

**CALIFORNIA COASTAL COMMISSION**

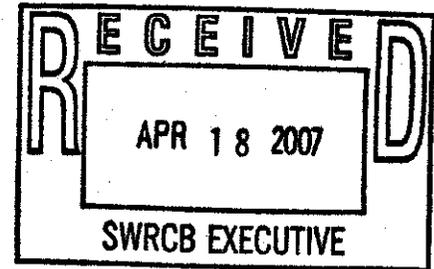
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**Wetland/Riparian Policy**  
Deadline: 4/19/07 12 noon



April 18, 2007

Board Members  
State Water Resources Control Board  
Division of Water Quality  
P.O. Box 100  
Sacramento, California 95812-0100



**Regarding : PROPOSED WETLAND AND RIPARIAN AREA PROTECTION POLICY**

Honorable Board Members:

The California Coastal Commission is one of several state agencies with regulatory authority over impacts to wetlands in the Coastal Zone. The Commission has also signed an MOU with the State Water Resources Control Board to coordinate the protection and restoration of wetlands through the Nonpoint Source Control Program. In order to facilitate more consistent wetland policies throughout California, the Commission staff has provided the comments below to support the development of a strong wetland and riparian protection policy to protect the quality of California waters and the beneficial uses.

Please accept the comments below as support for the expansion and adoption of Alternative 4 of the wetland and riparian area protection policy as the State Board preferred alternative. We believe that Alternative 4, which includes the establishment of a wetland definition that is more consistent with other state agency definitions and that better integrates wetland protection policies, is the only alternative which will adequately protect wetland beneficial uses.

**1) Adoption of Alternatives 3 or 4, each including a definition of wetlands consistent with the California Coastal Commission, the California Department of Fish and Game, and several Regional Water Boards, would lead to more standardized state policies and better protection of wetland resources by all agencies responsible for wetland resource protection in California.**

There is no single agreed-upon general definition of wetlands, although most definitions are similar. Coastal Act Section 30121 defines the term "wetland" as:

*[L]ands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*

Similarly, the U.S. Fish and Wildlife Service (USFWS) uses a general definition from its wetlands classification system first published in 1979:

*Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water (Cowardin, et al. 1979).*

In conjunction with adopting a wetlands policy on March 9, 1987 the California Fish and Game Commission assigned the Department of Fish and Game (DFG) the task of recommending a wetlands definition. The DFG found the USFWS wetland definition and classification system to be the most biologically valid. The DFG staff use the USFWS definition as a guide in identifying wetlands while conducting on-site inspections for the implementation of its Commission's wetlands policy.

Both the Coastal Commission and the federal government provide further specificity in their wetlands definitions to guide the process of wetlands delineation. The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "one parameter definition" that only requires evidence of a single parameter to establish wetland conditions:

*Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)*

The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

*(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

**2) The preferred alternative should provide similar levels of protection for wetland resources as those currently given to state wetlands within the Coastal Zone.** Coastal Act policy states:

**Coastal Act § 30231 Biological productivity; water quality**

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and*

*entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Alternative 4 would best provide this standard level of protection throughout the state. Such policies would support streamlined permitting processes that centers on similar definitions and protection policies among regulatory agencies. This will lead to greater resource protection and improved service to permit applicants. If wetland policies are less comprehensive outside the coastal zone, the State is restricted in achieving its no-net-loss policy for wetlands (both for acreage and condition).

**3) Policies of Alternative 4 will better address many of the limitations of the 401 permit history as defined by the 2006 study prepared for the State Water Resources Control Board by Richard Ambrose and others (An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Quality Control Board, 1991-2002).** The study found that while the 401 program was successful in retaining wetland acreage, wetland condition was not preserved or mitigated. Specifically the study found that;

*"Despite relatively high permit compliance, most mitigation sites were not optimally functioning wetlands."*

*"The functional deficiencies and the likely failure of many projects to meet the "no net loss" goal of the Clean Water Act are largely due to shortcomings in mitigation planning and in the development of the permit conditions. The root of these shortcomings lies with a lack of explicit consideration of the full suite of functions, values, and services that will be lost through proposed impacts and might be gained through proposed mitigation sites and activities."*

The study concludes that "permit compliance did not guarantee optimal, or even high, wetland condition". This finding suggest that current 401 permitting effort, limited to dredge and fill impacts, is incomplete in protecting beneficial uses and wetland condition. The Commission staff argues that it is necessary to integrate the review of potential adverse impacts from nonpoint source pollution and hydromodification into the permitting process to protect wetland habitat and beneficial uses. It must be restated that the State no-net-loss policy entails consideration of both acreage lost through fill and adverse impacts to wetland conditions (e.g. discharge of pollutants and hydromodification).

