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Regional Oral History Office  
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University of California  
Berkeley, California

Government History Documentation Project  
Ronald Reagan Gubernatorial Era

THE SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION, 1964-1973

Interviews with

Joseph E. Bodovitz  
Melvin B. Lane  
E. Clement Shute, Jr.

Interviews Conducted by  
Malca Chall  
1984

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To cite the volume: The San Francisco Bay Conservation and Development Commission, 1964-1973, an oral history conducted in 1984, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1986.

To cite individual interview: Joseph E. Bodovitz, "Management and Policy Directions," an oral history conducted 1984 by Malca Chall, in The San Francisco Bay Conservation and Development Commission, 1964-1973, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1986.

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## PREFACE

California government and politics from 1966 through 1974 are the focus of the Reagan Gubernatorial Era Series of the state Government History Documentation Project, conducted by the Regional Oral History Office of The Bancroft Library with the participation of the oral history programs at the Davis and Los Angeles campuses of the University of California, Claremont Graduate School, and California State University at Fullerton. This series of interviews carries forward studies of significant issues and processes in public administration begun by the Regional Oral History Office in 1969. In previous series, interviews with over 220 legislators, elected and appointed officials, and others active in public life during the governorships of Earl Warren, Goodwin Knight, and Edmund Brown, Sr., were completed and are now available to scholars.

The first unit in the Government History Documentation Project, the Earl Warren Series, produced interviews with Warren himself and others centered on key developments in politics and government administration at the state and county level, innovations in criminal justice, public health, and social welfare from 1925-1953. Interviews in the Knight-Brown Era continued the earlier inquiries into the nature of the governor's office and its relations with executive departments and the legislature, and explored the rapid social and economic changes in the years 1953-1966, as well as preserving Brown's own account of his extensive political career. Among the issues documented were the rise and fall of the Democratic party; establishment of the California Water Plan; election law changes, reapportionment and new political techniques; education and various social programs.

During Ronald Reagan's years as governor, important changes became evident in California government and politics. His administration marked an end to the progressive period which had provided the determining outlines of government organization and political strategy since 1910 and the beginning of a period of limits in state policy and programs, the extent of which is not yet clear. Interviews in this series deal with the efforts of the administration to increase government efficiency and economy and with organizational innovations designed to expand the management capability of the governor's office, as well as critical aspects of state health, education, welfare, conservation, and criminal justice programs. Legislative and executive department narrators provide their perspectives on these efforts and their impact on the continuing process of legislative and elective politics.

Work began on the Reagan Gubernatorial Era Series in 1979. Planning and research for this phase of the project were augmented by participation of other oral history programs with experience in public affairs. Additional advisors were selected to provide relevant background for identifying persons to be interviewed and understanding of issues to be documented. Project research files, developed by the Regional Oral History Office staff to provide a systematic background for questions, were updated to add personal, topical, and chronological data for the Reagan period to the existing base of information for 1925 through 1966, and to supplement research by participating programs as needed. Valuable, continuing assistance in preparing for interviews was provided by the Hoover Institution at Stanford University, which houses the Ronald Reagan Papers, and by the State Archives in Sacramento.

An effort was made to select a range of interviewees that would reflect the increase in government responsibilities and that would represent diverse points of view. In general, participating programs were contracted to conduct interviews on topics with which they have particular expertise, with persons presently located nearby. Each interview is identified as to the originating institution. Most interviewees have been queried on a limited number of topics with which they were personally connected; a few narrators with unusual breadth of experience have been asked to discuss a multiplicity of subjects. When possible, the interviews have traced the course of specific issues leading up to and resulting from events during the Reagan administration in order to develop a sense of the continuity and interrelationships that are a significant aspect of the government process.

Throughout Reagan's years as governor, there was considerable interest and speculation concerning his potential for the presidency; by the time interviewing for this project began in late 1980, he was indeed president. Project interviewers have attempted, where appropriate, to retrieve recollections of that contemporary concern as it operated in the governor's office. The intent of the present interviews, however, is to document the course of California government from 1967 to 1974, and Reagan's impact on it. While many interviewees frame their narratives of the Sacramento years in relation to goals and performance of Reagan's national administration, their comments often clarify aspects of the gubernatorial period that were not clear at the time. Like other historical documentation, these oral histories do not in themselves provide the complete record of the past. It is hoped that they offer firsthand experience of passions and personalities that have influenced significant events past and present.

The Reagan Gubernatorial Era Series was begun with funding from the California legislature via the office of the Secretary of State and continued through the generosity of various individual donors. Several memoirs have been funded in part by the California Women in Politics Project under a grant from the National Endowment for the Humanities, including a matching grant from the Rockefeller Foundation; by the Sierra Club Project also under a NEH grant; and by the privately funded Bay Area State and Regional Planning Project. This joint funding has enabled staff working with narrators and topics related to several projects to expand the scope and thoroughness of each individual interview involved by careful coordination of their work.

The Regional Oral History Office was established to tape record autobiographical interviews with persons significant in the history of California and the West. The Office is under the administrative direction of James D. Hart, Director of the Bancroft Library, and Willa Baum, head of the Office. Copies of all interviews in the series are available for research use in The Bancroft Library, UCLA Department of Special Collections, and the State Archives in Sacramento. Selected interviews are also available at other manuscript depositories.

July 1982  
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On behalf of future scholars, the Regional Oral History Office wishes to thank those who have responded to the Office's request for funds to continue documentation of Ronald Reagan's years as governor of California. Donors to the project are listed below.

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## INTRODUCTION

The three interviews in this volume document the pioneering years of the San Francisco Bay Conservation and Development Commission (BCDC). The first-hand recollections are those of Joseph E. Bodovitz, the commission's first executive director; Melvin B. Lane, the commission's first chairman; and E. Clement Shute, Jr., the commission's first legal counsel representing the attorney general.

In 1985 the San Francisco Bay Conservation and Development Commission celebrated its twentieth anniversary. Considerable publicity heralded this observance, much of it centered on the question "Has the bay been saved?" No one today would claim that the bay has been saved, for the meaning changes with time. But a quarter of a century ago the very existence of the bay was at stake. By 1960 more than one-third of the bay's original acreage had been converted to dry land and development. More filling and development were being planned by the cities ringing the bay. "Bay or River?" became the rallying cry of an unprecedented number of aroused citizens, who, under the leadership of the newly organized Save San Francisco Bay Association, moved the legislature and two governors to create BCDC. In 1965 it began, under Governor Edmund G. (Pat) Brown, as an interim planning and regulatory agency. In 1969 it became, under Governor Ronald Reagan, a permanent regional planning and regulatory agency to control bay fill and development and open up the waterfront to public access and recreation.

Given its mandate and the inherent tensions, the fact that BCDC survived its crucial first years, let alone a successful twenty, has made it a subject well worth documenting. Important also is the fact that BCDC served as a model for the Coastal Zone Conservation Commission, established in 1972 when the electorate overwhelmingly passed Proposition 20, and that both Joseph Bodovitz and Melvin Lane left BCDC in 1973 to assume positions with the new coastal commission.

The Ronald Reagan Gubernatorial Era Oral History Project, recognizing the Reagan administration's role in the passage of the legislation making BCDC a permanent agency and in shaping policies regarding conservation and the environment, sponsored this study of BCDC's formative years. The Water Resources Center at U.C. Davis, often a contributor to this Office's water resources oral history projects, added support. In progress is an oral history of the Save San Francisco Bay Association.

These oral histories on BCDC and the Save San Francisco Bay Association add links to the Regional Oral History Office's long-time studies on the history of land-use planning and water development in California. They follow most recently the three-volume State and Regional Land-Use Planning in California, 1950-1980, completed in 1983. This is an overview of the history of the previous thirty years through interviews with twelve persons who, from

differing positions of influence and responsibility, were major players in the development of landmark state, regional, and local land-use policies during a period when an aroused and organized citizenry moved the environmental movement from the background to center stage.

The Regional Oral History Office was established to tape record autobiographical interviews with persons significant in the history of California. The Office is under the administrative supervision of James D. Hart, director of The Bancroft Library.

Malca Chall, Project Director  
Land-Use Planning Series

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Joseph E. Bodovitz, Melvin B. Lane, E. Clement Shute, Jr.

SAVE SAN FRANCISCO BAY ASSOCIATION, 1960-1986

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Ronald Reagan Gubernatorial Era

THE SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION, 1964-1973

Joseph E. Bodovitz

*Management and Policy Directions*

An Interview Conducted by  
Malca Chall  
in 1984





JOSEPH E. BODOVITZ



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## JOSEPH E. BODOVITZ -- INTERVIEW HISTORY

Joseph Bodovitz began his career with the Bay Conservation and Development Commission in September, 1964, shortly after Governor Edmund G. (Pat) Brown signed State Senator Eugene McAteer's bill setting up the San Francisco Bay Conservation Study Commission. As its director, Bodovitz was assigned to direct the commission's study of problems inherent in filling the bay and to recommend legislation for protecting the public interest--if there was found to be a public interest.

At the end of an extraordinarily hectic four months, the commission published a report which defined the public interest and recommended legislation to halt the heretofore unrestricted filling of San Francisco Bay.

The McAteer-Petris Act followed in June, 1965, creating a twenty-seven member San Francisco Bay Conservation and Development Commission and granting this agency three years to come up with a plan which would balance conservation and development. In that interim period, through a permit-granting process, all filling would be halted unless it was deemed to be in the public interest. The future of the agency, and to a great extent, according to its adherents, the future of the bay itself, depended on how well BCDC handled its assignment. It handled it well enough to be accorded permanent status, in 1969.

Joe Bodovitz was reappointed executive director in 1965, a post he retained until 1973, when he became executive of the state Coastal Zone Conservation Commission. Today, he is the executive of yet another controversial regulatory agency, the state Public Utilities Commission.\*

Much has already been published about the formative years of the bay commission and Mr. Bodovitz's management role. Much, too, is already known about his background as a journalist and former staff member of the San Francisco Planning and Urban Renewal Association (SPUR). With that background already available, and considering the limitations of his schedule, this brief interview was planned to provide a few additional insights into the early history of the BCDC.

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\*As this volume goes to press Mr. Bodovitz has resigned from the PUC to head the California Environmental Trust.

The interview took place on October 10, 1984 in Mr. Bodovitz's San Francisco office of the state Public Utilities Commission immediately prior to a scheduled PUC meeting. He had read and considered the lengthy outline sent ahead and was well prepared. The interview could have taken from three to four hours, but because of his preparation and his enviable ability to speak clearly and to the point, most of the essentials were covered in the pre-arranged hour.

Malca Chall  
Interviewer-Editor

24 January 1986  
Regional Oral History Office  
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University of California at Berkeley

BIOGRAPHICAL INFORMATION

(Please print or write clearly)

Your full name Joseph E. Bodovitz

Date of birth 10/29/30 Place of birth Oklahoma City, Oklahoma

Father's full name Volley J. Bodovitz

Birthplace Ardmore, Indian Territory (now Oklahoma)

Occupation Lawyer

Mother's full name Frieda Gottlieb Bodovitz

Birthplace Pleasanton, Kansas

Occupation Teacher; housewife

Where did you grow up ? Oklahoma City

Present community Mill Valley, CA

Education B.A., Northwestern University, Evanston IL, 1951  
M.S. in Journalism, Columbia University, NYC, 1956

Occupation(s) Newspaper reporter; executive & director of  
San Francisco Bay Conservation and Development Commission, Coastal  
Commission, and Public Utilities Commission; teacher and consultant

Special interests or activities \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



*MANAGEMENT AND POLICY DIRECTIONS*The San Francisco Bay Conservation Study Commission, 1964-1965

[Date of Interview: 10 October, 1984]##

Chall: We have asked you to participate in an oral history dealing with the early history of BCDC [The Bay Conservation and Development Commission]. Actually, what I have found is that this book by Rice Odell is probably as complete as one would want to make it. I understand that you and Kay Kerr and others had a great deal to do with helping him write it--and that's why it's complete. There is also much good material on the subject.\*

Bodovitz: Right.

Chall: In oral history, what we really try to do is to get the first person story that complements the written material. So, since much of that is available there are only some aspects of this story that I'd like to take up with you. So, we'll start.

With respect to the setting up of the study commission the main question is: How did the staff and Senator [Eugene] McAteer meld this thing? What were the dynamics? You obviously did it and you did it well; but what were the dynamics behind it--the kind of thinking that went into it from your point of view and McAteer's?

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##This symbol indicates that a tape or segment of a tape has begun or ended.

\*Rice Odell, The Saving of San Francisco Bay, a Report on Citizen Action and Regional Planning, (Washington, D.C.: The Conservation Foundation, 1972).

Bodovitz: Well the background is, Senator McAteer had become involved in the issue because of Kay Kerr. I'm sure that story is either in Odell's book or you know it otherwise. She is a very determined person, and I think he realized she was really going to keep after him and I think he was very intrigued by the bay fill issue. I think what people tend to forget now is how unusual it was to have anybody of McAteer's stature interested in an environmental issue in the sixties. It would be common now, but part of what was intriguing about it at the time was, here was a person who had not been identified with environmental causes at all--part of the establishment in the state senate--suddenly taking up a brand-new and obviously glamorous, important kind of issue.

Another part of it was that Senator McAteer was obviously interested in being a candidate for mayor in the election of whatever year that would have been. I think, therefore, he saw an opportunity to take on a whole new kind of issue with potentially, not only a new constituency, but something that would be in the public eye--that he could keep in the public eye that would show him to good advantage. I don't mean by that to convey insincerity. That is, I think when he became aware of Mel Scott's book and the things that Mel laid out for everybody, it was easy to be genuinely concerned.\* So, I think it was all those things coming together at the same time.

There was then, probably more than there is now, a tradition of this sort of study commission in California government. That is, there was a tradition in the legislature--although I can't tell how many there had been before. But, here was a big issue brought by conservationists for a couple of years through Nick [Nicholas] Petris's bills in the assembly and otherwise, and here was the legislature not wanting to legislate--there was no consensus that would have let a bill pass. Yet, here was somebody with the power of McAteer able to say, "Well let's have a study commission." How he and Bob Mendelsohn designed the composition of that commission, I don't know, but it was not a big deal in the legislature to get a short-term study commission with a little bit of money. Then, everybody could forget about the issue and assume that the study commission would either do something or not do something. McAteer obviously had enough clout with the governor and with both houses to get a relatively simple thing like that through.

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\*Mel Scott, The Future of San Francisco Bay (Berkeley, The Institute of Governmental Studies, 1963).

So, in a way the session ended with no big tough bill passed, but with that kind of study commission enacted into law. One of my recollections is that everybody was surprised that that's what had happened. But here, all of a sudden there was legislative interest and there was progress.

Chall: What about the commission? Was it made up of people who were on, presumably, both sides of the fence with respect to the basics?

Bodovitz: Oh yes, and I think it had to be. I really can't recall how that was formed. My recollection is, and Bob Mendelsohn--I don't know who else can tell you--maybe Mrs. McAteer if you're talking to her. Again, the tradition in this kind of study commission is if the author was on good terms with the governor--these were part governor, part senate, and part assembly appointments as I recall it--the governor would be inclined to say, "Who would you like me to consider for appointment?"

Whether Pat Brown first suggested to McAteer, "Well you know you're interested in this issue, why don't you be chairman. It's the interim, there's no legislative session" or whether that idea came from somewhere else, I don't know.

Chall: What were the hearings like?

Bodovitz: Okay the hearings. Here we were with a law that has a study commission with slightly less than four months to complete the assignment, and a small budget. So what do you do next? Well, given the tremendous public interest that had brought this about, and given the effect that McAteer could have in energizing an issue, and given his willingness to spend some time at it, it seemed just very logical that you would want to hire consultants for a couple of small, research-oriented things that you needed to know about--but you would want to be as visible and public as you could possibly be.

My background was in reporting and covering public meetings (I'm a great aficionado of well-run public hearings), so I was enthusiastic about that idea. So we arranged public hearings. I think we did a dozen of them in slightly less than four months, and had a couple of consultant reports on some ownership questions and some other financial things. By getting really excellent people to speak at those hearings, we had an impact that made news--television and press coverage--and I think the hearings were genuinely informative. Again, I think the things that worked in the public arena were also genuinely useful. I don't think it was a case of imagery and fluff. I think the hearings educated people.

When you had people like Frank Stead and Frank Hortig and just the whole range of people that came to these meetings, you

were educating a commission of people that knew a little bit but not a whole lot. With a leader like McAteer it was marvelous. In some ways it was the most fun I've ever had in government. With a staff of myself, Bob, and one secretary, you don't have inter-office memos, and it's the height of efficiency; it was just great.

Then, because we had a little bit of a budget we were able to do what you probably couldn't do now -- get a very attractive report printed. The senator was obviously aware, as were all of us, that if this report was going to have an impact, it had to look lively and professional. I think just the fact that we were able, in that short a time, to do work of that quality, and come up with so attractive a presentation, I think that gave the thing a lot of momentum that it might not otherwise have had.

Chall: What kind of a person was McAteer? Pretty hard-driving when he got on to something that he was really working on?

Bodovitz: Yes, very hard-driving, but everybody who worked for him would have a different opinion of how he was to work for at whatever time. I came in about the time Leo McCarthy had left. McAteer could be very demanding on his staff. I think Bob was hired after Leo left, actually. He could be very hard on his staff. If you want to get into this much, Leo would be somebody good to talk to also. He enjoyed being part of the sort of club in the senate and having the kind of power he had. If he had lived and had been elected mayor, obviously Joe [Joseph] Alioto wouldn't have been, and who knows--

Given his background as an orphan, and having done things on his own--I don't think he had too many illusions about the world and about people. I found him a delight to work with partly because he was so energetic and lively. But at least the side of him I saw also was that he was a very compassionate person. I thought he would have been a terrific mayor--even though because of his sort of hard-driving nature, he could have been very hard to work for for many people.

I can't imagine the bay fill issue having gone the way it did without him. If you look at the make-up of the study commission and say, "Well suppose one of the others had been chairman?" Obviously, who knows? Nick Petris is very able, Joe [Joseph] Houghteling is very able, and we might have come out well, who knows? But as I say, the kind of political novelty of a McAteer being involved in a "do-gooder", "posy-plucker" issue just made it a different kind of issue. I don't know what would be a good example--like Ronald Reagan really being serious about protecting redwoods or something. [laughs]

Chall: Like Nixon going to China.

Bodovitz: Yes, like Nixon going to China or something. I mean it's that kind of--

Chall: You had to stop and take notice.

Bodovitz: Yes, it had to all of a sudden elevate this beyond just one more thing that a small handful of well-meaning but hopelessly naive people were trying to do.

The McAteer-Petris Act: The Bay Conservation and Development Commission, 1965-1969

Chall: As a matter of fact, none of it looks naive.

It seems that just getting the bill--the McAteer-Petris bill through was a sophisticated act because you had something really set to go. You had everything in place. It seems that nobody was leaving any stone unturned, no relevant facts omitted. Now, that was probably a result of McAteer or a result of your background? I don't know.

Bodovitz: You're talking about now in the legislature?

Chall: Yes, I'm talking about getting the interim bill passed from this original study. Working it out through getting Pat Brown to sign it, when he was wavering a bit.

Bodovitz: Well, I think it's in the nature of governors on issues like this to waver because there were competing interests. I mean here is Pat Brown feeling terrific about being the great freeway builder--which was a big thing in the fifties and early sixties, and here is his own Department of Transportation saying, "Gee this means we can't build freeways wherever we want in the bay, and we can't build bridges." There were obviously things of concern to Pat Brown that would have made him waver. I would be concerned about a governor who, if he didn't occasionally waver, would be a kind of zealot.

I think it was McAteer's ability to understand what the concerns were going to be, and to try, in the bill, to allay them. Sophistication is exactly the right word. Among the things we did that were unusual, were to create a commission that had federal, state, and local people all on it, and was as large as it was [BCDC]. People said both those things would make it totally unworkable, and we thought, "baloney." It was the fact

that no major point of view was going to be excluded from the place where the decisions were going to be made, that in fact makes it workable.

McAteer said over and over and over, and this was part of his answer, "The law says if you've got a good case you get a permit." or, "You're going to be there, you make your case. If you've got a good case you get your permit." That's hard for people to answer because that then puts them saying, "Well no I don't just want to make my case, I want to be guaranteed I can do what I want." McAteer would then say, "See, that's what everybody says. Everybody just wants to fill his little part of the bay and be let alone, you're just like everybody else."

The kind of novelty of that argument and that issue, and press coverage, and Don Sherwood whom I trust is mentioned in Rice Odell. Okay, what I mean is all that was going on at the time, just made it a very lively time.

I think the opponents were somewhat off guard. One of your questions was about ABAG [Association of Bay Area Government] saying, "We can do it all." McAteer thought that was ludicrous, and he thought the same about their threats that if he didn't do things their way they would kill his bill. He was both amused and annoyed at the presumption of ABAG's telling him that if he didn't do something they wanted they'd kill his bill.

Again, it's been so long since I've read Rice's book, but one of the key hearings was where McAteer took on Randy [Randolph] Collier who was the advocate of the freeway builders and was campaigning against the bill. My recollection is Collier finally took a walk or backed down on something that he was giving McAteer a hard time about. McAteer jumped down his throat very effectively and dramatically. It was the kind of thing that had not happened--that somebody with McAteer's power would take on Collier, whom everybody was terrified of. It was an interesting issue not only because of the welfare of the bay, but the fact that somebody of McAteer's standing and perceived perceptions people had of him, would take this on and do battle with a Randy Collier, for example; that was a big deal.

Chall: In terms of the size of the commission and the comprehensive powers that it had—even at the beginning, was some of this out of Mel Scott's recommendations--particularly permits, or the opportunity to have an interim commission. I haven't read it recently, but I recollect that he was pretty specific about the requirements needed to start that kind of a program.

Bodovitz: I'm sorry to say I don't recollect either where the idea came from, but that's as good a possibility as any. It was very obvious that if you didn't maintain some kind of control on the bay, the mere existence of a planning agency would provide great incentives for people to get the next ten years worth of filling done right away, because they might be stopped by the plan. The plan could be rendered useless simply by the existence of the planning agency, if I'm making sense--the fact that people thought they might be stopped would give them an incentive to go do something. So, you really needed to be able to protect the bay while you were planning for it or the risk was you wouldn't have much left.

There had been a very highly publicized lawsuit in which the state court of appeals upheld a Monterey case that temporarily denied somebody a permit to develop. There was a redevelopment area in downtown Monterey and somebody came in and wanted a permit to build a high-rise building or some large development in the middle of the redevelopment area. The city turned it down saying, "How can we plan for a redevelopment of this area if we give you a permit to build this great big building?" The appeals court said, "Yes, that is a reasonable thing." You can't deny them forever because that would be "taking," but for a limited period, while bona fide planning is taking place you can do that kind of denial.

So, there was a precedent. Again, it was easier to say, "Well look, this isn't permanent and we'll look carefully at what ownership rights and what rights people have, but in the meantime you can't do anything unless you get a permit, and you can't get a permit unless you meet these criteria. Again, the existence of the permit process said: If there's some really valuable public thing, all you have to do is make your case and you're entitled to a permit.

Chall: Then you had to be sure that you gave everybody a good hearing.

Bodovitz: The hearings had great value because not only ought people to have a fair hearing on a permit application, but the danger of planning agencies obviously is that the planning isn't rooted in reality. When you're hearing somebody arguing the case for a permit, and you're hearing the argument against the permit, you have some understanding of what is going on not only in that part of the shoreline--which the whole commission might or might not have been familiar with--but you begin to get some idea of what issues you're dealing with in the planning. So, I felt and feel very very strongly, that the plan benefited from the permit process, and the permit process benefited from the knowledge we were acquiring through the planning.

Chall: It definitely did and that is one of my other questions. How did you come to that conclusion? By this time you would be working with Mr. [Melvin] Lane. Did you both see it rather clearly at that point--the causal relationship between the permit and planning process? Odell, of course, is looking at it in terms of hindsight; but on the other hand you had the foresight. I just wondered where the foresight came from?

Bodovitz: The foresight, which may be foresight or good luck or whatever--was probably good luck, and we'll now say was utter brilliance. It seems to me the danger in this kind of governmental planning is people don't think in chess terms, they don't think a couple of moves ahead. It seemed to me you have to work backwards a little bit from where you're trying to get, not "lets just go down this road and see where it leads."

What we had in 1965 was a temporary commission. This means if you don't score a touchdown the ballgame is over. You don't go on forever; you don't have the luxury of permanence. You have a probably skeptical legislature when you go back; you have the people that didn't like the temporary commission and sure aren't going to like the permanent commission, so you're not going to be loved by everybody. You have a very large and diverse commission, some of whom have very different points of view. We had to take an advisory committee as you remember, that had all kinds of different people. So somehow, out of all that, you have to come up with something that can be the basis for legislation in 1969. The goal, as we saw it then and I would think correctly, was not, "Let's have a lot of fun preparing a plan." The goal was, "Let's do something that will be the basis for successful legislation in 1969, that will both protect the bay and encourage appropriate shoreline development."

When you think of it in those terms, then you think, "Well what do you need to be the basis of that kind of legislation?" One, you need a good plan that's rational and shows you understand what you're doing--with as much specificity as you can have about what is going to happen around the bay if the plan is carried out. Almost certainly, you're going to need some form of continuing permit operation, so you have to show that you have exercised the permit power responsibly during the interim period. That is, if you've blown it, no one is going to want to continue the permit power. But, if you've shown, over the four years, that people were fairly treated, that rational, necessary development was encouraged, not discouraged, and that the values of the bay were protected, you make a case for continuing.

Finally, because the people that oppose you are going to be very strong, very well-financed and all, you have to maintain the public support that got the whole thing started--if you lose that, you've got nothing. You've got a plan and nobody who

cares. When you reasoned that way, it seemed to me you just came to the inevitable conclusion of two things: One, the planning had to be done in an open, public way so that two audiences, the commissioners themselves and the public, would understand the planning. Secondly, that meant you couldn't commission one of these great big plans and just turn it all over to consultants, because no one would understand what they were doing, and no one would have a stake in it.

A third consideration was, it seemed to me the report of the commission had to be as unanimous as we could make it. To go to the legislature with a divided report, with big dissenting opinions at the end of it, would make it very difficult to legislate because there would be such a strong dissent, that you would just have a foretaste of what was going to happen in the legislature. It didn't seem to me that that meant we had to homogenize everything down to the lowest level that everybody could agree to; it meant that it really had to be the commission's plan. All kinds of people had to say, "Yes, we didn't get everything we wanted, but this is a good deal for this region and we're going to support it."

