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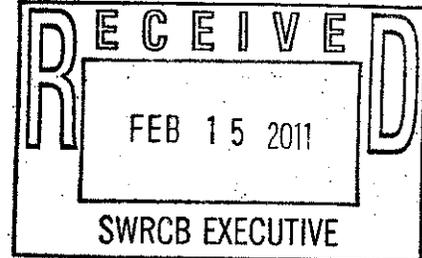
Recreation Division
822-7091

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Public Cmt /Wrkshp (1/31 & 2/8)
CEQA-Wetlands Policy & Reg
Deadline: 5/20/11 by 12 noon

February 14, 2011

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



RE: - Comment Letter – CEQA – Wetland Area Protection Policy and Regulations

Dear Ms. Townsend:

After reviewing the State Water Resources Control Board's (Board) Notice of Preparation of Environmental Impact Report /Initial Study Checklist for the Wetland Area Protection Policy and Dredge and Fill Regulations, the City of Arcata respectfully submits the following comments:

The Board's Initial Study is a program level analysis for the State Water Resources Control Board's Wetland Area Protection Policy and Dredge and Fill Regulations. The project description includes: 1) A wetland area protection policy that includes a wetland definition based on the Army Corps of Engineers' (ACOE or Corps) delineation methods and an assessment framework for collecting wetland data to monitor progress toward wetland protection and to evaluate program development; and 2) Necessary adjustments to the existing dredge and fill regulations to implement the wetland delineation methods and foster clarity and consistency in the permitting process.

- 1) ~~The Initial Study currently does not adequately describe the adjustments that will be made to the existing wetland dredge and fill regulations. The Environmental Impact Report (EIR) must provide guidance on whether the proposed project changes the current 401 certification regulatory process for wetlands under ACOE jurisdiction or if it only applies to wetlands that are not under ACOE jurisdiction. It also should address the range of mitigations that will be required under the proposed project, the impacts associated with those mitigations, and how they differ from existing (pre-project) mitigation requirements. In essence, the EIR should state how this policy changes existing RWQCB permitting requirements, mitigation, etc. as well as more specifically what wetland types will be regulated under the new policy.~~
- 2) The EIR should address wetland dredge and fill and riparian habitat regulation by other state agencies such as the Coastal Commission and California Department of Fish and Game. Specifically, it should clearly identify whether the proposed project results in redundant regulation of wetland and riparian resources and how that will

impact future implementation of projects covered by the proposed project. If the proposed project only regulates resources that are not already regulated under existing federal, state and local programs, this fact should be clearly stated. The EIR should also address impacts associated with mitigation requirements resulting from the proposed project.

- 3) The Initial Study (page 14) states that "the Wetland and Riparian Area Protection Policy is being implemented using a phased approach that will allow for necessary infrastructure and program development. The Project that is the subject of this Initial Study is defined as and referred to in Resolution No. 2008-0026 as Phase 1 of the Wetland and Riparian Area Protection Policy", that "work on Phases 2 and 3 will proceed in parallel or in sequence and will follow their own respective public participation procedures", and that "Phases 2 and 3 are not under consideration at this time and are not the subject of this Initial Study." CEQA Guidelines Section 15063 (1) states that all phases of project planning, implementation, and operation must be considered in the Initial Study of the project. Please provide analysis of the potential impacts of Phases 2 and 3 in this Initial Study or EIR.
- 4) The Initial Study, on page 14, states that the project "includes a wetland definition that is based on the Corps delineation methods". On page 15 the Board has developed a wetland definition utilizing the term "upper substrate" instead of "soil." The definition does not define the terms "upper substrate," or "hydric substrate" used in the new definition. For consistency and clarity the Board should rely on the Corps definition as other state and federal agencies do. Developing a new definition without better defining the terms used in the new definition does not "foster clarity and consistency in the permitting process" (page 15). Also the new definition under # 3, will be more inclusive and consistent with the ACOE definition, if it reads "lacks vegetation, or has problematic hydrophytic vegetation, or is dominated by hydrophytes."
- 5) Should the Board elect to retain the proposed definition, clearer guidance can be provided by utilizing the term soil/substrate and providing details as to what wetlands would be expected to have "substrate" rather than soil. Since most isolated wetlands mentioned in the policy are vegetated, any substrate with vegetation is defined as soil by the ACOE.
- 6) As currently stated it appears any area that lacks vegetation with anaerobic conditions in the "upper substrate" and wetland hydrology would be regulated under this new program. This could result in regulation of ditches dug in dry land that connect isolated wetlands to navigable waters. Please clarify as to whether it is the intent of this program to regulate these and include this discussion in the EIR.
- 7) The Wetland Tracking, Monitoring and Assessment section (page 15-16) requires state, federal and local agencies to develop standardized practices and methods in support of WRAMP. The EIR should identify a methodology for accomplishing this, costs associated with this requirement, and how costs will be covered. Furthermore,

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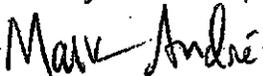
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this proposed program represents a significant change in the current policy for ensuring mitigation program compliance, yet there is no analysis of how this change would affect responsible and lead agencies for wetland projects.

- 8) The section on excluded areas and activities should provide guidelines for how one certifies for the Board that a wetland is constructed and exempt. Additional categories should be added to the definition (pg 17) to include Low Impact Development (LID) components and stormwater wetlands. Ditches dug in dry land that connect isolated wetlands to navigable waters should also be considered exempt under surface water drainage. While a date is assigned to prior converted cropland that is exempt from these regulations, there is no information on the date that applies to other areas "where a wetland did not exist before." The EIR must include a discussion of the impacts on existing constructed wetlands and their operation and impacts on wetlands developed as mitigation for prior wetland impacts. Information on the specifically applicable WDR's or waivers of WDR's that provide exemption should be identified.
- 9) The Environmental Impacts Section of the Initial Study/EIR should adequately address how implementation of the project and required mitigations will impact all the check list items. Too many of the check list factors are discussed by stating that future actions will be analyzed on a case-by-case basis under CEQA. The Environmental Impact section should explain how the project's regulation and mitigation requirements change existing conditions and the potential range of impacts associated with that change for each checklist factor. There should also be discussion of the mitigations that will be implemented since every factor on the checklist has identified potential impacts as "Less than Significant with Mitigation Incorporated." While the Initial Study does begin to address some of the impacts under greenhouse gas emissions, land use planning, air quality, and hydrology water quality categories, all environmental factors need substantially more detail before a determination can be made as to the significance of the impacts and how they will be mitigated.

Respectfully submitted,



MARK S. ANDRE

Director

Environmental Services Department