

BAY COALITION BRIEFS

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MAY-JUNE 1990

ANNUAL MEETING - JUNE 19TH

Plan to attend your Annual Membership Meeting on Tuesday, June 19, from 4:00 - 6:00 p.m. at the Port of San Francisco's Cruise Terminal on Pier 35. This is your opportunity to learn about the Coalition's activities in more detail, have your questions answered, and discuss your ideas for the future.

BCDC UPDATE:

PROPOSED SEISMIC SAFETY AUTHORITY A CONTENTIOUS ISSUE

At its April 19 public hearing, BCDC gave its support to a bill which would give it authority to deny projects in the 100-foot shoreline band if the project **does not provide reasonable protection from seismic hazards**. Assemblyman Rusty Areias, who has authored this bill, AB 3422, deleted a provision concerning storm and flood waters, which would have given BCDC authority to deny a project on the grounds of sea level rise concerns. As currently written, the bill also contains some confusing language regarding the question of BCDC's authority to deny a project in the shoreline band if it is not consistent with a water-oriented designated priority use. This would preclude projects such as housing, hotels, restaurants, and non-water related commercial or industrial uses.

This has been one of the most contentious issues before BCDC this year. When BCDC first introduced the concept on January 4, 1990, the Commission requested that another public hearing be held when specific language of the legislation had been drafted. The Commission heard the issue again on March 15, 1990; however, it refused to allow public input - which conflicted with its previous decision. Realizing the Commission had

erred, BCDC finally held a public hearing on April 19.

The Coalition, engineers, local governments, and policymakers have cited a number of concerns about this legislation. The primary concern is that it would introduce a new level of governmental review that many feel is currently satisfied at the local government level through use of the Uniform Building Code (UBC), which has been updated every three years since it was instituted in 1954. (While some argue that the UBC contains only "minimum" standards, a recent study of the 1,382 homes and business damaged and 26,953 destroyed during the Loma Prieta earthquake revealed that of homes and businesses built between 1970 and 1980, only 3 were destroyed and 53 damaged. This accounts for only .02% of those affected. It has not been determined if any of these structures are within BCDC's jurisdiction. In addition, the 1988 edition of the UBC has an entire section addressing seismic requirements.)

Other concerns are that 1) the standards for BCDC review will be set on a case-by-case basis because there are no published guidelines, and 2) there is a potential for delay while the BCDC's Engineering Criteria Review Board analyzes a project. The bill was voted out of the Assembly Local Government Committee on April 24 with no opposition. Because of economic considerations in a part of the bill that does not concern BCDC, the Assembly Ways and Means Committee will continue to address the bill.

HEARING ON JUNE 21 TO LIMIT ADMINISTRATIVE PERMITS FOR SHORELINE PROTECTION TO 10,000 SF

BCDC will consider whether its regulations should be changed to specify that any new or existing riprap or other shoreline protection projects that

involve more than 10,000 SF of Bay fill will be subject to a "major", rather than "minor", permit. In the past, most shoreline protection projects were handled administratively. This meant that such "minor repairs and improvements" could be approved by the Executive Director in a shorter time period and without the lengthy public hearing process.

BCDC's actions come in response to a November 1988 BCDC study that investigated whether cumulative impacts of small fills for shoreline protection were having a detrimental effect on the Bay. The Coalition is concerned that imposing a 10,000 SF limit may place a burden on applicants with relatively insignificant projects and may make such necessary shoreline protection subject to mitigation requirements. The Coalition will provide testimony and is considering requesting that the ceiling on administrative permits for shoreline protection be lifted to a higher figure. All members affected by this new rule are encouraged to attend the hearing and speak to the issues posed.

OAL APPROVES BCDC'S NEW PERMIT APPLICATION FORM

Over the past year, BCDC staff and the Bay Planning Coalition have worked closely on streamlining and consolidating BCDC's various permit applications into one form. In our last BRIEFS, we reported that the Commission approved the application over our objections to the requirement that applicants must secure all local government discretionary approvals before an application can be filed with BCDC. This requirement appears to conflict with a 1988 amendment to the McAteer-Petris Act (AB 2450).