That meant, we had to give the commission understandable chunks of the plan one at a time, and they had to vote on them. This was a new and novel idea.

Chall: Was that kind of thinking a combination of the fact that Lane understands setting up a magazine or a publication that people would read; and that you had had a background in publicity, and government? Was it a combination? Can you think of meetings that you might have had initially, when you first started, to decide how you would go about getting things done?

Bodovitz: I think it grew out of a lot of discussions that Mel and I had, but I can't tell you a particular day. Mel was terrific at everything. He would make me think through things. I would say, "I think this will work." He'd say, "Well, have you thought about this or that and something else?" I would realize that I hadn't thought about that, so I'd think about it, we would have some staff discussions and we would talk again.

You would have to ask Mel his feelings at the time, but there was a considerable leap of faith on Mel's part, because I'd never done this before, Jack [Schoop] had never done this before, Al Baum had never done this before. And there was McAteer looking over our shoulders. Mel was adding his reputation and prestige as chairman of this thing, with a great leap of faith, agreeing that as we had worked this out it sounded good to him-- but he couldn't begin to say he knew where it was going to go either.

The kind of things that he agreed with strongly, as I recollect, were: That if the commissioners voted to adopt a planning report that said marshlands were important, it was going to be awfully hard for them to then say at the next meeting, "Well we don't care whether we destroy marshlands or not." Therefore, this idea of building the plan piece by piece, so that everybody could understand—understand what they were voting for. We--the staff--did a reasonably detailed report on each subject, as detailed as time or money would allow, and a summary, and then very simple propositions that the commission would vote on. They weren't voting on whether they agreed or didn't agree with the consultant, and they didn't have to agree with the summary, but they had to vote that marshlands were important--and that the marshlands and the bay had been shrinking by such and such amount; and that it's important for fish and wildlife for us to protect remaining marshlands.

Chall: They had to see it regionally?

Bodovitz: Yes. I don't want to make this sound like trickery. We didn't sucker people into voting for things that, if they had known better, they wouldn't have voted for. But it worked both ways: the more development-minded people had to take a look at marshlands, but similarly the absolute conservationists, if that's the right term, had to understand there was an economy in the bay area, and that shipping after all, did depend on ports, and ports did depend on dredging and deep water access. People had to confront the legitimate interests of both conservation and development. The idea that Mel felt very strongly about, and I'm sure he will tell you it was a cardinal principal of his, is that reasonable, fair-minded people, dealing with facts in a reasonable, unemotional way, are going to come out largely agreeing to the same kinds of things. They may disagree on a particular permit or a particular issue, but no fair-minded person can say marshlands aren't important. Similarly, no fair-minded person can say ports aren't important to the bay area economy, to use those two examples.

First, there was a commission vote on the planning principles from each of the issues--marshlands, ports, recreation, et cetera. Each decision was meant to be reasonably complete. We didn't say, "This vote is absolutely final," but we weren't going to go over each issue at every meeting. Once the commission said, "That's our tentative policy," that's our tentative policy. We might have to change it when we look at another policy, or we may decide near the end of the line that we are going to have to change it, but that's what we're doing.

Chall: And, working it out so that at the same meeting you would have discussed some aspect of the plan, and come to some conclusions tentatively, or table it for a time? Also, as you took up

permits you were looking realistically at the bay in total? That was a planned concept for the meetings?

Bodovitz: Yes, absolutely. We had permit hearings at the same meeting for fear that some people would say, "Well the plan isn't important, I'll just show up when my vote counts on a permit." We also, as I recall, quickly decided that because the planning had to be paramount--the permit was an interim control, the plan was for the future of the bay--the plan had to have priority. Therefore, we would go to the planning issues at the beginning of the meeting, and then we would go to the permits. If anybody had to leave early, it was the permit hearing that would suffer, and there would be a very unhappy applicant.

Chall: Was there quite a bit of lobbying of the commissioners prior to some of these permit meetings?

Bodovitz: I'm not sure I would have been aware of all the lobbying, but I'm sure there was some. I can't believe there was any more than exists in a typical city council, planning commission, or board of supervisors. They were the same kinds of projects that had probably gone through a local government, and the developers or proponents would have lobbied commissioners here in probably the same way.

Chall: How about commissioners interacting with the staff on some of these cases?

Bodovitz: To the best of my recollection, there would be a phone call now and again--somebody wanting information. I just don't ever recall being leaned on by anybody about a permit. I didn't encourage anybody to do that. And, I think we would have lost credibility if we seemed to be bending one way or another. I have no doubt that people might try to call any commissioner they thought might be favorable--either proponents or opponents. Somebody might call me and say, "A friend of mine is interested in this project, what's it all about." Part of the purpose of the large commission, with the diverse representation, was so that there was no automatic bloc and that part was extremely healthy.

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Chall: I noticed, from reading a couple sets of minutes at random, that the commissioners were very very careful about everything. Their questions seemed to me to be good. They were based on fact, they were based on concerns of theirs, and the concerns seemed to be very largely, "What will this do for the bay? Will it pollute the bay? Will it mess up the scenic view?" Things of this kind.

I don't know who all these people were, but there was enough give and take so that it would seem as if everybody cared-- whatever the side of the fence they might have been on. The staff and the consultants had to answer, and Mr. Lane had also to say, "Maybe we don't understand enough about this, let's look at it another time." I was impressed with the total concern--not only that, but the detail that these people had in their backgrounds. Did they really do their homework well?

**Bodovitz:** Certainly many of them did. One of the reasons that we went to the planning summaries--have you seen those planning documents? They must be in somebody's file over there?

**Chall:** Yes, I think I've seen some of the summaries, and I've seen something like this confidential report which is based on a summary and really asks some very very pointed questions.\* For example, what the assumptions are, what the conclusions might be, what the problems and alternatives might be. I think that I'd like you to tell me a little more about those too. But, let's go on into the summaries first.

**Bodovitz:** The summary had two values. One is, our staff wrote the summaries. A consultant was hired or another agency or whatever, to prepare a report. Our staff then wrote the summary because we wanted to aim it at the commissioners and to put it into clear English. One of the things you learn in that process is you read a consultant's report and you think you understand it, and then you try to write a summary of it and explain it to someone else, and you find the holes. So, this process let us go back to the consultants right away and say, "Well this isn't clear, and you'd better explain that."

While I don't know how many commissioners read the full reports--probably the answer is that some read some and some read them all and some read few, I don't know. The intent of the summaries was to be concise and interesting and informative. I would guess by and large that everyone could read those with no great strain. People did read them, and then the policy statements that were included were what the commission voted on. I would think the homework was done quite well.

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\*Briefing Report; Tentative Conclusions as to the BCDC Plan, September 7, 1967, Stamped CONFIDENTIAL DRAFT. See also pages 27-27d.

Regarding the use of the confidential reports, Rice Odell, page 51, wrote: (for continuation see page 17)

We did the same thing in the Coastal Commission plan. Commissioners had to feel comfortable that this was their plan. Inevitably, we couldn't satisfy everybody. We couldn't take all the time everybody wanted on every issue, but you had to make sure you didn't run over anybody. If somebody was raising an important point, you got an answer, and then you wanted that person to be satisfied this was reasonable and to vote for the resulting policies.

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\*6. Review and Evaluation.

"Confidential drafts of the staff reports and the possible planning conclusions were submitted to members of the citizens' advisory committee for full review and comment. They were returned to the staff, which made revisions as it felt appropriate.

"The reports and possible planning conclusions, along with the advisory committee comments, were then presented to the commission. In case of disagreement within the advisory committee, or among staff or consultants, written procedures stipulated that 'all points of view will be presented to the commission, so the commission can have the widest possible range of information and opinion in reaching its decisions.'

"In addition, members of the public could and did testify and write letters expressing their opinions of the suggested policies. 'Dozens of suggested revisions in the conclusions were made from the floor by the public,' said Baum.

"The 'possible planning conclusions' were debated, revised and voted on. They then became part of the tentative overall bay plan. 'The idea was not to have a plan prepared by staff and consultants,' said Bodovitz, 'but a plan actually prepared and adopted by the commissioners themselves, with the hope, which I think has been proved correct, that in this manner the commissioners would be committed to the final plan.' This commitment would be important in generating public and political support.

"The BCDC, in a very important move, altered the normal procedure for obtaining agency concurrence in a plan. Usually, a large, detailed package of research and recommendations is presented to a commission after a year or two of work. 'The trouble with such plans,' said Bodovitz, 'is that at the end you take one big vote to adopt it or reject it, and everybody's against it because there's something in it they don't like.' This would have been particularly difficult with the BCDC, because of its comparatively large membership."

## Relationships with Developers and Conservationists

Chall: What about your public relations or your relationships with other groups like the Save the Bay people, the Sierra Club, and the League of Women Voters? Did you have contacts with them over the plans or some of your decisions in here, or assumptions? Did they talk to you regularly. Did Kay Kerr?

Bodovitz: Yes, Kay was never bashful. We had much more contact with Save the Bay than with the league, or the Sierra Club--with the exception of Dwight Steele from the Sierra Club, certainly. I better amend that because on this issue, Dwight Steele was the Sierra Club for all intents and purposes, so the fact that there weren't a lot of other people around didn't matter a lot.

Dwight and Kay were eloquent, effective, and knowledgeable--obviously. They felt, I think very strongly, that there was a danger the commission would be pushed in the developer's direction if they didn't push equally strongly. So, they or their representatives spoke at commission hearings. They talked to the staff--so did all kinds of other people; I mean it wasn't limited to them. We felt it important to understand what everybody wanted and thought. We obviously couldn't satisfy everybody on every issue all of the time.

In addition, the news media were interested in the bay issue. And the commission met in various places around the bay, so there was lots of public attention to what we did on some of the planning issues. We were short-handed on our staff, so we didn't really have a public relations person. It really depended on different ones of us making speeches or whatever. But having four city representatives and a supervisor from each county meant there was somebody local for people to talk to if they wanted. I think it would have become somewhat embarrassing for some of those people if they hadn't known what was going on because people would come and ask questions.

Chall: Well, and you were dealing with rather major problems, like the San Francisco port, Candlestick, and all these other interests like Westbay. Media would be there whether you had a P.R. person or not.

Bodovitz: Right, correct.

Chall: What about ABAG, and the League of California Cities, and the Bay Area Council? Those are people who would have basically been on the other side? Was that about the same kind of contact as you had with the environmentalists, or was it different?

Bodovitz: You're aware of the ABAG appointments?

Chall: Yes.

Bodovitz: Well there was a kind of turmoil within ABAG at the beginning, so that the initial appointments were replaced by people like Bernice May and Mike [Michael] Wornum. I think they felt it was their obligation to keep ABAG informed, and be the conduit. I went to ABAG meetings, and I'm sure I talked to ABAG groups, and I'm sure others on our staff did, but there were four people on the commission picked by ABAG, and I think they reported with some regularity to the relevant ABAG committees. Mike Wornum might be somebody you could talk to about that, but my recollection is that ABAG initially felt burned by having threatened McAteer, and then having McAteer steam roller them. Then, they made what were thought to be pro-development appointments to the commission, and that created a sort of commotion within ABAG that led to some different appointments being made. I think some of the ABAG people probably felt for a time, "Gee we've had enough of this." And, there probably was also a feeling that the thing would probably fall of its own weight, so why should they worry about it. When it collapsed they would be back to local control as before. Also, McAteer was nobody that you wanted to tangle with more than you needed too.

I remember once, I can't remember what year, they invited him to speak at the ABAG general assembly, and he was mildly conciliatory but let them know who was in charge. But I don't think that up to the time of his death he was ever a fan of ABAG.

Chall: I see. Well, at the time too, there was some concern about whether the future of BCDC would be a single-purpose agency or part of an umbrella regional government group. The 1969 act specified that if there weren't any regional government to identify with, BCDC would be a single-purpose agency, which is what happened at the time. But, within a year or two, there was a [John] Knox bill--a BARO [Bay Area Regional Organization bill], and it almost passed. What was the thinking of BCDC at that time? They would have been brought in under a general planning agency, or regional government set-up.

Bodovitz: I don't recall specifically. I'm sure the reaction would have been that those who thought a regional government, with its ability to do regional trade-offs, was probably of such value that even if the bay were slighted in the process it was worth doing. I'm sure there were others, and I'm sure Kay Kerr was one of them, who thought the bay was so important and this other thing was a mirage, that we were crazy to think that way. I suspect the staff--Jack, Al, and I-- probably saw more merit in a regional government with regional land use and planning and other kinds of powers, than we did with a lot of single-purpose

agencies. I suspect we thought that in the long run, with a regional government structured as I recall BARO was, the bay stood to benefit because a multitude of competing single-purpose agencies was likely to be trouble no matter what. Although, of course, there might have been parts we didn't like. I remember the election/appointment problems.

My recollection is that conservationists really didn't agree with Jack Knox on parts of what he was doing. I remember lots of meetings at the Faculty Club in Berkeley with Gene Lee and Stan Scott, trying to get us all together and straighten out our disagreements.

Chall: There were a couple of those. Well he [John Knox] had sponsored BARO bills for nearly a decade. The one in 1972-73 almost passed. There was another one in '74. You would have been gone by then.

Bodovitz: Right, I was gone by then.

Chall: There was a considerable concern on the part of the conservationists over that one.

The final vote on the plan itself, before you went into the 1969 session, was, I think, 20 to 1--

Bodovitz: I know you wrote that in your note. Was Frank Hortig the one you recall from reading?

Chall: I don't know who cast the vote. I haven't reread the minutes.

Bodovitz: I bet Rice has got who it is. My recollection of it is that it was either--Well why don't we-- [Checks Odell] Somebody at BCDC could look up the minutes and tell you. I'll tell you my recollection. Wait a minute, here we are: "The end result of these procedures was a remarkable plan and virtual unanimity in approving it. In the final, dramatic, 19 to 1 vote on September 20, 1968, only one county representative dissented." (I'm sure that would have been somebody from Solano county.) "He did so because he thought more industry or fills should be allowed. Another man, a state official" (that would have been Frank Hortig of the State Lands Commission) "abstained because he considered the plan in conflict with his position, a third member said he was unhappy, but voted yes anyway."\*

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\*Rice Odell, The Saving of San Francisco Bay, a Report on Citizen Action and Regional Planning, pp. 55-56.

So I've read that into the record. I can't vouch for that independently, but all of us were anxious to have Rice get it down correctly at the time he was doing it, so I assume that was accurate. We were smarter than we knew because you don't think at the time you're going to forget all this stuff and you do.

Establishing BCDC as a Permanent Agency, 1969

Chall: Can you give me some background on making BCDC a permanent agency? Now there's been a lot written about that--it's high drama. I've talked to Jack Knox about it, so we do know something about those tense days.\* Nonetheless what were you doing? I don't have that from your perspective.

Bodovitz: Once we got into the '69 session, as you are aware, there were several competing bills--Jack Knox's, there was a Milton Marks bill, and there were others. Knox put in a bill because he didn't think anybody else's was going anywhere. We'd had some meetings as to whether you ought to begin in the senate or assembly, those kind of things you do at the beginning of a session. Marks, because by then he was in the seat that McAteer had left, thought there was a sort of tradition and that he ought to put in a bill because that had been a good thing for McAteer and he ought to continue the tradition. So, for better or for worse, things got started in the senate.

I don't have enormous recollections of what we were doing. Obviously legislators and their staffs were more involved than we were with the interest groups and all the committee consultants and all of that. We were mostly trying to provide information and say that, "this amendment would cause problems and that one wouldn't be so bad." We felt that it was our job to explain and defend the plan. I think we also felt that the commission had

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\*John Knox, "Bay Area Regional Organization, the Environmental Quality Act, and Related Issues in the California Assembly, 1960-1980," an oral history interview conducted in 1982, Volume III Four Perspectives on State, Regional, and Local Mandates for Land-Use Planning, 1960-1982, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1983.

neither the power nor really the responsibility for saying, "This compromise is acceptable and that one isn't." Although I don't recall that clearly, it may be that in the minutes the commission did or didn't agree with certain versions of the bill or whatever. John Zierold was involved and would be somebody to talk to about his recollections at the time. Certainly Knox, certainly Tom [Thomas] Willoughby.

We were one step removed from the process, so I'm not sure I have really clear perceptions. I've always had a great deal of doubt about how effective agencies themselves are in this kind of thing. You don't really know what is going on, you don't really know what all the political pressures are on different legislators. You're not there every day--you're not living it. You risk having good intentions but making wrong decisions.

I think our basic idea was to try to educate as many people as we could as to why various ideas had or had not been included in the plan. When somebody would want to do something that hadn't been agreed to in the plan, I think our tactic was to say, "Look, don't spend a lot of time on that. That isn't a new issue. Contrary to what these people tell you, they were in fact heard. We listened to them and we just didn't think their position was right and here is why." So I think we were doing a lot of that, but I don't know that we were saying, "We want this bill," or, "We like this author and don't like that author." We were trying to help anybody who wanted help in drafting anything.

Chall: You're talking about staff now?

Bodovitz: Staff now, yes.

Chall: Mr. Lane could have seen the governor.

Bodovitz: The governor--that was one of your questions. As you're aware the Resources Agency had a person on the commission. For most of that time my recollection is that it was Al Hill who worked for Ike [Norman] Livermore. The people who were probably most influential within the Reagan administration were Al Hill and his boss Ike Livermore. Ike and Mel had been friends and had known each other and were both Republicans. Reagan had an appointments secretary (I can't remember the exact dates) named Ned Hutchinson.

Chall: He was there then.

Bodovitz: I don't know that he would have joined Kay Kerr's organization, but he was very sympathetic and thought it was bad for the administration to not be identified with responsible conservation. He was very helpful with advice as was Al Hill.

I think very highly of Al Hill, and likewise, obviously, Ike

Livermore. Ike was in the lumber business, a respected businessman, but he had an environmental family--an environmental conscience. It was hard to imagine Reagan having a better kind of person running state resources.

Chall: So when it came to the bill being acceptable to him, given amendments, he was for it.

Bodovitz: Right, but I'm sure there were plenty of people on the other side within the administration. So, I think it was important to have somebody like Ike. It would be good to ask Mel about this.

Chall: When it came to his appointments to the commission--of course he'd already started making appointments before this--did they change the tenor of the commission in any way at all?

Bodovitz: Reagan kept Mel, and he appointed [William] Evers, and he appointed Bessie Watkins, and who were the others?

Chall: I understand he appointed Marcella Jacobson.

Bodovitz: Yes, Marcella. Well, just to recite the names answers the question. I really think he thought--those were the days when he negotiated with Tony Beilenson on the abortion bill, and did some things that were quite progressive and balanced. I think when Ike and other people said, "Well not everybody is going to like it, but it's a balanced solution and there really is a problem," he was willing to go along. Both there and with the Coastal Commission, he didn't just stack the thing with people who were against the whole program.

Well, there were a few people who were hell-bent to undo the thing. But Reagan also appointed Mel chairman of the Coastal Commission, even though he opposed Proposition 20. When the thing was the will of the voters, he didn't try to undo it, and I think the same thing happened with BCDC.

Chall: In terms of BCDC being a permanent agency--it continued with practically the same staff--the same chairman. You didn't do anything about the plan anymore, but you did have to follow it. And, you had to determine your one hundred foot band priorities et cetera. How do you recollect the next few years?

Bodovitz: I recollect we had lots of things to do, and I think the momentum really carried forward. We'd had a permit process that was in place; I think people understood what the hearings were like and who came. The commission didn't particularly change. There was great continuity.

I think the concerns the business people had--this was true of every regulatory job I've been in--is the dislike of

uncertainty. They may not like the rules, but if they know what the rules are they can invest or not invest, do something or not do something. But, when no one is sure what the rules are going to be, then everything is up in the air. I think there was probably a kind of relief that at least the law was now the law. The ground rules were established, there would be fights about one thing or another, but everything wouldn't be all up in the air again.

Your third question here about the charges that the staff was made up of conservation-oriented people--this is an issue that somebody raises all the time, virtually, with all government planning and regulatory agencies. The question is not what they think, or whether they're nice to their wives and kids, or whether they ride bicycles to work. They have to be judged on how they do their jobs. I felt I was accountable (as I do in any agency) for the quality of work we produced, not for the opinions of the people who were there. I wouldn't want to be judged by whether everybody who ever worked for me was right-thinking by somebody else's standards, but I feel it's fair I be judged by the work we put out. If we were not upholding the law, or if we were doing something crazy, we ought to be called to account for it.

Those kinds of things lead to some interesting internal discussions within the staff; even people who have never met business payrolls have some interesting ideas. Sometimes they're right, sometimes they come up with good ideas, and sometimes somebody has to say, "That is interesting but we're not going to do it."

Chall: What about the inter-relationship among the staff in terms of when you came out in the plan with some of your proposals, or your stand on permit appeals.

Was there argument within staff so that there would be differences of opinion? How did you resolve those? I know that there were differences among staff in the Coastal Commission because I've read your interviews with Stan Scott.\* I wondered whether that took place also in BCDC.

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\*Joseph Bodovitz was interviewed by Stanley Scott during 1978-1979 on Mr. Bodovitz's experiences as executive director of the state Coastal Commission.

Bodovitz: My recollection certainly, is much more within the Coastal Commission just because of so many more issues. I think the difference is just in the range of issues. I don't mean to make the BCDC planning sound simple because God knows it wasn't; but relative to what we were dealing with in the Coastal Commission-- it was simpler, because it was bay fill and it was a narrow shoreline band.

It was a very small staff and it was people who--basically Cliff Graves, George Reed, Jack Schoop, Al, and myself, and one or two others. By and large we saw eye to eye on a lot of things. Sometimes Al, with greater permit responsibilities would say, "Wait a minute, we're out of sync here. The permit is going this way and the plan is going that way; we better decide what we're doing here."

That kind of tension or balance is very healthy. But, I don't recall enormous disagreements or whatever. With the Coastal Commission, because, as I say, we had so many more issues, and the issues were often much more complex, and such a much bigger area to deal with, it was very easy to have all kinds of different internal disagreements.

Finally, moreover, one of the virtues, and I think one of the reasons why the public had confidence, was because we had somebody of Mel's stature and experience. Mel obviously met all the business criteria anybody could look for, and Mel was a great sounding board. As I say, over and over he just would say, "Well, you think that's a good idea, but have you thought about this this and this." And I would say, "You're right, we shouldn't do it," or "Yes I have thought about it and we still should go forward." Once in a great while I would recommend something he wouldn't totally agree with, which I think is about how things ought to be.

He has just tremendous judgment, and could see right away something we on the staff were too close to see and hadn't thought about. I could send him a draft of something, or I could say, "What do you think about this idea?" He would say--thinking three jumps ahead--"These people over here are going to give you a bad time about it." And, I'd embarrassedly concede I hadn't thought about it and was glad he had pointed it out. As I said in my stuff with Stan Scott, I came to generally realize that when he and I didn't initially see eye to eye, he was much more likely to be right than I was, [laughs] and I'd better go back and figure out what I was doing wrong. I just think that no one could really believe that an agency that Mel was chairman of was going to go off and do wild and crazy things.

The other side of it also, is you really want a staff that is creative and thinks, and you need to be able to say, "Well that's a good idea but let's not do it." But you also need to be able to say, "That's a terrific idea, and, but for you, we wouldn't have thought of it." So, somehow it's finding a halfway balance between real creativity and innovative people and people who go off the deep end.

Chall: If they go off the deep end too often they don't have to stay on your staff.

Bodovitz: Yes, precisely.

Chall: I have talked to Mr. [Clement] Shute about the legal matters, but in terms of getting together and making decisions, was this difficult? For example, let's sue, let's go to court. I know he was probably a good advisor in his advice to the staff and commission, but was it sometimes a problem to decide, "Let's take a stand here, let's go to court."?

Bodovitz: As with any relationship of that kind, again we were blessed by having somebody as good as Clem, because he had the combination of an aggressive commitment to the laws we were trying to enforce, and a creative streak so that he could figure out ways around problems. He also had the cautionary judgment you'd expect a good attorney to have--"This one we can win, that one's just too far out." or "You can go this far and the courts will sustain you; you do that and my advice is you're going to get shot down."

You come to have confidence in a lawyer like that. You don't tend to have confidence in a lawyer who says you never can do anything, because you think, "Well, there's some lazy guy who doesn't want to think about what you might do, he just wants to tell you don't do this or don't do that." You don't need that. But you do need somebody who says, "Well here's a creative solution to that problem," or "Here's a problem there is no solution for; you just can't do it." Clem was terrific. He was energetic and creative, and very valuable. So that when he said, "No." I came to agree the answer was "No." The commission came to have confidence in his judgment as well. We lucked out with good lawyers at the Coastal Commission too, from the attorney general's office, because if you get leaden influences, you can be in awful trouble.

Chall: I know you have to go off to an appointment, and perhaps we've covered about as much as we really need to cover, even though it was done in a shorter time than I would have expected. So much has been written that maybe we've got enough. If, when you see your transcript, you want to add anything, then that would be a good time to do it in terms of getting down some aspects of

BCDC you didn't think about while we were talking. Otherwise then, we can just say we're through. I do appreciate your giving me this hour out of your very tight schedule.

Bodovitz: Okay. Well, you asked me about this thing [Confidential Report] which I have totally forgotten about for I can't tell you how many years. Just looking at it again I can't totally recall what led to it. But just looking at it quickly, it seems to be an example of our trying to make choices clear to the commission.

Chall: That was one of your ways of dealing with a problem.

Bodovitz: But, it was an effort on our part--If this was in 1967, it still looks good to me right now. In some ways I've been bureaucratized, and my writing has gotten worse than this, instead of better. This would have been the kind of ideas we would have tried to show to the commission. You asked if people did homework. We would have tried to say, "Well here in four pages, is what the main issues are." We would have thought that with anybody who wanted to be on the commission in the first place, it was not a great burden to expect him or her to take the time to read and understand something like this. And, as I say as I look at it, it seems to me to be a clear setting forth of issues and possibilities. I can't say how much of that was written by Al or Jack or me.

Chall: What were your reasons for leaving BCDC? What do you consider to be your personal accomplishments and frustrations during your decade with BCDC?

Bodovitz: I left BCDC to become executive director of the Coastal Commission, after Proposition 20 had been approved by the voters in the fall of 1972. I left, I think, in January, 1973.