**4) Adoption of Alternative 4 would best integrate and support other state programs established to insure the statewide attainment of the no-net-loss policy for wetlands.**

In 2000, the State Water Resources Control Board and the California Coastal Commission signed into a partnership to develop and implement the State Nonpoint Source Control Program for California. The Nonpoint Source Program Plan was approved and adopted by both agencies, as well as USEPA and NOAA. The program

established 61 Management Measures to be implemented by 2013. Several Management Measures pertain to the protection and restoration of wetlands, including:

**MM5.1A; Channelization/Channel Modification.** Channels should be evaluated as a part of the watershed planning and design processes, including

watershed changes from new development in urban areas, agricultural drainage, or forest clearing. The purpose of the evaluation is to determine whether resulting NPS changes to surface water quality or instream and riparian habitat can be expected and whether these changes will be good or bad. Negative changes include impacts on the physical and chemical characteristics of surface waters and on instream and riparian habitat

**MM6A; Wetlands/Riparian Areas Protection Management Measure** is intended to protect the existing water quality improvement functions of wetlands and riparian areas as a component of NPS programs.

**MM6B; Wetlands/Riparian Areas Restoration Management Measure** refers to the recovery of a range of functions that existed previously by reestablishing hydrology, vegetation, and structure characteristics. Damaged or destroyed wetland and riparian areas should be restored where restoration of such systems will significantly abate polluted runoff.

Coastal Commission leads a group of state agency staff working to implement these management measures through coordinated planning that helps to identify where different departments can cooperate to better protect state wetland resources (see examples below). Alternative 4 supports these cross-agency efforts by developing statewide definitions of wetland and riparian resources.

**5) Alternative 4 would better support other state programs to track and assess state actions to meet the no-net-loss policy.** State efforts include adoption of Level 1-2-3 assessment and monitoring framework as defined in the 2003 EPA document (*Elements of a State Water Monitoring and Assessment Program*), use of wetland and riparian definitions being developed and expanded by the State Wetland Monitoring Program and Riparian Joint Venture, use of standardized assessment methodologies (e.g., the California Rapid Assessment Method for wetlands.) and wetland project tracking protocols (Wetland Tracker). Many of these tools are being integrated into state programs (Surface Water Ambient Monitoring Program, SWRCB Consolidated Grants Program, Fish and Game Section 1600 Streambed Alteration permit, and Regional monitoring programs such as the Southern California Wetland Restoration Project).

**6) Finally, adoption of a consistent wetland policy similar to Alternative 4 would be responsive to the decisions of the voters of California who passed numerous bond measures (Prop 12, 13, 40, 50, & 84) to protect and restore water resources and wetland habitats.** California tax payers have spent over 2.5 billion dollars to preserve and restore

wetland and riparian habitat since 1993 (Clark and Hurd 2005, Wetland and Riparian Restoration Management Measure Tracking). For example, the State Board Consolidated Grants program spent at least 39.5 million dollars in 2006 on wetland and river restoration projects including 20 projects to restore habitat, 4 projects to remove invasive plant species (11.5 million dollars), and 9 projects that address historic hydromodification which has degraded state wetlands and riparian areas. State policy to protect current wetland resources should support our investments to restore degraded resources. Alternative 4 is the only alternative which achieves this level of protection.

The Coastal Commission Staff will continue to work through state partnerships including the Nonpoint Source Program to support consistent and effective wetland protection policies and restoration efforts. If you have any questions, please contact me at (415) 904-5200 or Ross Clark (NPS Program Wetland Coordinator) at (831) 427-4873.

Thank you,

ALFRED WANGER  
Deputy Director  
Energy, Ocean Resources and Water Quality

Cc:  
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