



# Will Property Rights Prevail in Wetland Reform?

## Supporters Say Not Without Grassroots Action

**S**INCE Congress initially passed Clean Water legislation 22 years ago, Section 404, which governs wetlands, has expanded tremendously through judicial decision and agency interpretation. Now, after years of testimony and public debate, the opportunity for regulatory reform and the acknowledgment of property rights is at hand, as Congress expects to consider reauthorization of the Act this month.

As you will witness in the letter on page 2 written by the National Wetlands Coalition, of which PLA is a member, property rights and changes imperative to future land use and economic growth are being completely overlooked by the House Public Works and Transportation Committee. This committee exerts tremendous control over the wetlands issue. Consideration of any new wetlands legislation which does not incorporate the changes proposed in H.R. 1330, The Wetlands Conservation and Management Act, will leave landowners empty-handed, facing several more years of abuse from regulators and the opportunity for future changes years away, since the Clean Water Act is only reauthorized about every 5 to 7 years.

At no other time has the need been greater for the efforts of grassroots involvement. Your action is needed NOW! Please respond to the requests on the following pages today. . . . TOMORROW MAY BE TOO LATE.



Kim Pitens, National Wetlands Coalition Executive Director (L) and Harry Fox, Jr., PLA Delegate and Board member (R), converge at the Coalition's Spring Meeting in Washington, D.C.

# Wetlands Proposal Lacks Major Components For Property Rights Protection

May 2, 1994

The Honorable Norman Y. Mineta, Chairman  
House Public Works and  
Transportation Committee  
2221 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Mineta:

We are writing to express our overall disappointment with the wetlands provisions contained in the draft amendment in the nature of a substitute to H.R. 3948, the comprehensive Clean Water Act reauthorization legislation, both of which you have sponsored. When the Public Works and Transportation Committee marks up H.R. 3948, we encourage you to support amendments that will truly make meaningful reform of the wetlands regulatory program.

The Section 404 permitting program was established in 1972 as a very specific point source regulatory program covering the "discharge of dredged or fill material" into navigable waters. The program was last debated extensively by Congress in 1977 when both the Senate and the House came very close to restricting the program to traditional navigable

waters. Throughout its entire 22 year history, the Section 404 program has expanded tremendously through judicial decision and agency interpretation. Today, the program applies, not to the narrow activity designated by Congress in 1972, but to a broad range of activities that occur seventy-five percent of the time on privately owned property that the Federal government considers to be "wetlands" and, particularly in the last few years, has become extremely controversial.

The amendment in the nature of a substitute that was released on April 21st contains some positive provisions. The direction in Section 405(b) that the EPA modify the rigid requirements of the permit review process to take into account the severity of the impact of the proposed activity on the environment, the functions of the wetlands in question, and the relative importance of the wetlands to the watershed area is a step in the right direction. In addition, the administrative appeals process in Section 405(h) appears to be well designed.

When taken as a whole, however, the draft amendment does not sufficiently improve the Section 404 program and in fact exacerbates some of the current problems with the program. Some of our specific concerns include:

■ The legislation does not provide a realistic definition of "wetlands" that are to be regu-

lated by the Federal government and does not provide a satisfactory process for resolving the ongoing controversy over the definition and description of "wetlands."

■ The legislation does not streamline the permitting process by addressing the current problem of too many Federal agencies implementing the Section 404 program. The Corps continues to implement the program in accordance not only with its own regulations, but also with regulations issued by the EPA. The EPA continues to have the power to veto individual permit decisions by the Corps. In fact, rather than take advantage of the opportunity to streamline the program, the legislation expands the role of both the EPA and the U.S. Fish and Wildlife Service. The effort to provide meaningful deadlines for action fails to achieve its objective due to the numerous exceptions of the 90 day deadline rule.

■ The legislation broadly expands the activities to be regulated under Section 404. Section 405(d)(1) contains the broadest definition yet of activities to be regulated. In defining the activities that will be regulated, the definition employs broad terms like "any addition of dredged or fill material," "incidental to any activity" and "has or is likely to have."

