

CALIFORNIA COASTAL COMMISSION

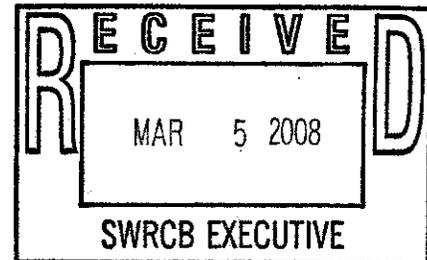
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3/18/08 Bd Mtg. Item 11
Wetlands & Riparian Areas
Deadline: 3/5/08 by 12 p.m.



March 5, 2008

To: Jeanine Townsend, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814
State Water Resources Control Board



Regarding: Resolution to Develop a Policy to Protect Wetlands and Riparian Areas

The California Coastal Commission is one of several state agencies with regulatory authority over impacts to wetlands. 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 Pollution Control Program. The Commission Staff provides the following comments in order to facilitate more consistent wetland policies throughout California. We support the three step process outlined in the proposed resolution to develop a strong wetland and riparian protection policy to protect the quality of California waters and their beneficial uses.

We have reviewed the "Resolution to Develop a Policy to Protect Wetlands and Riparian Areas". The recognition that the current limitation to wetland protection within current State Board programs is notable and the intent to address those limitations is appropriate. Finding a rigorous resolution that protects all wetland types within California is critical. While a single wetland definition consistent among regulatory authorities may not be feasible, greater comparability should be a key objective of the State Board process.

Please note that both the Coastal Commission and the federal government provide 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.*

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.

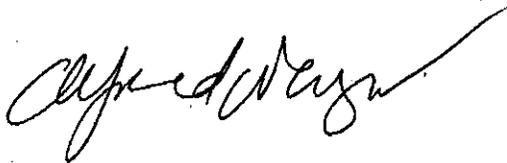
These statutes should be taken into account as the State Board uses the proposed "collaborative" process to define wetlands under its authority, expands the defined beneficial uses and possible water quality impacts associated with development, and expands those protections to the riparian habitats.

One substantive point we would mention at this stage is to note that point 6b of the proposed resolution states that, in Phase I of the development of the Policy, State Water Board staff would be directed to develop a wetland definition "that would rely on the United States Army Corps of Engineers' wetland definition to the extent feasible, but would also reliably define the diverse array of California wetlands." We believe that the latter part of that direction and a recognition of the fundamental impetus for the current resolution support the development of a broad definition that recognizes the existence of all wetland resources, including those overlooked by the Army Corps definition, and that is therefore as protective of wetland resources as possible. Consistent with this approach, we note that the Coastal Act definition of wetlands is broader than the Army Corps definition. See Cal. Pub. Res. Code § 30121 and Cal. Code Regs., tit. 14, § 13577(b). We are aware of no reason why the Development Team and the State Water Board could not adopt a definition akin to the Coastal Act definition, and we would encourage them to do so. If, however, the State Water Board adopts a definition narrower than the Coastal Act definition, we would request that the definition be adopted in a manner that makes clear its purposes for reasons other than the Coastal Act and that avoids any confusion or doubt about the continued relevance of the Coastal Act definition for Coastal Act purposes.

Commission staff fully support the proposed idea to adopt appropriate assessment methods to evaluate program success (Phase 1c) and would like to highlight the significant success the state has all ready made in developing these tools. Specifically, it should be noted that the State and Regional Boards have worked collaboratively with the Resources Agency, the California Coastal Commission and State Coastal Conservancy, with funding support from the USEPA to develop several standardized tools to achieve these objectives. Efforts to integrated standard data resources among regulatory agencies should continue as a component of this policy development process.

Finally, point 7 of the proposed resolution indicates that a "California Water Board development team" ("Development Team") would be created to work on the development of a policy to protect wetlands and riparian areas (the "Policy"). It also indicates that the Development Team would be directed to coordinate with, among others, other state agencies. We very much appreciate the fact that the proposed resolution would expressly support coordination with other state agencies, and finds this collaboration critical to the ultimate success of the policy. Unfortunately, due to our limited staff resources, we can only play a secondary role in this process. Nevertheless, we request that we continue to be kept informed as the process moves forward, and we hope to be able to participate more actively in the future.

Sincerely,



Alfred Wanger
Deputy Director, Information Technology and Water Quality
California Coastal Commission