

Subject: eBriefs - Bay Planning Coalition Update

Date: Mon, 19 Mar 2001 12:32:15 -0800

From: BPC Staff <staff@bayplanningcoalition.org>

To: Membership@bayplanningcoalition.org

eBriefs, March 19, 2001
Bay Briefs, the Bay Planning Coalition Newsletter

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CALENDAR

BPC Board of Directors Meeting

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

The Board meeting agenda will be sent to BPC member designees approximately one week prior to the Board meeting. If you would like to be added to the designee email list to receive the agenda, please contact BPC staff via email, fax or phone. BPC members are always welcomed at Board meetings.

BPC Transportation Committee

The next meeting of the BPC Transportation Committee is scheduled for the afternoon of April 10, 2001 in San Mateo County. The meeting will include a presentation by senior management personnel of the Peninsula Joint Powers Authority and SamTrans on the proposed Dumbarton commute rail alternative. Details and agenda will be provided to all BPC members prior to the meeting.

SFO Runways Panel Discussion

The Commonwealth Club is hosting a discussion on the need for new runways at SFO next Thursday afternoon, March 22, 2001. The event will begin with a reception at 4:45 p.m. followed at 5:15 p.m. by a one-hour panel discussion among regulatory agency and airport representatives. The event will take place at the Commonwealth Club, 595 Market Street, San Francisco. The cost is \$5 for Commonwealth Club members & \$8 for non-members. Space is limited and reservations are recommended. Call 415-597-6705 to reserve your space.

BPC NEWS & INFORMATION

BPC in DC

BPC's Executive Director, Ellen Joslin Johnck, is in Washington, DC this week meeting with our Northern California Congressional representatives and Senators Feinstein and Boxer regarding civil

works policy issues and requesting their support for federal appropriations for the civil works program and the Interior Department's budget. Look for a report from Ellen in the coming weeks.

Wetlands, Endangered Species & Critical Habitat

The following valuable informational materials are available to BPC members. If you are interested, please request them by contacting the BPC office via email, phone or fax. Materials will be mailed.

The Year in Review – 2000-2001 Developments in Wetlands Law. Prepared by BPC Board Alternate David Ivester of the firm of Washburn, Briscoe & McCarthy.

The Truth about Critical Habitat. Prepared by Cliff Moriyama of the California Natural Resources Group.

"In Play" California Threatened and Endangered Animal & Plant Species, a select, non-comprehensive list, prepared by The Building Industry Legal Defense Foundation.

Notice of Final Designation of Critical Habitat for the Threatened California Red-legged Frog, published by the United States Department of the Interior on March 14, 2001, includes a "Facts & Q&A" and News Release. The complete rule, including the Fish & Wildlife Service's draft economic analysis is available online at <http://www.r1.fws.gov/crithab/crlf/default.htm>.

MTC's Website

The bay area Metropolitan Transportation Commission has launched a handy new website, chock full of useful information. You'll find it at <http://www.mtc.ca.gov/>.

BPC MEMBERS IN THE NEWS

Montezuma Wetlands Receives Unanimous BCDC Approval

Congratulations are in order to Jim Levine, whose persistence and dedication have brought the Montezuma Wetlands restoration project one step closer to reality. On March 15, 2001, the Bay Conservation and Development Commission (BCDC) voted 22 to 0 to issue a permit to Levine-Fricke Restoration to begin the wetlands restoration, which will take clean dredged material from the Port of Oakland's -50 foot deepening project. The project is a win-win for both environmentally sound dredging and the goal of restoring Bay wetlands.

Check out "Bay Crossings"

Bay Crossings, which started as a small tabloid for ferry riders, has evolved into an informative publication found not only at numerous newsstands around the Bay area, but also on the web at <http://www.baycrossings.org>. The February issue contains an interview with BPC Board of Directors member Chuck Foster, Executive Director of the Port of Oakland, an interview with BPC member Bill Butler of Hanson Aggregates, and an in-depth look at the south bay operations of BPC member Cargill Salt.

IMPORTANT POLICY NEWS

The SWANCC Decision

Following is an excerpt from the January-February 2001 issue of the National Wetlands Newsletter. The Newsletter is published by the Environmental Law Institute and is currently accessible online at <http://www.eli.org/nww/>. This issue also contains an article on Crissy Field in San Francisco.

"Taking an important legal stand on wetlands and the Clean Water Act, the U.S. Supreme Court in January ruled that the government overstepped its authority in regulating certain isolated wetlands. The decision in Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers, No. 99-1178 (January 9, 2001), already has begun reverberating throughout the wetland community. In its 5 – 4 decision, the Supreme Court held that the U.S. Army Corps of Engineers could no longer use the "Migratory Bird Rule" to extend its regulation over "waters of the United States" to include isolated, non-navigable, intrastate ponds....

"While the Supreme Court's decision clarifies that the Migratory Bird Rule can no longer be used to assert jurisdiction over isolated non-navigable, intrastate ponds, the ruling leaves a number of questions hanging. For example, what constitutes "isolated" and "adjacent" in water bodies, and to what extent will the Corps' and EPA's regulatory authority be affected?"

Until the US Army Corps of Engineers issues guidance to local districts about how it intends to implement the holding of the SWANCC decision, we won't know the full impact of the decision on the Corps' regulatory program. On January 25, 2001 the California State Water Resources Control Board issued a memorandum addressing the impact of the SWANCC decision on its 401 certification program, saying "the state retains its independent authority under Porter-Cologne and other statutes to regulate discharges of waste to all waters of the state.... Given the state and federal "no net loss" of wetlands policy, the Regional Boards should consider that regulating any discharges of waste to waters that may no longer be subject to COE jurisdiction is both authorized and justified." The complete SWRCB memo is available from BPC or by contacting SWRCB staff counsel, Michael Levy, at (916) 341-5193 or via email at mlevy@exec.swrcb.ca.gov.

Seasonal "Fish Windows"

Wildlife agency biological opinions appended to the LTMS Record of Decision set forth recommended seasonal restrictions on dredging to protect critical habitat for endangered and threatened fish and other species in the Bay. The biological opinions and seasonal restrictions ("windows" being non-restricted periods) have led to a bottleneck in obtaining dredging permits due to the need for "consultations" between the Corps and wildlife agencies. BPC's Executive Director, Ellen Joslin Johnck, has convened a series of conferences with the National Marine Fisheries Service, US Fish & Wildlife Service, EPA and the Army Corps, with other participating agencies such as BCDC and CA Dept. of Fish & Game, to develop an Endangered Species Act permit streamlining process on fish window restrictions. This week, as part of her trip to Washington, DC, Ellen is participating in a workshop sponsored by the National Academy of Sciences to improve the science justifying the windows and to develop understanding and flexibility around these windows.

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