The following organizations have endorsed the above letter to the House Public Works and Transportation Committee:

American Farm Bureau Federation

American Mining Congress

American Petroleum Institute

American Road and Transportation Builders Association

Associated General Contractors of America

Associated General Contractors of Minnesota

Associated Pennsylvania Constructors

Association of Oklahoma General Contractors

Carolinas AGC

Coalition of Coastal Parishes (Louisiana)

Coalition for Environmental and Economic Balance

Concerned Citizens for Property Rights

Construction Industries of Massachusetts

Construction Industries of Rhode Island

D.C. Road Builders Association

Florida Transportation Builders Association

Illinois Road Builders Association

International Council of Shopping Centers

Interstate Natural Gas Association of America

Louisiana Landowners Association

Louisiana Mid-Continent Oil & Gas Association

# PLA and NWC Voice Concerns

- The legislation is unduly restrictive with respect to the role of mitigation banking, restricting these banks to a narrow class of "restoration and enhancement" projects only. Mitigation banking should be defined to include restoration, enhancement, creation and preservation projects, as allowed under the President's proposal, and should be defined specifically to include contemporaneous mitigation as well as advanced mitigation.
- The legislation does not provide an appropriate role for the states and local governments in wetlands regulation. Despite the fact that Congress directed in 1977 that the Section 404 program should be delegated to the states, only two states have received the program. Even when a state has assumed the program, the EPA retains the power to veto every permit decision made by the state.
- The legislation fails to adequately address the needs of agriculture, specifically, farmed wetlands, prior converted cropland, normal farming practices and a role for the Soil Conservation Service. In fact, this legislation, perhaps due to concerns over jurisdiction, contains fewer provisions addressing the concerns of agriculture than perhaps any other wetlands legislation proposal.
- The legislation does not address the special needs of certain areas of the nation, such as Alaska, where the dominant geographic feature is wetlands and where enormous wetland acreage is already protected through other Federal or state programs.
- Despite the fact that the Section 404 permitting program is sometimes compared to zoning programs, this legislation does not include basic "due process" protections of zoning programs such as mapping Federal jurisdictional wetlands, providing notice to landowners and potential land purchasers and other such elements that are fundamental to this type of land use program.
- This legislation does not contain an adequate wetland classification system. While some wetlands provide enormously important ecological functions and values, others are so marginal or plentiful that their ecological importance may not be as great as certain non-wetlands. National wetlands regulatory program requirements should be tailored on a nationwide basis to reflect the reality that "not all wetlands are created equal."
- Finally, with 75 million acres of privately owned wetlands subject to this Federal regulatory program, this legislation perpetu-

ates the conflicts over private property rights and does not establish a reasonable process for providing compensation to private citizens that have lost the use and values of their property under this program. In fact, restating in statute the Fifth Amendment prohibition against unconstitutional takings may create, rather than resolve, uncertainty in this area of the law. We agree that the nation needs a workable and reasonable program for conserving and enhancing our nation's wetlands, most of which are privately owned. However, neither the current Section 404 program nor the program contained in the draft amendment in the nature of a substitute constitutes such a program.

We continue to believe a reasonable Federal wetlands regulatory program is best represented by H.R. 1330, The Comprehensive Wetlands Conservation and Management Act of 1993, that was authored by Congressman Hayes and has been cosponsored by over 160 Members of the House. We encourage you to ensure that the Clean Water Act legislation that is reported by the Committee incorporates the concepts of H.R. 1330 in order to correct the problems with the current Federal wetlands regulatory program.