The Coalition still maintains that there should be an opportunity for a concurrent permit approval process which would allow BCDC and local govern-

ment to process permits simultaneously. In any case, the local government approval requirement stands. BCDC will be mailing the new form and instructions to the public shortly. For more information, contact the Coalition office and/or Deputy Director William Travis at BCDC, 557-3686.

STATE LEGISLATION PROPOSED TO MANDATE A REGIONAL DREDGING PLAN

BCDC has held two workshops in recent months to discuss acceptable provisions for state legislation to mandate a regional dredging plan for S.F. Bay. Assemblyman Byron Sher introduced a spot bill, AB 3748, which addresses this issue and has passed the floor of the Assembly. However, the bill still requires more detailed language before it is debated in the Senate.

A number of questions revolve around the "plan" legislation. Is it needed? Will it establish another planning and regulatory process, with BCDC as the lead? Will this conflict and/or duplicate unnecessarily with the joint state-federal disposal planning process (LTMS), which has been officially organized as a result of the Corps of Engineers "Bay Model" meetings? Will any costs be levied on the dredging community?

BCDC Chair Bob Tufts has stated that legislation is needed to support state involvement, both as a financial and working partner, in the Corps LTMS (Long Term Management Strategy). In addition, he feels it is important as a backup "plan" in case the LTMS process starts to falter. His intent is not to create or supercede the LTMS structure.

Thus far, however, the terms have not necessarily provided the surety that there is not another agenda. BCDC will hold a public hearing on the proposed legislation at its June 7 meeting. The BPC Board of Directors will be deliberating the merits of the

legislative proposal at its Board meeting on June 6.

**JOINT STATE/FEDERAL
DREDGING PLAN STRUCTURE
ADOPTED**

The 30 member Policy Review Committee (PRC) has unanimously adopted a formal organization structure to carry out the U.S. Army Corps of Engineers (USACE) Long Term Management Strategy (LTMS) for a Dredged Material Disposal Plan. A final plan is expected about December 1993.

The key element in the decision was the agreement that, once formalized, all of the entities represented on the ad hoc committee, to be supplanted by the PRC, would remain. Included on the PRC are federal and state agencies, port and development, environmental and fishing interests. The Bay Planning Coalition is a member of the PRC.

As the name implies, the PRC will function as a policy advisory body to the Executive Committee made up of the Commander, USACE Southern Pacific Division; Regional Administrator, EPA; Chairman, San Francisco Bay Regional Water Quality Control Board; and Chairman, Bay Conservation and Development Commission. A state coordinator, should one be appointed, would sit on this committee. The "work" of the LTMS will be carried out by a Work Group who will be directed by a Management Committee consisting of the executive officers of BCDC, RWQCB, EPA and USACE.

The Policy Review Committee continues to deliberate and has yet to approve a final "Work Plan" for the Ocean, In-Bay and Non-Aquatic disposal option study elements.

At present, the cost of studies over the 52-month planning period is \$11.2 million with a budgeted shortfall of between \$2.7 and \$3.8 million. This figure does not include the dredging or transport of so much as one cubic yard of dredged material. The USACE is expecting local cost "participation" to make up this deficit. The ocean studies are driving the timeline, and the estimate for completion is based on "normal" ocean seasons. The National Marine Fisheries Service and various fishing groups are fearful that we will not experience a "normal" ocean season this year! Hence the 53 months could become 60 or more months.

A key question is what is the interim solution for sediment disposal during the next two and one-half years. The governing policy for in-Bay disposal which was adopted by the Regional Water Board and recently approved by its parent body, the State Water Board, allows continued disposal at Alcatraz, primarily for maintenance work, with certain seasonal restrictions. Although the State Board rejected the concept of a moratorium on in-Bay disposal for "new work", (due to the fact that the LTMS is back on line) there are now monthly and annual volume restrictions at the three in-Bay sites. The Board will continue to monitor the situation closely.

