Providing Access for the Public to the Shoreline of San Francisco Bay

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This paper will discuss how the San Francisco Bay Conservation and Development Commission has responded to the public need to get to the shoreline and view the water as part of its regulatory program for the San Francisco Bay Area. The Commission's authority will be discussed as well as the way the Commission uses its Design Review Board and design guidelines to assure that public access areas are well designed and integrated into project development.

Man has been fascinated and dependent upon the coastal seas for centuries. He has relied on the sea for food and trade as well as used the sea to regenerate his spirit. As the world's seashores become more developed for industrial and commercial purposes, however, the public's ability to get to the water has decreased dramatically.

If we are to prosper as nations, we must not only develop our economic resources but preserve those parts of our environment that are very limited and precious: we must ensure that the public can continue to get to and use the seashore.

In order to achieve this goal, we should concentrate our efforts not only on the preparation of studies of natural and scenic resources but develop the legal and administrative mechanisms that will provide for environmental protection.

Such a program has been developed in the San Francisco Bay Area for the nine counties and approximately sixty cities that surround San Francisco Bay. The mechanism is a state regulatory agency called the San Francisco Bay Conservation and Development Commission. One of the goals of the agency is to provide public access as part of the approval of each development project that occurs on the shoreline.

The Commission was created as a result of a citizen initiative in the 1960's. A group of women in the Bay Area formed a group called Save San Francisco Bay Association. The women observed that large areas of San Francisco Bay were being filled and developed for commercial and industrial uses and that the public's ability to get to the shoreline was decreasing with each development. They correctly observed that the coastal waters were passed to the California state government when it joined the Union in 1848, and that the waters were to be held by the state in trust for the general public. In addition, the Save San Francisco Bay Association observed that the Constitution of the State of California guaranteed the right of the public to have access to the waters that were being held in trust for them.

In order to reaffirm those rights, the women lobbied their state governmental representatives to get a State law passed that would set up a regulatory agency to assure that access to the shoreline was provided as part of every development.

The legislature set up a study commission to evaluate the need and possible duties of such a regulatory agency. For six months the Commission held public hearings at which private industry, fishermen, yacht owners, housewives, port authorities, and state and federal agencies gave testimony. Each group gave its opinion about the value of the Bay for conservation and development. The State Legislature incorporated many of these opinions into the McAteer-Petris Act, which it adopted as interim legislation in 1965 and instructed the newly formed San Francisco Bay Conservation and Development Commission to develop a plan which included policies to assure a balance between conservation and development and assure the public could have access to the water. The San Francisco Bay Plan was adopted by the Legislature in 1969 and the Commission made a permanent agency with regulatory authority over all development that occurred in the water of San Francisco Bay and within 100 feet of the shoreline of the bay. One of the most important policies in the plan is that every development, public or private, must provide access for the public to the shoreline.

This provision of the law often astounds those who hear about it. Developers and government officials in states other than California or in other counties say it is impossible to require public access to the shoreline in every project because it is not legal, not safe, or would involve security problems. Or, they say it is economically infeasible to require a private developer to provide public access.

The Commission, after 25 years of experience, has not found any of those objections to be correct. First, a legal basis for placing conditions on land development projects in the United States is found in the Constitution which provides that, "Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property of the United

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States." The power to regulate land use was passed to state and local governments as each state was made a part of the Union. It is correct that the Fifth Amendment of the Constitution states that, "private property shall not be taken for public use, without just compensation" and that the Fourteenth Amendment makes the federal taking clause applicable to states. This "taking" clause is often cited as an impediment to providing public access.

There is considerable literature and debate on the legality of regulating land use for the purpose of providing a public benefit for the entire community. The outcome of most of the cases depend upon the specific facts of the case and whether the imposition of conditions on a development are reasonable, to what extent the landowner is damaged by the conditions, and whether the exaction was related to the burdens created by a project. Suffice it to say that in the San Francisco case, only one regulatory decision requiring pubic access as part of a new development made by the San Francisco Bay Conservation and Development Commission has been challenged by a developer and that decision was upheld by the court.

The success of the Commission's record is due to its law, policies, and decision-making process. The Commission's law states that, "In order to make San Francisco Bay more accessible for the use and enjoyment of people, the bay shoreline should be improved, developed, and preserved. The Legislature...recognizes that private investment in shoreline development should be vigorously encouraged and may be one of the principal means of achieving bay shoreline access, minimizing the resort to taxpayer funds: therefore, the Legislature declares that the Commission should encourage both private and public development of the bay shoreline." The law further states that existing public access to the shoreline and waters of San Francisco Bay is inadequate and the maximum feasible public access, consistent with a proposed project should be provided." And lastly, the law states that no project may be approved if maximum feasible public access is not provided.

The requirement to provide "maximum feasible" public access was written specifically so as to be vague in order to allow as much flexibility as possible to develop a pleasing design for public access. Specific standards for the amount and type of public access to be provided with each project was considered in the early days of the Commission. However, it was decided by a professional consulting team made up of designers that such standards would be infeasible in an area of such great physical diversity as the San Francisco Bay area.

Instead, the consultants recommended that more specific written guidance be provided to aid designers, developers, and the Commission in determining what maximum feasible public access would be for each project. Specific policies on public access were adopted. These policies encourage the clustering of development so that view corridors and accessways through projects to the shoreline can be provided. They require that improvements be provided, including such things as pathways, lighting, and irrigation. The policies also require the landowner to maintain the improvements that are constructed.

In addition to policies, design guidelines were developed. There are guidelines for industry and port development, for recreation and marina uses, for commercial and residential projects, and for marshes or non-urban areas. In general, the guidelines state that public access should feel "public", be usable by the public, include views to the water, connect to existing public access, take advantage of its shoreline location, and be compatible with adjacent development.

The Commission also set up a process to allow professional designers to review public access plans prior to their being reviewed by the Commission. The Commission's Design Review Board is made up of architects, planners, landscape architects, and engineers. There are seven members on the Board and it meets once a month to review proposed projects. The Board serves without pay. Presently the Board includes partners from several of the large Bay Area design firms. The Board is a public body so the monthly meeting is open to the public and their comments are invited. An agenda is prepared and mailed two and one-half weeks prior to the meeting. The developer presents his project at the meeting and the Board makes recommendations regarding changes. The comments of the Board are forwarded to the Commission before it votes on whether or not to approve a project.

In order to assure that projects are built in accordance with the Commission's approval, all plans for construction must be submitted and approved before any work on the project may begin. The staff includes a landscape architect who reviews all construction plans. If a project is built without prior plan approval or not built according to the approved plans, the Commission has the authority to order the removal of structures and is able to levy fines without going through a court proceeding.

When the Commission was established in 1969, only 10 miles of the 700 miles of San Francisco Bay shoreline was available for public use. There are now over 100 miles of shoreline available. All of the area was provided as part of private development without the expenditure of public funds. At the same time, trillions of dollars of private development have been approved.

A major reason for success of the program is that the access required provides a clear benefit for the private development. Improved shoreline walkways are an attractive amenity for a residential development. Improved shoreline parks enhance office and commercial use. Many of the developments advertise the fact that they have public access and utilize photographs of the public using the shoreline. It thus appears that providing public access is not only feasible, but desirable as part of every development project on the shoreline.