Maryland Highway Contractor Association

Mississippi Wetlands Coalition

NAIOP, The Association for Commercial Real Estate

National Cattleman's Association

National Cotton Council

National Federation of Independent Business

National Industrial Sand Association

National Aggregates Association

National Association of Home Builders

National Association of Realtors

National Association of State Departments of Agriculture

National Stone Association

National Water Resources Association

The National Wetlands Coalition

Peninsula Housing and Builders Association

Pennsylvania Landowners' Association

Tennessee Road Builders Association

Utility and Transportation Contractors Association of New Jersey

Virginia Peninsula Chamber of Commerce

U.S. Chamber of Commerce

Water Resources Congress

## H.R. 1330: The Comprehensive Wetlands Conservation and Management Act of 1993

TOTAL COSPONSORS—165  
41 Democrats, 124 Republicans

ALABAMA Spencer Bachus Sonny Carter Terry Ewart Earl Hilliard	ALASKA Don Young	ARIZONA Jim Kolbe Jon Kyl Bob Stump	ARIZONA Jim Kolbe Jon Kyl Bob Stump	ARKANSAS Jay Dickey Tim Hutchinson Blanche Lincoln	CALIFORNIA Ken Calvert Gary Condit Christopher Cox R. Cunningham Calvin Dooley John Doolittle Robert Dornan David Ebon Elton Gallegly Holly Hoger Steve Horn Duncan Hunter Jay Kim Jerry Lewis W. McClellan Howard McKeon Carlos Moorhead Ron Packard Richard Pombo Dana Rohrabacher Edward Royce Bill Thomas	COLORADO Wayne Allard Scott McInnis Dan Schaefer	CONNECTICUT Gary Franks	DELAWARE	D.C.	FLORIDA Charles Canady Eliot Fuster Earl Hutto Bill McCollum John Mica Cliff Stearns	GEORGIA Santford Byrd Mac Collins Newt Gingrich John Linder Roy Rowland	GUAM	HAWAII	IDAHO Mike Copps	ILLINOIS Jerry Costello Philip Crane Elliott Earle Gweny Harsh Henry Hyde Donald Manzetti Bob Michael Glenn Pothard	INDIANA Dan Burton	IOVA Ferdinand Jim Lightfoot Jim Nussle	KANSAS Pat Roberts	KENTUCKY Jim Bunning William Mitchell Harold Rogers	LOUISIANA Richard Baker Jimmy Hayes Bob Livingston Jim McCrory Billy Tauzin	MAINE	MARYLAND Roscoe Bartlett Helen Bentley	MASSACHUSETTS Peter Piro	MICHIGAN James Barta Dave Camp Peter Hoekstra Joe Klotzberg Nick Smith	MINNESOTA David Minge Tim Wirth	MISSISSIPPI S. Montgomery Mike Parker James Whitten	MISSOURI Pat Danner Al Emerson Mel Hancock Be Skelton James Talent Harold Volkmer	MONTANA	NEBRASKA Bill Riech	NEVADA B. Vucanovich	NEW HAMPSHIRE	NEW JERSEY Dean Cain	NEW MEXICO Steve Schiff Joe Steen	NEW YORK Arlene Specter Peter King John LaFalce David Levy John McHugh Bill Pascrell Jack Quinn Gerald Solomon James Walsh	NORTH CAROLINA Cass Ballenger Howard Coble Bill Hoyer Martin Lancaster Alex M. Moore Charlie Rose	OHIO John Boehner Paul Gibbon David Hobson John Kasich Mike DeLoe	OKLAHOMA Bill Brewster James Inhofe Evert Hubbs	OREGON Bob Smith	PENNSYLVANIA Bob Clinger George Goska William Goodling Joseph McCauley Austin Murphy Tom Ridge Nick Santorum Bud Shuster Bob Walker	PUERTO RICO	RHODE ISLAND Floyd Spence	SOUTH CAROLINA Bob Inglis Floyd Spence	SOUTH DAKOTA	TENNESSEE Bob Clement John Duncan James Quillen Orr Sunquist John Tanner	TEXAS Al Archer Dick Armey Joe Barton Henry Bonior Jack Brooks Cory Costner Ann DeJury Chet Edwards Jack Fields Peter Goin Ralph Hall Sam Johnson Greg Laughlin Solomon Ortiz Bill Sarpaluk Lamar Smith Charles Stenholm Charlie Wilson	UTAH James Hansen William Ottus	VERMONT	VIRGIN ISLANDS	VIRGINIA Herbert Bayman Thomas Bliley Drew Pflieger Norman Sisak	WASHINGTON Jesse Dunn	WEST VIRGINIA	WISCONSIN Judy Roth James Sensenbrenner	WYOMING Craig Thomas
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If you do not see the name of your congressional representative listed, he/she does not support wetlands legislation which addresses private property rights and compensation for regulatory takings. Without delay, write or call his office and find out why. Urge his cosponsorship and support of H.R. 1330.