The frustrations were those that go with managing in state government--the restrictions of the budgeting and personnel systems, which are slow and cumbersome. The best parts were obviously my good luck at having been able to help start a conservation and development commission for San Francisco Bay, a commission structure that has proven workable over many years now. And I think I'm proud of the open, clear planning process we used, and of the good permit hearings we held. There were so many excellent people involved--on the commission, on the staff, and in the various organizations we dealt with. It was a very exciting and interesting time.

Transcriber: Lisa Grossman  
Final Typist: Richard Shapiro

## BRIEFING REPORT

September 7, 1967--16 months to go

## TENTATIVE CONCLUSIONS AS TO THE BCDC PLAN

## I. BASIC ASSUMPTIONS

Assumption No. 1. As required by the McAteer-Petris Act, the BCDC plan for the Bay and its shoreline will be enforceable, not merely advisory. An advisory plan can be accepted or rejected by governmental jurisdictions and private property owners as they wish. An enforceable plan can be put into operation through various forms of compulsion, if necessary.

Assumption No. 2. As required by the McAteer-Petris Act, the BCDC plan for the Bay and its shoreline will be comprehensive. The plan will thus deal with the Bay and its shoreline as a whole.

Assumption No. 3. Many of the key decisions remaining to be made involve methods of carrying out the plan. There is, for example, no point in planning for a certain area as open water if its owner has already advertised his plans to fill it, unless decisions are made as to how the area cannot only be shown on the plan as open water, but actually kept as open water.

Assumption No. 4. While there is some question as to the validity of the title to certain Bay lands claimed by private owners, any effort to assert that these lands are in reality owned by the State, not the private claimant, would result in extensive litigation. The lawsuits would probably be ultimately decided by the U. S. Supreme Court. Since the outcome of such litigation cannot now be predicted, the BCDC plan will assume that the lands in dispute are actually in private ownership (at the same time, however, any lawsuits or other means to resolve the title controversy should be vigorously pursued).

## II. EMERGING CONCLUSIONS

Conclusion No. 1. Enforcement of the BCDC plan by individual units of local government, each having jurisdiction over only a part of the Bay and none having responsibility for the Bay as a whole, would result in such fragmented control as to mean no enforcement at all.

Therefore, an enforceable plan can be carried out only by an agency of government having jurisdiction over the entire Bay and shoreline.

Still to be determined: 1. What kind of governmental agency should it be -- single-purpose (the Bay alone) or multi-purpose (the Bay, plus other regional matters)? How should its governing body be chosen? What powers and financial base should it have? Possible answers to these questions are contained in the BCDC report on Government; these and others will be debated by the Joint Legislative Committee on Bay Region Organization (SCR 41 study).

Conclusion No. 2. To carry out the BCDC plan effectively, a regional agency must have the maximum possible control over Bay filling (a power as nearly comparable as possible to the power now exercised by the BCDC). This means that:

a. All filling and dredging in the Bay should continue to be controlled by a permit process similar to the present BCDC process. For the successor agency, the criterion for granting or withholding permits would be the extent to which the proposed filling or dredging was in accordance with the BCDC plan.

b. Any State agency wishing to dredge or place fill in the Bay would be required, as at present, to obtain a permit from the successor agency.

Political Problem: Probable opposition from the State Department of Public Works -- the Division of Highways and the Division of Bay Toll Crossings -- to this provision.

Political Answer: There should be no compromise on this issue. If the freeway and bridge builders are sufficiently important to be exempted from the controls of the successor agency, then other would-be fillers will seek similar exemptions -- there will then be no enforcement, and thus no enforceable plan.

c. Any city or county holding grant lands in the Bay must be required to obtain a permit from the successor agency to BCDC before dredging or filling, notwithstanding the provisions of any existing grant statutes.

Legal Problem: Should existing grants all be amended to make this provision clear? Or will passage by the Legislature of a law adopting the BCDC plan be sufficient for this purpose?

Political Problem: Probable opposition from the Port of Oakland and other grant-holders.

Political Answer: No compromise on this issue. With about 20 per cent of the Bay having been granted to municipalities, exempting these lands from control of the successor agency would mean no enforcement, and thus no enforceable plan. A comparable political battle was fought, successfully, over grant lands in San Diego Bay, and there may be no way to duck the fight here.

d. While there is no legal means for a State-created agency to control filling by Federal agencies, a strong State agency, with a clear position on filling, will exert considerable influence on fill proposals by Federal agencies -- as has been true with the BCDC.

Political Problem: Can the Army Engineers really be kept from filling parts of the Bay and shoreline with the spoil from dredging projects?

Political Answer: This may involve a fight, but aggressive efforts to promote spoil disposal at sea will continue to be needed. Other estuaries in the country face similar problems, and perhaps joint effort by governmental agencies in several areas will influence Congress. The new joint permit program of the Army and Interior Departments is also an encouraging sign of Federal interest in wise use of estuaries.

e. A federal-state-local compact commission, of the sort envisioned by Mel Scott, is neither necessary nor desirable now, though it could become so in the future. It is by no means clear that such a compact commission would really represent any additional control over federal projects than can be obtained as outlined above; and regulation of state, regional, and local fill and shoreline projects can certainly be accomplished without such a commission.

f. The primary problem involves control by the successor agency over privately-owned lands in the Bay. Two alternatives exist:

Alternative 1. The successor agency (or the Legislature) should assert the legal right to prohibit filling of privately-owned Bay lands without compensation to the owners, along the lines of legal argument advanced by Mike Heyman in his report to BCDC.

Problems: Is it ethical to do this, considering that the owners bought their lands in good faith, with no intent to harm the public? Is it politically realistic to expect either the Legislature or the successor agency to assert this right -- considering its implications for public policy in California? On the other hand, is there any other way to prevent substantial filling of private lands? Is it realistic to expect enough federal, state, regional, and local funds to buy Bay lands now -- at a time when rising population exerts great pressure for filling and taxpayers grumble at rising tax bills? Is assertion of the "total regulation" alternative necessary in any event to buy time, allowing court tests of the legal theory?

Alternative 2. The successor agency should be empowered to approve fill projects on privately-owned lands -- while at the same time making the maximum possible effort to attract funds from all possible sources to buy such lands shown on the BCDC plan as preferably retained as open water.

Under this alternative, the successor agency would consider a fill proposal much as a local planning commission evaluates a Planned Unit Development for an upland area. Approval of the fill could be granted only if the proposed project met several criteria, such as:

a. Before submitting a plan calling for Bay fill, an owner would be required to give the successor agency six months' notice of his intentions, allowing time for the agency to possibly buy the lands -- through negotiation if possible, or eminent domain if not.

b. A proposed fill plan would have to be reviewed and approved by an advisory panel of design professionals, as recommended in the BCDC report on Design and Appearance.

c. A proposed fill plan would have to be reviewed and approved by a panel of geological, soils engineering, and structural engineering experts, as recommended in the BCDC report on Fill.

d. A fill project would have to observe a minimum ratio of water to land -- perhaps a certain minimum percentage of the area to be left in open water.

e. A fill project creating new waterfront would have to include provisions for permanent public access for some minimum percentage of the new shoreline, through hiking and riding trails atop dikes, etc.

-4-

f. A bonus system should be provided whereby a developer would achieve some benefits (perhaps a more intensive use of his land) in return for reducing the amount of fill.

Problem No. 1: These requirements need to be spelled out more precisely. It is important that the restrictions be strict, but not so severe as to amount to inverse condemnation of privately-owned lands.

Solution No. 1: The Commission should contract with qualified consultants for advice on these points.

Problem No. 2: Much more information is needed as to the costs of buying Bay lands, the influence of inflation over a period of time, possible sources of funds for such land purchases, and legal factors involved in condemning Bay lands.

Solution No. 2: The Commission should contract with qualified consultants for this work.

Conclusion No. 3. To carry out the BCDC plan effectively, a regional agency must have control over shoreline development. A plan designed solely to regulate Bay filling can be carried out by an agency having jurisdiction over water areas only. But a plan designed to also provide for the region new shoreline recreation areas, adequate industrial sites, etc., can be carried out only by an agency having jurisdiction over the shoreline as well as the Bay.

Questions:

1. How should the shoreline be defined? Does the shoreline include all the salt ponds?

2. What is the minimum jurisdiction necessary for the successor agency to BCDC to carry out a shoreline plan? Possibilities:

a. Review power over federal grants, thus providing financial incentives for carrying out shoreline aspects of the BCDC plan.

b. Concurrent jurisdiction -- i.e., before a shoreline development could proceed, permits would be required from both the regional and the local agency. (But how could stalemates be avoided under this procedure?)

c. Reserve jurisdiction -- i.e., the right for the regional agency to step in with veto power over actions by a local government contrary to the BCDC plan, but no power over local shoreline developments that are in agreement with the plan. (For example, San Leandro would retain sole jurisdiction over its waterfront as long as the waterfront continued in use for public recreation; likewise, the Port of Oakland would continue with sole control over its port lands. But a change in land use would require approval of the successor agency.

3. How should new shoreline park and recreational areas be financed?

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The Daily Review  
Friday, March 14, 1986

## PUC director resigns

SAN FRANCISCO (AP) — The executive director of the state Public Utilities Commission has resigned his \$78,000-a-year post to head the new California Fund for the Environment.

Joseph E. Bodovitz resigned on Wednesday to work with the fund, which will help steer foundation money to environmental cleanup projects.

His resignation will take effect on May 1.

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Ronald Reagan Gubernatorial Era

THE SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION, 1964-1973

Melvin B. Lane

*The Role of the Chairman in Setting and Maintaining Goals*

An Interview Conducted by  
Malca Chall  
in 1984



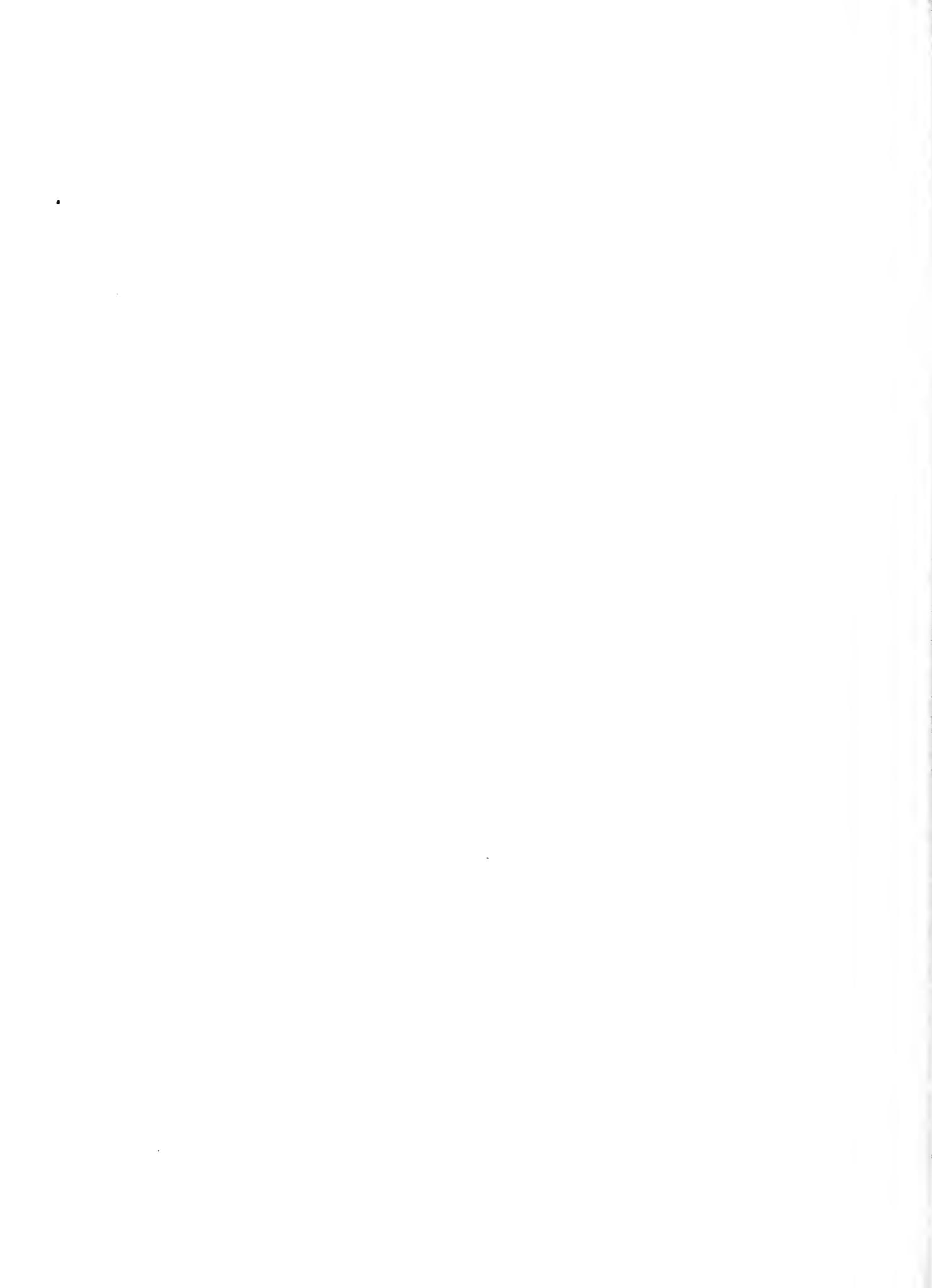


MELVIN B. LANE



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## MELVIN B. LANE -- INTERVIEW HISTORY

The success of the Bay Conservation and Development Commission through its interim permit/planning stage in 1965-1969, and its first years as a permanent agency, 1969-1973, has been attributed to many factors. One of these was the appointment by Governor Edmund G. (Pat) Brown, and later, by Governor Ronald Reagan, of Melvin B. Lane to the position of commission chairman.

Mel Lane is a Republican, a respected businessman as publisher of Sunset Magazine with an abiding concern for environmental protection. Independence and even-handedness marked his chairmanship. He was committed to protecting the bay from further depredation and to establishing a permanent state agency with authority to insure that protection.

How and why he developed his own style as chairman, how he worked with the large diversely representative board of commissioners, with strong-willed developers and equally strong-willed conservationists, with members of the legislature, and with representatives of Governors Brown and Reagan is the focus of this two-hour interview.

Prompted by self-confidence based on his years as a successful businessman, and by his observations of and participation in local government agencies, Mel Lane determined how he would work with his staff and commissioners and in what ways he would set out to accomplish his goals. "I'd pretty well figured out what I wanted to do, and what you have to do is to get them to take some of the responsibility. . . . I was very often having to remind them that we're not the same [as city and county government] and we aren't going to operate the same way, and that created some tension. . . . Again, I tried to make them take some responsibility, share in the planning. I was surprised the extent to which. . . if you walked all people through the same educational knowledge on a point, that we nearly always arrived at the same conclusion."

During the dramatic legislative battle of 1969, Mel Lane lobbied the governor and the legislature for passage of the bill that would secure BCDC as a permanent agency. He even took an apartment in Sacramento.

From his experience with BCDC, Mr. Lane thought the California coastline could be protected by the same permit/planning mechanism he had know at BCDC. He turned his attention, in 1972, to the Coastal Zone Initiative, Proposition 20. After its passage he was appointed by Governor Reagan to chair the newly formed state commission. How that mechanism was transposed to the coast has been a subject for books, articles and debate since 1972. Someday it might be instructive to have another round of interviews with Mr. Lane.

The interview took place during the afternoon of October 12, 1984, in the conference room of Sunset's offices in Menlo Park. Mr. Lane had studied the interview outline, copies of letters, memoranda, and newsclippings which had been sent ahead. With these as general guidelines he discussed thoughtfully and candidly his experiences during seven years as chairman of BCDC. He quite obviously takes his public responsibilities and commitments seriously, but, as the interview indicates, was able to see the humor in many situations.

Malca Chall  
Interviewer-Editor

24 January 1986  
Regional Oral History Office  
486 The Bancroft Library  
University of California at Berkeley

BIOGRAPHICAL INFORMATION

(Please print or write clearly)

Your full name MELVIN BELL LANE

Date of birth May 11, 1922 Place of birth Des Moines, Iowa

Father's full name Laurence William Lane

Birthplace Horton, Kansas

Occupation Publisher

Mother's full name Ruth Bell Lane

Birthplace Des Moines, Iowa

Occupation Publisher, Homemaker

Where did you grow up ? Palo Alto, CA.

Present community Menlo Park, CA

Education Stanford University, BA 1944

Occupation(s) Publisher

Special interests or activities Environmental Organizations

Stanford University Board of Trustees



*THE ROLE OF THE CHAIRMAN IN SETTING AND MAINTAINING GOALS*

THE BAY CONSERVATION AND DEVELOPMENT COMMISSION: THE INTERIM  
PLANNING YEARS, 1965-1969

The Appointment as Chairman of the Commission

[Date of Interview: 12 October, 1984]##

Chall: How did you come to get your appointment as chairman of BCDC from Pat Brown? I understand that you are a Republican. How did he happen to pick you? Why did you accept?

Lane: As far as I know it was on two scores. One, I was the initial public member of the San Mateo County LAFCO [Local Agency Formation Commission], and they had a lot of annexations of special districts which involved bay fill. I got very upset about those, and I think, therefore, some of the conservationists tagged me as somebody that might fight the cause.

I think the other part of that, equally important, was that I had some good friends who were close to the Pat Brown administration and gave me a boost. Whether they initiated it or the Brown people checked with them I have no way of knowing, but I have reason to believe [among them were] Mrs. Ed Heller--she was a regent; Joe Houghteling was big in the Democratic world--I remember he was on the highway commission at that time, long before he was on BCDC. There were some others, I've forgotten who they were now, that I would guess made a major difference.

Chall: I see. It didn't take you very long to decide to go on to the commission?

Lane: Not a long time. I first heard about it when one of the local environmentalist ladies called me and said I might be getting a call--she's in Redwood City and still active as far as I know, Pat Barrentine I think was her name. The other woman that called me was Marcella Jacobson. I think these two women were probably the ones who put my name in the hopper.

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##This symbol indicates that a tape or segment of a tape has begun or ended. For a guide to the tapes see page 67.

Then, I actually got a call from Pat Brown when I was on vacation in Montana. It took a week or two when I got back just to find out about it. I was vaguely aware that some legislation had passed, but really didn't know anything about it.

I was not involved in the battle of getting the legislation through, which I guess leads to the next thing. I became aware quite quickly, that this was Gene [Eugene] McAteer's baby, and had a hunch, which was later confirmed in spades, that he was not at all happy with my appointment.

Chall: Really?

Lane: It took me a little while to figure out that it was that he thought that this was his patronage plum and not the governor's. I knew Gene a little bit, he and my father were friends. He had appointed my dad to the Cow Palace board and some things, so it wasn't as though we were enemies or anything. But, he was very unhappy that the governor had appointed me and hadn't even cleared it with him, I guess. Even so, I think—in fact I'm sure, Gene really thought he was going to pick the person, and it would be somebody who was, in effect, beholden to him. He was very unhappy with that, but it wasn't a personal thing I realized later. It was just whoever it was, if it wasn't his doing and he didn't get the credit for it-- Because it meant he didn't have nearly the control over it, and that's where patronage works.

The first month or so was pretty rugged. I was pretty green to those processes, and Gene was a very strong, dynamo kind of a person.

Chall: Did he really take that much of a close interest at that time?

Lane: Oh he did at the beginning, yes. No, he'd gone a long ways out on a plank at a great expense. He was fighting all these big developers--they were the biggies, and he took the whole bunch of them on and rammed this legislation through. So, his pay-off had to be visibility and getting credit for it and what not. The Save the Bay Association was the main vehicle for that, but he couldn't assume that I was going to help him as far as giving him visibility and credit.

Chall: What did he do?

Lane: He started telling me how I was going to do things, and that I had to hire Joe Bodovitz as executive director. I had never heard of Joe Bodovitz, so I told him I couldn't do that, at least until I knew more about him. That really made him mad. He told me that the commission had to hire part-time his administrative assistant, Bob Mendelsohn, and I told him I wasn't sure I wanted to do that.

So I had some fairly lengthy sessions with Joe Bodovitz. In fact when my wife and I took him to dinner was my first introduction to him. I very quickly gained confidence in him--both in his ability and the feeling that I could work with him, and that he wasn't so beholden to McAteer that it would be a problem.

We did hire Mendelsohn for a little while, but I stopped it after a while. We were paying him a round amount of so many dollars a month with no accounting for what he did. He did do a lot of things, but it would have left a vulnerability that I just didn't want. So, Gene was mad at that.

But, eventually we got along pretty well. Gene led the key senate committee for two or three more years--about two years I guess after that, and really was quite helpful to us in Sacramento when we went up on budget matters and whatnot. He was disappointed he didn't get more points, and couldn't use the commission more to enhance his own political world. All of this is legitimate; I really don't mean to imply anything otherwise.

Chall: Would it have made any difference, had he been given his way completely, in the outcome of the final plan or in your permit work or research that went into it?

Lane: I don't know. He had some consultants he was hoping we would use that we didn't--whether they would have done as good a job or a better one, those kinds of things I just don't know.

Chall: A wide-ranging control then, he wanted--or influence?

Lane: Yes, oh yes. No, I'm saying that's the basic system of government--patronage. I have no problem with the American process.

Chall: But you were in charge.

Lane: I was in charge [laughs], or at least more so.

Establishing the Administrative Concepts and Relationships Among all Interested Groups

Chall: That's interesting inasmuch as Rice Odell and others who have commented, attribute the success of BCDC to your chairmanship very largely, and to your staff, and to the working relations with your staff, and the method that you developed to work with the

commission.\* Particularly interesting is that you had determined that you were going to develop most of the research within your own staff and hire consultants only as you absolutely needed them, and then that you write summaries in understandable English.

Lane: The concept of that came primarily from Bodovitz. We had a lot of opposition to it. I know Save the Bay Association was unhappy with some parts of that. They were kind of like Gene, they really had assumed that they would have a lot of say in our work. Their feathers were definitely ruffled that we were not only not asking for advice, but really weren't even taking it very well. [laughs] They had an image of how we were going to proceed. I'm not sure just what it was now, but we did our own thing.

So anyway, where Joe got that approach I don't know for sure, but it was primarily from him. It took us about six months to hire a chief planner. Joe and I made trips East and other places. Eventually we did--Jack Schoop was still in Anchorage and we interviewed him in the Seattle airport I remember, and hired him--or we recommended to the commission that they hire him.

I just made a point of getting to know each of those people on the commission. I had to memorize twenty-seven names in a hurry, and then find ways to be in touch with each one to develop an area of trust.

Chall: How did you do that?

Lane: Just talked to each one.

Chall: Met them over lunch or--

Lane: A lot of them were lunch, but I didn't try to romance them a lot. Just at the meetings, I tried to let them know that I really wanted them to have their say, and that nobody owned me, because they were looking to see where I was coming from. I had an advantage over most of them because I really wasn't beholden to anybody--I wasn't running for office, I didn't need to make a buck on it. So, it was easier for me to do that than it would be most people.

Chall: That brought about trust in you. I also understand you were exceptionally good at handling the meetings--keeping the agenda

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\*Rice Odell, The Saving of San Francisco Bay A Report on Citizen Action and Regional Planning, (Washington, D.C.: The Conservation Foundation, 1972).

moving along, and yet giving everybody a chance to be heard. Had you been a chairman of other agencies or commissions or study groups before?

Lane: No, I really hadn't. I'd seen a lot of them and I didn't like the way they worked very well. Particularly city and county government where they just went on and on and on. No, I'd figured out pretty well what I wanted to do, and that what you have to do is to get them to take some of the responsibility, "If you want to hear people talk we're going to be here until midnight. Do you really think it's productive?" and so forth. You kind of shame them into it a little bit. But it's really the concept of common ownership of the problem, and if you get other people to accept some of the responsibility for something, then it's easier for them to go along with you.

Chall: Was that the reason for working on the plan each time with the whole group?

Lane: Yes, that was classic because again, it was different with half of these people from city and county government. They unconsciously assumed we were going to work the same way. I was very often having to remind them that we're not the same, and we aren't going to operate the same way, and that created some tensions. Again, I tried to make them take some responsibility, share in the planning.

One of things that Joe and I would always do would be to bring in a proposal of what the consultant or staff planner was going to do--what they were going to study and where they were going to make proposals. The commission had to accept that if they voted for it. They couldn't later criticize the fellow, "Why are you meddling in this?" or "Why are you making recommendations in this area?" or "Why did you consider this?" because the commission had already had to sign off on that. That made a lot of difference. There was always a minority from the city and county experience, who would play games with that sort of thing. At that time San Mateo was one of the worst. Their representatives were, just generally "stirring the pot," but I had to remind them that they'd okay'd this--or that at least the majority of the commission had okay'd it, so the planners or consultants were doing exactly what we hired them for. If they didn't like it, they could get mad at the commission, don't take it out on the consultant. Well, [laughs] they didn't want to fight with the rest of the commission.

Chall: It was a good psychological ploy on your part. So, from the very beginning, determining what was going to be studied, through to the end, to agreeing on a plan, there was an open understanding and discussion. By the end, then, it was more or less their plan. Did you see them coming along, and becoming more regional in their approach--some of these people who had been starting out as very

local in their thinking?

Lane: I was surprised the extent to which in the planning—and the permits helped in their own way—if you walked all the people through the same educational knowledge on a point, that we nearly always arrived at the same conclusion. In some cases, people who felt they were really there to represent a constituency rather than just their own thoughts, eventually overcame those biases and they would agree that filling the bay was not a good idea. We learned that we couldn't dump as much of our sewage out there if we made it smaller by filling, and these were tradeoffs. You had to decide which way you wanted to go. So, pretty much everybody agreed when we got down to it.

It's when you look at the total of something, by and large people agree. It's only when you look at one little piece, because you can say, "Well, it doesn't make enough difference, and therefore, let's give old Joe whatever he wants," or whatever, but if you get them looking at the total, they come out about the same place.

Chall: They seem to have done this.

Lane: Yes, we had a pretty much unanimous vote on things.

Chall: Yes, I noticed from reading just a random sampling of minutes, that everybody seemed to be concerned really about the same sorts of things. Now maybe it's just a few that got into the minutes who did the most speaking, but there were good questions asked all the time.

Lane: Yes, there were.