One recommendation for "new work" disposal option is to use the former U.S. Navy munitions dump site 52 miles due west of the Golden Gate. This 1,700 fathom (10,200) site is being considered as a possible primary ocean disposal site and is included in EPA's "zone of siting feasibility" for its ocean work.

STATE WETLAND BILLS ON THE MOVE

A series of bills relating to wetland protection have been approved by the Assembly. The bills are highly controversial in that they contain regulatory provisions which have the potential for adding more confusion and complexity to the already burdensome federal process.

The Coalition staff testified before the Assembly committees and opposed those particular features which will have an adverse impact on its members. Working with a consortium of other groups and companies (California Chamber of Commerce, the Farm Bureau Federation, the Association of Water Contractors, East Bay MUD, Metropolitan Water District), we were able to secure some amendments. For example, authors Sher, Isenberg and Baker deleted their proposed one parameter wetland definition. We advocate that it be replaced with the three parameter EPA/Corps of Engineers definition. Thus far the bill has no wetland definition.

AB 4321 (Sher and Isenberg) has been amended to delete the provision that would automatically trigger an EIR for all wetland projects. However, in its place, the new wording establishes a "no net loss" standard for wetlands when projects subject to CEQA are approved. BPC remains opposed.

AB 4327 (Isenberg-Baker) sets out a "no net loss" policy and also specifies mitigation terms. This bill applies to public, not private projects. The BPC remains opposed to this bill primarily because the mitigation formula is arbitrary and not tied to a project's specific impacts.

BPC is opposed to SB 2530 (Marks) which attempts to close a so-called loophole in the CWA (as perceived by some) which exempts certain activities associated with farming. Marks' bill prohibits

wetland alteration including draining, turning over topsoil with a tractor drawn disk and blocking water from entering a wetland. Regional Water Boards may not grant a permit unless approved by the Department of Fish and Game.

Rather than being burdened with another conflicting layer of regulation, the BPC Board has deliberated whether or not it should push for state assumption of the existing federal program under section 404 of the Clean Water Act. To date, the Board's position is that the concept warrants investigation.

Other bills pending in Sacramento that may be of interest to members:

**Reorganizing the Fish and Game Commission/
Department of Fish and Game**

ACA 51 (Campbell) - New Fish and Game Commission

ACA 52 (Mountjoy) - Fish and Game Commission by District

AB 3158 (Costa) - DFG Funding increase

SB 2849 (McCorquodale) - New Fish and Game Commission

SCA 44 (Petris) - New Fish and Game Commission

Habitat-oriented Bills

AB 145 (Costa) - Habitat Bond Funding

AB 1979 (Elder) - Environmental mitigation: coastal development

AB 3602 and 3717 (Costa) - Habitat Assessment Districts

Endangered Wildlife and Plant Bills

AB 2195 (Campbell) - Merges Native Plant Act with State Endangered Species Act

AB 3878 (Woodruff) - Standards for Taking

AB 4332 (Kelley) - Local Costs of Endangered Species

SB 2043 (McCorquodale) - Wild Animals

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SB 2825 (Garamendi) - Wildlife Preservation Task Force

SJR 26 (McCorquodale) - Central Valley Water for Fish and Wildlife

Land Use Bills

AB 3419 (Woodruff) - Adjacent Landowner Notice

AB 3884 (Epple) - CEQA, Cumulative Impact and Notice

Water Quality/San Francisco Bay

AB 1845 (Torres) - Water Quality

SB 1999 (Bergeson) - Wetlands for Improving Water Quality in the New River

SB 2173 (Kopp) - San Francisco Bay Studies/Fees

Regional Government

AB 4242 (W.Brown) - Regional Government

The Bay Planning Coalition has been tracking or has been involved in most of these bills. If you need more information, just call the office.

