

September, 2003

**Galveston Bay Conservation & Preservation
Association**

Making Waves

GBCPA Files Suit Against Corps

On June 24, 2003 GBCPA in partnership with area cities, conservation groups and others, filed suit in federal court against the U.S. Army Corps of Engineers regarding the proposed Bayport project. The suit alleges three major violations of the National Environmental Policy Act and the federal Clean Water Act. It requests that the federal District Court order the Corps to prepare a Supplemental Draft Environmental Impact Statement (EIS) due to deficiencies in the Final EIS that was released by the Corps on May 16, 2003. The suit also asks that the wetlands policy being followed by the Galveston District be overturned by the court as illegal rule-making and that the Corps be required to reconsider the extent of wetlands at the Bayport site.

Joining in the lawsuit are the Cities of Shoreacres, Taylor Lake Village, Seabrook and El Lago, along with Galveston Bay Foundation, Houston Audubon Society, Gulf Restoration Network, Texas Committee on Natural Resources, Houston Yacht Club, the seafood professionals' organization PISCES, and the air pollution watchdog group GHASP — Galveston Houston Association for Smog Prevention.

Major concerns of the plaintiffs are the failure of the Bayport FEIS to even mention the recently permitted container terminal at Shoal Point, the controversial determination of jurisdictional wetland acreage at the Bayport site which varies from the Corps low of 19.7 to wetlands experts' estimates of over 140 acres, and the missing analysis of dredging the channel to at least 50' - the Corps has acknowledged this deepening would be necessitated by Bayport and promised an analysis, which has yet to materialize. "The public has a right to be told the truth in an EIS, and that has not happened yet," said Jim Blackburn, chair of GBCPA. "That's why we are going to court."

GBCPA acknowledges that litigation will be extremely costly and lengthy. While preparing for court, we are pursuing every other avenue available to us. (See inside stories on TCEQ and CCC.) Our success to date is due in large part to your generosity. As we move forward on every front possible, we ask that you consider donating to support this next phase of our fight.

Remembering Our Friend Dru Dickson

Galveston Bay lost a great friend and advocate when Dru Dickson suddenly died in early June. She personified Texas vitality and hospitality, her views clearly known and her home, garden and beach always open to family and friends. Her passing altered the local landscape for many. We will not forget her forceful ways.

Dru served on Seabrook's Park Board

when Pine Gully Park was expanding and when Hester Park opened on the next bayou down the coast. She backed development of the hike and bike trails connecting Seabrook's parks, three of them now part of the Great Texas Coastal Birding Trail. Later she also served on the city's Ecotourism Committee. She was a staunch and vocal opponent of the Bayport proposal threatening the natural qualities of the area.

As a tribute to her contribution to preservation of unspoiled places on Galveston Bay, the GBCPA Board of Directors has commissioned a bench in her honor in Pine Gully Park. The bench ends are elegant antique artwork of fish, reminiscent of Dru's own collection and donated by her friend Ann Gunnells — a modest memorial for a larger-than-life figure.

Leave No Stone Unturned

Texas Commission on Environmental Quality (TCEQ)

For Bayport to be permitted, TCEQ must certify that the project meets Texas water quality standards. To meet those standards, Bayport must be the least damaging, practicable alternative and appropriate mitigation must be provided.

On April 3, 2003, TCEQ held a public hearing to take comments on these issues. Over 500 people attended this first of its kind hearing in Texas. Elected officials speaking against the Bayport project were led by State Rep. John Davis, who was instrumental in convening the hearing. A spokesperson for State Sen. Mike Jackson was joined by Majors Robin Riley of Seabrook, Natalie O'Neill of Taylor Lake Village, and Nancy Edmonson of Shoreacres in questioning how Bayport could be considered the least damaging practicable alternative when clearly superior sites such as Shoal Point, Pelican Island and Spilman's Island were considered. El Lago Mayor Pro Tem Natalie Ong and Clear Lake Shores Mayor-Elect Katherine McIntyre addressed the inadequacy of proposed mitigation. Many of these officials expressed concern that the acreage of "jurisdictional" wetlands, as determined by the Galveston District of the Corps, has been significantly undercounted and should be reevaluated.

Mayor Edmonson addressed the, at that time, rumored mitigations at far flung sites such as Banana Bend (on the San Jacinto River below Lake Houston) and the Katy prairie, saying, "I am baffled by the idea that you can cut off my leg, and then mitigate by supplying someone on the other side of town with a new set of crutches." (With the release of yet another revised permit application on August 12, the Corps made it official—the PHA is proposing to add two mitigations areas, one in Banana Bend and one to be located in the Katy prairie.)

The TCEQ will publish their decision after the **Corp's Record of Decision is released, currently scheduled for Oct 17, 2003.**

Coastal Coordination Council (CCC)

An agency as yet scarcely even familiar to most people is suddenly receiving close attention as GBCPA and area cities begin pressing it to intervene in the Bayport saga. Its name is the CCC and its charge is to enforce the Texas Coastal Zone Management Plan. Its power and authority are substantial, although as yet largely untested.