If your representative is listed, let him know you appreciate his cosponsorship and encourage continued support, as individuals from the environmental movement will be pressuring him to withdraw from the bill.

Members may address their correspondence to:

Honorable \_\_\_\_\_  
United States House of Representatives  
Washington, DC 20515

Members may contact their representative by calling:  
(202) 224-3121



Additionally, urge your U.S. senators to support meaningful reform of the wetlands regulatory program during Senate consideration of the Clean Water Act reauthorization.

Honorable Harris Wolford  
United States Senate  
Washington, DC 20510

Telephone or fax correspondence to:  
Telephone: (202) 224-6324  
Fax: (202) 224-4161

Honorable Arlen Specter  
United States Senate  
Washington, DC 20510

Telephone or fax responses to:  
Telephone: (202) 224-4254  
Fax: (202) 224-1893

## BAD NEWS

### Clinton Administration Opposes Property Rights Legislation

Speaking before a House Public Works and Transportation Subcommittee on Water Resource and Environment, White House Office of Management and Budget Director Leon Panetta recently voiced the administration's opposition to several legislative proposals calling for the protection of private property rights. He reported that the administration specifically opposes H.R. 3875, which would provide compensation for private property owners when federal actions result in a loss of 50% or more of the value of an affected property. Panetta said the administration could not support such a provision because it would go beyond the level of compensation called for under the Constitution and would be an unnecessary and unwise use of taxpayer dollars.

The provision, which was modeled after Rep. Jimmy Hayes (D-LA). The Wetlands Reform Bill, would require the federal government to compensate landowners in certain circumstances whose property values had been diminished through wetland regulations. Under the Hayes' bill, restrictions on highest value wetlands that result in denial of all economic activity would constitute a taking of property.

## GOOD NEWS

### U. S. Ordered To Pay \$7 Million For Wetlands On Private Property

On June 15, 1994, the Court of Appeals for the Federal Circuit in Washington, DC, affirmed a Court of Federal Claims decision to award \$2.66 million, plus interest, (which comes to nearly \$7 million) to the owners of Loveladies Harbor in the landmark New Jersey case.

*Loveladies Harbor v. United States* involved 12 acres on Long Beach Island that could not be developed due to classification as wetlands by the Army Corps of Engineers.

The decision affirms that a Fifth Amendment "regulatory taking" can occur when less than a whole parcel is deemed wetlands. The government argued that the regulation of only 12.5 acres of a 250-acre parcel should not constitute a taking. Judge Jay Plager disagreed, rejecting the government's argument and making it clear that the individual parcel for which the

owners sought a variance, although it constitutes only a part of the original property, is the basis for determining whether the owner has been deprived of "all economically beneficial use" of the property.

The initial suit, which demanded compensation, was filed against the Corps in 1982. The government now has 90 days to ask the U.S. Supreme Court to review the case.

## Major Property Rights Victory in Massachusetts

On March 14, 1994, the Massachusetts Supreme Judicial Court ruled in favor of a Massachusetts property owner (*Lopes v. City of Prudhoe*), reversing a lower court decision, and remanding the case to the Massachusetts Land Court. The Land Court is to determine the validity of a zoning regulation that prohibited Mr. Lopes from building a home on his one-quarter acre lot because it contained wetlands in a flood-plain area. In doing so, the Supreme Judicial Court concluded that the lower court decision was inconsistent with the United States Supreme Court's 1992 decision in *Lucas v. South Carolina Coastal Council* which ruled that a compensable taking occurred when South Carolina denied Mr. Lucas the right to build a home on a beach-front lot.

Significantly, the Court also determined that the lower court wrongly concluded that Mr. Lopes could not challenge the wetland restrictions simply because he purchased the lot after the wetland restrictions were enacted.

