

BCDC and the San Francisco Bay Plan: A Watershed in Urban Planning's Relationship with the Natural Environment

By Allan Kapoor

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Introduction

In 1965, the McAteer-Petris Act created a new temporary planning agency, the San Francisco Bay Conservation and Development Commission (BCDC). Four years later, BCDC became a permanent regional regulatory body. The Commission was given the mandate to protect and maintain the San Francisco Bay for the public good through the development of a Bay Plan and the legal power to control bay fill and shoreline development. In the preceding decades, a majority of Americans had accepted unquestioningly the era's modernist visions, which celebrated technological progress, industrial growth, and a naïve faith in mankind's capacity to control and reorder nature. However, the 1960s and 70s witnessed a sharp increase in public environmental awareness. Rachel Carson's *The Silent Spring* called into question the inherent benefits of new technologies, the highway revolts in San Francisco and other cities reflected dissatisfaction with grand infrastructure projects, and the catastrophic 1969 Santa Barbara Oil Spill sparked widespread public outrage. Due to popular pressure, a wave of environmental legislation passed at the local, state, and federal levels. The Bay Area Air Quality Management District (BAAQMD) was formed in 1955, banning burning at garbage dumps in 1957 and setting limits on industrial emissions in 1958. The federal government's Clean Air Act and the National Environmental Policy Act (NEPA) followed in 1970, creating the US Environmental Protection Agency (EPA). California also passed its own Environmental Quality Act (CEQA) in the same year.

Within this context of evolving policy and popular attitudes, the urban planning profession, which had long been an ally of modernist development, began to take on a new role in advocating for and implementing smart growth policies to minimize negative environmental impacts. An early example of this trend, BCDC became "the first agency to exercise control over physical development as a way to protect the environment" (Rubin, 2011). Strong public support for the Commission's Bay Plan ended modernist visions of filling or altering the San Francisco Bay. Indeed, the formalizing of the popular movement to save the San Francisco Bay in the Bay Plan and the creation of BCDC represented both an abandonment of popular modernist development paradigms and a watershed in urban planning's relationship with the natural environment. Recent amendments to the Bay Plan are evidence of the continuing evolution of this relationship, as today's interest in sustainable development and resilience are reflected in BCDC's new focus on climate change adaptation.

Save the Bay and the Downfall of Modernist Visions

Prior to the environmental movement of the 1960s, bay fill was not widely regarded as a threat to the public interest. In fact, a proposal to fill in over 20,000 acres of the Bay, called the Reber Plan, enjoyed a surprising amount of popular support. The proposal sought to address California's fresh water scarcity by building two large dams, one between Marin and Richmond, and the other between Oakland and San Francisco (Nishkian, 1946). The proposal's author envisioned highways and railways running across the causeways, an enormous industrial area west of Berkeley, and the murky Bay replaced by man-made fresh water lakes. Fortunately, the Reber Plan was never adopted due to political and technical infeasibility, but the fact that the Army Corps of Engineers went so far as to build a 120,000 square foot model of the Bay in 1957

to test it is indicative of the enthusiasm at the time for plans to radically alter the natural environment.

Even without a coordinated plan, the San Francisco Bay and its wetlands were shrinking at an alarming rate. Between 1850 and 1960, open water in the Bay had been reduced from 680 square miles to 430 square miles (Gulick, 1988) and wetlands shrunk by 75 percent (Rubin, 2011). The water in the Bay was also being polluted indiscriminately, with 40 garbage dumps directly on the shoreline (Gulick, 1988). The strong pressure to fill the Bay resulted from two major factors. First, the Bay is surprisingly shallow and easy to fill. About two thirds of the Bay is less than 18 feet deep at low tide, and large parts of the South Bay are only 5-6 feet deep (BCDC, 2012). Second, the ownership of the Bay floor is divided between various private developers (22%), several municipalities and counties (23%), the federal government (5%), and the State of California (50%) (BCDC, 2012). The shallow depth and fragmented ownership meant that those with decision-making power had little incentive to resist fill pressures. Municipal governments stood to attract desirable economic growth by authorizing fill for industrial and residential development.

