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County of San Diego



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August 17, 2016

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

Comment Letter # 28

Via email to: commentletters@waterboards.ca.gov

COMMENTS ON THE STATE WATER RESOURCES CONTROL BOARD'S STATEWIDE DREDGED OR FILL PROCEDURES

Dear Ms. Townsend,

The County of San Diego (County) has received the State Water Resources Control Board's (SWRCB) Notice of Public Hearing, Public Workshops, Opportunity to Comment and Filing for the Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Proposed Procedures). The County appreciates the opportunity to comment on the Proposed Procedures.

Please consider and address the following comments.

AIR POLLUTION CONTROL DISTRICT

1. The Air Pollution Control District is concerned about the potential impacts of dredging and screening operations on local air quality. Accordingly, the County recommends amending the Proposed Procedures to include a requirement that dredging and screening operations be conducted in accordance with the requirements of the applicable air pollution control district. This recommended amendment would help ensure dredging and screening operations are conducted in a manner that protects air quality and public health.

28.1

ENVIRONMENTAL HEALTH

1. The Department of Environmental Health is concerned that the Proposed Procedures miss an important opportunity to better coordinate ocean dredging and beach replenishment activities that are regulated by the SWRCB, with the SWRCB's own Beach and Bay Water Quality Monitoring Program. Dredging and replenishment projects can have significant impacts on beach water quality, but the local monitoring agencies designated in the SWRCB's Beach and Bay Water Quality Monitoring Program currently do not reliably receive advanced notice of these activities. Also, these local agencies do not have a workable means to search for advance information on all such projects. This noticing issue could be corrected as part of the Proposed Procedures process; however, the Proposed Procedures do not require that advance notice be provided to local monitoring agencies. The Proposed Procedures also do not specify how the entity conducting dredging or beach replenishment activity must monitor water quality. The County recommends that these two omissions be corrected for dredging or beach replenishment activities in marine waters. 28.2
2. The Proposed Procedures do not require that dredgers or dischargers make basic information concerning their activity easily accessible to the public on the internet. The County recommends that the Proposed Procedures be revised to include a requirement that dredgers or dischargers make general information concerning their activity available to the public for marine waters via the internet. This recommended amendment would allow for concerned persons to be easily referred by the monitoring agency to that information online. 28.29
3. The Proposed Procedures should be supplemented to require that every person or entity, when conducting dredging or beach replenishment activity that affects marine waters, be required to do all of the following:
 - a. Make a project description and summary available to the public via the internet that also includes a project contact for the public. 28.3
 - b. For those projects adjacent to recreational beaches, regardless of permitting requirements, notify the local beach and recreational water quality monitoring and reporting authority as soon as possible, but not less than one week before activity, of:
 - i. Date(s) which the overall project activity will begin and end; and the date or dates upon which the discharge will take place. 28.4
 - ii. A detailed description of the location of waters proposed to receive a sand/water discharge including map(s) of sufficient detail. 28.5
 - iii. Any changes in project parameters, including duration, location, etc.

- c. For projects adjacent to recreational beaches that exceed three days, prepare a plan to monitor water quality in accordance with current State regulations (currently fecal indicator bacteria - total coliform, fecal coliform, and enterococcus bacteria), and submit that plan for comment and approval to the local monitoring agency for beach water quality at least one week prior to the start of the project with the following components:
- i. Proposed sampling locations (with respect to discharge point(s)), procedures and methods.
 - ii. Sampling approach with respect to the different stages of the project which meets the following minimum frequency requirements:
 - A minimum of two samples over a two day period during the initial surveillance period at the discharge location must be collected.
 - For projects lasting longer than a week, sampling events must be conducted at least weekly to monitor water quality for the duration of the project or until the local monitoring agency deems sampling complete.
 - If responsible party's project samples or local agency's routine samples in the area of the project exceed State health standards, re-sampling shall be conducted by the responsible party in accordance with direction by the local monitoring agency until compliance with water quality standards are met.
 - Sample results must be reported to the local monitoring agency no later than close of business the day following sample collection (preliminary results are acceptable provided final results are provided the same day they become available).

28.6

4. Due to the aforementioned concerns identified in the Proposed Procedures, the following subsections in italicized text are recommended for inclusion. The other text for this comment (#4) that is not italicized is provided as a reference to the Proposed Procedures.

Section B. (Permitting Authority Review and Approval of Application for Individual Orders)

6. The permitting authority shall provide public notice in accordance with Water Code section 13167.5 for waste discharge requirements. The permitting authority shall provide public notice of an application for water quality certification in accordance with California Code of Regulations, title 23, section 3858. If the permitting authority receives comments on the application or there is substantial public interest in the project, the permitting authority shall also provide public notice of the draft Order, or draft amendment of the Order, unless circumstances warrant a shorter notice period.

