



BAY PLANNING
COALITION

Bay Coalition Briefs is a publication of the Bay Planning Coalition, a membership-based, non-profit organization which advocates a reasonable, prudent and balanced planning and permit process for uses and activities in the San Francisco Estuary and shoreline areas.

303 World Trade Center
San Francisco, CA 94111
(415) 397-2293

John Briscoe
Chairman

Don Warren
Vice Chairman

Mike Cheney
Secretary

John Henderson
Treasurer

Ellen Johnck
Executive Director

Kay Petrini
Administrative Assistant

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BAY COALITION BRIEFS

GOVERNOR NOMINATES NEW FISH AND GAME DIRECTOR

Governor Wilson has nominated Boyd Gibbons, environmental writer with *National Geographic* magazine and a former Interior Department official in the Nixon Administration to be the new Director of the Department of Fish and Game. The nomination requires Senate confirmation. Current director Pete Bontadelli will move to head up the Department's Oil Spill Prevention Program.

NATURAL DIVERSITY BILL BECOMES LAW IN JANUARY

A bill by Assemblyman David Kelley which seeks to establish a state version of the federal Habitat Conservation Plan (HCP) has passed the state legislature and was recently signed by the Governor. The bill encourages the creation of "natural community conservation planning" to conserve, protect, restore and enhance any endangered or threatened species and its habitat.

The overall objective of the bill is to move protection for endangered species away from a single species focus to plan for an entire habitat

range in a coordinated manner. It is thought that through this type of collaborative planning process that a balance between providing for the long-term protection of endangered species and allowing for the responsible development of property can be achieved.

Many legitimate and responsible plans to develop private property are being thwarted because of the debate raging over endangered species and critical habitat. As the situation currently stands, there is confusion, acrimonious dispute and last-minute attempts by environmentalists to halt development through the employment of the Endangered Species Act. As a result, opportunities for economic growth, jobs and housing are being lost. On the other hand, the environmental community views the Endangered Species Act as its sole recourse to halt the destruction of critical fish and wildlife habitat.

The bill authorizes the Department of Fish and Game to enter into agreements with individuals and public or private entities to prepare and implement a conservation plan. The Department is authorized to prepare nonregulatory guidelines for the development and implementation of these plans. In formulating the guidelines, the Department will work with with

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ANNOUNCEMENTS

MERRY CHRISTMAS AND BEST WISHES FOR A HEALTHY AND PROSPEROUS 1992



John Briscoe
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NEW ADDRESS FOR THE COALITION

The Bay Planning Coalition has
relocated. Its new address is:

303 World Trade Center
San Francisco, CA 94111
(415) 397-2293

WELCOME NEW MEMBERS:

City of Benicia
Virgil Mustain, Director - Public Works

Harbor Tug and Barge Co.
Ron Duckhorn, Vice President

Matson Navigation Company, Inc.
Thomas A. Marnane, Vice President

Stevedoring Services of America
Ray Holbrook, Regional Vice President

USS Posco Industries
John Gibson, Director - Modernization

Wexford Real Estate Appraisers
John Urban, Principal

MARCH 12 DECISIONMAKERS CONFERENCE FEATURES WARREN BROOKES

Mark your calendar for the Coalition's 6th Annual Decisionmakers Conference, scheduled for Thursday, March 12, 1991 at the Fleet Admiral Nimitz Conference Center on Treasure Island. Our keynote luncheon speaker will be Warren T. Brookes, syndicated columnist of the *Detroit News*. Mr. Brookes has written extensively on political and economic issues and his articles have appeared in such publications as the *Washington Times* and *Forbes*.

As in years past, the conference will bring together business leaders, environmental groups, federal, state, and local government policy makers to create an open dialogue on San Francisco Bay issues. The Decisionmakers Conference Committee is already hard at work putting together a program and speakers for the event. If you would like to become involved in this effort, or have any suggestions on topics, themes or speakers, please call the Coalition office.

TRANSCRIPT OF SWRCB AND BPC, REAL PARTY IN INTEREST v. OAL PUBLISHED

The Coalition has available the published transcript of the proceedings in the September 14, 1990 hearing, *State Water Resources Control Board (SWRCB) v. Office of Administrative Law (OAL) and Bay Planning Coalition, Real Party In Interest*. In this case, a San Francisco Superior Court judge ruled that the State and Regional Water Boards violated the Administrative Procedures Act by adopting regulatory amendments to the S.F. Bay Basin Plan without submitting these regulations to OAL for review. The judge ruled that the regulations were therefore invalid. This was an important victory for BPC and the regulated community at large because most of California's water quality requirements suffer from the same defects as these invalidated wetland rules. The Water Boards have appealed this decision, and BPC will keep you informed of our future actions in this on-going case. If you would like a copy of the hearing transcript, please call the Coalition office. (There will be a charge for copying costs.)



local, state and federal agencies as well as incorporate public input. The California Conservation Corps, will be the main entity responsible for the implementation of the conservation plans.