Chall: People were really concerned. These were basically either permit appeals or your plan but--

Lane: Yes, the planning was tougher, it's more nebulous and they couldn't quite see where things would fit together, and I wasn't sure whether they would. [laughs] But permits--the city and county people particularly, boy that was their meat. They knew about permits, and they wanted to talk too long, but other than that--

Chall: In terms of your working with the staff, was the quality of their work the result of Bodovitz's leadership?

Lane: Absolutely. Schoop was very good, but Bodovitz was the--In many ways it was a publishing project.

So, I was comfortable with figuring it out. Eventually, we were going to come up with this document for the legislature, so that was the end of the line. The permits were something that you just had to put up with in the meantime, and try to minimize the

damage from them, and put out fires. But, this was a publishing project, and therefore, I had a good understanding of that and so did Bodovitz.

Chall: You were all working under great deadlines, so I guess staff had to be able to do that.

Lane: Oh yes, and they were very dedicated people. Private enterprise could never do any better as far as people, really--very caring.

Chall: There had been some criticism that the members of the staff were all planners, and they'd never met a payroll and, therefore, what would they know about this kind of thing? How would you answer that comment, when I'm sure people would make it to you?

Lane: Oh, I've forgotten, but I would guess, "Let's judge what they do. Before we put our name on it we're obviously going to--" This came mostly from people applying for permits. Our primary job was to plan, so professional planners were needed. In the permit world you are talking at three levels. One of them is the substance--the thing you should be talking about, "Does this project fit these laws?" But, if the applicant sees they're going to lose at that level, they then challenge process as being faulty in some way, rather, unfair. One of the ways you can a permit granting body is to make them feel guilty that they haven't been fair to you. Then, if that doesn't work, then the last shot is at the capability or integrity of the individuals doing it. You can see it go up and down in a meeting--you're here, then you're down here, then you're back up here. [laughs]

Chall: Did you learn that while you were on the job, or had you known that before?

Lane: No, I learned that one here.

Chall: In terms of going out among your peers in the business world, how did you find their acceptance of what the BCDC was doing? And, your role in it?

Lane: Well, one of the things I "milked," took advantage of, was the fact that I did know most of these people, or at least had entree to the president of Standard Oil Company, or whatever. I think I made them more responsible, just in terms of their own self-respect. Once I got them into a public meeting with other people there, they couldn't just have the company lobbyist and public relations man fire away at us with total ease. I'd write them back and send copies to everybody, so I think I kept them a little more on track.

Chall: I wondered, because it could have been uncomfortable at cocktail parties or dinner parties or Bay Area Council meetings.

Lane: Yes, sure there was some of that. Although, being the token environmentalist wasn't all bad—because at least I got the floor. The Bay Area Council kind of liked me because they could say, "We now have both sides here, and we're hearing both viewpoints." They might vote 37 to 1 or something once in a while, but usually I'd pick up a few votes. It was a podium.

I was telling them things that they'd never heard otherwise. One of the things that goes on within the world of developers, particularly the big corporations, is if they're fighting something, their hired consultant will make some ridiculous charge—before they know it, they're all believing it. They forget that they've paid some flack to come up with this thing. It would start with what in effect would be a rumor, but very quickly it was accepted. This gave me a chance to tell them, "This is where it started, it just has no accuracy to it, and you should tell your political consultants to check their facts."

So, Bay Area Council kinds of things were very helpful in that regard—toned them down. I enjoyed that part [laughs].

Chall: You were an educator. You did do quite a bit of public speaking didn't you—on your own, all over the area?

Lane: I did some, I didn't like it very well. I like meetings where we talk and argue and go to it. Like a Bay Area Council meeting. But just the Rotary Club kind of thing I don't like very well. I don't do it very well—those usually go together—because you really are entertaining as much or more than you are discussing and communicating and that part of it. I had to do more of it with the Coastal Commission, but I can't say it came easily.

Chall: What about your relationships with federal and state representatives in those first years? I know you said you had to get acquainted with the commissioners. What about the federal and state agency representatives?

Lane: There was an outstanding man—a colonel in the Corps of Engineers named Allen [Robert H.] who was on there, and he was swell. The corps was really the enemy of everybody at that time, so I was totally surprised by him. He was just fine. He played it straight, and set up meetings for me, or whatever I wanted.

Having the Sacramento agencies on the commission was excellent. Again, I had the right guy right there. The fellow from San Diego who was head of the Resources Agency was a former senator—passed away now, was a judge later. Hugo Fisher. I had never even heard of him before. He was fine. He told me there were a few things that realistically, I had better accept, and we worked that out. I've forgotten what they were now, but some things about state government and the Brown administration I didn't understand. But I

got, certainly, fair treatment from him, and having him on the commission was just great.

Chall: The kind of commission then that was set up, that was in the McAteer bill, and I guess that was very largely his idea, of this wide diversity--

Lane: I think the wide representation was more because all those agencies wanted to be there and protect themselves more than their wanting to save the bay, but that was Gene's trade-off. He wrote a pretty tough law, but he said, "Okay, now you guys are going to run it, so they aren't going to abuse this law unless you're a party to it--or at least if you are a participant."

So, Bob [Robert] Bradford who was head of the Public Works Division which did the highway building, was there and he was a tough cookie, but he was fine. He was very helpful in expediting the meetings. We would get in these darn impasses where nobody was happy, and you start floundering around. He would say, "What's a middle ground we can find that people can live with?" He was good.

Chall: So it was a good idea to put all these people together. They learned, I suppose.

Lane: Yes, it was. Telling twenty-seven people they only have a half-hour to decide something got overwhelming to them at times, but pretty soon they respected other people's time, and they knew if they talked a long time and everybody else talked a long time, we were all going to be there longer than we wanted to be. So, with a couple of exceptions they were pretty good.

Chall: Did you time people? Did you give them a time or did you just try to monitor it?

Lane: I did, yes. Not like I had to in the Coastal Commission where I just literally had a stop watch. [laughs] But BCDC might have three or four permits at a meeting, the Coastal Commission might have thirty and you had five hundred people out there, so it was a different scale of things.

We did set time limits, and I held it to them pretty closely, so that I'd let them know when they'd hit their time and to finish up quickly or whatever. Then, if they abused that I'd shut them down, but you didn't have to very often. The commissioners though, once we closed the hearing, then they could talk--make their statements or ask questions, and that was harder.

Chall: They obviously wanted to know quite a bit--I could tell from the minutes. They asked rather searching questions, but that was what they were there to do.

Lane: Yes, sure.

Tensions Over Future Governance and Property Rights in the Bay Area

Chall: We've talked about industry and the cleavages on the commission and things of that sort. What about ABAG [Association of Bay Area Governments]? You were concerned both with the regional agency and regional governance.

Lane: ABAG went away in a little while. Initially they were a big threat to us. ABAG was a phony in my opinion in that it was a facade of regional government, which really allowed the cities and counties to do what they wanted to do anyway. There was, whatever you call it in a government body, where you split it up and you say, "You do what you want in your area and I'll leave you alone, and vice versa, and we'll all--" It was that kind of an operation.

ABAG had no real authority of any kind, but they did have--it was just really developing about that time--an increasing role as the dispenser of federal funds. The federal government said, "You have to have a regional coordination group or we won't give you some of these funds." So, ABAG had that kind of power, but I really think most of them--not all obviously, but most of them--really didn't want ABAG to do anything, but they wanted it to look like it so other agencies wouldn't be brought in who really would do something. They looked at BCDC, Louis Chess and those people, San Mateo County was in some ways the strongest on that, was very strong in ABAG and its structure--they were pushing very hard that they would be the ones to run the bay.

Chall: Run the bay, govern the bay area. Well, the press release and the information that I gave you on this question shows that there was tension. Mr. [Warren] Schmid's answers are rather interesting.\* Would you like to comment on that?

Lane: Oh yes, Schmid was the one with the--

Chall: He was the executive director.

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\*See following pages for copy of correspondence and related information.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION  
507 Polk St., San Francisco 94102 557-3686

REPORT OF GOVERNMENTAL STUDY COMMITTEE

JOHN SUTNER, CHAIRMAN

The Committee expressed support for Senator "J" Eugene McAteer's proposal that the various regional agencies in the Bay Area cooperate in jointly studying the governmental needs of the Bay Area.

Senator McAteer proposed that these studies be undertaken by the BCDC and the Bay Area Transportation Study Commission, the Bay Area Air Pollution Control District, the Bay Area Rapid Transit District, the Bay Regional Water Quality Control Board, and also the Association of Bay Area Governments.

The Committee agreed not to confine its studies to the question of controls necessary for Bay fill, but rather to consider the entire question of regional government in the Bay Area. All reasonable alternatives should be studied, including the proposal made this week for an elected multi-purpose regional agency to deal with problems of Bay fill, water and air pollution, transportation, and other regional issues.

The Committee adopted the attached statement of its objectives.

*Copy with ...*

PROGRAM OUTLINE

## BCDC Governmental Study Committee

Authorization

BCDC's final report to the Legislature must contain "the Commission's recommendation of the appropriate agency to maintain and carry out the comprehensive plan," the Commission's estimate of the funds required to implement the plan, an indication of the possible sources of funds, and other related information and recommendations (Section 66551, McAtter-Fetris Act).

Background: Existing Regional Agencies

In the Bay Area, four regional agencies with governmental powers have been created:

- a. Bay Area Air Pollution Control District
- b. Bay Area Rapid Transit District
- c. Bay Conservation and Development Commission
- d. Bay Regional Water Quality Control Board (While this board is part of a Statewide system, its members are Bay Area residents.)

A fifth regional agency--the Bay Area Transportation Study Commission--has no regulatory powers but has the same assignment from the Legislature as the BCDC: to recommend the appropriate governmental agency to carry out its plan. The BATS Commission has recently created a special study group, consisting of members of the Commission and of its advisory committee, to investigate the governmental issues involved in carrying out a transportation plan.

The Association of Bay Area Governments (ABAG), a voluntary association of eight counties and 82 cities in the Bay Area, has undertaken the governmental function of preparing a regional land-use plan. In addition, ABAG has recently created a Goals and Organization Committee to study the problem of regional government in the Bay Area.

Various other regional agencies have been proposed, including:

- a. A Golden Gate Authority to administer toll bridges and other transportation facilities such as airports and harbors.
- b. A regional airport district, recently proposed by Assemblyman John Foran.
- c. A regional open-space district to acquire large regional parks and agricultural preserves in areas threatened with urbanization, as proposed by T. J. Kent, Professor of City and Regional Planning at the University of California.
- d. A regional planning district as proposed in a bill introduced by Assemblyman Byron Rumford in 1963.

Programs for Committee Study1. What relationships should a permanent commission controlling the Bay have to other regional agencies?

Is the development of various regional special districts desirable? Should a new multi-purpose district be created to administer the functions of some or all existing regional governmental agencies? If so, how can merger be achieved, since the geographic boundaries of existing agencies differ? If merger of existing agencies is not possible or not desirable, should a permanent commission with jurisdiction over the Bay be structured so that it can assume now regional functions, such as those of a future transportation agency, if and when the Legislature or the electorate of the Bay Area choose to give it such functions? If merger of existing or proposed regional agencies is not considered feasible, should the same individuals be the directors of the various agencies to promote coordination of their activities?

2. What governmental powers are needed to conserve the water of the Bay and to develop its shoreline?

Should the permit system now employed by the BCDC be continued on a permanent basis? Can this legally be done under the police power, i.e., under a zoning system? What governmental powers are needed to implement the BCDC plan for the Bay and shoreline? How should "shoreline" be defined?

3. What organizational structure should a governmental agency have if it is to carry out the BCDC plan for the Bay and shoreline?

How should the governing body of such an agency be selected? Many methods are now used in the Bay Area: directors of the Air Pollution Control District and BARTD are appointed by Boards of Supervisors and councils of Mayors. The Governor appoints members of BATS and BCDC. Direct election is employed by some large special districts such as the East Bay Regional Park District and the East Bay Municipal Utility District. Other methods have been suggested, such as assigning regional governmental powers to ABAG, or to a caucus of State Senators and Assemblymen elected from Bay Area constituencies. Or there could be direct election of delegates to a regional agency, perhaps on the basis of two delegates for each Assembly district in the nine Bay Area counties. Still other methods may be discovered.

4. How should a governmental agency to carry out plans for the Bay and shoreline be financed?

The McAteer-Petris Act requires a report to the Legislature as to "possible sources of money" for implementing the comprehensive plan and "an indication of the possible sources of money for such purposes, such as local bond funds, Federal grants, State funds, funds from foundations, and funds from private subscription." (Section 66651). Similar questions arise as to the source of funds for administrative expenses. Whether the Commission should have the power of eminent domain, the power to sell bonds, and the power to levy property taxes must also be considered. The committee should consider these sources of funds, as well as other sources, for administrative expenses as well as for the major expenses involved in carrying out the plan.

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

17 POLK STREET, ROOM 330  
 SAN FRANCISCO, CALIF. 94102  
 PHONE: 557-3686

LEVIN B. LANE  
 Chairman

S. MORSE ERSKINE  
 Vice-Chairman

SEPH E. BODOVITZ  
 Executive Director

April 13, 1966

Mr. T. Louis Chess, President, Association of Bay Area Governments  
 and Chairman, Bay Area Air Pollution Control District  
 Mr. Adrien Falk, Chairman, Bay Area Rapid Transit District  
 Mr. Nils Eklund, Chairman, Bay Area Transportation Study Commission  
 Mr. Grant Burton, Chairman, Bay Regional Water Quality Control Board

Re: Governing the Bay Area -- A Program for Action

Gentlemen:

I am writing this letter to propose that our six agencies, with the cooperation of other groups mentioned herein, join in a program of action to determine how best to provide for the future governmental needs of the San Francisco Bay Area.

I am sending copies of this letter to the Bay Area Council, the Leagues of Women Voters of the Bay Area, and the San Francisco Planning and Urban Renewal Association (SPUR). These three groups have already indicated a strong interest in the Bay Area's governmental problems; other groups will undoubtedly express a similar interest, and they should also be invited to take part in this work.

Never before have regional problems received so much attention in the Bay Area. Two commissions -- the Bay Area Transportation Study Commission and the Bay Conservation and Development Commission -- have been directed by the Legislature to make recommendations as to the governmental means of carrying out plans for transportation and for the Bay. Senator "J" Eugene McAteer of San Francisco has proposed that existing regional agencies "undertake a joint study of the governmental needs of the Bay Area and make explicit recommendations to the Legislature and to the citizens of the Bay Area." Mayor John F. Shelley of San Francisco has proposed that a regional government be created with clearly-defined powers and with an elected legislative body; the San Francisco Board of Supervisors has supported this proposal.

Metropolitan government is already here -- in the form of our agencies and others that serve sizable parts of the Bay Area. The question is no longer whether there should be regional government in the Bay Area; the fact that several regional agencies exist has already answered that question. The real problem we face is this: what form should regional government take in the future?

The existing regional agencies, together with the Association of Bay Area Governments as a voluntary association of local governments, have served the people of the Bay Area well over the past several years. But the question remains as to whether this system of fragmented responsibility will be adequate in the coming years of intensive population growth in the Bay Area.

Certainly we must all be concerned about the extent to which Federal and State governments are involved in making decisions that affect the Bay Area. Federal and State governments will make more and more regional decisions if we who live in the Bay Area do not ourselves decide on the governmental machinery we want. Those of us who now serve on regional agencies are particularly well-qualified, because of our experience and our interest, to undertake the task of trying to arrive at answers to these regional questions.

Our analysis may conclude that the existing governmental machinery is adequate to meet the needs of the Bay Area, both now and in the future. I am well aware that governmental proposals created on paper may well have an appeal that would disappear under actual practice. Existing governments may suffer unduly by comparison to theoretical forms of government. Certainly we should insist that any new governmental machinery show promise of greater benefits to the people of the Bay Area than the existing machinery before we make a change.

To evaluate the various governmental possibilities will require careful studies both of our present governmental machinery and of alternatives to it. I am thoroughly aware that dozens of studies have already been made of many aspects of local and regional government. But isn't it equally true that the most successful solutions to complex problems generally begin with an effort to gather and analyze facts and opinions?

Objectives. I propose therefore that:

First, we should analyze the governmental needs of the Bay Area, collecting and evaluating information so that we can determine:

- a. The present and future needs for governmental services in the Bay Area.
- b. Whether we in the Bay Area should continue our present system of assigning regional responsibilities to separate, single-purpose agencies; i.e., to a special district for rapid transit, to a State-created board to control water quality in the Bay, to a special district to control air pollution, and to special State-created commissions to plan for the future transportation network in the Bay Area and for the future of the Bay.
- c. Alternatives to our present system, including modifications in existing regional agencies.
- d. The advantages and disadvantages of different kinds of governmental machinery to solve regional problems, compared to each other and to our present system.

(I am attaching an outline of a proposed "Analysis of Governmental Needs in the Bay Area," which spells out more fully some of the questions that I believe need to be answered.)

Second, we should provide for publication of the findings of our studies, and the widest possible public debate on them.

Third, we should find the maximum possible agreement among existing governmental agencies on future courses of action.

Fourth, we should see that our decisions and recommendations are implemented.

Program.

The program I am proposing should be completed in 12 to 18 months. The work is estimated to cost about \$150,000, and two-thirds of this amount should be sought from Federal planning funds available under Section 701 of the U. S. Housing Act. Citizens' groups such as the Bay Area Council, the Leagues of Women Voters of the Bay Area, and SPUR should be closely involved in the study, as should other governmental agencies that serve more than one county but not the entire Bay Area; these latter groups would include the AC Transit District, the San Francisco Water Department, etc.

As the next step in this program, it is important that the agencies wishing to participate should so indicate as quickly as possible. A meeting of representatives of participating agencies should then be held at once.

I believe the BCDC must do substantially the things I have outlined in this letter even if we must do them alone. I believe, however, that a program of this sort can best be carried out by our agencies jointly, and therefore I hope your response to this proposal will be favorable. Because of the urgency of meeting deadlines imposed on our Commission by the Legislature, I would hope for your response as quickly as possible. I would be happy to meet with you further to discuss this program more fully if you wish.

Sincerely,

*Melvin B. Lane*

MELVIN B. LANE  
Chairman

enclosure

cc: Joseph Bodovitz  
Jud Callaghan  
John Harrison  
Warren Schmid  
Bill Stokes  
Richard Zettel

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION  
 507 Polk Street, San Francisco 94102 557-3686

Attachment to letter of April 13, 1966, to:

Mr. T. Louis Chess, President, Association of Bay Area Governments  
 and Chairman, Bay Area Air Pollution Control District  
 Mr. Adrien Falk, Chairman, Bay Area Rapid Transit District  
 Mr. Nils Eklund, Chairman, Bay Area Transportation Study Commission  
 Mr. Grant Burton, Chairman, Bay Regional Water Quality Control Board

An Analysis of Governmental Needs in the Bay Area

The following outline is intended as a suggestion as to how the first phase of a joint governmental program for action might proceed. This first phase would involve the gathering and analysis of information. Undoubtedly other regional agencies will have additional requirements for information to be obtained and analyzed.

- I. How are regional decisions in the Bay Area being made now?
  - A. Effectiveness of coordination of policies among existing governmental agencies, local and regional
  - B. Present and future influence of Federal government on decisions regarding development of the Bay Area
  - C. Present and future influence of the State government on decisions regarding development of the Bay Area
  - D. Advantages and disadvantages (costs and benefits) of present process of regional decision-making, relative to other possible processes.
- II. Alternatives to the present system of regional decision-making
  - A. Creation of additional special-purpose districts, such as the Bay Area Rapid Transit District, and Bay Area Air Pollution Control District
  - B. Creation of a new multi-purpose district to administer the functions of some or all existing regional governmental agencies (and possibly additional functions)
    1. Difficulties in merging existing regional agencies into multi-purpose district--e.g., differing boundaries of such agencies as Bay Area Rapid Transit District (3 counties) and Bay Area Air Pollution Control District (6 counties at present)
    2. If complete merger is impossible, should the same persons be selected as directors of two or more regional agencies to insure coordination?
    3. If merger is not workable, should a new governmental agency be created, with control of one or more regional functions, such

as transportation or Bay conservation and development, and with a sufficiently adaptable structure to be able to assume new regional functions if and when the Legislature or the people of the Bay Area so decide?

- C. Association of Bay Area Governments with different and greater responsibilities

III. Which of the following areas of governmental concern should be under State jurisdiction, which under regional jurisdiction, and which under local jurisdiction?

- A. Transportation within the Bay Area--highways, bridges, etc.
- B. Transportation to other areas--ports and airports
- C. Police and fire protection
- D. Sewage disposal
- E. Disposal of garbage and other solid wastes
- F. Air pollution control
- G. Water pollution control
- H. Open space, parks, and recreation
- I. Bay conservation and development
- J. Area-wide planning and land use controls such as zoning, to guide urban expansion
- K. Housing
- L. Other

IV. What powers are needed to solve each of the governmental problems determined to be of regional concern? This question would need to be answered for each of the regional functions.

- A. For example, to answer questions the BCDC must answer in any event, because of its mandate from the Legislature to do so, the following information is needed:
  - 1. How can governmental powers best be used to conserve the waters of San Francisco Bay and to guide development of its shoreline?
    - a. To what extent can conservation and development controls be exercised under the police power, i.e., under a system of zoning or a permit system such as that now employed by BCDC?

-3-

- b. What governmental powers are needed to carry out the BCDC plan for the Bay and shoreline?
- c. How should "shoreline" be defined?

V. If a governmental agency were to be created with responsibility in more than one area of regional concern--such as air and water pollution, control over Bay filling, transportation, etc.--what structure should such an agency have?

A. How should the legislative body be selected?

- 1. Through appointments made by various governmental bodies, as is presently the system for choosing directors of the Bay Area Rapid Transit District and the Bay Area Air Pollution Control District?
- 2. Through direct election, as is presently the system for choosing directors of the East Bay Municipal Utility District and the East Bay Regional Park District?

a. If so, how should electoral districts be established?

B. How should the chief executive of the regional agency be selected?

- a. Through direct election?
- b. Through appointment by the legislative body?

VI. How should a governmental agency with regional responsibilities be financed?

- A. Should the agency have power to tax property and to sell bonds?
- B. Should the agency receive funds from Federal and State governments?

*Courier 6/6/66*

## Do BCDC and ABAG Have the Same Objectives?

Are the Bay Conservation and Development Commission and the Assn. of Bay Area Governments seeking federal funds to accomplish essentially the same objective: studies of the regional problems of the Bay Area?

That was the question raised when Warren Schmid, executive director of ABAG, met with the BCDC.

The Goals and Organization Committee of ABAG is preparing an inventory of the problems common to the Bay Area, a study of those problems that have not been met by regional agencies, and recommendations on how those problems may be solved. ABAG expects to apply for federal funds to finance part of the cost of its ongoing study program.

And the BCDC recently decided to proceed independently with a study of how to establish a regional government to protect the Bay. The federal government will be asked to pay two-thirds of the cost of this proposed six-month, \$45,000 study.

Schmid reported that he understood the BCDC is ineligible to apply directly to the federal government for the usual "701" planning grant. Consequently, the BCDC may have to use an agency such as ABAG to accept the grant. Schmid commented. He said ABAG had accepted such a grant on behalf of the Bay Area Transportation Study Commission, which is preparing a study of the region's transportation problems.

But Chairman Mel Lane said that, until he heard Schmid's remarks, it was his understanding the BCDC was eligible to accept the grant, but the application would be filed through ABAG.

Commissioner David Pierce, mayor of Richmond, pointedly asked Schmid whether he thought there was a "duplication of effort" if both agencies sought federal funds for the regional studies, and whether he would "look unfavorably" on the dual applications.

"At this stage I wouldn't attempt to make an evaluation," replied Schmid, "but if we don't get our houses in order HUD will." The applications would be filed with the regional office of the Dept. of Housing and Urban Development.

"Don't you feel that the \$25,000 for the study by ABAG is inadequate to deal with this problem," asked Pierce.

"I'm not trying to solve the commission's problem," said Schmid. "ABAG is ~~evaluating~~

regional problems that cover a broader spectrum than just the Bay. We are not attempting basic new research or new feasibility studies with this money."

"Then there's no duplication?" asked Pierce.

"I'm not trying to express an opinion on that question today," replied Schmid.

Pierce then asked Richard M. Zettel, director of BATS, whether "you can foresee cooperation between BATS and the BCDC in a joint study of such problems as transportation and Bay fill?"

"We haven't precluded that possibility, but we need a better definition of the problem," replied Zettel.

(POLITICAL)

Lane: Yes, I think he was initially, yes. And, they had a director who went to jail for absconding with all their funds--I think that came just a little bit later; I've forgotten now.

Chall: Apparently this problem of who's going to make a study of future governances of the bay area region created some concern and tension between ABAG and BCDC.

##

Lane: We wanted to have our oar in this and not let it get away from us. I think this letter came as a tactical move of ours to position ourselves in it. If we called the meeting they couldn't say they'd never heard from us.

Chall: But, you said a little while ago, before I turned the tape on, that ABAG had been an irritant.

Lane: Well, they were opposing us very strongly in Sacramento. Anything to do with BCDC, they were pushing against us up there. They were in effect, making critical judgments and statements through their positions in their local government roles, and they were making it tough for us, no question about it.

Chall: That's because you were supposed, ultimately, to decide what was going to be the governmental structure to continue BCDC.

Lane: We would in effect, be deciding what was going to happen on their shoreline of the bay. And, [laughs] it was real turf, and they wanted the freedom to all do what they had been doing, of course.

Chall: Out of this concern apparently, you hired Stanley Scott and John Bollens to write the report on what kind of governmental structure there might be. They were taken on as consultants on a particular problem.

Lane: Yes, another of them is your chancellor over there [UC Berkeley] Mike Heyman.

Chall: Yes, Chancellor [Ira Michael] Heyman.

Lane: I had dinner over there the other night, and he had pleasant memories of doing that chore.

Chall: Oh really? As I understand it he came out with the idea that private property--the people who owned property in the bay really didn't have the same control over it as any private landowner.

Lane: He did that, but he also said that even on land--in effect he was saying there is a lot of misconception as to what your rights are

because you own land. You don't necessarily have the right to do anything different on it. You have the right to continue the present use. You have a right to make some reasonable use of it, but the fact that you want to build a big building here doesn't mean you have any right at all to do that.

Chall: That must have been a great shock to certain people.