The popular movement to save the San Francisco Bay first began in 1959 when three Berkeley residents, Kay Kerr, Sylvia McLaughlin, and Esther Gulick, saw a map produced by the Army Corps of Engineers predicting that the Bay would be completely filled except for a thin channel by 2020. Horrified by what they saw as the rapid destruction of an irreplaceable natural treasure, the women reached out to several conservation organizations, but most were more interested in fighting to preserve remote natural habitats or were stretched too thin to take on a new campaign. Nonetheless, since the women enjoyed considerable local clout (Kay Kerr, for example, was married to Clark Kerr, the President of the University of California) they decided to strike out on their own. Their initial success can be attributed in part to this “elite status” (Rubin, 2011). In 1961, they founded the Save San Francisco Bay Association (later shortened to Save the Bay) with the intention of targeting the Berkeley City Council, which was planning to authorize over 2,000 acres of bay fill to substantially increase the city’s size. They started by sending a letter to friends and other Berkeley residents in which they outlined the benefits of and threats to a healthy Bay. The women were pleasantly surprised to get a 90% response rate (Gulick, 1988). There was considerable support for their cause from average residents who had been previously unaware of the extent of planned bay fill. In 1962, Save the Bay unsuccessfully lobbied against the Berkeley City Council’s decision to allow bay fill “for all commercial and industrial uses and purposes” (Gulick, 1988) but in doing so gained lots of positive publicity. By the end of that year, Save the Bay had over 2,500 members (Gulick, 1988). Continued public pressure and the testimonial of several experts in front of the Berkeley Council gradually convinced them to reverse their policy, implementing a waterfront plan that greatly limited fill and development.

From Popular Movement to Legislation

Concern about the future of the Bay was also growing at the regional and state level. In 1963, The Institute of Governmental Studies at UC Berkeley released a report, *The Future of San Francisco Bay*, which called for the preparation of a comprehensive plan “as the first step in ending the present costly and potentially ruinous piecemeal planning and development of the bay and shore areas” (Scott, 1963). Nicholas Petris, an Assemblyman from Richmond, introduced bay fill moratorium bills in 1963 and 1964, which lost, but were successful in bringing statewide

awareness to the issue. In 1965, Save the Bay gained the support of Eugene McAteer of San Francisco, a powerful state senator, in its quest to end bay filling. The subsequent campaign to create a regional agency to control bay fill was a “classic example of legislative, professional, and citizen teamwork” (Schoop & Hirten, 1971). The three-pronged strategy consisted of documenting arguments to justify action, stimulating public outcry, and engaging in back-door political negotiations. McAteer knew that the powerful interests who opposed fill control would make immediately creating a permanent agency politically impossible, so he instead supported a bill to create a San Francisco Bay Conservation Study Commission (Gulick, 1988). With himself as chairman, McAteer used the commission’s twelve public hearings to highlight the wide variety of groups that had an interest in preserving the Bay, ensuring that the battle would not be seen as simply developers vs. environmentalists (Schoop & Hirten, 1971). The study commission’s findings recommended the creation of the Bay Conservation and Development Commission as a temporary agency with four years to prepare a plan for the responsible use of the Bay and its shoreline. In 1965, with the help of constant public pressure (including thousands of written letters, hundreds of concerned citizens descending on Sacramento, and support of a famous San Francisco radio DJ) the McAteer-Petris Act passed, making this a reality. BCDC came into being with the legal power to control bay fill and dredging, and the mandate to prepare a “comprehensive and enforceable plan for the conservation of the water of the Bay and the development of the shoreline” (McAteer & Petris, 1965).

