

CALCIMA

California Construction and
Industrial Materials Association



Friday, May 20, 2011

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA95814

Re: Comment Letter -CEQA - Wetland Area Protection Policy & Regulations.

Dear Ms. Townsend:

These comments are offered on behalf of the California Construction and Industrial Materials Association (CalcIMA). CalcIMA is a statewide trade association representing the construction aggregate, ready mix concrete and industrial minerals industries in California. Our members operate over 500 facilities statewide providing the raw materials to fuel California's infrastructure needs as well as the needs of the construction, manufacturing and industrial sectors. We appreciate this opportunity to comment on the CEQA Wetland Area Protection Policy & regulations Process.

CalcIMA is in agreement that a program level EIR needs to occur on this proposed policy but is concerned the Board's indicated method of analysis will not properly scope impacts on minerals and other resources and issues required under CEQA. Development of such a broad reaching regulatory Policy requires that the Board shoulder a large responsibility to complete a meaningful analysis of the impacts of that policy. To that end, CEQA requires that the Board consider the impacts to the availability of mineral resources. We have not seen any evidence that a complete and meaningful analysis has been completed by staff. At a minimum we would like to have the opportunity to review the analysis. At a maximum, we would like to have this Initial Study revisited by staff and complete the economic analysis required by CEQA. It is important not only to the members of our association but also to the economy and people of California that the authority to develop State Policy weigh the many factors that make good Policy.

Staff seems to be focusing their efforts on the challenge of identifying project by project impacts of the statewide policy rather than analyzing the overlay of a new statewide program as a whole on the projected development which will occur in California. We certainly understand the challenge of identifying such impacts, however, other State agencies have shown it possible during Policy development. The second challenge is clarity on what the proposed program will require of projects which end up interfacing with the Board's policy.

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Inadequate Analysis of Program Level Impacts

In order to properly quantify and analyze the impacts of the proposed Policy, staff needs to come to conclusions and submit reasonable assumptions to develop informed policy decisions required by CEQA. CalCIMA feels strongly that staff has not crossed this hurdle.

A pertinent example can be found in the Mineral Resources Section. The fact that the mineral resources section exists is a clear indication of the importance and relevance that mineral resources play in California. Far and away the most important mineral resource to California is that of sand and gravel. The sand and gravel industry requires a regulatory process that works within the CEQA and NEPA frameworks and provides the review and feedback necessary to make permit and impact decisions specific to our industry.

In the Minerals section of the Initial Study, the document states:

1. Adoption of this policy will not cause direct impacts to mineral resources.
2. Implementation of this Project could, however, cause an adverse impact on mineral resources.
3. Specific projects which fall under the Boards could have potentially significant impacts on mineral resources.
4. From checklist: Project should result in a Less than Significant With Mitigation Incorporated loss in the availability of known mineral resource.
5. From checklist: Project should result in a Less than Significant With Mitigation Incorporated loss in the availability of locally-important mineral resource delineated on a local general plan, specific plan, or other land use plan.

Once the Project Policy is adopted the Regional Boards will be required to implement said Policy. If the development of that Policy does not take into account the impacts on the availability to mineral resources, then the measure of impacts to the availability of sand and gravel is altered without regard to the environmental consequence as required under CEQA. It is our strong belief that this Policy may have very significant impacts on the availability of sand and gravel in California. The State has spent valuable resources in documenting short and long term availability issues of sand and gravel under the current regulatory policies (Mapsheet 52¹). It seems unlikely to us that this Policy will not affect aggregate availability even more if enacted.

Additionally, there are other data and resources to assist staff in their analysis of environmental and associated impacts as required by CEQA. It seems to us that in order to properly analyze the impacts of the Policy, staff needs to come to conclusions and reasonable assumptions about how much of the States mapped 2,912,501 acres of identified wetlands would be subject to this policy by virtue of not being subject to Army Corps Jurisdiction. The State of the State's Wetlands report seems to provide credible information as to both acreage of wetlands as well as percent mapped. As such the State seems to have a good idea at least generally where the lands this policy will apply to are located.

This is important as the State has also successfully and systematically mapped other resources and also engages in long range development planning. Mineral resources, for example, are mapped and classified by the State Geologist and State Mining and Geology Board and can be

¹ http://www.consrv.ca.gov/cgs/information/publications/ms/Documents/MS_52.pdf

compared to the wetlands mapping data to determine the amount of identified mineral resources which occur under wetlands that may be subject to protection by this policy. The CEQA checklist specifically calls these resources out due to the serious economic environmental and economic impacts that blocking these resources from local use may cause. The lack of local resources contributes to a dramatic increase in truck traffic, noise, air pollution, and cost to local regions as they deal with infrastructure and growth. Once blocked through any means, these environmental and cost impacts become permanent.