Lane: It sure was. The classic case that he put on the spotlight was Consolidated Rock Company. It was a case in southern California where a man had this mountain and the city wouldn't let him do anything up there. Finally this fellow got some goats and he put them up there with a big fence around them, and even the goats couldn't live--they died for lack of food. So, this fellow's proof was, "This isn't even good for goats, now you've got to let me do something with my land." The city said, "No, you're not going to do anything," and the state supreme court upheld it.

Chall: That must have sent quite a ripple through the community. We haven't talked about some of these groups that you would have had dealings with--besides the Bay Area Council, Leslie Salt, Westbay.

Lane: Yes, okay, let's go through them quickly. At the time BCDC was created there were some firms who were fighting it extremely hard, and they'd fought McAteer all the way through on the legislation. This is where McAteer, of course, felt that he had points coming, and I don't blame him. One of those certainly was Leslie Salt. They had a lawyer whose name I've forgotten now, I used to see him up in the Bohemian Grove.

I knew the Schilling family quite well. Aug [August] Schilling, the president and major stockholder, was a friend of my family and my wife's family. They were a customer of my company. No, how do I say that? They bought things from us--or at least we were trying to sell them both advertising in our magazine, and publishing a book for them. One of the companies they owned was Spice Islands, and we published a book for Spice Islands. They were our biggest single customer in book publishing for a period of years right in the middle of all this fighting. So anyway, I knew them.

They had a president at the time under Aug, Sheldon Allen, or some such name like that. This lawyer I mentioned worked with this president. They had decided a couple of years before BCDC came into being, that they were going to start making money on their real estate, because they were never going to do it in the salt business. So, they were off on these grandiose plans for filling in all the salt ponds and were, therefore, scared to death of BCDC--as they should have been. We did fight and scratch with them, and anything we ever had in Sacramento they were right there trying to give us trouble--putting out press releases and all the rest of it.

Chall: Considered you socialists, Fabian socialists?

Lane: Yes, exactly. Harry something was that lawyer. But then they got in such financial problems that they were less of a problem, and they realized they were just going to have to wait until our four-year process had run its course.

Chall: I brought in some press clippings on some of your basic property rights controversies.

Lane: [Reading] Candlestick, that was bad news. It was one that was more of an irritant than a serious problem. Quentin Kopp was the lawyer, and that was my first introduction to Quentin in that situation. He was certainly a hired gun. He's a good lawyer and he was doing exactly what he got paid for, but boy, he was just challenging us on everything he could think of, on all three of those levels I mentioned [laughs]—but particularly on process, he really hit us on the question of due process.

Chall: But, then you took it to the courts, and you won on that?

Lane: Yes—we did very well in the courts. We didn't lose many of the important ones. They bought one hundred and eighteen thousand square feet of tidelands, yes. They're still there. Chet Smith is the man's name—that's the building you see from the bayshore there—and he's got the world's biggest American flag flying above it. I guess it's still there, I don't know.

Chall: Let's see, there was the Marin plan. You may not want to talk about these, unless something strikes you as you look at these press clippings. Because you were the chairman you must have felt the impact first.

Lane: Yes. [reading] Frank Burke was a tough one. One of the things in the permits was that we could turn down a permit if we thought that it might be in conflict with the plan that we had not yet written. That's tough because you don't know what's in your plan so how can you say what is in conflict? All you can say is it probably will be. Anything that filled marshland was unacceptable. The law didn't specifically say that, but anything that had bay fill was carefully scrutinized. The marshes were considered bay to us, and they were considered bay to marine biologists, but they were not considered bay to a lot of developers, so we had to argue that one.

Anyway, this one as I remember, was the Burke property up there. It did have some marsh on it. He wanted to put it to some light industrial uses. Part of what we were fighting was to prevent using the baylands—particularly the ones that had been filled, for things that weren't water-related and could just as well go some place else. This was one of those, but it was a very tough one.

## Legal Step Against <sup>9/2/66</sup> Bay Fill

The chairman of the Bay Conservation and Development Commission yesterday asked the Attorney General's office to begin legal action to stop Emeryville's 185-acre fill project in San Francisco Bay.

Melvin Lane said he asked Deputy Attorney General E. Clement Shute Jr. to seek an immediate injunction halting the fill operation.

Last month, Lane's commission voted overwhelmingly to bring suit if Emeryville did not voluntarily stop. On Monday night, the Emeryville City Council voted to continue the filling.

"We're not certain exactly when the suit will be filed," said Lane, "but we expect it will be filed in Alameda Superior Court."

Lane, the publisher of Sunset Books, said the Commission wants the court to answer two questions: does the Commission have jurisdiction over the Emeryville fill and does the Emeryville plan for development of the tidelands comply with the state grant which allows them use of the land?

"We claim that we do have jurisdiction and that the Emeryville fill does not comply with the state's grant," he said.

Meanwhile, other legal action involving Emeryville's controversial plans is still pending in Sacramento Superior Court.

The East Bay city filed suit for a declaratory judgment there last year, asking the court to approve its plans as being in accord with the state grant of use of the tidelands. The State Lands Commission, which says the plans are not in the statewide public interest as required by the grant, is opposing Emeryville.

The county of Marin was another one that never liked BCDC very well and resented its interference and so forth. Some of these others here--Emeryville was a very tough one right from the start, and Albany even though they worked separately. Emeryville was the toughest. They were working with the Port of Oakland on a major project which was actually right next to Emeryville, but the two were working together on the north side of the Bay bridge where all the funny sculptures are. Emeryville had a triangular piece--hunk of land out there and they had planned to fill all of it and we stopped them. But later, through sheer muscle, they did get those tall buildings in there.

When the final bill went through in Sacramento [to make BCDC a permanent agency], the one real exception was Emeryville. They wrote some special language that just let Emeryville go ahead. The legislators who were key to it, including people who were darn good friends, just couldn't take the heat. Emeryville and Albany were the two exceptions.

Chall: Right. Grandfathered in as it were?

Lane: Well, no they just--

Chall: Or was that a total exception?

Lane: Just a flat out exception, yes.

Chall: I suppose they were afraid that they wouldn't get the bill passed at all? That was the only way it would get passed?

Lane: Yes, we just wouldn't get it passed, so they got their exceptions in. I tell you, Emeryville particularly, was a baddy.

Chall: The airports, I think they seem still to be a problem. I noticed in the material they were supposed to be determined on a regional basis. I don't know how that's worked.

Lane: That worked pretty well in my opinion. The Port of Oakland which had the Oakland airport as well under their charge, were always very tough. They're a very well-run, strong government agency. Ben Nutter was the key power there. They were very unhappy with BCDC's creation because there's no question that it put a halt, at least temporarily, to a lot of their plans. Then they had, of course, great plans to compete with San Francisco's airport. They got through some fill for lengthening their runways that in my opinion then, and now, was excessive. They were using safety and a lot of arguments that were hard to refute, but there were a lot of unsubstantiated things--but that was about all.

We did arrive at one quite early in the game. Joe Bodovitz again figured this out for us, that one of the first-rate uses

of the bay was dealing with the noise of airplanes, also keep them out over water and obviously they were safer. A plane is usually going to have less damage in water, particularly shallow water, than it is on land if it does have an accident. If the noise of planes taking off is somewhat lessened by doing it over water that's a good use, because that's a way you can have airports close to population centers and still not have all the noise problems. So anyway, early on, we said airports are a good use of the bay, and we should try to cooperate with the necessary needs of airports.

San Francisco got a permit to fill an area just to the north of San Francisco's main airport—that's where the Coast Guard is. But, we put some conditions on it that they yelled and screamed about, and as a result, they've never filled it. It was the biggest fill permit we had ever allowed, it was two hundred acres or something.

We got along with the airports pretty well, but the ports just resented our activities greatly. The Port of San Francisco was a state agency until just about the time our law passed [making BCDC permanent], even though the city kind of ran it for them, so that was sort of tricky. It was more in-fighting than what they wanted to do until they got into a plan for a big project when they wanted to put some big office buildings out in the bay. We did fight them on that, and everybody else took credit for it. But the big buildings proposed by U.S. Steel and Castle & Cook—we were the ones that stopped those. They would have had them because they had the city politics of San Francisco under control. [Joseph] Alioto was right in the middle of it. We had awful fights with Joe Alioto over them, but since that was after the law was passed, in some ways we were in a better position because we had some clearer language.

Chall: I guess you met him from time to time along the way, Mr. Alioto?

Lane: Yes. I learned some political lessons from him the hard way.

Chall: What did you learn?

Lane: Always have at least one other person there who will remember things as they really were. [laughs]

Chall: Whom did you have? [laughs]

Lane: —Because if you were there with Alioto and his friends, they would rewrite history any way it worked for them. It was like you hadn't been having the meeting. I learned I'd just invite some of the commissioners along. It's pretty hard for Alioto to say, "You can't bring them."

Chall: Oh, when you had private meetings?

- Lane: Yes. I'd appoint a little committee, just any way to get these other people with me. And, they were people that Alioto couldn't blackjack. It would be a supervisor from some other county or something. [laughs] Boy, did I get taken to camp by him for a while there. Oooh.
- Chall: I guess those negotiations were very very tough.
- Lane: [Continuing to look through press clippings] Westbay--that's the Rockefeller brothers. They were tough, very professional. A fellow named Warren something from New York was their contact, and I got to know him. We got along all right. They had this troika, the big owner of the baylands--they made cement, and they were headquartered in the Rockies--Salt Lake I think it was.
- Chall: Was that the Ideal Cement Company?
- Lane: Yes. the third part was the guys that owned the mountain.
- Chall: San Bruno? Would that be the Crocker Land Company?
- Lane: Yes. So, they would cut down the mountain, push it in the bay, and go right over bayshore freeway into barges and take it down and fill in down there. Then, Rockefeller would put up the money and all the professional skills of planning the land and marketing it and so forth.
- Chall: What a phenomenal concept.
- Lane: It's like Candlestick park. Pushing land into the bay. Developers just love that--God they think that is so wonderful. Anyway, we finally wore them down, but they were tough and very able.
- Chall: During all this period you did have quite good press coverage didn't you?
- Lane: Yes, although we worked at it. Bodovitz was very good at it. He'd been a reporter and understood how they worked, and had good contacts. But, we worked the press, no question about it.
- Chall: Well, that would help.
- Lane: We knew that the ultimate test was whether the legislature approved our plan or not, and that it was going to be a popularity contest more than on merit. If it looked like the public wanted this, we had a good chance. If it didn't, we were deader than a duck, so the public was where it counted.
- Chall: You talked to me a little bit about McAteer wanting some influence over the commission. Over the period of time did you have any

Nov 3 '66

## Huge Bay Tideland Proposal

A tentative plan for a major development of Bay tidelands — although its backers decline to call it that — has been submitted to San Mateo county authorities for their consideration it was disclosed yesterday.

Involved is a vast area stretching from San Francisco International Airport on the north to the San Mateo bridge on the south.

The plan was submitted by Pacific Air Commerce Center of San Francisco and will be discussed with the San Mateo County Regional Planning Committee a week from tonight.

### PRESIDENT

Warren T. Lindquist, president of the firm, declined to discuss details of the plan in advance of that meeting.

In fact, he hesitated to call it a plan.

"We are in no sense going before anybody with a plan which we are trying to get developed — nor will we attempt to undertake any development which is not in accord with a plan that has been developed by all the planning bodies concerned," he said.

### HOPE

"We expect to discuss with the committee our thinking as to how some of the San Mateo county bay frontage area might be constructively improved in the public interest. . . .

"We would hope that these ideas could serve as a basis for further discussion — a starting point for a dialogue."

He insisted that "The last think we have in mind would be a massive fill" of the Bay.

"Unless there is a plan for improvement of the Bay which has overwhelming

## Tidelands: Development Proposal

From Page 1

develop our properties, that's all. We just won't do it."

Existence of the plan was disclosed yesterday by Mayor John F. Shelley, who said he had discussed it Tuesday with Lindquist and San Mateo publisher J. Hart Clinton.

Shelley said he understood the plan involves some 780 acres — with commercial development at the north and south ends and — in the middle — a mile-square lake surrounded by high-priced apartment developments.

"They told me they had a green light from the San Mateo county Board of Supervisors," Shelley said.

This was denied by County Manager E. R. Stallings, who said such a development wouldn't be in the county's jurisdiction but in that of three cities — San Mateo, Burlingame and Millbrae.

### COMMITTEE

The regional planning committee, which will consider the plan at 8 p.m. next Thursday in the San Mateo City Hall, is comprised of one county supervisor, one county planning commissioner, and a city councilman and planning commissioner from each of the county's cities.

The firm behind the plan, Pacific Air Commerce, is comprised of the David Rockefeller interests of New York, Crocker Land Company and Ideal Cement Company.

The same group in 1964, presented a similar development plan — which involved, in addition, construction of an air cargo center for the airport — but shelved it the following year after San Francisco withdrew its support.

The plan envisioned filling of tidelands — owned mostly by Ideal Cement — using earth from San Bruno Moun-

contacts with Governor Brown? Was he concerned about what you were doing? Were people getting to him?

Lane: No, he was great. I was concerned on that because Pat was more of an "old school" politician. It wasn't a corruption kind of a thing, but the normal course of events in Sacramento would be if some big Democrat called Pat Brown's office and said, "I've got this problem over in the so and so department," they'd help move it along. So I expected we would get a lot of that, but we didn't.

Bodovitz was the one that I was concerned about. There was no way they were going to push this commission around. Normally they would do it through the paid staff, but it was not a serious problem. I never felt any pressure personally. Occasionally they would call and say, "We have this problem, would you mind talking to somebody and let him down easy?" I'd say, "Fine, I'm happy to talk to anybody." So, if the guy just felt better having an interview, that's fair enough--we do that in business all the time; but as far as giving him some advantage, or something that he wouldn't have received anyway to please the governor, we didn't have that problem.

Sometimes you could very clearly see somebody on the commission was carrying the baggage. They would suddenly come on very strong on a given permit, raising all the questions about the staff procedure, or those three levels I was talking about. They were helping out a friend--but that's different. The governor's office could have put them up to it, and in some cases I think that was the case, but we could handle that.

Chall: What about representatives from the League of California Cities, or CSAC [The County Supervisor's Association of California]?

Lane: When we were passing legislation, then those people were important in Sacramento, but they were seldom involved in our other activities. That was not true in the coast--they were very involved. As a matter of fact, we really got along with the league pretty darn well. I got to know some of those people, and they were really helpful in some of our legislative battles. But we didn't see them in the day-to-day work really.

Chall: They probably were able to work through their own commissioners anyway. The mayors on the one hand and supervisors on the other.

Lane: Yes, very definitely. The fellow from San Leandro was the president of the league--

Chall: Mr. Maltester.

Lane: Jack. So they were getting it that way.

## ESTABLISHING BCDC AS A PERMANENT REGIONAL AGENCY, 1969

Chall: You lost out on some plans for your permanent BCDC plan. One of them was to have control over one thousand feet of shoreline.

Lane: We started out proposing a varying distance, which drove a lot of them up the walls, but we did it. [laughs] There we are.\* In terms of the land usage, I think it made very good sense. In terms of simplistic American law, if you get a six-foot fence then I get a six-foot fence, and it's that kind of simplicity, it did not fit in with that. Anyway, the legislature did cut it back, and then they eventually cut it to one hundred feet, which was too bad because there's just a lot of awful things around the bay right now, that we wouldn't have had. It did give us bargaining power. In some cases, in order to get what they wanted in the first hundred feet you could get some trades on what they did in back of it.

On the other hand, having looked at it on the coast, I'm not sure if the commission would have had one thousand feet, they would have been over their head. They'd have responsibilities that were excessive to what an unpaid, twice-a-month group could really handle. But, we got most of what we wanted.

Chall: Yes, in fact a little more than you might have expected at some times during the battle.

Lane: Yes, as I remember we did get a few more.

Chall: It was an exciting period while you were trying to get the law passed. I guess the fact that you did depended on a few flukes.

Lane: No question. Howard Way's support was a fluke--there were a bunch of flukes there and I'm trying to remember what they were now; that was one. He would not normally have been with us philosophically; he was very conservative. How he got in that position on this particular piece of legislation, I don't know.

Chall: I think he became head of the senate.

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\*San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan [Sacramento: California State Office of State Printing, 1969] p. 38.

- Lane: Yes, but his becoming head of the senate, our bill was one of the things he took a stand on, and as I say, it was not a great fit.\*
- Chall: But he apparently helped a great deal in getting the legislation through.
- Lane: Yes, he did.
- Chall: The other one I suppose was the fact that Mr. Dolwig, Senator [Richard] Dolwig got turned around?
- Lane: Yes, Dolwig in some ways I didn't think got fair treatment. He played a very good role in Sacramento that last year when he got turned around. Yet, he was the enemy of the conservationists. They were unrelenting in ever giving him a point for doing anything. Dolwig was very effective, and did everything he'd said he'd do. I found him very straight to deal with. I was surprised.
- Chall: Was he your senator? Did you try to--this is before the turn around--did you try to reason with him, talk to him about the issue?
- Lane: Oh yes, you bet I did--and didn't make any headway. He finally sent out a questionnaire to constituents and was very surprised by the results. I think he got religion through that. He called me and said, okay he was going to join the team, and would I help him? So, he wrote his own bill and I assured him he would get equal time at commission meetings and a bunch of stuff, because if he was going to join the team I was glad to give him points. I had no problem with that. But the conservationists [laughs], they wouldn't give him a nickel. He did a lot of important things for us in Sacramento.
- Chall: In getting the bill passed?
- Lane: Yes.
- Chall: Well I don't see how anybody could fault him for that. Apparently it was touch and go for a couple of months--the last six weeks.
- Lane: There were some other coincidental things, and I'm trying to remember now what they were. Howard Way was certainly one of them. There were some other just good people in that senate, particularly because that's where the opposition was centered.
- Chall: Well Senator Marks was carrying the Reagan bill but changed his mind too at some point.

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\*See Rice Odell, pp. 79-84.

## Politics In Review

# Battle Over The Bay

Sacramento Bee AUG. 3 '69

By Richard Rodda, Political Editor



**HELPLESS** — The old guard of the State Senate never was so helpless as it was Friday during the final debate on the Bay Conservation Development Commission legislation.

Forces determined to save the San Francisco Bay from uncontrolled landfill by the special interests won a complete victory.

This was a triumph also for Sen. Howard Way, R-Tulare County, the new president pro tempore of the upper house, and the strong coalition of Democrats and Republicans who effected the first change of Senate leadership in nearly 13 years.

Way's election last May 13 was a blow to the lobbyists for the liquor industry, the race tracks, the land speculators, and other special interest groups whose close ties with Sen. Hugh M. Burns, D-Fresno County, the former Senate leader, permitted them often to write their own ticket.

**UNITED** — Last week these forces united again in an attempt to block the BCDC legislation, which would interfere with plans for huge commercial centers, industrial tracts and residential subdivisions along the 276 miles of bay shoreline.

But without Sen. Way and the Rules Committee to help in their strategy they were handicapped.

Nonetheless, they resorted to every parliamentary maneuver in the rule

book, hoping against hope something would work and thwart the conservationists. Crippling amendments were proposed, efforts were made to send the legislation back to committee and the rarely used "appeal from the ruling of the chair" was tried. It was all in vain. Sen. Way was at the rostrum and had a firm grip on the gavel.

As the debate wore on Sen. Way's power in the Senate chamber seemed to grow by the minute. As the climax came the opposition was confused and dazed, one senator sputtering almost incoherently in a futile attempt to prevent a rollcall.

**BILL SAVED** — When the dust had settled only nine senators recorded themselves against AB 2057, Knox, the measure which extends the life of BCDC and increases its power to regulate land development along the bay shoreline. This is a far cry from the days the forces involved in the anti-BCDC effort could put together 21 votes in the Senate almost at will. Twenty-one, of course, is the magic number in the upper house — a majority of the 40 senators.

The no votes on that key rollcall were cast by Senators Burns, William E. Coombs, R-San Bernardino County; Lou Cusanovich, R-Los Angeles County; Ralph C. Dills, D-Los Angeles County; H. L. Richardson, R-Los Angeles County; John G. Schmitz,

R-Orange County; Jack Schrade, R-San Diego County; James Q. Wedworth, D-Los Angeles County; and James E. Whetmore, R-Orange County.

**CONTROVERSIAL** — The BCDC legislation has been perhaps the most controversial of any during the 1969 legislative session. Early attempts to bottle up the measure in the Senate Governmental Efficiency Committee reportedly contributed to the move to oust Burns in the first place.

This committee for years has been known as the graveyard for bills the special interests do not want. Sen. Way has vowed to change this and already has demonstrated he means what he says.

Senators Nicholas C. Petris, D-Alameda County; and Richard J. Dolwig, R-San Mateo County, were the leading spokesmen for BCDC. Dolwig underwent a change in his thinking a few months ago. He was being blamed by San Mateo County citizen groups for trying to kill the legislation. Feelings were so intense bumper strips — Fill the Bay — With Dolwig — appeared.

Conservation leaders say that had not Dolwig changed his attitude, his political future was in jeopardy. Republicans still may challenge him with a formidable candidate in the 1970 primary election.

Lane: Oh, he changed his mind minute to the minute. [laughs] He meant well, but he was just changing his mind by the second, and his bill was not strong enough to do anything.

There was another senator up in that northern Marin, Contra Costa area.

Chall: Miller [George]?

Lane: No, it wasn't Miller--but Miller was very helpful. Miller really replaced McAteer in many ways as sort of our "leader of causes" up there. He was a powerful guy, and he was excellent. Then he died.

Chall: Yes, so that left rather a vacuum.

Lane: Nejedly [John] replaced him and was okay, but not nearly as good. This other fellow, Lew--I remember we flew somewhere on an airplane.

Chall: I can look it up somewhere. [Lewis Sherman]

Lane: It didn't get much press, but when we finally got the bill passed, he was the one to get the senate to reconsider after they had voted us down once. He was a "clutch player" and didn't have to do it because it didn't help him particularly. Anyway, I've forgotten who some of those others were now.

Chall: Were you most active in lobbying?

Lane: I sure was. I was up there a lot. I even had an apartment there for a while.

Chall: Is that so? Were other commissioners helping you? Did any others care as much as you did?

Lane: Not much. There were a few. We would try to sic them on a specific legislator. Some of them were very effective in that way, but they were kind of looking for somebody to tell them what to do in nearly every case. Most of them really didn't want to do too much lobbying. It was not a field they were comfortable in.

#### Ronald Reagan's Interest in the Agency ##

Chall: Did you have to go in and see Governor Reagan from time to time on this to bring him around?

Lane: Yes, that was nervous. I had two good friends on his so-called cabinet--in this and previous worlds. Ike [Norman] Livermore, Resources, and a fellow who is now Secretary of the Army--

Chall: Gianelli?

Lane: No, in Washington--

Chall: Not Caspar Weinberger?

Lane: No, but I did work with Weinberger when he was at Finance there for a while. Let's see I'll think of this fellow's name. His wife's mother and my mother were good friends in Iowa--it was one of those--Verne Orr! Verne Orr, he was Finance after Cap. Anyway, the cabinet only had four or five people, so I had two people that I could talk to. They didn't carry my flag, but they would see that I got a hearing. That made a lot of difference.

Chall: Did you go in to see Ronald Reagan sometimes, to talk?

Lane: I went to cabinet meetings maybe a dozen times, and you'd get three minutes to make your little pitch.

Chall: Was he there?

Lane: Yes, usually. Other times you would just see Bill Clark or Ed Meese. Clark I also had known outside of his role--we'd go on horseback rides down in Santa Barbara every year. So, I had friends up there that helped in access to the administration. Meese, we got to know through Verne Orr's wife. She brought them down here for lunch a couple of times, and we got to know the Meese family.

Chall: Did that help?

Lane: Oh sure--It helped on entree. They didn't just do us a favor per se, but if you had a problem, or the governor was sore at something we did, I could get a better hearing on why we did it and what we did, than I could have otherwise.

Chall: Was he attentive at cabinet meetings? Do you think he was paying attention, or was he more interested in having his cabinet pay attention?

Lane: Oh, as a rule our things were not that important to him. He, I think, usually had his little one-page summary sheet. There were three parts to it, I've forgotten how he organized it. Then, and now as I perceive it, he has kind of a philosophical approach to something, and that's more important to him than the specifics of it. He just is generally for something, or is generally against that kind of thing.

Chall: He did come out for retention of BCDC.

Lane: He did sign it. He didn't like it very well. He made some very funny comments about it--not humorous funny but surprising. One of them was that one of the reasons he had signed the bill was that it avoided having regional government. [laughs] We said, "Right on, you're right!" [laughs]

Chall: What was the other one? [laughs]

Lane: [laughs] Hmm, some chamber of commerce kind of a thing. It would save money or it would facilitate better airports or something. It was not an incorrect statement. But one thing that we discovered very early in those days was that he had to have a non-environmental justification to get him to approve an environmental project. You had to give him something he could say to the California Manufacturers' Association, that he could justify himself with. Ike Livermore used that very well. The governor didn't build a freeway across the Sierra because it cost too much--fine. His [Reagan's] record in Sacramento was actually pretty darn good environmentally. He did a lot of things and did not play games with us on budgets or those things. He was straight.

Chall: Of course you had many Republicans in the legislature who were strongly for the environmental controls. CEQA [California Environmental Quality Act] came out during that period too, and the Republicans really were as responsible for it as anybody.

Lane: Yes, that's right, but most of them were in the assembly.

#### Controversy Regarding Bay Area Regional Organization: The Knox Bills

Chall: Yes, the rising tide. Well, now you became a permanent agency--and a single-purpose agency because there was no type of regional government or regional agency to take it on. Even so, the Bay Area Regional Organization studies were going on under John Knox. There ultimately were many Knox-sponsored BARO bills, but the one that would have come out while you were still around was A.B. 1057 in 1971.

Lane: Yes, gosh we spent time on those! None of it went anywhere, but we certainly spent a lot of time on it.

Chall: Was BCDC amenable to the Knox bill--one of the first ones--1057, that almost passed--within one or two votes. I think BCDC would

## COMPLIMENTS ABOUND

# Save-The-Bay Bill

S. Jose Mercury

AUG. 8 '69

## Signed By Reagan

By LOU CANNON

Mercury Sacramento Bureau

SACRAMENTO — Gov. Ronald Reagan on Thursday signed legislation intended to permanently preserve San Francisco Bay, which he called "one of the most important resources that California possesses."