The existence of the CCC represents a new twist to the old problem of whether the coast is a blank slate for development, or a major natural resource in itself. As more and more of the nation's coast became developed, Congress created the Coastal Zone Management Program (CZMP) to coordinate coastal activities of cities, industry, transportation

interests, and agencies responsible for natural resources.

Under federal law, a state's decision to join the CZMP is voluntary. To do so, the state must create and implement an approved coastal zone management plan. Texas joined in the early 1990's and has a coastal management plan in place.

The Bayport project is clearly within the coastal zone. As the TCEQ reviews Bayport to determine whether or not it should be certified under the Clean Water Act, it must integrate the coastal management plan requirements into its review process. These requirements raise familiar issues: is the wetlands mitigation adequate, is the determination of jurisdictional wetlands accurate, is the

deepening of the Houston Ship Channel a reasonably foreseeable result of the Bayport project, are there practicable alternative sites which would have less adverse impact.

If the TCEQ does certify the Bayport project, we have the option of requesting that the CCC review TCEQ's determination for consistency with the coastal management plan's goals and policies, and potentially overturn any certification.

On August 7, representatives of GBCPA and area cities met with the Executive Committee of the CCC to lay out this possibility and request their assistance in obtaining a CCC review if TCEQ does certify the proposed project.

San Jacinto Rail Update

On August 11, 2003, GBCPA filed a petition for review with the 5th Circuit Court of Appeals. A petition for review requests the court to review an agency's decision—in this case, the Surface Transportation Board's decision to permit San Jacinto Rail. The court will only overturn an agency decision if they find it arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. LULAC, the League of United Latin American Citizens, has joined GBCPA in our petition. And, the City of Houston has filed their own petition for review. Again, your financial support for this effort is greatly appreciated. Check the GBCPA website, www.gbcpa.net, or join the Conservancy (see next page), for developments.

Port Drains Taxpayers

More than half of the cumulative reported income of the Port of Houston Authority from 1995 through 2002 came from the property taxes of Harris County taxpayers, according to a financial analysis by GBCPA Board member, Larry Tobin. Harris County port taxes are a component of real property taxes paid by all non-exempt property owners in Harris County. The Port's funding from the port tax levy was \$15 million in 1995, \$25 million in 1998, and by 2002, it had more than doubled to \$35 million.

In addition to this huge influx of county tax dollars, the PHA received state subsidies and net interest income. Tobin's analysis shows that only 28% of its reported net income for this time period was actually operating income. In a January 2003 press release, Port Chairman James Edmonds claimed, "record-level operating revenue of nearly \$108.5 million in 2002." According to Tobin, however, the Port's net operating income for 2002 was only a little over \$1.5 million. "It's a very cushy arrangement to claim large reportable net income

when income from operations represents only a small portion of total income, and all risk and debt burden is passed to the obligated taxpayer," said Tobin.

By comparison, the recently permitted container terminal to be constructed at Shoal Point (Texas City) will be completely privately funded.

For more detailed information on this subject, go to www.gbcpa.net and select Port of Houston Authority Financial Reports & US Port Trade Statistics.

GBCPA Office Destroyed by Fire

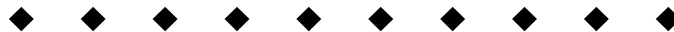
On June 16, the building which housed our office at 2600 NASA Road 1 burned. Although much property was destroyed, no one was hurt. We anticipate being able to move back into our quarters in November. Until then, we have temporary office space which is not open to the public, but you can reach us by leaving a message at our phone

number, 281-326-3343 or by emailing us at gbcpa@ev1.net. And you can always keep track of developments at our website, www.gbcpa.net and by joining the Galveston Bay Conservancy (see below).

Although we were able to salvage our database, we would appreciate your help in checking to make sure

it's accurate. If the address we have used for you is incorrect in any way, or if you have received duplicate copies, please email or call us with the correction. Thanks for your help!

And thanks to Linda and Bob Holmes, our building's owners, for all their help in dealing with the mess.



Join the Galveston Bay Conservancy

If you'd like to receive timely updates on developments in GBCPA's activities, news about upcoming events, and articles of interest, join the Galveston Bay Conservancy.

To join, go to GBCPA's website at www.gbcpa.net. Select membership (under GBCPA) and then click on the animated yellow figure. A form for an email will appear which you can fill out with the simple message that you'd like to join and send. That's all there is to it.

And, if you are already a member, would you take a moment to go through the joining process again? That will help us update our email list and make sure that email addresses we are using are current. If you do have to change your email address in the future, don't forget—just click on the animated yellow figure, send us the email, and we'll have your new address.

Thanks!

GBCPA Fundraiser July 13

A big thank you to Natalie and Mike O'Neill for hosting a wonderful fundraiser at their home. The food and music were great, and everyone enjoyed their gracious hospitality.