Likewise Local Governments and Regional Councils of Government are required to create general plans and Regional Transportation Plans. These Plans are required so that state agencies and decision makers can make educated decisions. This also includes the development of sound Policy. Local governments and stakeholders are developing sustainable community strategies which allow long term growth and achieve GHG reductions via Vehicle Miles Travelled reductions. As a result we know where development is planned within the state. When these Plans and strategies are compared to the 82% of mapped wetlands, it can be argued that staff could better estimate the environmental and economic interaction between the Wetland Policy, wetland protection, and the land planning efforts of local and state governments. Our quick review of the states wetland report indicates much of the mapped wetlands occurs in either the Central Valley and Bay Area. From this fact, we suggest staff complete a focused analysis to narrower specific regions to quantify and analyze Policy impacts.

We request that Board staff develop reasonable assumptions of how many projects a year within regions are likely to interface with the new policy. For example, the California Air Resources Board documented such assumptions in their development of the Naturally Occuring Asbestos Air Toxic Control Measure for Construction and Mining Operations. In the Initial Statement of Reasons, they estimated the likely number of impacted projects to then calculate and analyze impacts from their regulatory activities.

"Using information from the Construction Industry Research Board and DOF, staff determined the number of new housing units authorized by building permits in 1999 per county. In 1999, a total of 140,137 building permits were authorized in California (DOF, 2000). The number of housing permits per county was multiplied by the percentage of the area in ultramafic rock units in each county to estimate the number of housing units that may be built in ultramafic areas. This number was then summed for each county to get an estimation of the total new housing being built in ultramafic areas for all counties in California each year. Table VII-2 shows the permitted housing units and the fraction of the area in a GURU for each county."²

It also strikes us that other potential data sources exist within the Resources Agency from past CEQA clearinghouse documents identifying projects with potential impacts on riparian habitat as well as from the Army Corps of engineers permitting program which may enable the Board to reasonably estimate the total number of projects or even percentage of projects by what type are likely to end up undertaking activities regulated under the policy. As the policy goal is to backfill lost federal authority a comparison of data from the US Army Corp's pre SWANCC and post SWANCC may also be enlightening in terms of identifying total mitigation and permits

²<http://www.arb.ca.gov/regact/asbesto2/isor.pdf> page VII-5

issued. Such data would likely need to be corrected for overall project activity occurring in the time periods in question.

Only by undertaking these and other prudent steps, can the Board and stakeholders fully understand the Boards Policy. From that understanding staff and all stakeholders can then develop informed policy decisions required by CEQA.

Scoping the Policies Impacts

We are unclear how the Policy intends to deal with compensatory mitigation as well as interpretation of the avoidance policy components as it relates to the current ACOE 404 program. Current mitigation banks and mitigation policies may become untenable if staff does not consider this issue.

Inconsistencies between the State and ACOE in: (1) Avoidance prioritization and, (2) Overall Project Purpose, will create significant hurdles to Projects and mitigation planning, since by nature, Projects will have to go through both ACOE AND the Boards to get necessary permits. Currently permits and mitigation (including mitigation banks) are relatively seamless. Impacts and the development of mitigation (especially banks) need to be based on regulatory procedures that work together. If two regulatory programs overlap or are inconsistent, then mitigation may become economically infeasible. Mitigation for a state permit may require the construction of on-site wetlands while the ACOE would require additional mitigation at another site or bank.

How the compensatory mitigation program is designed to work is critical for several reasons. There has been some discussion that it may require mitigation within the watershed. If this is true then projects in watersheds without offsite options for compensatory mitigation could be ended by the policy. If those projects are effectively ended by not having mitigation available the ending of those projects may then interfere with other CEQA objectives i.e. mineral resources, GHG reductions if they are components of transportation projects designed to reduce vehicle miles travelled (VMT) etc.... If the policy offers an effective and available compensatory mitigation program the impacts to the project by the policy would be in conducting that mitigation both economically and environmentally. If the policy is designed in a way it effectively ends projects, its Environmental impacts could be much larger.

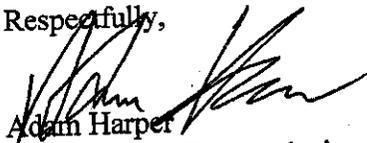
CalCIMA has previously submitted comments to the Board staff regarding specific components of the policy which are under consideration which may have the impact of effectively preventing mineral projects. The nature of mineral extraction where it interfaces with wetlands protected under this policy necessitates a need for available offsite compensatory mitigation or the policy could preclude the development of finite resources.

It would have been very helpful to have the full text of the Board's proposed policy to comment on. We remain uncertain as to why the Board feels the need to develop a California Specific Wetlands Definition rather than working from the federal delineation process. Consistency between the federal program and the State Program would seem to both facilitate understanding and compliance ease as well as ensure the programs don't end up creating conflicts with each other.

We want to thank the Board for this opportunity to comment on the initial study checklist. We are in agreement a policy that applies to some component of over 2 million acres of identified wetlands could have significant environmental impacts and needs a full EIR. We hope our comments help staff in determining the potential environmental scope of impacts of the policy as well as considering how the policy design may enable mitigation of those impacts while achieving the worthwhile goal of protecting wetlands within the state.

Should you have any questions please feel free to contact us.

Respectfully,



Adam Harper
Director of Policy Analysis