The governor was flanked by a host of Bay Area legislators as he signed the bill with 14 different pens that he afterward distributed to co-authors of the historic legislation and to conservationists who had made it possible.

"This bill will save the bay," Reagan said. "It is, I believe, a milestone in our continuing efforts to preserve the quality of life — not only for this generation but also for those who will follow us."

In marked contrast to the acrimony among legislators, lobbyists and conservationists that often accompanied the seven-month struggle to pass bay preservation legislation, the bill-signing Thursday was accompanied by a mutual exchange of compliments.

Assemblyman John Knox (D-Richmond), principal author of the measure and a usually partisan Democrat, pointedly praised the governor.

"Your statements were extremely helpful," Knox told Reagan. "You kept jabbing them a bit every week."

The only note of criticism that intruded into the bill signing came from the governor, when he said his "one regret" was that the Legislature had exempted two projects from jurisdiction of the Bay Conservation and Development Commission (BCDC).

One project, an apartment house development on already-filled land in Emeryville, is minor in nature. The other would allow Albany to fill 105 acres for a marina complex known as Albany Isles:

In his statement accompanying the bill-signing, the governor called the bill "an example of creative partnership through which we can preserve the irreplaceable" and added:

"We can be proud of the fact that while we have taken action to preserve something that belongs to all of us, we have also protected the rights of private property owners.

"We have accomplished this without imposing the stifling controls of a regional government on the cities and counties that surround the bay."

The Knox measure would:

- Extend indefinitely the life of BCDC, which had been scheduled to go out of existence 90 days after the legislative session.

- Give the commission jurisdiction over the 50,000 acres of salt ponds, four-fifths of them in the south bay that are owned by Leslie Salt Co. and over another estimated 20,000 acres of "managed wetlands" now used as duck ponds or open marsh area.

- Authorize the BCDC to exercise jurisdiction of a 100-foot wide shoreline strip extending around the 276 miles of bay shoreline.

But the new authority that BCDC will have over the salt ponds and shoreline, which presently are outside the commission's jurisdiction, is balanced by the specific protection for private landowners referred to by the governor.

BCDC will be required within a year to designate areas designed for public use such as parks and wildlife refuges. Within three years after this designation is made, an agency would have to buy the land and dedicate it to the public.

If the publicly-designated land is not purchased by another governmental agency, BCDC would have jurisdiction only to determine that the use made by the prospective developer was properly "water-oriented."

Thus, BCDC would have limited zoning power over areas such as the salt ponds with power to guide development but not to deny the owner use of his land.

The commission has since its inception in 1965 blocked bay filling and dredging except for such public projects as parks, ports and airports. This power to control bay fill is preserved intact in the Knox bill.

The bill, heavily opposed by lobbyists for Leslie Salt, Westbay Community Associates and the Santa Fe Railway Co. at various stages of the legislative process, was a compromise effort worked out by Knox and Sens. Richard Dolwig (San Mateo), Nicholas Petris (D-Oakland) and Milton Marks (R-San Francisco).

Dolwig, who originally introduced legislation that conservationists groups said would seriously weaken BCDC, was a frequent target for bay preservationists in the early months of the session.

But he played the leading role in restoring shoreline control powers to the bill on the Senate floor last week and Thursday issued a statement praising the legislation as "an important victory for conservationists and all persons who believe in fighting to preserve

The turning point in the battle to save the bay, according to Knox and conservationist-minded Sen. Alfred Alquist (D-San Jose), came when Sen. Howard Way (R-Exeter) replaced Sen. Hugh Burns (D-Fresno) as president pro tem of the Senate.

have been folded in in some way.

Lane: I don't remember. I know there was the threat of it, and we had many meetings with Knox and his administrative assistant Tom Willoughby on those bills. Every year they were up and the Bay Area Council got all involved. Some of them would have enveloped BCDC, but it's a big blur in my mind now.\*

Chall: Some of them would have, and some of them wouldn't have. The Save the Bay Association I take it, was never in favor of them.

Lane: No, and I think as I remember it, Bodovitz and I figured our role was not to publicly oppose what they were doing, but not to go out of our way to help it along either--if it was going to water down BCDC. BCDC's function was the test of it. It didn't have to be the same organization, but it would have to be a law that was as strong, and with a capability that was as strong in protecting the bay.

Chall: But that apparently took quite a bit of your time?

Lane: It did. It was a very popular subject. There were meetings all over the place, conferences, and all that stuff went on and on.

Chall: What's your general opinion about bay area regional government? Did you come up with one that satisfied you?

Lane: I never was for one on general land use. I guess I liked the special-purpose agencies, but the more you could coordinate them so they didn't contradict or overlap, obviously, was desirable. There were some things that you could do that way, but I would liked to have seen the maritime/port things under one group.

Edgar Kaiser worked very hard on that in the early sixties. I remember Edgar coming back to a meeting once. He really pushed it, and he worked very hard. He got it very close, and--who was the state senator that was the "daddy of freeways" in the north?

Chall: Collier?

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\*See John Knox, "Bay Area Regional Organization, The Environmental Quality Act, and Related Issues in the California Assembly, 1960-1980," an oral history interview conducted in 1982, Volume III Four Perspectives on State, Regional, and Local Mandates for Land-Use Planning, 1960-1982, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1983.

- Lane: Yes, [Randolph] Collier. Anyway, he came back from a meeting with Collier, and Edgar Kaiser said, "I've decided I can't afford a legislature." [laughs] I didn't know exactly what he meant, but I had a pretty good idea that it was going to be a very expensive trip. [laughs]
- Chall: You're talking about then, the idea for a Port Authority, is that what you're talking about?
- Lane: Yes, the San Francisco/Oakland/Contra Costa competition was counter-productive in my opinion. Anyway that was one. I think coordinating the airports in the area, again, it's a Port Authority kind of thing, would be an improvement. The bay--shoreline and water access needed one. Water quality of course is another one. Highways, you certainly need that one. But, to just have a general land-use agency, that is not likely and in my opinion desirable.
- Chall: How about garbage? That seemed to be so great a problem--still is.
- Lane: Garbage would definitely be one, yes. Local government, political boundaries don't make any sense on that. No, I'd agree with that. So too, solid waste or at least sanitary waste, and I think we're learning now, late and the hard way, toxic waste certainly needs something. Whether its regional or state or federal or whatever, I'm not so sure, but leaving it up to cities doesn't do it. Underground aquifers, same thing; they don't respect boundaries.

As a result, nobody does anything. Twenty years ago most of the environmental battles were fairly specific, and you could get public support--Save the Trees, the Bay, or Clean the Air. We set up government machinery that could cope with most of those, if the public wants them to. Gosh, but we're dealing with stuff now--You just start with the potential damage of radiation, or nuclear, or population growth, greenhouse atmospheric problem, or underground water aquifers--either they're endangered by pollution or over-consumption. We don't have government machinery for them, and we don't know how to deal with it.

Few politicians are going to really get their necks out, because they won't get enough points to make it worth it. If he starts worrying about greenhouse effects, he's got all of the polluters in the area on his back. But the greenhouse is the whole world, and so you just aren't going to get enough votes in your district to make any difference. So, the incentives to tackle these environmental problems is a much tougher one.

Continuing to Develop Strategies as Chairman

Chall: Now Governor Reagan reappointed you as chairman, and you were willing to stay with it I take it.

Lane: Oh yes. We were still in our three-year project. I worked on getting reappointed. I went to a bunch of friends--Bay Area Council, and Steve Bechtel, Sr. McAteer was still alive then, and he didn't have a lot of say with the governor, but I gathered that he at least didn't object to my staying in there--even though I was Republican. I called in favors with some of my friends that were big in the Reagan world to stay on.

Chall: You probably felt that you still had to insure BCDC as a permanent agency--that it wasn't weakened.

Lane: BCDC was only one year old when Reagan came in. He reappointed me, but he dumped the other four who were all Democrats. He got a lot of pressure to get me out of there by people who just wanted to weaken the thing, and get some good developer in the slot. He did replace the other four, and that's what brought on Bill Evers and--

Chall: Bessie Watkins?

Lane: Bessie Watkins, yes. I've forgotten who the other two were now.

Chall: Was that when Marcella Jacobson came in?

Lane: I think it was. She's the other one that called me right at the beginning.

Chall: Oh, I see. She is a Republican.

Lane: Yes.

Chall: Strong in Save the Bay wasn't she?

Lane: Yes, and really, she more than that other woman I mentioned [Pat Barrentine], was the one that really talked to me long and hard, and explained to me all that was going on, which I didn't know anything about.

Chall: So, Ronald Reagan's appointees were good ones would you say?

Lane: They were fairly good. A lot of us were working on it, and we particularly pushed for Bill Evers, because I was looking for a good vice-chairman.

Chall: How was Mrs. [Dorothy] Erskine?

Lane: Very nice, a lovely, wonderful woman, and she was fine. I had no problem with her, we were good friends, and I loved her--but she was not the one that was going to run a big meeting, or those things. Her place was in organizing a lot of volunteers to go.

Chall: She could do it.

Lane: She sure could. Her thinking was certainly clear, and she knew what she was trying to do. But, the world of lobbying and those things just didn't seem to come naturally to her--or building up the personal relationships with commissioners--this kind of activity. Everyone liked her.

Chall: So, did you request through your channels to put Mr. Evers on there?

Lane: Yes.

Chall: Did he do what you had anticipated he would do?

Lane: Yes, Bill was fine--excellent. Bill was vice-chairman, and then later became chairman. I've forgotten how that worked for a while there, because Bessie Watkins was vice-chairman. I think she became vice-chairman after I left though.

Chall: I think so.

Lane: Yes, with Joe Houghteling. Bessie was fine. I didn't know her, I knew her husband [Dean] pretty well, and he's quite conservative so I didn't know what to expect, but Bessie was fine. She was very faithful and able.

Chall: Then there were members of his [Reagan's] staff who were on the board like Livermore--as part of the administration.

Lane: Yes, by then we had gotten a bill through for proxies. As I remember it, Senator Miller was the one that helped us get that through. People like Ike did not show up as a rule. The Democrats like Hugo Fisher, those people did come, but in the Reagan administration the agency heads did not come, but they could have an alternate or a proxy, so it worked all right.

Chall: When you say that you, through channels, pushed for Mr. Evers, could you explain what those channels were and how they worked? did you have any influence over any other appointees? If so who were they?

Lane: I called friends who were prominent Republicans to put in a good word for me and for Bill Evers. Steve Bechtel Sr. was one of them. Bill Evers was the only one I urged besides myself.

Chall: Now during the Reagan period, were there any attempts to lean on you, or any commissioners, different from what you experienced with Pat Brown?

Lane: No, they were totally hands-off. But, you see, Brown was generally too. It wasn't a problem I guess, is what I'm saying. The fellow whose name I'll think of that was Ike Livermore's proxy, was also in the Republican Central Committee and those things.

By that point I had a group of four or five people that joined me for lunch every time before a meeting. Then I'd ask other people if there was something on the agenda that was of interest to them, or where they were a participant. If we had a great big project in Oakland, we had a supervisor named [Emanuel] Razeto from Alameda County--so I'd ask Emanuel to come, and we'd just discuss it. Nobody got surprised.

Chall: It was a luncheon meeting before every meeting?

Lane: Before every meeting yes. I told the commission we were doing it, so there were no surprises. If they had a big project in their area coming up, they were welcome.

Chall: Was that so you would understand it?

Lane: Yes, so I would understand it and would save time in the meeting. One of things we had to do was plot our legal case--always. Clem [Clement Shute] was there, and one of the questions to him was, "Okay, if this goes to court, what are we going to wish we did at this meeting?" Then he'd tell me, "You've got to be sure you say this, and you've got to be sure you do that." [laughs]

Chall: Oh I see, just as important as planning your agenda.

Lane: Yes, because these kind of suits, when it gets into the courts you cannot introduce new information. The courts are looking for what happened. Therefore, if you're going to get challenged on some procedural thing or something like that, you better figure it out. So anyway, it was part of the process.

Chall: That didn't run you afoul of the Brown Act--the public--?

Lane: No, because we didn't have a majority of the commission. But we really weren't trying to steer the thing to a given vote or conclusion, we were just concerned with the process. No, I thought I might have trouble with that, but I never did. I always told the commission about it. I'd tell them, "We've been advised by the attorney general, that in processing this permit we should do X and Y." So, they were seeing the results of it; it didn't come as a surprise.

Chall: Did you do the same thing when you went to the Coastal Commission, or try it?

Lane: Well in effect, it did not formalize. Those meetings went for two or three days, so I would usually huddle with Joe Bodovitz and the attorney general ahead of time--on an airplane half the time of course. Then, I'd at least talk to the attorney general on the big ones, but the logistics just didn't allow it.

### Accepting and Working With the Plan

Chall: I guess there weren't really many changes after the commission became permanent, with respect to the appointment of other commissioners.

Lane: No, and I was a little disappointed. To perpetuate ourselves kind of bothered my conscience--that's so natural for anybody with some power in this world. But, it became evident that as soon as you started tinkering with the balance of that thing, that it just would become unraveled. So, we basically stayed with the same twenty-seven member organization. There were a few minor modifications--I've forgotten what they were now, but they didn't amount to much. The state agency assignments got changed around some, I've forgotten what they were.

Chall: I think too that there was one more mayor appointed, I believe four from ABAG, because of the loss of--I think BATS [Bay Area Transportation Study] went out of existence.

Lane: That's right. BATS went out, and ABAG appointed one additional mayor. We looked at taking it down to a smaller group for instance. Well who do you throw out? I decided that was not worth it. We could argue back that the twenty-seven member commission did work--as dumb as it sounds--so who's to say it can't keep working.

Chall: And how did it keep working? I mean, did commission members continue interest in working with the plan?

Lane: It worked pretty well. I thought it worked fine, from my point of view. No, I didn't see any drop-off in participation.

Chall: By this time of course the developers and builders knew that you were a permanent agency and they would have to deal with you, so I suppose then they came in with projects that either tested you, or accepted the agency's premises.

Lane: Most of the real bad ones didn't even come, it just disappeared. Businessmen, once they see a buck is someplace else, they move fast. If once they were convinced that they weren't going to make it filling in the bay, then they all went up into the mountains or wherever they went.

Chall: Well, the concept of having public access to the bay, certainly has made a difference around the bay for many people. It's also opened up considerable areas of marshlands.

Lane: Yes, and one of the things that impressed me was that what it came down to really was important. I remember there were four or five basic policy concepts that pretty well took in the whole thing. The rest of it was just detailing it out. One of them was that, "You don't put something in the bay that can just as well go on land." The next one was, "You don't put something next to the bay that can just as well go inland.

That covered an awful lot of things. A house doesn't have to be in the bay, a yacht harbor does. [laughs] So, if there's a choice, the things that are water-related get a priority over these others. "Things that the general public can enjoy will get preference over things that just a private owner can enjoy." The things that groups of people can enjoy will get a preference over the something that only is for a single person, or a single owner. There was the airport logic we stuck with.

Chall: You had industrial logic.

Lane: There are a lot of industries that do not need to be in the bay, but if you fill it up with houses and warehouses, you don't leave room for those things that really have to be there. The airports were one, and all the maritime things--not just the ports, but the maritime-related industries, whether it was deep-water shipping, or they needed bay water for processes or whatever, they should get a preference over the bay.

So anyway, it came down--I was surprised, the planners can usually make things pretty complicated, but the real rules that were going to guide the bay were pretty simple.

Chall: Mr. Bodovitz said that whenever he had a real difference of opinion with you, sometimes he found out that you were right and he was wrong. [laughs]

Lane: Yes, we split them up I think. He was ahead of me on the processes, in knowledge, because he was at it full time. He knew what was going on and I didn't, because I wasn't there. An awful lot of what we were doing was strategizing, and a lot of this was not that different from what I do in my business. It's publishing. The way we sell advertising to General Motors Corporation, is very similar

to selling a piece of legislation. [laughs] You figure out who are your friends, who are going to oppose you, who are the people you have access to, who are the people you've got to find access to. So, some parts of that I had some experience to put on the table.

Chall: It seems to me there was some real sophistication behind a lot of action during these years in this particular agency, that made it successful. Why did you decide to leave in 1972?

Lane: I got interested in the coast, and so basically Joe and I both decided to take a run at that. I was more involved than he was--at least visibly--in pushing the coastal legislation, because he was a state employee and his hands were tied a little bit, but we both worked on the coastal initiative.

Chall: I'd like to talk to you about that someday.

#### The Conservationists and Their Relationship with BCDC

Chall: I didn't ask you about how you got along with the real strong conservationists like the Save the Bay people, Sierra Club, and what they did for you and BCDC?

Lane: We got along fairly well. I have a theory I inherited from Dave Brower actually. That is, that environmentalists should be extremists. They represent an extreme, and the people who are going to make a buck represent the other one, and the decision makers should sweat it out in the middle. If the environmentalists are convinced that they should be reasonable and cooperative, all you're doing is bringing them in here, the middle has just shifted over to here. [gestures] I had no problem with their telling us, "We don't care what's going to happen to this man, and his taxes, and his money problems and all that. The fact remains you're going to kill all of these birds, you're going to destroy this marsh," and--

When I'd tell Dwight Steele and those people that theory, they didn't like it too well, because they would like to say, "Well I'm not extreme, you ought to be right where I am." They also really had thought that they they would have more of a voice in our proceedings, I think is a fair way to say it.

Tactically, they were not as sophisticated very often as the developers. There were times when at least a lot of us in the commission and staff were really going to go their way, but if it looked like we'd done it because the Sierra Club had beat us into doing it, it made it harder to do. But they just couldn't resist

coming in there and raising hell.

We really had some tough times the first year or so, with the Save the Bay folk, because they had been the ones that got McAteer to carry the bill, and they really thought they were going to have some real voice in things. Mrs. Kerr and some of the others, had some very strong ideas as to how we should do it.

Chall: What would they have been? How were they different from what you did?

Lane: They didn't like all these studies to the extent that we did, although they were not totally against it. As a process, they wanted us to start out with a framework of policies, and then kind of massage them and enhance them, because they were afraid we would go astray I think. They had good reason to, because you're trusting twenty-seven people who are not particularly environmentally-oriented, a lot of them, to do something. Anyway, we had some pretty strong sessions with some of them, and they were very unhappy.

There were some things that, in my opinion, were symbols to them rather than being very important: Where we should turn down a permit, not because in itself it was a big problem--maybe precedent is a fairer word of their feeling. We felt if an applicant qualified under the law, in our opinion, he ought to get his permit.

At the first meeting we had we had four permits. Stan Scott and others were there and they were really beating on us that we just had to turn these down. If we ever let developers see that we were going to approve things, we would just get washed away. None of the four had a problem. One man wanted to build a little bridge in his farm up in the north bay so he could get from one plot of land to another one. Well, to turn his bridge down was crazy. I remember my wife sat next to him at that one, and this guy had been sure that he was going to get clobbered, and couldn't believe it when he got his little bridge. [laughs]

As I remember we approved all of that first batch. Martin Meyerson--he was chancellor later, he was head of the environmental studies (whatever you call it, architecture) then.\* He was Kay Kerr's choice to be one of the commission members. He was a governor's appointment. It took me a little longer with Martin than

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\*Martin Meyerson came to Berkeley in 1963 as professor of urban development and dean of the College of Environmental Design.

it did some others before we really became friends. And, Kay Kerr really told him what he should be doing. I assume they didn't always quite agree, but he was carrying her messages a lot of the time. That was a little tricky on some of those, but that first meeting he was just very upset that we approved them.

The point I always insisted on, and I think that Joe liked it, was that the staff would make a recommendation; they didn't just throw something at us. The people involved knew it--that is, the applicant and the opponents and whatever. So, before each project, they would give us the background information, most of which was already written out, and the staff would recommend that we approve it or disapprove it for these reasons. That drove a lot of people up the wall, but I thought it was fine. It kept the staff on their toes, and at least there were no hidden agendas. Everybody knew where everybody was.

Anyway, I remember when Bodovitz recommended that we approve all these, Martin Meyerson just had a terrible time. But, he was very helpful later. He was a very bright man, and I had a bunch of meetings with him eventually, on what kind of a plan we ought to have, and whether we should be looking primarily in the long-run to the state or to local government, as to where we put power and those kinds of things. He was good.

Chall: Those are the important decisions that need to be considered. Where did you put it?

Lane: State. I mean we went on to be a state agency. The cities and counties didn't have the say they thought they ought to have.

Chall: Well, you'd had the experience with ABAG already, enough to--I'm sure the Save the Bay people or the Sierra Club or any of the others, would never have been satisfied had it not been the state.

Lane: There's that, and land-use control is a state responsibility. Cities have it because the state has delegated it, but they can take it back anytime they want to. That's in effect what they do with the BCDC. They just take it away from the cities and counties and say, "We're going to put it in a state agency." Anyway, Martin was fine.

Chall: Would you meet sometimes with Kay Kerr or Mrs. [Esther] Gulick?

Lane: Yes, but not as a regular thing at all. She would be very upset or want to talk us, and so we'd go over there and have a meeting at her house, or dinner, or something. She was always gracious. She just felt very strongly, and she had a great investment in it, and she was entitled to her hearing with us. I never begrudged that at all. They were very, not Kay or Esther so much as some of the others,

very strident, demanding, and rigid in their approach, so it was not an easy relationship. The other one--

Chall: Mrs. [Sylvia] McLaughlin.

Lane: She was swell. Mrs. McLaughlin I've known from days past. But, Will Siri and Will Siri's wife and those people, and some of the lawyers they had, would just say, "That's illegal, that's absolutely illegal." [laughs]

Chall: Oh is that so?

Lane: Barry Bunshoft was one of the lawyers. I remember he particularly was upset with a lot of our legal things. Clem Shute would say, "Don't worry."

Chall: Yes, he seemed to be on top of it. You belonged I think to, was it the Planning and Conservation League Foundation, or the league itself for awhile?

Lane: I was just a member and then they made me an honorary something or other, but I never was a--

Chall: You never were on the executive board?

Lane: Bill Evers and Lou Butler and some other good friends, were very involved in all that--and Richard Wilson. So I did--well for a while they had a good lobbyist up there, so I used them as much as I could. That was my main real involvement with them, other than that I didn't do a lot.

Chall: Were they using Mr. [John] Zierold at the time?

Lane: Yes, John was with them, exactly.

Chall: But you weren't an active member?

Lane: Not really, no--only as it affected the bay, or later the coast. They were very active proposing coastal legislation, and really did an awful lot of the work in developing legislation which was based on BCDC as far as it's legal structure--of three years and all that. So, I worked with them a lot on that.

#### Evaluating BCDC and its Future

Chall: Looking back on BCDC, can you discuss, if you haven't already

stated it, what you consider the great accomplishments and some of the frustrations you might have felt?

Lane: [Pauses to consider] Certainly clarifying the laws as they applied to a lot of these things was one of our major accomplishments. One that happened more coincidentally than any of the specific things we did, was getting a much broader and deeper appreciation of the bay by the general public, and by the people in the local governments. [Pause] If I thought about that I'd probably think of some things that were frustrating.

Chall: Well, you can put it in, when you are reviewing—you'll have to review this, so you can add anything you want. How do you look today at the future of BCDC under Governor Deukmejian? Are you concerned?

Lane: Oh it's not very good. These battles are ones that you don't solve ever, with the coast or bay or air or water or whatever it is, because tomorrow there is another group of citizens and voters and government leaders, so those battles just go on forever. The picture has not been quite as attractive in the last five years or so as it was before that.

Chall: Can it slip back considerably? Or is there enough in place now so that the concepts regarding protection of the bay are not in danger?

Lane: I don't think it will slip back as far. I think not only the public, but the city and county governments have really changed. They're more aware of public access. They're more aware that maybe a marsh has some value, besides a city dump.

##

Lane: I think there's that--just the education process there would prevent it from going all the way back, to where cities and counties were just competing to see how much they could fill in more of their bay than the next guy could. I'd be surprised if there was a lot of that.

Chall: But there does seem to be some real interest on the part of developers, to get in where they couldn't before. Do you think, as some of them have said, that the development side of BCDC was not considered over these past twenty years? That that has been shoved aside over the years, and that BCDC was concerned more with the conservation?

Lane: I think, looking at the resource, and what we thought it should be one hundred years from now, took priority over what somebody could do to make a short-term profit. One of the theories I came out of it with—I've forgotten who named it—is called "salami logic."

It's very true, in my opinion, that if you look at a slice you see something very different than if you look at the whole loaf.

If somebody owns a piece of shoreline and some mud flats, and they go to the city council and they say, "Now I just want to fill in a little bit out here to help my building, but I'm going to put a little path around here for the public and there's a picnic table. I've got this architect that's going to put ivy on my building, and I'm going to create fifty jobs, and I'm going to pay you twenty thousand a year in taxes, and on and on. And, I've only taken .0007 per cent of the bay." The city council can't turn that down. But if you looked at all of the privately-owned shallow parts of San Francisco Bay and said, "Now if this happens to even a large part of it, was that a good idea?" We'd say, "No." If you looked at that one slice, you'd say, "Yes." [laughs]

So as planners we should be looking at the total, but a developer looks at only his thing. He's looking at it philosophically--that he thinks there is a God-given American right that the best use of resources is to put them into the capitalistic system so somebody can do something with them.

Chall: So, there's always going to be a tension between them, always?

Lane: Yes, sure.

Chall: What do you think of the future? I'm talking about the short-term--

Lane: There will be some gradual erosion, but I think it will be very gradual. I would guess that fifty years from now, most of what is now bay would still be there. The public's interest is not expressed in as strong a voice, but it's there. We had a bond issue in June where 64% of the people said, "I'm willing to be taxed to preserve wildlife refuges." They can't even go and use it, all they can do is just preserve it for animals. That says something to me. I think the public, they won't build schools or prisons with their money, but they'd do that.

So, as long as there's that public interest in these things, that's the real guardian. As cities get built bigger and population pressures greater, I think the interest in those things will get greater.

Chall: Well, I think that's about all of your time I'm going to take today. Thank you very much for the help and advice you've provided this project during the past several years.

Transcriber: Lisa Grossman  
Final Typist: Richard Shapiro

## TAPE GUIDE -- Melvin Lane

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THE SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION, 1964-1973

E. Clement Shute, Jr.

*The Place of the Courts in the  
Solution of Controversial Policy Issues*

An Interview Conducted by  
Malca Chall  
in 1984





E. CLEMENT SHUTE, JR.



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## E. CLEMENT SHUTE, JR. -- INTERVIEW HISTORY

E. Clement Shute, Jr., began his career in law in 1964 as a junior deputy in the state attorney general's office. In September, 1965, he was assigned to the newly established Bay Conservation and Development Commission representing the attorney general's office as its counsel. He remained with the agency until 1980, at which time he left government service and went into private practice. During those eighteen years he sat with the commission and handled all of their legal work.