28.7

At least a week prior to initiating a discharge of dredged or fill materials to waters of the State that are within ¼ mile of the ocean or

that has the potential to impact ocean water quality, the following public notification methods must be initiated:

- a. Make a project description and summary available to the public via the internet that also includes a project contact for the public.*
- b. For those projects adjacent to recreational beaches, regardless of permitting requirements, notify the local beach and recreational water quality monitoring and reporting authority as soon as possible, but not less than one week before activity, of:*
 - i. Date(s) which the overall project activity will begin and end; and the date or dates upon which the discharge will take place.*
 - ii. A detailed description of the location of waters proposed to receive a sand/water discharge including map(s) of sufficient detail.*
 - iii. Any changes in project parameters, including duration, location, etc.*

cont
28.7

Section A (Project Application Submittal)

d. If compensatory mitigation is required by the permitting authority on a case-by-case basis, an assessment of the overall condition of aquatic resources proposed to receive a discharge of dredged or fill material and their likely stressors, using an assessment method approved by the permitting authority and a draft compensatory mitigation plan developed using a watershed approach containing the items below. Compensatory mitigation plans are not required for Ecological Restoration and Enhancement Projects. Draft compensatory mitigation plans shall comport with the State Supplemental Dredged or Fill Guidelines, Subpart J, and include the elements listed below.

- vii: For projects adjacent to recreational beaches that exceed three days, prepare a plan to monitor water quality in accordance with current State regulations (currently fecal indicator bacteria- total coliform, fecal coliform, and enterococcus bacteria) and submit plan for comment and approval to the local monitoring agency for beach water quality at least one week prior to the start of the project with the following components:*
- 1. Proposed sampling locations (with respect to discharge point(s)), procedures and methods.*
 - 2. Sampling approach with respect to the different stages of the project which meets the following minimum frequency requirements:*

28.8

- a. *A minimum of two samples over a two day period during the initial surveillance period at the discharge location must be collected.*
3. *Sample results must be reported to the local monitoring agency no later than close of business the day following sample collection (preliminary results are acceptable provided final results are provided the same day they become available).*
4. *For projects lasting longer than one week, sampling events must be conducted at least weekly to monitor water quality for the duration of the project or until the local monitoring agency deems sampling complete.*
5. *If responsible party's project samples or local agency's routine samples in the area of the project exceed State health standards, re-sampling shall be conducted by the responsible party in accordance with direction by the local monitoring agency until compliance with water quality standards are met.*

cont
28.8

PARKS AND RECREATION

1. The Department of Parks and Recreation (DPR) periodically removes cattails out of ponds and it is unclear in the Proposed Procedures whether this is dredging or just maintenance. There are definitions for many terms in the technical documents attached to the new procedures, but dredging is not defined in them. DPR recommends that a clear definition of dredging be incorporated.
2. The only natural fed lake in San Diego County, "Lindo Lake," was cut off by a Dam that now forms Lake Jennings. When the lake was cut-off from Lake Jennings, wells were used to fill and preserve wetland habitat. The County is currently preparing construction documents to improve Lindo Lake water quality and is concerned about any future limitation that would restrict San Diego River well water from being used to fill Lindo Lake. When revising any future regulation, please consider the impact this will not only have on this community, but also consider that further restriction may generate loss of wetland habitat. The County recommends that Lindo Lake be exempt from SWRCB's regulations that could limit well water for this wetland habitat.

28.9

28.10

PUBLIC WORKS

1. Please provide information on how comments submitted during this comment period will be addressed and if they've resulted in changes to the Proposed Procedures.
2. No information was provided in the Proposed Procedures regarding application and permitting fees. Please disclose any proposed application and permitting fees and allow for public review and input on proposed fees prior to finalization of the Proposed Procedures.

28.11

28.12

3. The definition of wetlands under the Clean Water Act (CWA) includes three parameters and requires all three to be considered a wetland: hydrology, hydric soils/substrate, and vegetation. The Proposed Procedures would change that the wetland definition (Lines 32-53) at the state level by allowing areas to be considered a wetland even if vegetation is lacking (Line 49). This is problematic because it could introduce confusion and subjectivity into the definition and could allow features like tire ruts to potentially be considered a wetland during the rainy season. Please consider adding back in the requirement for vegetation to be considered a wetland. If there is another type of unvegetated natural water feature that the SWRCB would like protected, please consider defining it more clearly to minimize any potential confusion and subjectivity. 28.13
4. Please use this opportunity to clarify the definition of waters of the state, as there is a lot of confusion regarding how to define waters regulated as waters of the state. The Proposed Procedures state that "the wetland definition is not intended to be jurisdictional – not all features that qualify as wetlands are waters of the state" (Lines 26-27). This could introduce more confusion, as the wetland definition in the Proposed Procedures should be consistent with what would be regulated as waters of the state. In order to make the Proposed Procedures more consistent, clear and objective, please consider including the definition of waters of the state and include the definition of wetlands that would be regulated as waters of the state. 28.14
5. With regard to application requirements, please create more consistent requirements for a Complete Application rather than having the extensive examples of "Additional Information Required for a Complete Application" (Lines 128-203). The additional information section could make the process more confusing, subjective and time consuming, as most of the requirements are determined by a case-by-case basis by the local permitting authority letting the applicant know what other materials they would need to provide. This could make the application process substantially more time-consuming and subjective. Please consider creating a consistent application procedure to streamline the application process and provide consistency. 28.15
6. Regarding application submittal and permitting, the Proposed Procedures state that within 30 days of receiving all of the required items the permitting authority shall determine whether the application is complete and notify the applicant accordingly. Please consider including timeframes for permit issuance once the application is deemed complete. No response from regulators after a certain period of time should allow project proponents to move forward. 28.16
7. On a case-by-case basis the permitting authority can require supplemental data from the wet season if wetland area delineations were conducted during the dry season (Lines 129-131). This has the potential to cause substantial project delays due to an extended permitting process and increase costs. The County recommends that the Proposed Procedures clearly identify types of projects that would be required to have a wet-season survey so project proponents can plan ahead of time and build this into project schedules. 28.17