If you would like a copy of the bill, please call the Coalition office.

ABUSES OF ENDANGERED SPECIES ACT UNDER SCRUTINY

Executive Director Johnck recently was invited to join the California Chamber of Commerce Endangered Species Task Force to discuss a strategy for curbing the misapplication of the ESA. Recommendations of the Task Force will be delivered to the Bay Area Congressional delegation and key legislative committees in time for the debate on the re-authorization of the ESA in the fall of 1992.

Johnck also spoke, along with the Chamber, to the West Coast coordinating meeting of the Nationwide Public Projects Coalition to share ideas and concerns about re-authorization issues. Frank Dunkle, former director of the U.S. Fish and Wildlife Service and advisor to the NPPC addressed the group on a draft plan to amend the Act.

Robert Irvin, lobbyist for the National Wildlife Federation, has

called the ESA re-authorization the "fight of the century." Significant interest in the Act has developed among Indian tribes, water districts, counties, timber companies, home builders, electric utilities, pipeline companies, etc. The discussion has focused on the need to return economic balance to the Act and its implementation, such as the need to adopt some statutory criteria for social or economic impacts that could be involved to override biological considerations. Technical amendments is the most favored approach rather than a call for the Act's repeal. Some of the suggested priority amendments include:

1. provide for full public notice and participation;
2. require timely designation of critical habitat;
3. set standards for best scientific and commercial data available;
4. establish peer review process to determine "petition to list" contains best scientific data;
5. require Secretary to determine the existence of imminent threat prior to emergency listing.

The Coalition welcomes ideas and recommendations on the ESA from its members. The BPC position and policy will be deliberated through our Wetland Committee

chaired by David Ivester.

NATIONWIDE PERMIT PROGRAM SET FOR STATE CERTIFICATION HEARING IN EARLY FEBRUARY

The good news for landowners is that the Nationwide Permit program (NWP) is in the process of undergoing some positive revisions by the U.S. Army Corps of Engineers. Under Section 404 of the Clean Water Act, the Corps is authorized to regulate "discharges of dredged or fill material into the waters of the United States." Wetlands have been interpreted by the Corps to be included in the category of "waters of the United States."

In order to perform any type of activity in these "waters", a permit must be obtained from the Corps in one of two ways. For major projects, a landowner must secure an individual permit, which requires that the applicant's project undergo a lengthy review process. Projects considered to have a minimal environmental impact, such as the maintenance of existing facilities or minor alterations to a wetland are covered by a general or "Nationwide Permit".

Because the Corps' process for issuing an individual permit has become increasingly costly and burdensome, the NWP program

has become important to landowners as a way to cut through the inevitable bureaucratic delays involved in the individual permit system.

The Corps has decided to amend the regulations governing the NWP process and has added new conditions to all NWPs. The agency plans to re-issue the 26 currently existing NWPs, along with 10 new NWPs. The permit creating the greatest amount of controversy is NWP 26, which the Corps has decided to retain with amendments. This permit governs activities in land areas over 1 acre and up to 10 acres total. The Corps has clarified many provisions in the permit, such as the method for determining acreage. The most important feature of the amended permit is that the notice process has changed. The Corps must receive 30-days advance notice and must submit a wetland delineation with the notice if the project involves activities in a wetland. Wetland mitigation may also be required.

Should California veto many or all of the NWPs, the relief which these permits have provided to landowners in the past will be in grave jeopardy. At this time, the staff of two California agencies involved in the approval process (the Coastal Commission and the State Water Resources Control Board) appear to be leaning towards rejecting

these permits. The end result of a veto would be that every activity, no matter how minor, would be subject to individual review by the Corps. This would be to the detriment of permit applicants, and would result in even more delays, costs and uncertainties in the permit process.

The BPC has already begun its preparations for active involvement in the hearings to ensure the salvation of NWP 26.