During the initial crucial three-year interim permit/planning period when local, state, and federal agencies, private developers, and environmentalists were testing their strengths and their turfs, many legal issues had to be resolved, some of which, through court decisions, would set precedent. This was a new agency dealing with an environmental resource, having such untried and broad ramifications as private property rights on submerged land, public access to the shore, the scope of the historic public trust, police power, mitigation, and regional, rather than local control over the bay and its shoreline.

It was in the courts that many of these issues were settled, and it was Clement Shute who provided the advice, the energy, and the skill needed to establish BCDC's authority over future development of San Francisco Bay in the courts. "I started off that job thinking it was going to be interesting, but I had no background in ecology--environmental matters--by training or interest. So I grew with it."

Mr. Shute agreed to fit a one-hour interview on October 8, 1984, into his very crowded schedule by combining lunch and taping in his San Francisco office on the top floor of a renovated Victorian home on Hayes Street. The focus was legal issues, and major court cases handled during BCDC's first decade. To be sure, this subject deserves more than one hour. But by combining excellent recall, a skill at discussing legal matters in understandable English, and a historical perspective, he was able in that brief period to add a valuable dimension to our understanding of the early history of the Bay Conservation and Development Commission.

Malca Chall  
Interviewer-Editor

24 January 1986  
Regional Oral History Office  
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University of California at Berkeley

BIOGRAPHICAL INFORMATION

(Please print or write clearly)

Your full name Ellison Clement Shute, Jr.Date of birth 5/8/39 Place of birth Ithaca, N.Y.Father's full name Ellison Clement ShuteBirthplace Philadelphia, Pa.Occupation Engineer-ManagerMother's full name Edith Blair ShuteBirthplace Philadelphia, Pa.Occupation —Where did you grow up? El Cerrito Ca.Present community Orinda, Ca.Education B.S. Business Admin, Univ Cal. Berkeley 1961JD Boalt Hall 1964Occupation(s) Attorney

Special interests or activities \_\_\_\_\_

*THE PLACE OF THE COURTS IN THE SOLUTION OF CONTROVERSIAL  
POLICY ISSUES*

SETTING THE LEGAL FRAMEWORK

[Date of Interview: 8 October 1984]##

- Chall: First of all I want to know at what stage you came in to BCDC.
- Shute: I was in the attorney general's office as a junior deputy, just having gotten out of law school in 1964. I was assigned by the attorney general's office to work with BCDC [Bay Conservation and Development Commission] from its first meeting, late in September of 1965, or October of 1965.
- Chall: That was during the Brown administration?
- Shute: Yes, Father Brown. [Edmund G. Brown, Sr.]
- Chall: Did you come in to stay in San Francisco; were you actually on staff there?
- Shute: The attorney general had three offices then and four now, and always had an office in San Francisco and that's where I was.
- Chall: Your particular assignment dealt with legal matters and what else?
- Shute: The BCDC was then and still is a state agency, so by law the attorney general is its counsel. I was assigned as the deputy that would represent the agency by attending meetings, writing opinions, or handling any lawsuits. So, I was involved from the legal perspective; but when you work with an agency for a while, the line between policy and law becomes very blurred.
- Chall: Did you feel at that time, let's see you came on in '65, when it was just a study commission--
- Shute: No, the study commission was 1964.

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Chall: That's right, it had already been granted its three-year trial period.

Shute: Eugene McAteer had sponsored legislation which passed and became effective September 17, 1965. The agency started meeting right after that, and that's when I became involved. So I was there from the start of that initial three-year planning and permitting process.

Chall: At that time what did you consider your stance with respect to BCDC? Were you an advocate for BCDC in any way? It seems to have begun with very positive concern among the staff. How did that affect your work as the state's attorney?

Shute: I started off that job thinking it was going to be interesting, but I had no background in ecology--environmental matters--by training or interest. So, I grew with it, but I wasn't a Sierra Club member or anything like that.

Chall: At the time, during those first three years, they were doing a couple of things. One was that major plan they had to develop, and the other one was the permit applications. Both of these would deal with law. In what way were you concerned with the work on the plan?

Shute: There were many many legal issues about what kinds of limitations could be prescribed against people who owned tide and submerged lands, that were even far less resolved then than they might be now because of some later court decisions. The so-called public trust doctrine was not nearly as well developed as it is now. The commission, through the studies which were being done initially, wanted to severely limit the opportunity for fill anywhere in the body of San Francisco Bay. For example, if that were in the same category legally as land in downtown Oakland, there are constitutional limits on how far you can go in preventing an owner from using property, or completely diminishing its value. So there were constant questions of, well if we only allow them to do this, or if we declare this an open-space zone, what sort of test can be made against the plan in court and what would happen? This was probably the major legal issue, but there were many many issues in connection with the plan.

Some more examples were whether BCDC could draw lines inland based on the parcel depth, or was that just an arbitrary event based on some prior property transaction, or did it have to be uniform? The plan recommended that the shoreline band vary by parcel depth. I advised, during the legislative process, that I thought that would violate equal protection, so we came up with the uniform band. I wish it were more than one hundred feet.

There are all the procedural questions of setting up hearings. "How do you have hearings? Who gets to talk? What's the level of formality? Are there such things as hearsay or opinion testimony that should be disregarded? What kind of notice has to be given?"

This was a whole new agency that didn't exist before, and it was in an area that was pretty novel. Then, we had (you started off talking about the plan, so I'll stick to that), there were questions that came up during the planning process about having a fill tax for fill; or having mitigation requirements. Then, of course, you get into legal issues. How much of that can you impose on somebody and have it still be valid? What strength of evidence do you have to have? What criteria do you set up?

I would say that I probably sat through 90% or more, maybe closer to 95% of all the public meetings of BCDC during that whole period [1965-1969]. Sometimes they would result in a request for an opinion--written opinion from the attorney general, or, more of the time, somebody on the commission would say, "Well this has been raised, Mr. Shute, what do you think?" I would respond as spontaneously as I could.

Chall: Had you done some prior research on the topic?

Shute: Oh, sure.

Chall: Did you have your own staff?

Shute: No, not in those days. In those days I was assigned half-time to BCDC, and I was a tax lawyer the other half time so--

Chall: Oh my goodness, really? [laughs] Of course everybody was under tremendous pressure those three years. I suppose you all went through that kind of thing.

Shute: That's right, yes.

Chall: In considering the plan and research for it, the McAteer-Petris Act required that you had to come out with something by the end of the period. Did you work along with groups like the Sierra Club and the Bay Area Council? Did you ever have any contacts with them as you were working on the plan?

Shute: I knew most of those people, but I didn't deal with them directly. I found it more effective to have the staff take in what they thought were issues that these groups were presenting. Then I would discuss it with staff, so I didn't have direct meetings very often with those kind of people. Actually, the scope of the work would be defined in the contracts with the consultants, who did the initial studies on the effects of bay fill, and then, for the most part, they worked with the staff. I would see a draft and go through that. My main objective there was to make sure that a consultant didn't advocate something which would put the agency in an impossible position, because if it relied on it, it would be indefensible.

Chall: I see.

Shute: The only consultant I had contact with was Mike Heyman (now chancellor of the Berkeley campus). As you know Mike did the Powers report.\* That was a critical report because it was going to lay out some of the legal parameters that the agency would have to live with, and get into this question of how far you could prevent fill without destroying property rights, so I was involved in that one. But, on the stuff about how much sand there was in the bay, and the value of marshes and so forth, I didn't deal directly with the consultants.

Luckily we were all learning then--everybody was learning. One of the first things that I remember happening early in the fall of '65, was (I think it was) Professor Tom Harvey from San Jose State, coming up and giving the commission a lecture on the meaning of the word ecology. We all take that for granted today, but I didn't know what it meant. So, we were all learning together.

Chall: And, establishing some precedent eventually for use of the land underwater or on the shore. Mel Lane is quoted as saying in effect that when you own property under water, that doesn't mean you have the right to turn it into land.

Shute: Well that's right. That was something which I think the BCDC plan, and BCDC's actions in implementing the plan, had more to do with than the State Land Commission, particularly by becoming involved in lawsuits to determine the scope of the public trust. All of those decisions in intervening years have been along the lines of what we were advocating. That if you owned underwater land that was subject to the public trust, the public could use it for whatever purpose was appropriate, and the private owner could not consider it like the land that I own at my home. It was a whole different character of land--that's been pretty well established now. Although, we had to walk a line between hoping that would become the law, and honoring what we thought was the existing law which was that people had to be given an opportunity to use their property.

Chall: Now, of course, that came out in permit applications.

Shute: Yes, that's correct. I wanted to really emphasize that because I think that the reason the bay plan has been an enduring document, at least relatively speaking, is because it was developed by the same people that had to sit through permit hearings and make those tough decisions. Not sit in a corner and work with consultants in an abstract fashion. They saw people who said, "I want to fill this for a marina. It's going to create jobs and provide berthing facilities which are drastically needed in the bay area. I have to

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\*Heyman, I. Michael, Powers: Regulation--Legal Questions, Volume I, April 1968. Prepared for the San Francisco Bay Conservation and Development Commission.

fill a marsh to do it." By living through those kinds of experiences--the BART tube was one of the first things that came up, and there were lots of other controversial things--those people became attuned to what was really happening out there, where the pressures were. They fashioned a plan and policies that were responsive to that permitting experience, and not just an abstract planning process.

Furthermore, BCDC became involved right away in some major lawsuits. Which, in retrospect, were extremely important, because this was a new regional agency--it was one of the first ones in the United States created strictly for protection of an environmental resource. I found it interesting that the private sector didn't like us a bit, but they don't like government regulation anyway. So, there was nothing special about that. Local government took it as a tremendous affront to their normal prerogatives to have this planning and permitting agency. Our early lawsuits were against local government.

We were establishing our turf, "We are here, we have a law to administer and we have powers, and you just better understand that." You don't do that by putting out press releases or holding meetings. You do it by litigation because then the courts come down with rulings, and they see that you will enforce your law, and you gradually gather some standing.

Our first major lawsuit was against the town of Emeryville.

#### Emeryville and Fill: Setting a Precedent

Chall: Oh yes. Was that over fill?

Shute: Yes over fill. They wanted to fill a hundred and some acres--I think about one hundred and fifty acres of land, outboard of the end of their marina where it is right now, and put fifteen thousand people out there--a new city. They had started filling and adopted a plan four days before the statute became effective in 1965, so they claimed they were grandfathered. They had a plan and they had started it. There was a grandfather provision in the law which wasn't really too well written--I had nothing to do with that.

We went to court, and it eventually ended up in the California Supreme Court where we won a resounding victory. The project was stopped. The court said it wasn't grandfathered, and gave very broad credence to the McAteer-Petris Act. That case has been the precedent for all the subsequent appellate cases on any issue that has come up. BCDC has never lost an appellate case, and I've been

# A Crucial Legal Test On Bay Fill

The Bay Conservation and Development Commission was presented with its first strong legal test yesterday in a suit filed here by a rejected Bay filler.

Candlestick Properties Inc., whose request to fill a square block southwest of the ballpark was rejected in January, attacked the legalities of the Commission's procedures.

Using terms such as "un-constitutional and invalid," "wrongful, arbitrary and illegal," and "arbitrary, illegal, capricious and discriminatory," the company asked that the Commission order be set aside, that its permit to fill be issued and that it collect \$50,000 in damages.

### SUIT

Minutes after the suit was filed, Presiding Judge Alvin E. Weinberger of the Superior Court ordered the Commission to show cause on March 15 why Candlestick's petition should not be granted.

The unhappy firm, which is not related to either the ballpark or the baseball team, said it bought some 118,000 square feet of tidelands in 1964 at a cost of \$40,000.

It planned to use the property, which has a total size of 2.7 acres, for dumping demolition debris — mainly wood, broken concrete and dirt.

Filling the tidelands would require about two years, the company told the Commission, after which the land would be developed with light industrial uses.

### ATTORNEY

Quentin Kopp, attorney for Candlestick Properties, said in the suit that the Commission had no jurisdiction over the land because it falls within the Hunters Point Reclamation District.

He also said the Commission erred by not acting within 60 days after the fill application was filed, by allowing proxy members of the 24-man Commission to vote without written authorization from regular members, and by giving him no opportunity to rebut evidence or cross-examine witnesses who opposed the project.

The Candlestick application was rejected, 11 no to 6.

# Bay Unit OKs Plans for New West Oakland Port

Jan. 18 '69 Oakland Tribune

The San Francisco Bay Conservation and Development Commission has unanimously and enthusiastically approved plans for Seatrain Lines Inc. to develop a major new container ship port on the old Moore Drydock property in West Oakland.

The big maritime development won't require Bay filling.

Joseph Bodovitz, BCDC executive director, said the fact that private industry is willing to invest millions in rehabilitating a deteriorated section of the waterfront for port development is proof of one of BCDC's basic contentions: that new industrial development can be done without Bay

Bodovitz also praised the company for its willingness to provide public access and public viewing spots within the big new shipping complex at the western tip of Oakland adjacent to the west end of the Estuary.

"This is a prime example of what can be done — and what could be done — elsewhere in the Bay Area," Bodovitz said.

Seatrain will install an 800 foot long dock parallel to the existing shore. The company has plans for similar docks along 1,600 feet of waterfront.

The development marks one more step toward Oakland's emergence as the major container-cargo port on the West Coast and increases the

be selected as the West Coast terminal for the proposed "land bridge" that would move cargo from Europe to Asia by a combination of big ships and big unit trains.

The commission also narrowly approved plans for the Port of San Francisco to dike and fill 2½ acres covering the site of the deteriorated Pier 72 and the foot of 23rd St.

BCDC also, for the fourth time, turned down a request by Frank M. Burke for permission to fill half of the 96-acre "Heerdt Marsh" at the south end of Corte Madera Creek for a housing and industrial development with the other half of marsh being donated to the Marin Conserva-

involved in all of them including one now in private practice, where I represented Save the Bay (Leslie Salt v. BCDC).

So, the willingness of the agency to go to court, or to deny a permit and defend it, was instrumental in establishing its turf as an institution. Otherwise, some groups have come and gone that had power, but it wasn't recognized or not exercised, so everybody ignored them.

Chall: How did it come about that this particular agency was willing to fight for its own turf? Was that an accident or what?

Shute: I think there was a unique combination of circumstances during that time. One was that the legislation coincided with a public feeling that the bay was threatened. So, the agency was operating generally with editorial support, and support in a broad sense from the populace in the bay area. The people named to the commission to start with, for the most part were outstanding people, really committed to the process. Like Mel [Melvin] Lane and Hans Feibusch, and I don't remember all the names, but they were very outstanding people. The staff, Joe Bodovitz and the people that he gathered around him, were very talented people. There was a combination of support and an understanding of the purpose, and so if somebody was going to start a fill project out there, people didn't want that to continue. They wanted to assert their authority and stop it.

Chall: Did that case against Emeryville come up after the commission was made permanent? Did it take a long time?

Shute: No, they were filling from the day the commission came into existence. We went to court sometime that fall of 1965. We had injunctions from the trial court immediately, and a ruling from the California Supreme Court sometime in 1967, so it all happened pretty fast. In fact, the California Supreme Court took the case directly over from the trial court which is very unusual. Usually, there is an intermediate level appellate court that you go through, but the supreme court thought it was so important, and had such strong public overtones, that it took the case over directly.

Chall: Well, I guess the public trust was another area of concern. Was that the public lands commission that took that to court?

Shute: The State Lands Commission is traditionally the agency that people consider to be the one charged with administering and so forth, the public trust. But, another reason the Emeryville case is so important is that Emeryville was proposing to fill these lands which were actually granted tidelands belonging to the state of California, granted in trust to the town of Emeryville for statewide purposes. During the course of the opinion, the supreme court said that the McAteer-Petris Act in effect amends every one of those grants to incorporate into it the restrictions of the law—the McAteer-Petris Act.

Now, other decisions have made it even more clear that the McAteer-Petris Act is an exercise of the trust, by the legislature, delegating that power to BCDC. So, that BCDC's planning and permitting decisions are a part of the trust. So the commission has always supported the State Lands Commission, pushed the State Lands Commission, gone in as a friend of the court in cases involving the public trust, all with a view of trying to broaden its scope and bring it into contemporary understanding. It's not only to protect commerce, navigation and fishing, which is the way it developed in the English common law a thousand years ago, but to protect the natural resource values of a body of water, which is the contemporary concern.

That was accepted by the California Supreme Court in Marks vs. Whitney, in 1970. The suit was between two private parties over tidelands property in Tomales Bay. The State Lands Commission and BCDC came in as a friend of the court, because the issues there were the same as the issues in the bay, and the California Supreme Court came out and said that the trust encompasses contemporary needs to preserve the environment, protect the bay from filling, preserve open space and wildlife habitat and so forth; which was a major major victory for the trust.

Westbay Community Associates: The Public Trust Issue

Chall: What about Westbay litigation? It seemed to take forever. I note from the Fall Newsletter, 1977 from the Save the Bay Association that it was settled in 1977. But it seems to me, from other old clippings that are around, that this must have started a long time before.

Shute: Yes. Well, it was actually almost all of San Mateo's shoreline-- from Burlingame down to the Dumbarton bridge right around the Santa Clara County line. The way it started was that there was a Westbay Community Associates, I don't know the legal entity, but it was consisting of three major interests: The Chase Manhattan Bank in New York, the then Crocker Land Company, which I think became part of Foremost-McKesson, and the Ideal Cement Company which claimed title to those old underwater patents. The idea was Chase Manhattan, David Rockefeller, would finance it, the Crocker Land Company owned San Bruno Mountain, they'd level it and put it in the bay on Ideal Cement's property. It would be thousands of acres of fill and residences and industry.

Chall: Great plan.

Shute: There were three major opponents in 1969 to the [BCDC] legislation. One was Westbay Associates, one was Leslie Salt, and the other was Santa Fe Railroad. We orchestrated a tactical maneuver. Westbay Community Associates was going to argue in the legislature that they owned this property, and they were being stymied in carrying out this project. So, just before that 1969 legislative session started, we convinced the State Lands Commission to file suit and challenge their title which had to be done anyway. That way we could tell the legislature, "What do you mean? It's been challenged whether they own that property, they can't come in here and tell you they have a right to fill it." That suit went on for a long time and through various machinations, and eventually we settled in, I forget what year.

Chall: In favor of BCDC?

Shute: I think so. The settlement confirmed some of their title, but all subject to the public trust. And, confirmed some upland parcels in fee which were already filled. Their project basically was abandoned, and they've never been able to carry out any part of it.

#### Santa Fe and Murphy: The Public Trust Issue

Chall: What about the Santa Fe and Murphy litigation, involving this bayshore land?\* Are you familiar with that? I think it began in 1977.

Shute: I'm familiar with that too.

Chall: Could you tell me something about that one?

Shute: That started off as a suit by Murphy and (I guess) Santa Fe against the decision by the Berkeley City Council to deny a shopping center down there. There were some underwater parcels that were involved in the ownership--as well as filled parcels. I believe the State Lands Commission intervened in the case, or maybe the city of Berkeley brought them in--I've forgotten how the state became a party.

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\*The Santa Fe Improvement Company and George W. Murphy vs. The City of Berkeley and the State of California.

Then they got away from litigating the validity of Berkeley's denial, and got into the question of the meaning of the trust. The California Supreme Court again, in a case called, City of Berkeley vs. Superior Court, which was the same Murphy litigation, held that any area which is currently wet--subject to tidal action, is subject to the public trust. Any area which had been filled at the time that BCDC came along, was not. A practical compromise so to speak.

It's a very complicated subject having to do with the Board of Tideland Commissioner sales in the 1860s, pursuant to a plan they had for the bay, which was a cookie-cutter subdivision with some canals. Then they sold that land to private parties, and some of the court cases in the 1913-15 era, had said that those sales terminated the trust because they were pursuant to a plan to improve the bay. So, the supreme court in effect, partially disapproved and overruled some of those early cases and said, "No, that's not true." But, rather than stick people who perhaps relied on those decisions and filled their property, we'll say, "They're off the hook. That land isn't subject to the trust." Anyone who had not relied on that plan by that time, the water was still there, they're subject to contemporary requirements subject to the trust. Then subsequently, Berkeley and Santa Fe are embroiled in a whole new dispute, and that lawsuit has been dropped. It never did litigate the validity of Berkeley's denial.

Chall: At the present time the Santa Fe is planning something on the Berkeley shore, but I don't know whether that involves fill or not.

Shute: No, it does not.

Chall: Is it just the use of their land which they're permitted under city planning regulations?

Shute: Yes. Just for accuracy, I am retained by the city of Berkeley as an advisor to them on all the legal questions that will come out of that development, so I guess the record ought to show that, but Santa Fe's proposal does not involve any new fill, just on the existing fill--which under the Berkeley case I just described, would not be subject to the public trust.

Chall: When did you leave? I wanted to get into some other cases that I have here, but I don't know when you left BCDC.

Shute: I left the attorney general's office in February of 1980. I sat with the commission as their counsel and handled every bit of their legal work for that whole eighteen years.

The Candlestick Properties Case: Police Power Authority

Chall: I am using some of the material on BCDC from Ora Huth's files in the Institute of Governmental Studies. I have a page out of a publication dealing with significant court actions which is dated July, 1973. On page 41, it reads, "The Candlestick properties case, finally decided in 1970, was the first major test of the Commission's police power authority to prevent filling of the Bay."\*

Shute: True.

Chall: Can you tell me a little bit about that one? I think it arose in 1967. This one has to do with police power, but is that different from what you have told me?

Shute: Yes, because at the time, this was property down in the Candlestick Point area near the stadium, that was under water--it still is I think, that was also within an area called the Hunter's Point Reclamation District. The legislature has an unfortunate habit of passing laws every year that don't relate to what they did the year before. The Hunter's Point Reclamation Act law had a requirement and provision in it encouraging fill.

The owner of those properties, or the person who claimed ownership, came before BCDC with a proposal to fill it--I don't even remember what the project was supposed to be, but they wanted to fill a substantial portion of it. The commission turned them down. It said, "No, that's going to be harmful to the bay, it's contrary to the implementation of the plan that we're working on," and denied it. The owner, represented by Quentin Kopp, currently on the San Francisco Board of Supervisors, sued the commission for umpty ump jillion dollars in a claim of inverse condemnation--that all their property rights had been frustrated.

The case went through the superior court and then to the court of appeal, and the court of appeal said that the commission had engaged in the valid exercise of its police power to protect the bay during this planning period; that there were legitimate environmental reasons and planning reasons for that, and that the

owner might have alternative uses available under the plan, or for water dependent purposes. He hadn't really tried to explain why he didn't.

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\*Bosselman, F., Callies, D., Banta, J., "Taking Issue: An Analysis of the Constitutional Limits of Land Use Control," Council on Environmental Quality, (July 9, 1973), p. 41.

41.

The San Francisco Bay Conservation and Development Commission is another regional agency sanctioned by the California Legislature, this time to deal with ecological problems associated with land use and development in and immediately adjacent to the Bay. The Commission has strong powers of review over both public and private development within the Bay and adjoining wetlands, including undiked marshes. Applications for shoreland development, however, must provide only "maximum feasible access . . . to the Bay and its shoreline" to gain Commission approval. 11/

The Candlestick Properties case, finally decided in 1970, 12/ was the first major test of the Commission's police power authority to prevent filling of the Bay. The legislative mandate approved in that case has allowed the Commission to take a firm stand in several cases where wetlands or the Bay have been endangered by development proposals. Clement Shute, head of the State Attorney General's Environmental Unit notes that the "CDC's exercise of discretion is controlled by a watchful and concerned public which would sue if there were an abuse of discretion, and also by full media coverage of its meetings." 13/

Working within its narrow regulatory mandate, the Commission works to reach an accommodation whenever possible. The staff Legal Counsel notes that it has used one statutory exception allowing minor filling to facilitate trade-offs in negotiation with permit applicants. An agreement allowing fill of four acres in the Suisun Marsh in the northwest part of the Bay in exchange for dedication of 365 acres to the Conservation

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11. See F. Bosselman and D. Callies, The Quiet Revolution in Land Use Control, Council on Environmental Quality (December, 1971) at 108-135.
  12. Candlestick Properties, Inc. v. San Francisco Bay C & D Commission, 11 Cal. App. 3d 557, 89 Cal. Rptr. 897 (1970).
  13. Interview with Clement Shute, Assistant Attorney General, September 13, 1972.

42.

Foundation for preservation is one of the more successful agreements reached in this manner. 14/

The 100 acre Hurt Marsh in Marin County is one area where the Commission is currently taking a strong stand in an effort to prevent the loss of one of the few large marshes in that section of the Bay. After proposing several industrial uses to be located on a proposed land-fill, the landowner is now proposing a marina which meets the "water related use" requirement for Bay development on fill. However, recent amendments provide that such development must be built substantially on existing land, a qualification which has prevented approval of even the revised proposal. 15/ The property, if available for commercial development, may be worth as much as \$5.5 million dollars, keeping the taking issue alive until the permit application is finally resolved.

The state, supported by the Save San Francisco Bay Association, has filed suit to block development of a 2.3 mile strip along the southwest side of the Bay. 16/ Although Westbay Community Associates owns the submerged land involved, the state urges that the public trust for navigation, commerce and fisheries would be infringed if Westbay is allowed to fill. The Association also argues that there has been long standing public access to the area establishing prescriptive rights in the public. 17/

The voters liked the concept of the BCDC so much they voted in favor of proposition 20 at the November, 1972 elections, thereby establishing a similar control program along the entire coast. The Coastal Zone Act 18/

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14. Interview with Mike Wilmar, September 14, 1972.

15. Id.

16. "Bay Watchers," Save San Francisco Bay Association, February, 1970.

17. Id.

18. California Public Resources Code Sections 27000 et seq. (1973 Supp.).

Just because of the timing of it, coming in 1970 when other places like Wisconsin, New Jersey, as well as California were starting to grope for ways to protect their wetlands, this for a while, became known as the leading case on the question of the extent of the police power to protect waterways.

Chall: Apparently Save the Bay as an organization, filed some suits, one against the Westbay Community Associates which we talked about. Was that important?