## Supreme Court Upholds Property Rights

In a major victory for all property owners, the U.S. Supreme Court established new constitutional protections for property owners confronted with arbitrary government conditions on development of their land.

In the case of *Dolan v. The City of Tigard*, for which PLA submitted an Amicus Brief to the high Court, a 5-4 decision was handed down. The decision strikes at an increasingly common practice of local government to force property owners, as a matter of routine, to donate parts of their land for community use as condition of receiving a permit for building or development. Land donations for public parks, bike paths, sidewalks and roads are just a few common examples.

John and Florence Dolan, who wanted to expand their plumbing supply business, had contended that the city's required land dedication of about 10 percent of their 1/4 acre lot constituted a "taking." The high Court agreed. According to Justice William Rehnquist, the burden should fall on the city to prove that it needs the land as part of an "essential nexus" related to the development, not on the property owner to prove that he should not have to give it up.

# H.R. 350: The Wetlands Reform Act of 1993

## TOTAL COSPONSORS—90

84 Democrats, 5 Republicans, 1 Independent

ALABAMA	MINNESOTA
ALASKA	Minge
AMERICAN	Oberstar
SAMOA	Sabito
	Vento
ARIZONA	MISSISSIPPI
ARKANSAS	MISSOURI
CALIFORNIA	MONTECALMO
Bicocca	NEBRASKA
Bierman	NEVADA
Berman	NEW HAMPSHIRE
G. Brown	Sweet
Callahan	NEW JERSEY
J. Dixon	R. Andrews
G. Edwards	D. Flaherty
Edwards	NEW MEXICO
Farr	Richardson
Fisher	NEW YORK
Hartburg	Acherman
Hartman	Hershey
Latham	Hodrick
G. Miller	Lowery
Minnick	Mahoney
Palco	Nader
Roybal-Walsh	Carson
Stark	C. Rangel
Schick	Serrano
Tamm	L. Slaughter
Waters	Town
Waxman	Velazquez
Woolsey	N. CAROLINA
COLORADO	S. First
Schweiker	Walt
Skaggs	NORTH DAKOTA
CONNECTICUT	OND
DeLam	Sawyer
Gejman	Stiles
Shays	OKLAHOMA
DELAWARE	OREGON
D.C.	PENNSYLVANIA
Tolson	Blackwell
FLORIDA	Mohrle
Huddles	Movinsky
H. Johnston	Walden
GEORGIA	PUERTO RICO
J. Lewis	RHODE ISLAND
Moxley	McCarthy
GUAM	Reed
HAWAII	S. CAROLINA
Abercrombie	Alவர்
Mink	SOUTH DAKOTA
IDAHO	TEENNESSEE
ILLINOIS	TEXAS
L. Evans	R. Coleman
Galewitz	Washington
Raymond	UTAH
Yan	K. Shepherd
INDIANA	VERMONT
Jackson	Sanders
IOWA	VIRGINIA
KANSAS	Byrne
KENTUCKY	Moran
LOUISIANA	VIRGIN ISLANDS
MARE	DeLuca
T. Andrews	WASHINGTON
MARYLAND	McDermott
Cardin	WEST VIRGINIA
Givvers	WISCONSIN
Wynn	T. Barrett
MASSACHUSETTS	Kucinich
J. Kennedy	WYOMING
Mahoney	
Merkley	
Ober	
NICHIGAN	
Coyne	



**H.R. 350, the Wetlands Reform Act, is proposed legislation supported by the environmental community totally disregarding landowner rights, compensation for takings, and categorization of wetlands by value.**

**If your representative is a cosponsor of H.R. 350, notify his office immediately urging his withdrawal of cosponsorship and encouraging his support of H.R. 1330.**

Members may address their correspondence to:

Honorable \_\_\_\_\_  
United States House of Representatives  
Washington, DC 20515

Members may contact their representative by calling:  
(202) 224-3121



**The following Pennsylvania Representatives are uncommitted to either H.R. 1330 or H.R. 350. Please write or call each of them and urge cosponsorship of H.R. 1330.**