The Bay Plan: Process, Findings, and Policy Recommendations

The resulting Bay Plan was a landmark in environmental urban planning, receiving an AIP Award of Merit for its innovative methodology (Schoop & Hirten, 1971). Rather than spending four years preparing a plan that could easily be ignored, the newly created commission made the early decision to use the planning process to build public support for making BCDC a permanent regulatory agency when the Bay Plan came before the legislature in 1969. The key to this strategy was the Commission’s interim power over bay filling and dredging, which had been originally intended by the legislature to only be a moratorium until a static plan was completed. The McAteer-Petris Act stated that fill permits could only be issued if a proposed project was determined by the Commission to be “(1) Necessary to the health, safety, or welfare in the entire Bay Area, or (2) of such a nature that it will be consistent...with the provisions of the San Francisco Bay Plan” (McAteer & Petris, 1965). The second condition was especially important because it meant that any policy in the Bay Plan would directly influence the Commission’s future power. With widespread public support for a watchdog agency to protect the Bay and six fulltime staff, including the former Associate Director of SPUR, BCDC set about developing the Bay Plan as a “series of policy decisions establishing the legal and technical reference for use of the power over fill control” (Schoop & Hirten, 1971).

With this power over future development, the Bay Plan had the potential to be very influential, but that also made it the enemy of moneyed interests, and without strong legal, political, and popular backing, it would never be approved by the state legislature. Three major strategies were employed to ensure that the Bay Plan would enjoy broad support, 1) the composition of the Commission itself, 2) confidential meetings and shuttle diplomacy between key decision makers, and 3) active public engagement. BCDC consists of 27 commissioners, including appointees from various state agencies, regional bodies, counties, and local governments. Each commissioner was responsive to different constituencies, all with some form of jurisdiction over

the Bay but with diverging interests, ensuring that when the group reached consensus it reflected long-term regional interests over short-term local priorities (Kerr, 1988). The opposition of special interests was mitigated by the planning staff's decision to confidentially hold meetings with all decision makers and key stakeholders at the beginning of the planning process. The results of these discussions were presented to the Commission who, after posing questions and hearing public comment, returned the amended conclusions to BCDC's planning staff as a guide to prepare the Bay Plan. BCDC's executive director, Joseph Bodovitz, had previously worked as a journalist and understood the importance of an effective communications strategy (Travis, 2012). Rather than developing the plan behind closed doors and then presenting it to the public for review, he decided to gradually prepare the plan as a series of elements. Each element was released as a separate report upon completion, with an accompanying summary and press release to ensure public understanding. During the four year planning process, BCDC's staff maintained an unprecedented public engagement schedule averaging 2-3 hearings per week (Schoop & Hirten, 1971). Also, by focusing on regional issues, the Commission was also careful not to intrude unnecessarily on the power of local governments. With the public well informed through hearings and by major newspapers, all of which were in support of the plan, there was almost no overt opposition, although developers lobbied against it privately.

The resulting plan, adopted by the Commission 20-1, was not a static guide for development, but a series of policy recommendations and justifications for using the power to control bay fill, dredging, and shoreline development in anticipation of BCDC being made a permanent regulatory agency by the state legislature. The major conclusions and policies of the plan are outlined within the first section, intended for easy understanding by a lay audience. The entire document, including maps and appendixes, is less than 150 pages. The Bay Plan's primary finding, that the protection and management of the Bay can only be carried out on a regional basis, provided support for the permanent existence of BCDC (BCDC, 2012). The conclusions that followed were a realistic compromise between the interests of conservationists, the public, and key stakeholders, such as maritime ports and airports. The plan determined that the uses of the Bay providing the most public benefits are those that treat it as a body of water, not as real estate to be developed. Additionally, all desirable uses of the shoreline can be accommodated without substantial filling, but areas suited for airports, ports, maritime industry, recreation, and wildlife should be reserved for those purposes. Bay fill always has negative consequences, including habitat destruction, water pollution, and reduction of the cooling effect on regional air temperatures, but some filling is justifiable if the same public benefits cannot be achieved otherwise. The plan acknowledges the fact the Bay is polluted by many sources, but since pollution control is outside of BCDC's mandate, it did not delve further. Major policy recommendations besides maintaining BCDC as a permanent agency to carry out the plan included developing maritime ports, shipping channels, and waterfront parks, planning airports on a regional basis to minimize unnecessary fill, and adding to existing wetland refuges (BCDC, 2012).