BPC'S AMENDMENTS TO ACR 107 - WETLANDS OF INTERNATIONAL IMPORTANCE - ARE ACCEPTED

Assemblyman Robert Campbell has sponsored ACR 107 which urges the Governor to designate the San Francisco Bay as a "Wetland of International Importance" in accordance with the Ramsar Convention of 1971, also known as the "Convention on Wetlands of International Importance Especially as Waterfowl Habitat". As we understand this Resolution, the wetlands nominated to receive this designation will be the State and federally-owned wetland areas in San Francisco Bay and the Audubon Society's Richardson Bay Wildlife Sanctuary.

While this joint resolution is being portrayed as a public relations effort, the BPC has voiced concerns about the Ramsar Convention's implementation procedures, wetlands definition, and the possible impacts to property owners adjacent to those designated wetlands. During a recent meeting, Assemblyman Campbell's staff indicated that the resolution would be amended to reflect some of the Coalition's concerns. The resolution is before the Senate Natural Resources Committee. The U.S. Fish and Wildlife Service will notice the implementation procedures (how designated areas can be added or expanded) in the Federal Register.

NATIONAL WETLANDS ISSUES: PRESIDENT'S TASK FORCE ON "NO NET LOSS", THE FEDERAL DELINEATION MANUAL, AND WETLAND BILLS

The White House named Teresa Gorman to lead the Domestic Policy Council's Task Force on Wetlands. Ms. Gorman was a top aide on the Health and Environment Subcommittee of the House Energy and Commerce Committee. The Domestic Policy Council (DPC) is expected to announce a series of nationwide public hearings on wetlands protection to define the President's goal of "no net loss". The hearings will also address the recent Corps/EPA MOA on Wetlands Mitigation. Testimony is requested at the hearings to focus on the roles of public entities and private conservation groups in achieving no net loss, coordination of Section 404 and other environmental laws, mitigation policies and mitigation banking, and market-based strategies for wetlands protection.

The Army Corps of Engineers held a public hearing on the Federal Manual for Identifying and Delineating Jurisdictional Wetlands at Louisiana State University in early May. The Coalition has submitted comments which reflect our concerns that without adherence to the formal rulemaking

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process, the Manual expands the reach of the regulatory definition of wetlands by providing that only one or more of the "three mandatory parameters" must be present to define a wetland.

On April 30, Congressman George Miller introduced HR 4700, the Central Valley Project Fish and Wildlife Act. This is a far-reaching bill whose stated purpose is to "preserve, protect and restore fish and wildlife and their habitat in the Central Valley." The legislation aims to complement the Isenberg/Baker wetland protection package which is now moving through the state legislature.

The bill sets stringent fish and wildlife restoration levels and directs the Secretary of the Interior to formulate and implement a plan that ensures these increased levels will be reached by the year 2000. The bill also places upon the Secretary of the Interior responsibility for implementation of the North American Waterfowl Management Plan in the Central Valley, which includes ensuring "firm" water supplies to Central Valley wildlife refuges, and also limits new water contracts by prohibiting any Central Valley water projects of greater than one year's duration from being signed until the provisions of the bill are met. The costs of the bill would be borne by the federal and state governments and the users of the CVP in the following ratio: Federal - 25%, State - 25%, Users - 50%.

Another bill, HR 1746 - Wetlands No Net Loss Act of 1989, was introduced by Representative Charles Bennett of Florida. This bill defines wetlands (Soil Conservation Service definition), clarifies the role of the Corps of Engineers in preserving wetlands, establishes the Office of Wetlands Identification & Preservation within the USFWS, requires individual states to develop a wetland conservation plan, and encourages states to take an active role in the acquisition and preservation of wetlands among other provisions. The BPC is tracking these bills

and will report on them in future Bay Briefs.

CORPS AND EPA ISSUE MEMO RE: 404 AG ACTIVITIES

The "Memorandum for the Field" signed May 3 by Robert Page, Assistant Secretary of the Army, and La Juana Wilcher, Assistant Administrator for Water, EPA, clarifies that if a farmer is producing crops and uses "normal farming practices," the activities generally do not require a Corps 404 permit.

