

# Exemptions from BCDC Jurisdiction, Permitting Requirements, Policies, or Standards

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*Making San Francisco Bay Better*

# Government Code Section 66610

The jurisdiction of the commission shall not extend to the areas commonly known as the Larkspur and Greenbrae Boardwalks in the County of Marin, such areas to be defined by commission regulation.

## Commission Regulations

- Appendix A: Non-Jurisdiction of BCDC, Larkspur Boardwalk
- Appendix B: Non-Jurisdiction of BCDC, Greenbrae Boardwalk

## **Government Code § 66632.1**

Nothing in this title shall apply to any project where necessary local governmental approval and a Corps permit have been obtained to allow commencement of diking or filling, and where such diking or filling process has commenced prior to the effective date of this title.

# **Government Code § 66654**

Within the commission's jurisdiction under Section 66610, subdivisions (b), (c) and (d), any uses which are in existence on the effective date of this section may be continued, provided, that no substantial change shall be made in such uses except in accordance with this title.

## **Government Code § 66655**

If, prior to September 1, 1969, any city or county has adopted an ordinance or issued a permit authorizing a particular use or uses within the areas defined in Section 66610, subdivisions (b), (c) and (d), no person who has obtained a vested right thereunder shall be required to secure a permit from the commission, providing, that no substantial changes may be made in any such use or uses, except in accordance with this title.

## **Government Code § 66656(a)**

Any person claiming an exemption from Section 66632's permit requirements for placement of fill within the commission's jurisdiction under Section 66610, subdivisions (a), (c), and (d), after January 1, 1974, through reliance upon Section 66632.1 or 66655 shall, within 90 days after January 1, 1974, notify the commission by filing a claim of exemption with the commission. Failure to file a claim of exemption shall subject such activity of such person to the permit requirements of this act.

# **Suisun Marsh Preservation Act**

## **Public Resources Code § 29507**

(a) No person who has obtained a vested right in a development prior to January 1, 1978, or who has obtained a valid permit for development from the commission or any local government shall be required to secure a permit for the development pursuant to this division. However, no substantial change may be made in any such development or with respect to the activity authorized by such a permit without prior approval having been obtained under this division.

# **Suisun Marsh Preservation Act**

## **Public Resources Code § 29501.5**

Notwithstanding the provisions of Section 29500, within the primary management area no marsh development permit shall be required for any development specified in the component of the local protection program prepared by the Suisun Resource Conservation District and certified by the commission.

# Judicial Interpretation of Project-Specific Exemption

*BCDC v. Emeryville*, 69 Cal. 2d 533 (1968). Even where particular project exempt, successor projects in same geographic area may not escape BCDC permit requirements. Word “project” in Section 66632.1 is a term of limitation such that if there is a fundamental or substantial change in the purpose or use for which filling undertaken, the resultant project is a new project subject to MPA permitting requirements.



San Francisco Waterfront  
Piers 27 - 29

# **Scope of BCDC permit review when work involves piers that pre-date BCDC**

- Proposed work on pier that does not involve additional Bay coverage or that does not involve work on pier or substructure may be treated as coming within shoreline band jurisdiction (uses need not be water-oriented).
- Where proposed work does involve work on pier or substructure, scope of permit review depends on extent, nature and purpose of work.

# **Scope of BCDC permit review when work involves piers that pre-date BCDC**

- Minor repairs to deck or pilings that are necessary to keep up with ordinary wear and tear does not subject uses to review for whether water-oriented.
- Removal and replacement of all or substantial portion of pier deck constitute further filling of the Bay and therefore uses supported by pier would be subject to evaluation for whether water-oriented.
- Proposed development that falls between extremes may or may not subject uses supported by pier to review for whether water-oriented. Depends on physical extent, nature and purposes of work.

# **Exemption from Certain Requirements for Replacement of Pre-existing Residential Structure**

14 CCR § 10700. Minor Fill for Improving Shoreline Appearance

The Commission may approve the placement of minor fill to improve shoreline appearance, including the rehabilitation or replacement of a pre-existing residential structure only if, in addition to the other findings required by Government Code Section 66605 and the Bay Plan, the Commission finds that:

# Exemption from Certain Requirements for Replacement of Pre-existing Residential Structure

14 CCR § 10700. Minor Fill for Improving Shoreline Appearance

- (a) the fill is necessary...
- (b) the amount of fill is the minimum necessary to improve shoreline appearance;
- (c) the proposed project would improve the shoreline appearance; and
- (d) the fill will not adversely affect enjoyment of the Bay and its shoreline; and
- (e) with regard to a pre-existing residential structure, the requirements of (b) and (c) above will be met if the rehabilitation or replacement will not substantially enlarge the size of the pre-existing structure, will not be out of character or scale with any nearby structures, will cover less of the Bay surface than the pre-existing structure, and will not change the use of the structure.

- Bay Plan Exemption to the Water-Oriented Use Test for Houseboats under Certain Circumstances
- Bay Plan Limitation on Geographic Scope of Applicability of Climate Change Policies