Thomas Foglietta (D-1st)  
202-225-4731

Robert A. Borski (D-3rd)  
202-225-8251

Ron Klink (D-4th)  
202-225-2565

Tim Holden (D-6th)  
202-225-5546

Jim Greenwood (R-8th)  
202-225-4276

Paul E. Kanjorski (D-11th)  
202-225-6511

John P. Murtha (D-12th)  
202-225-2065

William J. Coyne (D-14th)  
202-225-2301

# Management Plan Under Way For "PROTECTING" Allegheny River

**W**ITH several segments of the Allegheny River officially being added to the nation's Wild and Scenic Rivers Act in April of 1992, the USDA Forest Service in conjunction with the Northern and Southern Advisory Councils created under the legislation, are moving to establish a management plan for protection of the Allegheny River. Portions of the river were designated as "recreational" under the national act via legislation sponsored by U.S. Congressman William Clinger (R-5) and U.S. Senator Arlen Specter (R), despite the objections of PLA. The Act's language now requires the establishment of guidelines to "maintain and enhance the river's outstandingly remarkable values."

Pennsylvania Landowners' Association submitted comments to the Forest Service and Advisory Councils in May citing several areas of concern with the proposed recommendations. Specifically, PLA is concerned with the zoning recommendations being proposed for municipalities to adopt, such as setbacks or buffer zones and minimum lot and building sizes. PLA is also objecting to the mandatory establishment of an 80% tree canopy at all times, maintaining that this precludes property owners from accessing their own resources when needed, interfering with proper forest management, and in many cases, costing individual landowners thousands of dollars. Several U.S. District Court cases and a recent U.S. Supreme Court case were cited, advising the Forest Service and Advisory Councils of the "takings"

of private property the courts found to exist and the monetary compensation which was ordered. In its letter to the management plan committee, PLA Executive Director Rhonda McAtee stated "In our opinion, this only opens the door for lawsuits against local governments for "takings" of private property. We would suggest that the ANF and Advisory Councils research the legalities of this issue before suggesting zoning requirements and restrictions of this type."

PLA president Keith Klingler also advised the management committee of PLA objections to the federal government's purchase of additional land under the Act without selling or exchanging a parcel of equal size or value in order to maintain a "no net loss of private property." Klingler also stated the organization's concern of lost tax bases to municipalities if more land is bought up by the government and no additional land is exchanged or sold back to the private sector.

Congressman Clinger (R-5th) recently asked the House Interior Appropriations Committee for \$500,000 for the Forest Service, \$200,000 of which would specifically go toward the purchase of land in the Allegheny River corridor. PLA has noted many times that the federal government already owns over 1/3 of all the land in the United States, and combined with state and local ownership, amounts to about 43% of all the land in America. How much is enough?

## Now You See It, Now You Don't.

By Don Hopey

It's getting very eerie in Erie—both mysterious and scary—now that Erie County Council is thinking about paring a Natural Heritage Inventory of the county's land features and resources.

Come on. Either a stream, farm, forest or wetland is there or it isn't. You can't make it go away just by getting out a big eraser and rubbing.

But citing "implied" threats to property rights and land use, the county's ruling body voted 5-3 to spend unknown additional thousands to review the \$40,000 planning document prepared by the Western Pennsylvania Conservancy and submitted to the county and state Department of Community Affairs in November.

"They feel the threat is there," said David A. Skellie, Erie County planning director, "We don't. We feel the document is good, relevant, nonthreatening the way it is, but it's sometimes hard to get that across."

The Erie document, intended for use as a reference for planners, municipal officials and developers, divides the county into 27 quadrangles, then identifies land uses and natural areas occurring within each quadrangle. It also makes nonbinding recommendations for future land use and development.

But in the northwest corner of the state, the document has raised the bloodlust of a swarm of property rights activists, spawned by a long-running controversy over wetlands regulation. In a letter to one Erie council member, The Pennsylvania Landowners' Association contended that the Natural Heritage Inventory contains "a fundamental bias against economic development by identifying development, forestry, mineral extraction and agriculture as threats to the values the NHI seeks to protect."