8. On a case-by-case basis the permitting authority can require the applicant to consult with state and federal land management agencies, fire control districts, flood control districts, local mosquito-vector control districts, etc., prior to initial mitigation site selection (Lines: 167-173). The County recommends that this should not be a requirement, but instead encouraged. Not all of the agencies mentioned would be applicable to the project and the SWRCB shouldn't have authority over the consultation.

28.18

9. On a case-by-case basis the permitting authority can require the applicant to consult the applicable airport land use commission when proposing mitigation (restoration or establishment) on a site(s) within five miles of any airport (Lines 174-179). The County recommends that this should not be a requirement, but instead encouraged. The SWRCB shouldn't have the authority over making the applicant coordinate with the airport agencies; the County believes that it's not part of SWRCB's jurisdiction.

28.19

10. Regarding the requirement for an alternatives analysis – Least Environmentally Damaging Practicable Alternative (LEDPA) – please define when this analysis is applicable to a project. For example, for projects with permanent impacts of 0.5-acre or greater to wetlands/waters an alternatives analysis would be required, but not for those with less than 0.5-acre of permanent impacts. The County recommends that this section should also include an exemption to the requirement for the alternatives analysis for essential public infrastructure projects that are water dependent (such as a roadway creek crossing). In addition, projects that qualify for an USACE Nationwide Permit, which are intended to streamline permitting, should also be exempt from an alternatives analysis.

28.20

11. Overall all, it appears that the SWRCB is trying to create a blanket approach to their permitting process; however, a lot of the new requirements in the Proposed Procedures will be determined on a case-by-case basis, which may defeat the purpose of a blanket approach. Please make updates to the Proposed Procedures to increase consistency and clarity and reduce subjectivity.

28.21

12. Please clarify if activities excluded from the application procedures (starting at Line 359) are also exempt from being regulated under the Proposed Procedures.

28.22

13. Please include exemptions for the operation and maintenance of the following:

a. Drainages excavated in an upland area.

28.23

b. Essential water infrastructure including Municipal Separate Storm Sewer System (MS4s) and constructed wetlands.

14. The Proposed Procedures will expand the authority of the SWRCB to affect projects that are considered as ministerial or exempt from the California Environmental Quality Act, subjecting them to meet Federal Environmental Requirements even though there is no federal permit required.

28.24

15. The Proposed Procedures use different terminology including Orders, Individual Orders and General Orders. It is not entirely clear if these are different types of applications or whether it is an inconsistency in the document. The Proposed Procedures should clearly identify the different types of applications that could be issued under these procedures. 28.25
16. Appendix A – State Supplemental Dredge and Fill Guidelines (State Guidelines): Should references to permit, general permits etc. be changed to Order to be consistent with the Procedures? 28.0
17. Appendix A: While it is commendable that the SWRCB wants to incorporate many sections of the Federal 404(b) (1) Guidelines (Federal Guidelines) into the State Guidelines, it is often confusing how these relate to Orders being issued by the SWRCB. The Federal Guidelines cover several permit types including, Individual, General, and Nationwide Permits. In some instances, for example, specific sections related to General Permits are retained in the State Guidelines but in others it is deleted. 28.27
18. Project and Activities in California that do not require Federal Permits are not subject to Federal Environmental Regulations and as such should not have to comply with Federal 404(b) (1) analysis. This will only increase cost and time for private and public entities. 28.28

The County looks forward to receiving future documents and/or notices related to this project and providing additional assistance at your request. If you have any questions regarding these comments, please contact Danny Serrano, Land Use / Environmental Planner at (858) 694-3680, or via email at daniel.serrano@sdcounty.ca.gov

Sincerely,



Joe Farace, Group Program Manager
Advance Planning Division
Planning & Development Services

Ms. Townsend, State Water Resources Control Board

August 17, 2016

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