**ASSEMBLYWOMAN
BARBARA LEE CALLS
STATE AGENCIES
TOGETHER TO SOLVE
DREDGING PROBLEM**

There was hardly an absentee of the state dredging regulatory and advisory agencies who attended a recent meeting called by Barbara Lee. They know that when Assemblywoman Lee calls a meeting, she means business. Also participating in the meeting at Ms. Lee's invitation were BPC Executive Director Johnck; Owen Marron, Executive Secretary of the Central Labor Council of Alameda County and Lynn Suter, the Port of Oakland's Sacramento lobbyist.

The question posed to the agencies by Ms. Lee was, "Tell us what your agency is doing to help solve the dredging problem." Mike Kahoe, representing the

Governor's Dredging Coordinator (CAL-EPA Secretary Jim Strock) led with an iteration of CAL-EPA's task list:

1. Expedite the permit process for the designation of interim (before LTMS conclusion in 1994) upland disposal sites, e.g. Sonoma Baylands and Montezuma Slough;
2. Ensure that there is a single state voice in the LTMS process;
3. Prepare a recommendation on a boundary alternative for the Monterey Bay National Marine Sanctuary that allows for ocean disposal of dredged sediment. Thus, CAL-EPA will pursue Boundary 5 only to restrict oil and gas development, but will recommend that there are precedents for different boundaries and exemptions for specific uses. (However, the BPC is unaware of such possibilities and the NOAA staff has advised us that its preference is to ^{not} allow disposal exemptions.)

BPC also recently sent a 14-page letter to CAL-EPA's Strock identifying specific problem areas of

California Cities , Farm Bureau Association, Sierra Club, and Audubon Society are hoping to avoid future legislative and regulatory confrontations over wetlands through this effort.

GOVERNOR SUPPORTS AN EXPANSIVE SANCTUARY WITH PROVISOS

Governor Wilson, along with Senators Seymour and Cranston, Congressmen Panetta and Campbell, were signatories to a recent letter to Robert Mosbacher, Secretary of the U.S. Department of Commerce regarding the Monterey Bay Sanctuary Boundary.

While the letter supports the most expansive boundary, the letter acknowledges the need to consider allowing an ocean site alternative for the disposal of dredged material.

The question remains whether certain disposal activities actually could be allowed in the authorizing legislation for the sanctuary. It is normally the custom for NOAA to designate a sanctuary without any specific provisions for exemptions, and those exemptions must be handled through the regulatory process with the sanctuary manager at the regional level.

NOAA staff, who are working on the final EIS, have advised us that

the public will be provided another 30-day comment period when the EIS is published in January, 1992. The Coalition is on record opposing the most expansive boundary due to our concerns that ocean disposal of dredged material is likely to be precluded.

SFEP WETLANDS REPORT REFLECTS COMMITTEE IMBALANCE

At the San Francisco Estuary Project's Management Advisory Committee (MAC) meeting on September 26, the Coalition, along with the Building Industry Association of Northern California (BIANC) voted not to endorse the Wetland Status and Trends Report (STR) and the corresponding Management Options compiled by the Wetlands Subcommittee. This decision by BPC and BIANC was drawn after a great deal of thought and reflection and after taking into account the need to remain true to our respective organizations' guiding philosophies and the views of the under-represented private sector community at large.

Over the past two years, both BPC and BIANC have spent an extraordinary amount of time participating on the Wetlands Subcommittee and providing lengthy and thoughtful technical comments on the draft reports. Although few in number (2), BPC and BIANC had

the responsibility of representing the viewpoint of the private sector at large throughout the entire study area. The consensus-building process was flawed from the outset because "consensus" was defined by the operating procedures of the Wetlands Subcommittee to mean "majority". Thus we were perpetually constrained by our minority position and, ultimately, our recommendations were represented as "minority" only. The end result was that what could and should have been a serious negotiating process became an exercise in "room packing" by the majority.

Because of the structure of the committee, our desire to include a goal emphasizing full consideration of the rights and interests of affected property owners was denied. Further, the final STR is devoid of any consideration and discussion of wetlands as private property and the acknowledgement of the need to further other public, social and economic goals, and commensurate uses of these lands. This negligence has produced a report with a list of isolated management options that are neither practical nor realistic.

A yes vote on the Wetlands STR and Management Options by BPC and BIANC would have served to simply legitimize a biased process. Because of this, both organi-

zations were forced to vote against endorsement of the document.

The Wetland STR and the other STRs on Pollutants, Land Use, Aquatic & Biological Resources and Dredging & Waterway Modification will be used as a basis for the development of the Estuary Projects Comprehensive Conservation Management Plan (CCMP). 1992 (the final year of the project) will be an intense year as BPC continues to strive for a balanced and workable CCMP.