Legislative and Legal Successes

When bills to adopt the Bay Plan and make BCDC permanent reached the state legislature, they faced a legal and legislative assault from developers and some local governments. Fortunately, the attacks were deflected by staunch public support and the coalition-building strategies BCDC had employed during the planning process. The two interests who stood to lose the most were

Westbay Community Associates, a joint development venture including David Rockefeller, and Leslie Salt Company, the largest single landowner in the Bay (Dolezel & Warren, 1971). Westbay had an enormous commercial, residential, and industrial development planned for the shallow waters of the South Bay—10,169 acres of fill, the size of Manhattan Island, along a 27-mile stretch of San Mateo's shoreline (Gulick, 1988). One of the partners, Crocker Land Co., owned San Bruno Mountain, and hoped to level the top of it to provide the necessary fill material. Leslie Salt Company owned 52,000 acres of marshland and saltponds, some of which it hoped to remove from salt production to make way for large housing developments. Since BCDC's power to restrict bay fill and shoreline development would completely derail both organizations' plans, they argued before the legislature, and in courts, that this "would constitute a taking of lands without just compensation" (Dolezel & Warren, 1971).

BCDC's right to control fill was upheld and the bill passed through the Assembly and on to the Senate. Once there, three Bay Area cities moved to oppose the agency's jurisdiction over shoreline development. The City and County of San Francisco was concerned that BCDC's proposed 1,000-foot shoreline jurisdiction would extend into parts of the financial district and downtown. The cities of Albany and Emeryville worried that shoreline regulation limited their ability to attract development. The Mayor of Emeryville wrote a letter to each of the 402 municipalities in California, warning that BCDC set a dangerous precedent of violating home rule (Dolezel & Warren, 1971). This had little effect because most other Bay Area cities were already in support of BCDC and the Bay Plan. However, both Albany and Emeryville were in the district of Nicholas Petris, now a Senator. He brokered a compromise where BCDC's jurisdiction was reduced to 100 feet, placating the three cities. There was concern that Governor Reagan would oppose the bill's encroachment on home rule. However, after several of his appointees came out in favor and being "presented with a four-foot high stack of petitions containing 200,000 names urging his support" (Dolezel & Warren, 1971) Reagan announced "We cannot permit a lapse, no matter how short, in protection of this priceless natural resource" (Gulick, 1988), ensuring bipartisan support. Some proponents of the Bay Plan, including the Commission itself, had hoped that BCDC would operate "as part of regional government vested with responsibility for several area-wide problems" (Dolezel & Warren, 1971) but regional government was not politically feasible in 1969. Instead, they decided to focus their attention on ensuring that BCDC's powers as a single-purpose agency would not be watered down during the legislative process. After weeks of legislative battles, the Governor signed the bill into law on August 7, 1969.

BCDC as a Permanent Regulatory Agency

Once permanent, BCDC transitioned from policy development to its new role as a regulatory agency, which although definitely less glamorous, was not without controversy. The Commission's jurisdiction covers all open water, marshes, wetlands, and mudflats of the greater San Francisco Bay, and all shoreline located within 100 feet of the mean high tide, extending as far into tributaries as there is tidal action (BCDC, 2015). Within this area, BCDC is charged with administering and enforcing the Bay Plan through the regulation of dredging, filling, and land-use. Per the Bay Plan, permits for new fill can only be issued for water-related activities. Commercial or residential development is not allowed on new fill, but this restriction does not apply to existing filled areas. BCDC uses its power over shoreline development to ensure high priority for water-related uses, such as ports and wildlife areas, and maximum public access to

the shoreline whenever possible. The Commission's enforcement power stems from its ability to withhold the permits required within its jurisdiction for any of the following: placing solid fill, building or repairing docks, pile-supported or cantilevered structures, disposal of material in the Bay, extracting material from the Bay, mooring a vessel for a long period of time, substantially changing the use of any existing structure, subdividing property, or grading land. Violators are issued cease and desist orders or orders for removal of unpermitted structures and are subject to a fee of \$1,000-\$30,000. Serious violators are prosecuted by the California Attorney General, resulting in penalties of \$50-\$5,000 per day for negligent violation or \$100-\$10,000 per day for intentional violation (BCDC, 2015).