JOIN GBCPA IN CALLING FOR COLONEL WATERWORTH'S DISQUALIFICATION

In response to a series of actions considered biased and unfair, GBCPA is pressing the U.S. Army Corps of Engineers to disqualify its Galveston District commander, Colonel Leonard Waterworth, from making decisions on the proposed Bayport mega-container terminal. The request to the Corps of Engineers hierarchy to replace Waterworth as the final decision maker on the Port of Houston Authority's Bayport permit application was submitted by GBCPA and the City of Shoreacres. "We are confronting a pattern of biases cropping up over and over again," said Mayor Nancy Edmonson of Shoreacres. "The Corps of Engineers has authority to issue permits for coastal development, and federal laws require actions by the Corps to be fair. On this project, their actions have been far from fair."

In the letter requesting Waterworth's removal, GBCPA Chair Jim Blackburn said: "The Colonel has consistently made knowing and intentional omissions of significant facts, and false and misleading statements that have severely impacted the due process rights of concerned citizens." Acknowledging that the Colonel faces pressure, Blackburn said, "He is a focal point of political pressure from a powerful applicant. But the Colonel is also the first line of defense for the public. Over 5,000 people live within one mile of the proposed Bayport facility. They have a right to a fair permit process. If the Colonel is biased, the whole process is undone."

The joint request to disqualify Waterworth went to the Commander and Chief of Engineers, Lieutenant General Robert B. Flowers, at the Corps headquarters in Washington, D.C., and to its Engineer Inspector General, Lieutenant Colonel Willie A. James, in Alexandria, Virginia. It also went to the Pentagon — to the Honorable Les Brownlee, Under Secretary of the Army — and to Corps lawyers in Galveston and Washington.

Five different kinds of bias are outlined.

1. **Knowing release of false information:** Releasing the final EIS on Bayport without mentioning that a permit had already been issued for a new Galveston Bay container port at Shoal Point in Texas City — one of the alternative sites in the Bayport permit application — was a biased action. The issuance of the Shoal Point permit significantly changes the base determination of whether the Galveston Bay system requires not just one but now two new container terminals, in addition to the existing Barbours Cut container facility. Adequate information was not provided regarding the impacts of two, rather than one, additional container facilities. There is no doubt that Colonel Waterworth knew the Shoal Point permit had been issued; he signed the Shoal Point "record of decision" document.
2. **Knowingly limiting practicable alternatives:** The Bayport final EIS for the first time accepted that the planned cruise terminal and container facility are not interdependent. If there is no need for them to be located together, then there is no need for the Corps' analysis of alternatives to be restricted to sites large enough to accommodate both. Considering only very large sites has biased the Corps' analysis of whether practicable alternatives exist that would have less adverse impact on the aquatic environment.
3. **Failure to disclose noise, vibration and air pollution impacts:** The Bayport draft EIS claimed that these issues were of no significance and posed no threat to nearby communities. But the final EIS presented a very different picture: sound levels violating the Pasadena noise ordinance, even at night; noise-induced vibration to residential structures up to 4,600 feet from the Bayport channel; and potential violation by 2010 of the air quality standard for fine particle pollution (PM 2.5), which is known to cause respiratory illness. Failure to provide for full disclosure and citizen comments on these impacts constitutes bias.

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4. **Failure to evaluate deepening of the Houston Ship Channel:** Although the authorized depth of the Houston Ship Channel is only 45 feet, the Bayport permit application indicates container docks reaching a depth of 56 feet and cranes sized for giant post-Panamax vessels that require from 45 to 53 feet of depth. Col Waterworth falsely stated that the impacts of deepening the channel to at least 50 feet were addressed in the Bayport draft EIS and final EIS. They were not.
5. **Allowing the Port of Houston Authority multiple revisions to its application:** The five permit applications that the Corps has allowed so far (in addition to the draft and final EIS documents) are excessive and indicate bias in favor of the Port. Each time, the public has been forced to respond — otherwise “it will be considered that there are no objections.” This is inefficient and injects confusion into an already complicated process. Col. Waterworth is not acting in the public’s interest in this matter.

WHAT CAN YOU DO TO HELP?

GBCPA urges you to write a letter supporting GBCPA and the City of Shoreacres in their request that Col. Waterworth be disqualified as the final decision maker for the Bayport Container/Cruise Terminal Project and send copies to each of the six names and addresses below. Please refer to the five areas of bias as outlined above or go to the GBCPA website, www.gbcpa.net, for more detailed information on each of these points. Adding your voice to the call for Col. Waterworth’s removal is one of the most important actions you can take at this critical moment.

Colonel Leonard D. Waterworth
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Galveston Bay Conservation & Preservation Association

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MAKE YOUR GBCPA DONATION COUNT EVEN MORE

GBCPA appreciates the generous financial support of the community. As we enter the litigation phase of the Bayport fight, your donation is more critical than ever. One way to make your donation count even more is to ask your employer if they match employee contributions to 501(c)(3) organizations—many do and your payroll department can make this happen easily. Please investigate this opportunity at your workplace and make your dollars work harder for GBCPA.

Send your tax-deductible contributions to GBCPA, P.O. Box 323, Seabrook, TX 77586.

I would like to support GBCPA at the following level:

Benefactor	\$1000	Sponsoring	\$500	Supporting	\$250
Sustaining	\$100	Contributing	\$50	Regular	\$25

Name _____

Address _____

City _____ TX, Zip _____

Phone _____ Email _____