Shute: Save the Bay lawyers intervened in the Westbay litigation. The state brought the case, Westbay was the defendant. Save the Bay said, "We want to come into this case because we think we have an interest slightly different than either party." The court allowed them to intervene. They have done that on a number of occasions over the years, and you would have to ask them about that time. My understanding is that their perceived role was that they wanted to make sure that the state was honest about staying strong and tough on the strict principals that BCDC was advocating, or that they were advocating. Particularly, if there were going to be a settlement, that the settlement not be weak or give away or anything like that. By being a party they could object to and prevent a settlement that was not in their interests.

Chall: How important is a group like Save the Bay to BCDC?

Shute: I think its very important because it provides a constituent support group, and a constituent group that espouses consistently a hard-line, tough, pro-environmental, pro-protective position. Politically it has a certain claim to the life of the agency because it was very instrumental in having it enacted in the first place, and then in getting it extended in 1969.

A good number of the people that have served on the commission and have been leading forces, have been people that came out of Save the Bay ranks--were members or had always been supportive of Save the Bay objectives. So, Save the Bay had ready entree to key people on the commission and to the staff, and was always there as a counter-force to the ever present pressure of developer's, "Oh we've got to have it now, jobs--it's only a small amount of fill." There was Save the Bay there all the time, "No, no." It was always predictable--and still is what they'd say, but I think it was a very important role.

## FACTORS IN ADMINISTERING THE LAW

The Reagan Administration

- Chall: When Governor Reagan came in, was there a change in concern about BCDC? His appointees, did they change the tenor of it in anyway?
- Shute: For one thing when Governor Reagan became governor, Mel Lane was continued as chairman. I think there were some changes, like the woman who was vice-chairman for years and years--
- Chall: Mrs. Erskine.
- Shute: Well, Mrs. Erskine then, but it was after her--Mrs. Dean Watkins, Bessie Watkins, became vice-chair. She was not maybe as much of an environmentalist, or single-minded about protecting the bay as Dorothy Erskine but close. I don't remember detecting any significant change in the commission's direction at that time. I don't know whether Governor Reagan's administration just figured, "Well they're in the midst of a planning process, and the legislature's going to have another crack at it," or whether, because of the public support for this, they just went along with it. I don't believe that had much significance to what the commission did.
- Chall: So the commission after the big battle of 1969, just moved ahead in about the same way, except that you had new commissioners to educate?
- Shute: Not all, not a whole bunch. I think that one of the changes made in the legislation was that alternates could not--I guess there couldn't be any alternates.
- Chall: Yes, that's correct.
- Shute: And, a lot of the alternates had actually been the strength of the commission, because they weren't a member of the board of supervisors, they were somebody interested in the bay. Say the San Mateo board said, "Aw you go play with that, we don't know what it's all about, and we don't care." Then the legislature, pursuant to pressure, wanted to make sure that those politicians were there and not some alternate, so they knocked that out. So, those people, some of them required a lot of education and all that sort of thing. But even then there was no great change. Eventually the legislature put the alternate provision back in because people didn't come to meetings. You couldn't get thirteen votes and so the same people who took it out wanted it back in.
- Chall: Except that they required that their alternates be members of the same organization.

Shute: That's correct.

Chall: Yes, I noticed just on one set of minutes that I picked up at random, that there were--this was in 1967--that there were ten proxies at that time, and four people absent, so it meant that those proxies were very important.

Shute: They were important, that's correct.

##

Eugene McAteer died sometime during 1967. He was going to be the hoped for champion of this legislation, and so it was kind of grim for a while. Eventually, four bills were introduced in that 1969 session, and I think Senator Marks's bill was sort of the "stalking horse" for the Reagan administration. Essentially all it did was to knock out the termination provision in the three-year part of the first McAteer law. The agency would continue to exist, but it wouldn't have any powers related to a permanent program or its plan. That was the Reagan solution and Marks advocated that.

There was so much pressure in the bay area--from the papers, from the radios, it was such a big crusade that even Reagan had to back off and end up supporting the strong version of the bill, and of course he signed it. So having done that, I guess they didn't decide to make the wholesale change and put a bunch of people on the commission who weren't sympathetic to the new statutory purpose.

Chall: His Resources Agency director anyway was Norman Livermore who must have been concerned about the bay.

Shute: Oh a lot of concern. His family has, over the years, been interested in conservation matters. Ike Livermore was probably the--I don't know what the right label is, but he was the one who, if anything, was out of sync with the ideology of the Reagan administration because he did support these things. Other members of that administration didn't, but he, because of Reagan's policy, as he espoused in his debate last night, of just setting a broad policy framework and then letting people alone, Livermore was pretty much able to do what he thought was right, which for the most part was very constructive.

Chall: And also on the board after '69, was Gordon Luce of the Business and Transportation agency. That was important in terms of his highway program.

Shute: They always sent somebody from Cal-Trans much on further down as the actual appointee. They were either nonparticipants or went along with the staff.

Chall: Were you in touch with anyone in the governor's office during the 1969 battle over the legislation?

Shute: On the administration's legislation? No, during 1969 the governor's office was really not a factor in the legislative process.

Chall: And after that? Was there any leaning on the commission for particular decisions on permit applications or anything like that that you know of?

Shute: I don't think so, I don't recall any. I believe that one of the things about BCDC that tells its story, is that almost every vote has been close to unanimous--on planning issues and permitting issues. The feeling was when the commission was created, that no twenty-five politicians could agree on when to adjourn, so it was doomed to failure--and it's been exactly the opposite of that. I think a part of that is because the state administrations from time to time have not tried to put pressure on them.

#### BCDC Relationships with other Federal, State, and Local Agencies

Chall: What about relationships with such state agencies as the Department of Water Resources, and the Regional Water Quality Control Board?

Shute: The Department of Water Resources, the problems that they are involved in, have more to do, I think with the various water projects--diversion to southern California and the central valley. BCDC staff and chairmen over the years, I think tried to create a fiction in my opinion--divorcing those water projects from anything having to do with BCDC's role. I think it was in order to avoid getting sucked into the water fights and suffering politically, because no matter what you do you end up hurting somebody. So, the commission assiduously avoided positions on water projects even though we all know, and now pretty much concede, that there is a tremendous impact on the bay as well as the delta. So, there wasn't much contact with the Department of Water Resources.

Now the state Water Resources Control Board, and its regional board in the bay area, that's a whole different thing, because they have direct regulatory power through the waste discharge requirements. There was a turf fight at the beginning as you would expect. The regional board saying, "We don't want you taking over things that we think are normally our job." And, BCDC maybe aggressively wanting to step on some of the things that they had normally administered, but that worked itself out pretty easily and I don't believe there's been much friction over the years between those two agencies.

Chall: Does the Water Quality Control Board have enough police power--enough enforcement power to bring about these requirements?

Shute: Yes. As a matter of fact BCDC didn't have much enforcement power. It didn't have cease and desist or civil penalty provisions. So, along about the mid-seventies, I've forgotten the year, the commission went to I forget who it was, probably [Michael] Wornum in Marin County then an assemblyman. Anyway they went to the legislature and asked that the Porter-Cologne provisions of the water quality law be put into its law, to allow it to issue cease and desist orders and civil penalties, and that was put into its law. So, we borrowed our enforcement power from the state board.

Chall: Well that certainly would help the lawsuits.

Shute: Yes, it helped a lot because then the staff could issue a stop work order, in effect. If a person violated it they would be subject to \$6,000 a day in civil penalties ordered by a court. Otherwise you have to go to court to get an injunction, and the other guy's lawyer comes in and pleads all kinds of hardship. So this sort of administrative enforcement is much more effective.

Chall: That happened in the mid-seventies?

Shute: The mid-seventies, yes.

Chall: What about the federal government's Corps of Engineers and other water-related agencies?

Shute: Fish and Wildlife Services?

Chall: Some of these federal as well as state agencies were on the commission.

Shute: E.P.A. since it was formed in the Nixon administration, had a representative, but that person as you know, is non-voting and never really had a whole lot to say, or didn't try to coordinate federal policy through BCDC. I find that a very interesting process grew up during that time--which is still somewhat the case and I think unfortunate. The Department of Fish and Game is the natural corollary to the U.S. Fish and Wildlife Service. The Department of Fish and Game was used to taking its crack at people who wanted to fill the bay, or put in a project in the bay, through the United State's Army Corps of Engineers permitting program. So they would fuss and fuss at BCDC about mitigation and reducing the project, and then they'd go over to the Corps and comment there and try to influence that process.

The Fish and Wildlife Service, being a federal agency, was much more comfortable in submitting its comments to the corps, so they didn't do much with BCDC. And, at a permitting level, what happened was the state of California was acting almost with two voices. BCDC, which I think was the state's representative for the bay, would say a certain thing. If fish and game wasn't happy--and they

hardly ever were; they always wanted more--they'd go over to the Corps of Engineers. The corps during that era was going through a very non-traditional change, whereby it was becoming very concerned in the San Francisco Bay region for the bay, and expanding its jurisdiction, taking tough positions, and refusing to act on a permit application until the state Department of Fish and Game and the U.S. Fish and Wildlife Service signed off. They had no direct regulatory power, but unless they agreed the corps would tell the applicant, "Well we're not ready to make a decision, and you won't like the one we make. Go see fish and game and make your peace." So just by the "we won't make a decision" tactic, fish and game had tremendous leverage.

Well, you always have to "pay the piper," and eventually there was a backlash to that which has been expressed through the Reagan administration. The corps is diminishing and retreating on its jurisdiction using this abuse of the regulatory process as part of its excuse for doing it.

Chall: I understand that the Corps of Engineers was very cooperative with--

Shute: Very cooperative, and I think in the good old days, the chief of the corps--the colonel in charge of the district would end up going to work for a big construction firm or a big engineering firm. For a while there people like Charlie Roberts were going to work for the state--BCDC.

Chall: That's right.

Shute: Even Frank Boerger went to work for a consulting firm that was doing environmental evaluation. Under Charlie Robert's regime, the corps reinterpreted its powers to include permit control to the level of "historic" high water, not "actual" high water. They had a band of jurisdiction beyond BCDC, and that was very controversial. But they were very supportive. So, at that level there was a redundancy and a reinforcement that was even stronger than BCDC. That of course worked out informally, but at the permitting level the leverage was through fish and game refusing to agree until they were 100% happy.

Chall: At one time the navy was a problem was it not? Did BCDC have any control or was it able to get any control over that situation?

Shute: The one example that I remember most particularly was the seaplane basin I think, in Alameda County. The navy was going to fill it--ninety-some acres. Their attitude was, "We're going to fill it. We don't care who you are, we're the United States Navy, national security et cetera." I made a statement at the commission, and I forget whether we wrote letters, we probably did, in which we pointed out that under the National Environmental Policy Act, the navy had to comply and do an environmental impact statement and justify its action even though there was no direct state control. And, that we'd sue them if they went ahead with it without complying

with federal law. So, they ranted and raved, and then they dropped it.

Chall: What about the airport and the ports? Those are sticky problems. You really didn't have total jurisdiction in those areas did you?

Shute: Well, there was total jurisdiction over new fill, there wasn't any other kind of jurisdiction. Probably if you add up the amount of approved fill over the years, ports and airports would constitute eighty percent or more of the total authorized fill.

The Port of Oakland was always and has been and still is, a very tough adversary for BCDC. It's a tough, well-run outfit. You can see in the comparative performance of the Port of Oakland and the Port of San Francisco, some flavor of the strong management. They would come to BCDC meetings and they would tell it like it is, and they would be tough, and they wouldn't yield. But then at some point where they figured they could save their basic interests they would yield.

They wanted to extend the length of the runway at the Oakland airport, again I don't remember what year. It involved a good number of acres of fill. The first time around I think the commission just plain turned it down--denied the permit. Then they came back a year or so later, and developed jointly with the staff, this idea of mitigation for fill, which the airport and other people had always called blackmail and which the staff at BCDC called mitigation. The idea was, "Okay, if you're going to fill here, you Port of Oakland better find us an area under your jurisdiction that you can dedicate to natural resource protection. Or, if you don't own it buy it, and then make it available for natural resource protection and we'll consider that kind of an off-set for this damage." So, they did provide some mitigation--I forget exactly where it was--and the commission granted a permit for the extended fill.

I remember discussions. They said, "We can't fly a fully loaded plane to its destination without a lengthening of the runway." We said, "Fine, fly it half-full and half-fuel, and reload somewhere." Well they found that just completely outrageous, but eventually they got their permit with mitigation.

The Port of Oakland's Seventh Street terminal was a grandfathered project. That was one where they had better legal advice than the town of Emeryville. They had done their steps to have a plan and begin filling, and so that whole mole that sticks out on the south side of the Bay bridge at the east end, was a grandfathered project. They just did it, and got it done before they needed a BCDC permit.

Over the years they've had other projects for improving piers and building container facilities, all of which have involved fill.

The commission and they have had tough negotiations, and basically I think ended up requiring the port to have some kind of a plan so you knew what was coming next, and providing some kind of mitigation. The public benefits of a port operation are there. You can't just say it's always got to be the environment. So that was a tough negotiation. I think conducted the way these things ought to be. In other words both agencies had legitimate reasons for being, they knocked heads and they came up with something which I think was probably reasonable.

The Port of San Francisco is a different story. I now am a consultant to them for some other purpose, but I'm going to take a crack at them anyway. They, as part of the city of San Francisco, including the whole fuss over high-rise buildings in Joe Alioto's administration which I was involved in, took the attitude that the state of California was barely relevant to the operations of the city of San Francisco. It was a sovereign entity and, "Who the hell is the state?" So they would just start filling, or just start doing something, and then we'd land all over them. The mayor would scream and jump up and down, "Who are you, who are you?" But, their lawyers would tell them, "You can't do that without a permit." or, "They've got some power, you better acknowledge it." So, until very recently I think, there was a consistent bad feeling and bad blood between the staffs of those two agencies, and between the city and BCDC.

The high water mark of that was Joe Alioto's administration when they came up with this huge proposal for a high-rise office building off one of the piers in San Francisco, and the U.S. Steel building off another pier rising right up by the Bay bridge. They just came in full blazing, "This is San Francisco, we need it." They had gotten a grant of the port from the state, and the grant provisions, which I'm sure they engineered, required them to spend so much money on development within so many years or they would lose the grant. So they were saying, "The state said we have to spend this money, you can't tell us we can't." I was asked to write an opinion, "Could the commission approve fill for nonwater-oriented purposes?" I said no. It is a formal attorney general's opinion, still on the books, and published. The commission, relying on that, found that office buildings were not water oriented, because they've had a pretty strong tradition of not allowing things which can go anywhere to be considered water dependent; turned it down on that basis.

The city, not trusting its own city attorney, hired a big private law firm. They went to court and they were going to hammer us into the ground, but we beat them and they never took an appeal, and the project just went away. That led, eventually when everybody's temperature came back down, to the formulation of these special area plans for the San Francisco waterfront which have this

complicated formula for getting credit for removing old fill. And, you can put in so much new fill if it has public access, and its for commercial assembly, and public use, and things like that.

Chall: But it's better than it would have been otherwise?

Shute: Oh yes. I think it's okay now and everybody gets along fine. In fact when I first was approached by the port to advise them, I said, "I don't know that I want to have anything to do with you people. All I ever remember is how much we hated each other." "Oh it's all different now." I called BCDC staff and they said, "Oh yes, they're lovely people." So, that's apparently over with, but for years there was a strong feeling that whatever the Port of San Francisco wanted to do there had to be something wrong with it, just because of who was proposing it.

Chall: Well I suppose it was a decade of testing one another too. Because there are agencies that ultimately would back down from Mayor Alioto. He was a strong man.

Shute: Well that was the hope. [laughs]

#### Developing the Concept of Mitigation

Chall: The whole idea of mitigation is one I'd like you to tell me about. How did that come about? Now I think it's under somewhat of a cloud with the Deukmejian people, but it worked, so it seemed. How did it develop? It's not in the BCDC law, and I don't know that it's in the plan. That whole concept seems to have evolved. How did that happen?

Shute: I will tell you how it evolved, and then I'll tell you the legal basis for it. Early, early on during the planning process, there was a debate about a fill tax. The idea being, "Look, if somebody's going to fill they're going to cause a detriment and they should pay for it. Maybe they should be allowed to fill because there is some legitimate reason for it, but they ought to pay for it." That was then called a fill tax. It was defeated by the commission--it wasn't a policy that was put into the plan. The feeling was, "Well look, if we say something has enough public benefit to be legitimate for fill, then why should somebody pay a tax on top of that? We should just say it's not legit if we don't think it's right." So that was defeated. There's nothing per se about mitigation in any detail in the plan.

Chall: Yes, you did say it's called blackmail--

Shute: Or extortion.

Chall: Yes.

Shute: The truth of it is I think, that in 1970, the California Environmental Quality Act was enacted--the California EIR law, which is parallel to the National Environmental Policy Act. It has all kinds of language in it about mitigation. So the commission became involved as a routine matter, in evaluating draft EIRs [Environmental Impact Reports]--environmental documents that came to them along with permit applications. Rather than go into the complexities of that law, the upshot of it was that the commission and the staff used the mitigation requirements of that law to impose conditions on projects--or negotiate conditions on projects.

So, they I think, felt their primary power came under what we call CEQA [California Environmental Quality Act]. That was never questioned because CEQA was there and said that. As the years went by, CEQA was amended in such a way as to, and that was in 1981 or 1982, to say that none of those mitigation measures--Let's see, how is that worded? Oh, "CEQA gave no power to impose mitigation measures which was not already a power that the agency had from its legislation or ordinances." So, BCDC had been relying on CEQA as the source of its authority to impose mitigation; the legislature came along and said, "If you have it in the McAteer Act, or you the city of Redwood City have it in an ordinance, you can do it--but you can't rely on CEQA as a source of your power.

Then, the bad guys came along and said, "Well you can't use CEQA anymore can you? So you're out of the mitigation business." Then you go back and you look at the McAteer Act, and it says in 66605a, one of the initial policy provisions that, "The commission can only approve fill when it finds that the public benefit exceeds the public detriment from the fill." In my opinion in order to make sure that the public benefit outweighs that detriment, mitigation may be necessary in order to tip that scale in favor of the public benefit.

Chall: That's actually in the act but nobody ever paid any attention to it?

Shute: Yes, I mean it wasn't all that important because of CEQA. Then all of a sudden everybody made an issue out of it, and it's there--it's in the law, in my opinion.

Chall: It's been quite important to BCDC.

Shute: Well the Dumbarton bridge mitigation, the Golden Gate ferry terminal, those are probably the two big ones. Over the years there has been lots of mitigation required in different contexts, and the scream has been, with some justification, there are no standards for

**66605.** The Legislature further finds and declares:

(a) That further filling of San Francisco Bay should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay;

(b) That fill in the bay for any purpose, should be authorized only when no alternative upland location is available for such purpose;

(c) That the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;

(d) That the nature, location and extent of any fill should be such that it will minimize harmful effects to the bay area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources;

(e) That public health, safety and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters;

(f) That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline;

(g) That fill should be authorized when the applicant has such valid title to the properties in question that he may fill them in the manner and for the uses to be approved.

this, we don't know what to expect. Write the rules so we'll know what we're supposed to do. The staff has always said the varieties of situations are infinite, we can't draft rules.

The One Hundred Foot Band: Public Access

Chall: Finally, can you tell me a little bit about the problems of determining boundaries for the priority areas allowed in the one hundred foot band along the shore?

Shute: Shoreline band?

Chall: Yes, you had to set priorities didn't you, and once they were set that was it. That was rather a hard decision, I would think, to make.

Shute: The legislative history of that was that the commission's plan had proposed certain priority areas predominantly for parks and industry. The consultants had found that there was going to be a shortage of waterfront for industry in the future. The commission also went around and looked at everybody's local plan--the general plan of a city or a county--where they wanted to propose parks or public use areas. They put that in the plan, where they were in the shoreline, as potential public parks. Those would be priority areas which would operate like zoning; you couldn't change it.

Then the legislature froze those, so that they couldn't be changed except with legislative consent. So now, the legislature was going to sit in judgement over whether some park site in San Mateo County ought to stay in the plan. The whole reason for that was that the idea of a state agency having land-use authority out in open water was novel enough, but for it to have power up on the dry land was beyond the comprehension of man.

That's why the people who wrote the Coastal Initiative, knowing BCDC's experience, made it one thousand yards and they made it for all purposes. The Coastal Commission has dwarfed BCDC's power on uplands, and so you don't hear anything about BCDC's authority because compared to the Coastal Commission's its irrelevant.  
[laughs]

The process of setting those boundaries wasn't terribly difficult. There were a lot of hearings and then the lines were set. Most of the crunch has come with the public access requirements, because we were one of the first agencies to administer a public access requirement and the law didn't say you could require dedications. I mean its typical of local government

to have an ordinance saying, "Okay developer you want to build a subdivision? You build us the roads inside the subdivision, and dedicate them to us. You're generating the traffic, you build the road. We're not going to spend everybody's money doing that, and then we'll take title to the road." That's the conventional way that dedications of land are handled with development.

Well, this law says, "The commission shall find that maximum feasible public access consistent with the project is provided." It didn't say, "You can take it by dedication." There was no power in the McAteer Act for the BCDC to hold title to property, so it took a lot of doing to get where they are now--with a long strong tradition of administrative interpretation of what public access means and the various forms of enforcement. That was the hard part.

Chall: Had there been a decision, who would be responsible for what? Say the land that was dedicated in order to get the Port of Oakland the longer runway. Didn't they dedicate a park somewhere?

Shute: Those would be permit conditions. I don't know that the commission staff has done this uniformly, but it was my recommendation that they record the permit, and that way it would become an operative restraint on the property. If anybody ever tried to convey the property, the new owner would be taken subject to, and with notice of these conditions--and they could be enforced against any owner as time went along. That's not terribly important to a public agency because they're not selling their property, but the condition of, "You will do this," meant that the commission could always enforce their permit requirements.

Chall: Sometimes they dedicated it to the local park department.

Shute: There was every kind of variation you can imagine. We would try to get park districts, local governments, land conservancies like the Trust for Public Lands or the Nature Conservancy or groups like that to take title. We always preferred, at least I did, that title be transferred somehow to a neutral body to make sure that it would happen.

A lot of times local governments would say, "We're just going to get liability. Somebody falls down on a sidewalk in this public area and they're going to sue us. We don't want the liability, we don't want the property." Plus, there's a philosophical disagreement with BCDC about public access so they didn't want to cooperate anyway. Sometimes we couldn't find anybody to take a property interest, so we would we just say, "It's a condition of your permit that you do this. We're going to record the permit, and if you don't comply with it we will bring enforcement action."

Chall: How can you be sure whether they do or don't comply? I think there's something of a public lookout point at Jack London Square near a couple of piers which sounds like an interesting sort of

thing. I've never gone walking down there, but how could you be sure that that was there and continually kept up?

Shute: You just have a BCDC cop running around patrolling.

Chall: Same as a bay watcher?

Shute: Well, there have been groups that have tried that. The Oceanic Society has planes they fly around, and they try to spot illegal fill and turn it into the commission. But, enforcement in my experience, has always been the lowest priority of a public agency. Not just BCDC but almost all of them. So they'd issue these permits with sixty-two tough conditions and then put them in a file. Now, BCDC has at least one and maybe more, people whose job is enforcement. They're supposed to run around and check these things out but--

Chall: That's difficult. What about budgets? Did you find that you were concerned about the budget from time to time? Funding is all from the state isn't it? It's really the state administration who makes the determinations. A couple of years ago there was an attempt to cut back on the budget.

Shute: All the way up until recently, I think there was the typical budget struggle to get enough money for what they thought they wanted to do, but really they did not have difficulty getting budget support. From the years after the enactment of the federal law administered by NOA [National Oceanographic Administration]--the Coastal Zone Management Act--there was all kinds of federal planning money that came into BCDC, and so they had lots of money for studies and staff and things like that. Recently there have been struggles, but I've heard from my old friends over there that they still come out okay with the governor's office. All state agencies have suffered but BCDC has not suffered disproportionately.

The Coastal Commission became a symbol, and Deukmejian ran on a platform of abolishing the Coastal Commission. He devastated their budget--even to the point where he wouldn't let them spend federal money that wasn't even the state's money to be worried about. BCDC has never suffered from that kind of backlash. I think that's another reason why its actions have been viewed in the bigger political world as being more reasonable or balanced or something, than the Coastal Commission's.

Chall: You think this has to do quite a bit with the staff and the commission itself.

Shute: Yes I do. I use this as an example: Joe Bodovitz went over to the Coastal Commission in the early years and brought the same kind of experience and high brain power to that. But, those people got all caught up with what they were doing to the exclusion of, I think, political reality. They had power, and they carried it too far.

The best example I know of is a woman that I saw on local T.V. during the say mid-seventies late-seventies, sitting with a tree crashed across her patio, and the glass furniture was all shattered and the chairs were all askew. And, there's the local T.V. guy who says, "Why don't you clean up this mess?" She says, "I can't." He says, "Why not?" She says, "The Coastal Commission won't let me." "What do you mean they won't let you?" She says, "The tree trunk is still attached to the roots, and they won't let me take the tree down."

Chall: [laughs] That's pretty extreme.

Shute: [laughs]

Chall: Now you were working ostensibly for Evelle Younger. You were on his staff. Was there any contact or relationship with Mr. Younger?

Shute: Yes.

Chall: When you might say, "I can't make a decision, I have to check with the attorney general's office" or something of this kind, was he the person you might see, or was there somebody else in that office that you could check with?

Shute: I have a little trouble with that because I was also in charge, for part of his tenure, of a program called the environmental unit which was a group of lawyers that were enforcing California's environmental laws under the auspices of the attorney general, and without regard to any state agency. On any of those kind of actions we had to have his personal signature on anything we did. But, usually when representing a client, there was not a great deal of involvement by the attorney general because those are decisions that are considered to be necessary to be made by the professional staff, and he would just defer.

Deukmejian was far worse about imposing his ideological views on what an agency should do than Younger or any other attorney general has ever been. Younger was a moderate Republican who sensed that at the time he was in office, the people wanted environmental protection. Even though he didn't understand it too well himself, and probably wasn't terribly sympathetic, he gave some strong support to us in the environmental unit and we were able to accomplish a lot in environmental law.

Chall: Thank you very much for taking time to talk to me about your role in developing BCDC. It's an important addition to the history of that agency.

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