CHARLES WARREN SPEAKS TO BOARD OF DIRECTORS

Charles Warren, Executive Director of the The State Lands Commission, was BPC's guest speaker at our October Board of Directors Meeting.

The Coalition has been following the activities of the SLC with interest and cautious scrutiny, particularly its proposal to establish an "Inland Coastal Commission" to address issues pertaining to the Delta. The SLC has released a report entitled "The Delta - California's Inland Coast" which details the environmental problems faced by the Delta (fresh water diversion, land subsidence, deteriorating levees, pollutant run-off) and proposes as a solution the establishment of a new regional

agency to oversee the Delta, possibly based on the BCDC/California Coastal Commission model.

Mr. Warren stated that the SLC is but one interested party in the debate over the Delta, not the leader. Furthermore, in his view, the current state agency structure has not provided adequate stewardship of the Delta. Therefore, he would like to create a "seat at the table" for Delta interests, possibly by establishing a new regional commission or agency. Further consideration of Delta issues and its government structure has since been reassigned to the state legislative hearing process upon recommendations of BPC and local interests.

Mr. Warren also spoke about the dredging issue. He stressed that San Francisco Bay business is directly dependent on the health of the Delta, and has done well to recognize the connection between the need for adequate freshwater flows upstream and Bay dredging. He also emphasized that SLC is not opposed to dredging because of its responsibility to ensure that navigation of the state's waterways is viable.

An important issue for BPC is the SLC's participation in the joint state/federal LTMS. Mr. Warren stated that in his opinion SLC was given short shrift in the LTMS

process, thus they found it necessary to assess a \$.25/cubic yard fee on in-Bay dredged material disposal in order to conduct additional studies on dredging, which they felt would better address their concerns. Subsequently, SLC did vote to endorse the LTMS' Policy Review Committee Work Program. When asked why, in light of this fact, the monies collected have not been returned to the permit applicants, Mr. Warren stated that the monies may still be necessary to fund BCDC's upland studies on dredged material disposal. Mr. Warren's general opinion on the dredging issue is that in-Bay disposal of dredged material must be phased out completely "because it is biologically disruptive."

Comparison of the Manuals

	1987 Corps Manual	1989 Federal Manual	EPA Proposal	Reilly/ Quayle Proposal
Hydrology	Inundated or saturated within major portions of the root zone (usually within 12 inches of the surface) during the growing season.	Inundated or saturated 7 consecutive days within 6 to 18 inches of the surface, depending on soil permeability, during the growing season.	Inundated and/or saturated at the surface by surface water or groundwater for 10-20 or more consecutive days during the growing season.	Inundated for 15 consecutive days or saturated at the surface by surface water or groundwater for 21 consecutive days during the growing season.
Vegetation	More than 50 percent of the dominant vegetation must be facultative, facultative wetland, or obligate wetland species. Has a facultative neutral option.	(1) Same as 1987 Manual, or (2) a frequency analysis of all species yields a prevalence index of less than 3.0 (where obligate wetland plants = 1, facultative wetland = 2, facultative = 3, facultative upland = 4, obligate upland = 5.	Proposal A: same as 1989 manual. Proposal B: (a) the number of dominant facultative wetland and dominant obligate wetland species exceeds the number of dominant facultative upland and obligate upland species, and (1) from 1989 manual or (a) and (2) from 1989 manual.	Prevalence index less than 3.0. See 2 from the 1989 manual.
Soils	National Technical Committee for Hydric Soils criteria: all histosols except folists; or, soil meets the same hydrology criteria as are in the 1989 manual.	Same as 1987 manual.	Same as 1987 manual, but must be based on field verification.	Same as EPA proposal.
Growing Season	At 19.7 inches below the surface, soil temperature must be above biological zero.	Same as 1987 manual.	3 weeks before the crop season to 3 weeks after.	Same as EPA proposal.

***This table adapted from the "National Wetlands Newsletter", Volume 13, Number 5, Sept./Oct. 1991

Mr. Gregory Peck
Wetlands and Aquatic Regulatory
Resources Branch (A-104)
Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20535

SAMPLE LETTER

Dear Mr. Peck:

I have read about the proposed changes to the current EPA Wetlands Delineation Manual. I am hopeful the regulatory agencies are beginning to balance our natural resources and the economic health of our nation.

I support these first steps taken by the EPA, recognizing that it must have been a difficult decision on the part of all involved to attempt this balanced approach to what is defined as a wetland.

Sincerely,