The MOA's detailed description of what are "normal farming practices" is also provided. Copies are available at the Coalition office or through Suzanne Schwartz at EPA (202-475-7799) or Corp S.F. District office, Regulatory Branch.

USFWS ISSUES FINAL ASSESSMENT ON BAY REFUGE EXPANSION

The U.S. Fish and Wildlife Service issued its Final Environmental Assessment (EA) for the Potential Additions to the SF Bay National Wildlife Refuge. This second phase of expansion, which attempts to incorporate an additional 20,000 acres to the Refuge, was initiated by Congressman Don Edwards' legislation. The USFWS is still 5,000 acres shy of its original 1972 mandate to create a 23,000 acre refuge. As could be expected, the EA resulted in a Finding of No Significant Impact (FONSI). The FWS has identified more than 70 property owners whose parcels it would like to acquire. The final EA is a dramatic improvement over the draft document; however, it is still a self-serving report which merely suggests that there may be economic impact to local governments and property owners. Contact the Coalition for a copy of the EA.

STATUS REPORT ON THE SAN FRANCISCO ESTUARY PROJECT (SFEP)

The SFEP has finalized its first report, Status and Trends of Dredging and Waterway Modification; the second draft of the report on Pollutants has been recently issued; the second draft of the Wetlands report will be available in July; the first draft of the report on Land Use Management will be released in the summer.

The Coalition has been and will continue to be an active participant in all the Committees and subcommittees and will provide a voice for balance and objectivity in all SFEP products. The ultimate goal of the SFEP is to publish a Comprehensive Conservation Management Plan (CCMP), which will include management options and recommendations for public decisionmakers. This Plan is expected to be finalized as an "action" plan in late 1992 to be signed by the Governor.

BAY TRAIL PUBLIC FORUM ON JUNE 7 AT THE COMMONWEALTH CLUB

As the Chair of the San Francisco local Bay Trail group, John Malamut, BPC assistant director, will be conducting the first public forum for the Bay Trail. The event is scheduled for Thursday, June 7, 7:30 p.m. at the Commonwealth Club, 595 Market Street, SF (near the Montgomery Street BART Station). Speakers include State Senator Bill Lockyer (legislative sponsor of the Bay Trail), Commonwealth Club President-elect Jean Auer, County Supervisor Nancy Walker, and BCDC's Executive Director Alan Pendleton.

The presentations will describe the Bay Trail, a regional 450 mile network for hiking, biking and education, and focus on the specific recreational opportunities in San Francisco. It is being sponsored by the Bay Trail Committee, Association of

Bay Area Governments, Bay Planning Coalition, Bay Trail Committee, Commonwealth Club's Bay Area Platform, San Francisco Estuary Project and Save San Francisco Bay Association. Admission is free and we welcome your attendance.

The BPC has been a member of the Bay Trail Advisory Committee since its inception in 1988. Our role has been to support Bay Trail implementation, urge cooperation among all entities and ensure that landowner issues and concerns are addressed in all phases of the planning and construction process.

BOARD MEETS ON THE FIRST WEDNESDAY OF MONTH

The Coalition's Board of Directors is now holding its monthly Board meetings on the first Wednesday, instead of the last Wednesday, of each month. The Board meeting dates for the balance of 1990 are: June 6, July 1 (due to July 4 holiday), August 1, September 5, October 3, November 7, December 5. Members and guests are welcome to attend. Please call the office if you wish to be included on the agenda mailing list.

WELCOME to Kay Crisman, new addition to the Coalition staff as Administrative Assistant, and Nathalia Hardy, Legal Intern. Kay received her Bachelor's Degree in Political Science at San Francisco State University and is now working on a Master's in Public Administration. She recently was Legislative Aide to Assemblyman Bill Filante.

Nathalia, a law student, is with us for three months sponsored by the Student Public Interest Law Foundation at Case Western Reserve University in Cleveland, Ohio. She will be working on an update of our Mitigation Primer as well as fulfilling her writing requirement.

