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August 15, 2016

Public Comment  
Statewide Dredged or Fill Procedures  
Deadline: 8/18/16 12:00 noon

Felicia Marcus, Board Chair  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814



VIA ELECTRONIC MAIL [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**RE: Comments on “Statewide Dredged or Fill Procedures”**

Dear Ms. Marcus and Members of the Board:

Thank you for the opportunity to comment on the State Water Resource Control Board’s proposed “California Ocean Plan and Inland Surface Waters, Enclosed Bay, and Estuaries of California Plan Amendments,” which include draft “Procedures for Discharges of Dredged or Fill Materials to Waters of the State” (Permitting Procedures). If adopted, the draft Permitting Procedures will have far-reaching consequences for both public infrastructure improvements and private development projects within the City of Concord (City). For the reasons discussed below, the City does not support the proposed Permitting Procedures.

The City, like other members of the regulated community, is currently subject to an array of federal and state laws that regulate impacts to jurisdictional waters and other aquatic resources. The federal Clean Water Act administered by the U.S. Army Corps of Engineers (Corps) and Environmental Protection Agency (EPA) includes extensive regulations and policies governing the fill of wetlands, creeks, and other waters. The Clean Water Act and its implementing regulations include science-based criteria for delineating wetlands and other waters, intensive scrutiny of applications to fill aquatic resources to ensure fill permits are issued only for the least environmentally damaging practicable alternative (known as the “LEDPA”), and rigorous mitigation standards to prevent a net loss of aquatic resources. The Corps also issues “nationwide permits” that permit small amounts of fill that will cumulatively result in minimal adverse effects on the aquatic environment. Affects to creeks, lakes, streams, and their adjacent riparian areas are also regulated by the California Department of Fish and Wildlife (CDFW) through Lake and Streambed Alteration Agreements.

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The State and Regional Water Quality Control Boards (State Board and Regional Boards) have the authority under Section 401 of the Clean Water Act to determine whether federal Clean Water Act permits and nationwide permit authorizations comply with state water quality standards. Regional Board staff actively participates in all federal Clean Water Act permitting processes through the 401 water quality certification process.

The proposed Permitting Procedures would duplicate the federal Clean Water Act permit process, and impede the federal nationwide permit program. While the draft Permitting Procedures incorporates the Clean Water Act 404(b)(1) Guidelines, it also departs from the Guidelines in potentially significant ways. For instance, the draft Permitting Procedures requires an "alternatives analysis" for small fill projects, such as habitat enhancements and bank stabilization projects (which may be critical to maintaining public health and safety), that are subject to the Corps' nationwide permit program. Preparing an alternatives analysis is a significant burden on the City and other applicants, and requires hours of Regional Board staff time to review.

Requiring an alternatives analysis before certifying a nationwide permit is inconsistent with the federal nationwide permit program and will not provide any water quality benefits. It will also significantly delay projects and increase the cost of these projects, potentially jeopardizing important local projects.

As proposed, the Permitting Procedures will largely duplicate the existing federal Clean Water Act permitting process. Rather than review federal individual permits for consistency with state water quality standards, the Regional Boards will be reviewing federal permits *de novo* or engaging in a parallel permitting process, placing an additional and unnecessary burden on the City. To the extent the Permitting Procedures differs from the existing federal program or if the Regional Boards reach different conclusions than the Corps, it will inevitably result in conflicts between the Corps and Regional Board.<sup>1</sup> This will lead to further delays and expense.

The draft Permitting Procedures are also duplicative of Sections 1600, *et seq.* of the California Fish and Game Code by purporting to expand the Regional Boards' jurisdiction to include newly defined "riparian areas." Riparian areas are generally already covered by Section 1600 and CDFW's Lake and Streambed Alteration Agreement program. Duplicating regulation by two state agencies is wholly unnecessary.

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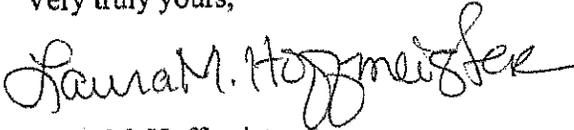
<sup>1</sup> The draft Permitting Procedures gives the Regional Boards independent authority to require a 404(b)(1) alternatives analysis (under somewhat modified Guidelines) and to evaluate the adequacy of the alternatives analysis. This may result in the preparation of two 404(b)(1) alternatives analyses; one for the Corps and one for the Regional Boards. It may also result in two different LEDPA determinations. Similarly, it gives the Regional Boards independent authority to interpret the Corps' mitigation rule and decide if a mitigation plan provides adequate financial assurances, etc. Again, potentially resulting in conflicting determinations by the Corps and Boards and requiring applicants to provide duplicative financial assurances.

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The proposed state definition of wetlands included in the draft proposal does not appear to serve any useful water quality purpose. Existing federal and state regulations that govern the fill of "waters," already define "wetlands" as a subset of "waters." Expanding the definition of wetlands will simply shift some existing waters into the wetland subset. Doing so will necessitate the preparation of additional wetland delineations, but will not provide any additional benefit for wetlands or other waters.

The result of the proposed Permitting Procedures will be new processes, more paperwork, and additional costs which local public agencies such as the City can ill-afford, without any corresponding environmental benefit. For these reasons, the City urges the State Water Quality Control Board not to adopt the proposed Permitting Procedures.

Very truly yours,



Laura M. Hoffmeister  
Mayor

cc: Concord City Council  
Valerie Barone, City Manager  
Guy Bjerke, Director of Community Reuse Planning  
Senator Steve Glazier  
Assemblywoman Susan Bonilla  
Jason Gonsalves, Gonsalves and Son