Skellie's reading of the Erie inventory omits the between-the-lines paranoia. "It provides information, it's a take-it-or-leave-it tool that can be used to make informed decisions on land use," he said. "People can't be afraid of knowledge, but some, I guess, are."

Seventeen other Pennsylvania counties, including Allegheny, have completed natural heritage inventories. So far, only the Erie document is showing lumps. Maybe its just another lake effect...like heavy snow.

# Make sure you get the **FACTS...**

HENRY INGRAM, Esq.

“  
*Choice of words*  
*such as*  
**bloodlust**  
*and*  
**paranoia**  
*and heavy-handed*  
*hints that critics of*  
*the NHI are*  
**ignorant**  
*and*  
**afraid**  
*of knowledge puts*  
*this particular*  
*column squarely*  
*on the fine line*  
*between*  
**subjective**  
**editorial**  
**opinion**  
*and*  
**plain old**  
**propaganda**  
”

**D**on Hokey is an environmental reporter for the Pittsburgh Post Gazette who also authors the Green Beat column for this newspaper. In his columns, Mr. Hokey expresses his subjective opinions and is not reporting objectively on news even where, as a reporter, he would be expected to seek out both sides of the “story” (see article on page 6). Nevertheless, many newspaper readers assume that information contained in editorial commentaries is fact rather than opinion.

Mr. Hokey's recent Green Beat piece on the Erie County Natural Heritage Inventory (NHI) illustrates the difference between subjective editorial opinion and factual reporting. What apparently elicited his interest in the NHI was the recent adoption by Erie County Council of a resolution, introduced by County Council member Dr. Tracy Seyfert, which “requests” the Erie County Planning Department to initiate proper procedures for modification “and revision of the NHI,” and further resolves “that the modifications of the study reflect language acceptable to all concerned parties and be approved by County Council.”

Mr. Hokey “interprets” this somewhat precatory resolution to mean that County Council voted “to spend unknown additional thousands to review the planning document...” which “raised the bloodlust of a swarm of property rights activists, spawned by a long running controversy over wetland regulation.” He goes on to credit David Skellie for avoiding the “between-the-lines paranoia” of critics of the NHI process and quotes the top Erie County planner as saying “People can't be afraid of knowledge, but some, I guess, are.”

In reality, County Council did not vote to spend thousands, it simply expressed its judgment that the planners should address the concerns of affected citizens. It is crystal clear from this column that Mr. Hokey is not reporting facts. He was rather expressing his opinions, and the condescending tone of his column reveals that he has a rather low opinion of critics of NHI and of property rights generally.

Choice of words such as “bloodlust” and “paranoia” and heavy-handed hints that critics of the NHI are ignorant and afraid of knowledge puts this particular column squarely on the fine line between subjective editorial opinion and plain old propaganda. But however you characterize this piece, Mr. Hokey is not reporting facts.

Readers of the *Landowner* know that PLA and a number of other organizations and individuals

have raised legitimate and serious concerns about the Erie County NHI process. In an entirely appropriate response to these concerns, County Council listened to all sides of the issue during the Hearing of the Public portion of its meeting on June 7, 1994, debated Dr. Seyfert's resolution and adopted it by a 5 to 2 vote.

Another newspaper, the Erie Morning News “reported” on Council's action after investigating the facts and interviewing representatives of all sides of the issue. In its “news” story, the Morning News summarized the objections of interested parties to the NHI process as follows:

- Failure to notify property owners that their property was under study
- Failure to notify property owners of the results of that study when the results recommended their land be “protected.”
- Recommendations for “buffer zones,” “timber harvest limitations” and pesticide controls that could later become mandatory as property owners seek county or state permits to use their land.
- Use of code numbers to identify various endangered species so that ordinary citizens who paid for the study cannot understand and interpret it.
- Use of phrases like “quick, strong and complete protection” in the recommendations without definition and without regard to opinions from interested citizens and organizations.
- Submission of the inventory and recommendation to state government without processing it through County Council, something both property owners and council members said they had been led to expect.