Just because BCDC had become a permanent agency did not mean that it was immune to the corrupting influence of special interests. The regulatory capacity of the Commission had three major vulnerabilities (Schoop & Hirten, 1971). First, the interest and dedication of individual commissioners could wane over time, especially as appointees who had not participated in the creation of the Bay Plan gradually replaced the original commissioners. This was potentially very dangerous, because anti-regulatory interests had snuck in an amendment to the 1969 bill that prevented commissioners from sending proxy staff to vote at official BCDC meetings. All of the appointees, especially those from the state, already had other responsibilities. Second, developers or local governments could push for sympathetic appointments to the Commission that would weaken its stance. Third, BCDC's regulatory powers could be overturned in courts. Fortunately, the wave of environmental legislation and public awareness over the next decade ensured that commissioners, even recent appointees, took their roles seriously. The mix of BCDC appointees from a range of local, regional, and state bodies help ensure that long-term regional interests prevail in the permit review process. Unique to BCDC are rules requiring the Commission to wait a minimum of two weeks between the meeting in which a permit application is presented and the meeting in which it is voted on, preventing "the frequent complaints directed at other public bodies that officials come to a hearing with their decisions already made in private" (Kerr, 1988). To minimize the third threat, the Commission used its powers carefully to "minimize support-eroding misunderstandings and to avoid court tests on unfavorable cases" (Schoop & Hirten, 1971). Even so, it was inevitable that BCDC would eventually run up against powerful interests.

The first major development proposal struck down by BCDC was the Ferry Port Plaza, submitted by the Port of San Francisco and a team of private developers as the latest in a series of attempts to reinvigorate the city's declining waterfront. The project was intended to replace Piers 1 through 7 with a single 40-acre pier on which a 1,200-room hotel, office buildings, commercial space, and a 2,400-car parking lot would be built (Rubin, 2011). The developers hoped that BCDC might make an exception for their project, as the design included perimeter esplanades to allow for maximum public waterfront access and would be supported by pilings rather than solid fill. Environmental activists poured out in droves to protest the "16-football-fields-sized footprint over the bay" they believed constituted a "rape of the waterfront" (Rubin, 2011). BCDC's executive director, Joseph Bodovitz, suggested a compromise, called the "rule of equivalencies" which would allow new development over the Bay if an equal amount of surface area was opened up somewhere else. Ultimately it was up to Attorney General Thomas C. Lynch to decide whether BCDC could make an exception to its own rules. He ruled that regardless of the proposed compromise, BCDC regulations did not allow fill for non-water-related uses nor

projects that could be built elsewhere (Rubin, 2011). With this clarification, the Commission voted 22-1 against authorizing the project. The failure of the Ferry Port Plaza project to gain approval marked the end of grand modernist visions for the San Francisco Bay's waterfront.

Adapting to Rising Tides

The Bay Plan is not a static document. Amendments can be made if they receive a two-thirds vote by the Commission. The state legislature can also modify the regulatory powers and jurisdiction of BCDC itself by passing additional amendments to the McAteer-Petris Act. Both tools have been used since BCDC's creation to adapt the Commission and the Bay Plan to reflect contemporary environmental legislation and planning priorities. This is exemplified by the recent addition of an entire section on climate change to the Findings and Policies chapter of the plan. This update was partially intended to facilitate the implementation of the Bay Area's Sustainable Communities Strategy to reduce greenhouse gas emissions as mandated by SB 375, but also in response to the growing threat of sea level rise (BCDC, 2012). An amendment formalizing BCDC's adaptive strategies was necessary to fix the paradox where an agency that was created to keep the Bay from shrinking was increasingly taking on the role of guiding development to accommodate the Bay increasing in size (Travis, 2012). The amendment was developed during a 26-month process including 36 public hearings, meetings with stakeholder groups and local governments, and only adopted after a 7-month public comment period (BCDC, 2011).

