

**Subject: Bay Briefs - Bay Planning Coalition Update**

**Date:** Thu, 15 Feb 2001 15:05:12 -0800

**From:** BPC Staff <staff@bayplanningcoalition.org>

**To:** Members@bayplanningcoalition.org

## ***Bay Briefs, February 15, 2001***

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### **US Army Corps of Engineers Wetland Fill and Dredging Permit Process: A Report to Bay Planning Coalition Members**

The Bay Planning Coalition has been concerned that Army Corps permits are not being issued in a timely manner. In 1995, BPC provided recommendations for the "project manager life cycle" system, under which one Corps staff person is responsible for a permit application for the life of its review and issuance. For a time this procedure strengthened Regulatory Branch accountability to the applicant and seemed to improve Corps staff productivity. District Engineer LTC Mike Walsh said at that time that the Corps' goal was a 180 day permit turnaround time. Recently, however, the permit process appears to have broken down.

In late 2000, the Bay Planning Coalition, represented by Executive Director Ellen Johnck and three BPC Directors, met with USACE District Commander LTC Timothy O'Rourke, Regulatory Branch Chief Cal Fong and three regulatory staff, to review the SF District's federal Clean Water Act section 404 permit process procedures.

BPC inquired into the reasons for the slowdown in permit issuance. The Corps responded:

- The main reason for the slowdown is the extra burden and time required for the US Fish & Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) **endangered species consultation process** and seasonal restrictions on dredging ("**fish windows**").
- Although the number of applications has remained steady (each permit manager has 50-70 active projects), each application is more complicated and takes more time.
- Applicants should plan their dredging and fill projects at least one year in advance and apply early.
- **Permits cannot be issued within 180 days and may take one year.**

The Corps recommended that permit applicants be clear and specific in naming a wetland fill or dredging project (project title) on the permit application and always use the exact same name in subsequent correspondence.

The Corps also recommended that, for wetland fill projects, applicants use the voluntary JARPA form (Joint Aquatic Resource Permit Application). Copies are available at local governments' planning departments, and the JARPA form is accepted by the Corps, BCDC, the Regional Water Board and Dept. of Fish & Game.

In addition, the Corps recommended that applicants use email to contact the Corps project manager when inquiring about permit status. Applicants may contact Ed Wylie, Southern Section Manager (415-977-8464; ewylie@spd.usace.army.mil) or Jane Hicks, Northern Section Manager (415-977-8439;

jhicks@spd.usace.army.mil), if the project manager is unknown or unresponsive.

BPC inquired if ESA consultations would be re-initiated on permits which have already received a non jeopardy opinion through a Section 7 consultation when critical habitat is subsequently designated. The Corps does not have a policy on this issue and BPC recommended that the Corps and the USFWS engage in a programmatic consultation that would result in a one-time determination that any project which has already received a no jeopardy opinion will be deemed to be exempt from consultation for subsequently designated critical habitat in the project area. The Corps suggested that an independent agency and/or ombudsman provide the scientific information on endangered species issues and potential impacts in the consultation process.

BPC also raised the problem of differing interpretations by the Corps and the SF Bay Regional Water Board in following the Section 404(b)(1) guidelines. A major concern is that if a permit is not issued in one year, the Regional Board will deny it (without prejudice) because the State Administrative Procedures Act requires that all state permits be granted in one year. The Corps acknowledged that it has been working with the Water Board on this issue and is preparing a Memorandum of Understanding to coordinate 404/401 procedures. The Corps indicated it welcomes BPC assistance in its discussions with the RWQCB staff to promote greater consistency in following the 404(b)(1) guidelines. (The BPC Board of Directors has authorized staff to schedule permit process meetings and dialogue with the staff of the SF Bay Regional Water Quality Control Board.)

· Following the November 2000 meeting with the Corps, BPC has continued its efforts to improve the Corps permit process, and in particular to resolve delays due to the seasonal fish windows.

· BPC has initiated a series of monthly meetings with the Corps, NMFS, USFWS and the EPA to:

- Review dredging projects in the bay;
- Evaluate the scientific underpinnings of the Biological Opinions for the fish windows;
- Agree on procedures for streamlining fish windows consultations through such mechanisms as batching projects;
- Determine necessary amendments to the LTMS Biological Opinions and/or reinstate entirely new Biological Opinions and commensurate fish windows.

If you have questions or comments regarding these issues, please call or email the BPC office.

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### **BPC CALENDAR**

#### **Quarterly Board of Directors Meetings**

Member designees will receive a Board agenda approximately one week prior to each meeting. All members are welcome to attend.

Wednesday, March 28, 2001, 2:30-4:30 p.m.  
Port of Oakland, 530 Water Street  
Courtyard Conference Room, 2nd Floor

Wednesday, June 27, 2001, 2:30-4:30 p.m.  
Port of Oakland, 530 Water Street  
Courtyard Conference Room, 2nd Floor

Wednesday, September 26, 2001, 2:30-4:30 p.m.  
Port of Oakland, 530 Water Street  
Courtyard Conference Room, 2nd Floor

Thursday, December 13, 2001  
Annual Membership Meeting  
Board Meeting: 10:00 – 11:30 a.m.  
Reception & Luncheon: 11:30 a.m. – 1:30 p.m.  
St. Francis Yacht Club, San Francisco

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### Panel Discussion of Interest to BPC Members

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On February 26, 2001, Noon to 1:30 p.m., at the Palace Hotel, San Francisco, the Environmental Law Section of The Bar Association of San Francisco will present "**The Future of Federal Regulation of Isolated Ponds and Wetlands after SWANCC.**" In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al.*, decided January 9, 2001, the U.S. Supreme Court invalidated the Migratory Bird Rule as applied to isolated ponds and wetlands, and held that the federal government has no power to regulate these waters under the Clean Water Act. A Panel featuring BPC member Edgar B. Washburn of Washburn, Briscoe & McCarthy; Hugh Barroll, Assistant Regional Counsel, USEPA, Reg. IX; John Eft, District Counsel, US Army Corps of Engineers, SFD, will discuss the implications of this landmark decision. For more information or to register go to [www.sfbar.org](http://www.sfbar.org).

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