By Mr. Hokey's big city standards, this may sound like the bloodlustful rantings of a swarm of ignorant property rights activists whom he thinks are afraid of knowledge. Thankfully, County Council saw it differently and acted accordingly.

Critics of the Erie County NHI process including PLA, stuck to their guns and attracted the interest of County Council and succeeded in achieving closer scrutiny of the NHI by elected officials. Taking a few shots from Mr. Hokey is a small price to pay for the infusion of sunlight and fresh air in County government and for vindication of property rights. The fact that he was induced to crank out a column on the subject may be a further sign that the anti-development lobby is feeling the heat and may be a bit paranoid itself.

**...NOT a news story.**

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Pennsylvania Landowners'  
Association, Inc.  
P.O. Box 391  
Waterford, PA 16441  
Phone: 814/796-3578  
Fax: 814/796-6757

## PLA Membership Categories

Please indicate:  New Member  Renewal

- INDIVIDUAL I** ..... 25.00  
Any individual supportive of private property rights  
(owning 0 to 15 acres)
- INDIVIDUAL II** ..... 35.00  
(owning 16 to 100 acres)
- INDIVIDUAL III** ..... 50.00  
(owning 101 to 250 acres)
- INDIVIDUAL IV** ..... 100.00  
(owning 251 to 500 acres)
- INDIVIDUAL V** ..... 200.00  
(owning over 500 acres)
- ASSOCIATE I** ..... 100.00  
Any business entity supporting the free  
enterprise system and the principle of private  
ownership (local businesses in communities)
- ASSOCIATE II** ..... 250.00  
Trade Associations (state organizations  
supportive of private property rights)
- ASSOCIATE III** ..... 300.00  
Major suppliers to land use entities (resource  
development, construction, agriculture)
- AFFILIATE** ..... 50.00  
Local or regional grass roots, non-profit  
organizations
- BUSINESS I** ..... 750.00  
Corporations or other business entities whose  
activities involve ownership, use and/or  
development of acreage in excess of 100 acres  
but less than 500 acres.
- BUSINESS II** ..... 1,250.00  
Same as I but in excess of 500 acres

Any land owning member (excluding Individual I) purchasing PLA signs and participating in the "Posting For Support" program is entitled to a 50% reduction in membership fees for the current membership year.

### POSTING FOR SUPPORT PROGRAM

Yes, I wish to become a participant in this program.  
Please send me \_\_\_\_\_ signs.

I have enclosed 60¢ for each sign ordered.

- I am a current participant in the  
"Posting for Support" program
- I am a new participant in the  
"Posting for Support" program

**USA v. Brace & Brace Farms Videotape (VHS)**—

"One farmer's battle with Federal Wetland provisions."  
\$15.00 donation.

**Wetlands Videotape (VHS)**  Part I  Part II

"Our Environment, Whose Property?"  
\$15.00 Donation each. Please send me a copy of  
this limited edition PLA videotape.

### Please complete this information:

Name \_\_\_\_\_

Address \_\_\_\_\_

County \_\_\_\_\_

Acreage Owned \_\_\_\_\_

Phone Number (\_\_\_\_\_) \_\_\_\_\_

Township \_\_\_\_\_

How many acres of land posted? \_\_\_\_\_ acres

Membership Amount \$ \_\_\_\_\_

Less 50% reduction in fee if  
"Posting for Support" participant - \$ \_\_\_\_\_

Amount of signs purchased + \$ \_\_\_\_\_

Additional contribution (If any) + \$ \_\_\_\_\_

Total remittance enclosed \$ \_\_\_\_\_

**Membership dues and contributions may be deductible as  
a "Business" expense. Please consult your tax advisor  
regarding your particular situation.**

Enclose form with check or money order payable to:

**Pennsylvania Landowners' Association**

P. O. Box 391

Waterford, PA 16441

Please allow up to 4 weeks for delivery of membership card.

## Pennsylvania Landowners' Association, Inc.

P.O. Box 391  
Waterford, PA 16441

Address Correction Requested

BULK RATE  
U.S. POSTAGE  
PAID  
Permit No. 7  
Waterford, PA