The Climate Change section, inserted at the start of the Bay Plan's Findings and Policies chapter, confirms the threat of global warming and sea level rise caused by human activity and predicts that shoreline areas currently vulnerable to 100-year flood events will most likely be inundated by midcentury. Recognizing the limits of both BCDC's jurisdiction and the capacity of local governments to address sea level rise, the updated Bay Plan calls for regional cooperation to develop an all-encompassing climate change adaptation strategy for the Bay Area led by the Bay Area Regional Collaborative, the umbrella organization for several other regional planning bodies. Since it will be impossible to protect all areas of the shoreline, this regional strategy would "determine where and how existing development should be protected and infill development encouraged, where new development should be permitted, and where existing development should eventually be removed to allow the Bay to migrate inland (BCDC, 2012).

In lieu of a regional adaptation plan, BCDC will evaluate each proposed project within its jurisdiction based on the project's "resilience to flooding and capacity to adapt to climate change impacts" (BCDC, 2012). The Commission recommends that significant structures should not be built in places that will require protection in the future, but if absolutely necessary, they should be designed to be resilient to mid-century sea level rise projections. Undeveloped areas that are vulnerable to future flooding should be preserved as natural habitats (BCDC, 2012). Even though BCDC itself has limited capacity and authority to develop a regional climate adaptation plan, it has been increasingly stepping into its old policy development role in order to encourage and support planning for sea level rise by local governments. The Adapting to Rising Tides Program (ART) was created by BCDC in 2010 to lead "collaborative planning projects that build a comprehensive understanding of climate vulnerability and risk" (ART, 2015). So far, ART projects have included the Oakland/Alameda Resilience Study, the Hayward Shoreline Resilience Study, and the regional Resilient Shorelines Partnership. These projects all work toward increasing the knowledge toolkit available to planners seeking to address sea level rise.

Conclusion

The development of the Bay Plan and the creation of BCDC as a permanent regulatory agency was a watershed moment because it “helped establish...the influence of the environmental movement on planning policy (Rubin, 2011). It reflected a new understanding among urban planners of the economic, aesthetic, and recreational value of preserving urban shorelines in addition to the environmental benefits, and marked the end of modernist visions for radically altering the San Francisco Bay in the name of progress. It is important to remember that the preservation of the Bay was only possible because of citizen activism and public pressure. According to Will Travis, BCDC’s Executive Director Emeritus, it was “the first expression in an urban area of society’s determination to protect something that was precious to them.” Bay fill didn’t stop happening just “because BCDC denied a bunch of permits. It’s because society changed its mind” (Travis, 2012). Continued public support for BCDC’s mandate and advocacy from organizations like Save the Bay is necessary to counter pressure from anti-regulatory interests, such as The Bay Planning Coalition, a non-profit founded in 1983 to advance the interests of maritime industry and shoreline developers. In the words of Kay Kerr, “the Bay is never saved. It is, instead, always in the process of being saved” (Kerr, 1988). Part of BCDC’s success, however, is that it has helped manage the competing economic and environmental interests, and true to its name (the Bay Conservation AND Development Commission), finding synergies and intersections between the two (Travis, 2012). Since the creation of BCDC in the 1960s, environmental planning priorities have shifted from conservation to sustainable development to resilience. The Commission’s recent involvement in promoting climate change adaptation strategies is a reflection of the growing consensus among planners, policymakers, and the public that it is in everyone’s best interests to develop regional approaches to sea level rise. In this way, BCDC continues to position itself at the forefront of urban planning’s evolving relationship with the natural environment.

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