

WETLAND POLICY STAKEHOLDER ISSUES AND RESPONSES		
No.	Stakeholder	Issue and Staff Response
3. ¹	Regional Boards	<p>Issue 3: Should the Policy Procedures Better Address Potential Staff Workload Issues?</p> <p>A. Current Policy Framework The Policy is intended to be “resource neutral” and addresses the five areas of Regional Board concern as follows:</p> <ol style="list-style-type: none"> <u>Wetland Delineation.</u> Water Boards will rely on Corps’ approved wetland delineations within boundaries of the waters of the U.S. (see Markup Version, Line 149). Water Board staff will only be responsible for delineations of non-federal wetlands which is no change from the current practice. Over 95% of dredged and fill permits are for projects impacting federal waters only. <u>Alternatives Analysis.</u> The requirement of “alternatives analysis” ensures that the proposed project is the least environmentally damaging practicable alternative (LEDPA) and is used to verify project actions taken to avoid and minimize impacts to wetlands and waters. Avoidance is the first step in the mitigation sequence of first avoiding, then minimizing and finally mitigating any unavoidable impacts to waters. This is the central requirement of the EPA/Corps CWA section 404 b(1) Guidelines. The Policy adopts this requirement and makes it the central to the permit decision process. However, when issuing general permits, the Corps completes the alternatives analysis to meet the requirement that the authorized activities under the general permit would have minimal impact on the environment. Thus applicants for Nationwide Permits are not required to do the alternative analysis; the Corps’ only requires the alternative analysis for standard permits. The Corps issues Nationwide Permits for 88% of their permits. <p>The Policy, to be consistent with the Corps’ permitting program, also includes “off-ramps” for the alternatives analysis requirement. Currently the Policy waives alternatives analysis for projects with “minimal impacts” (as defined by the Policy; see Markup Version, Lines 548-550), and specific classes of projects including restoration projects, and projects permitted under general WDRs or watershed plans.</p> <ol style="list-style-type: none"> <u>Cumulative Effects and Mitigation Evaluation Using Watershed Profiles.</u> Watershed profile information would be supplied by the applicant. Current project review procedures require staff to

¹ Issues 2 and 3 have been removed.

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4.	Regional Boards	<p>Issue 4: Should Policy Mitigation Procedures Include Regional Board Factors?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. The Policy specifies that “The project will not result in a significant degradation...or cause a violation of Regional Water Board Water Quality Control Plans. This clause provides the Regional Boards discretion to consider “regionally-appropriate” factors in making factual determinations about mitigation.</p>
5.	UTIL & BUS	<p>Issue 5: Should the Wetland Definition be the Federal Definition?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. The following reasons support retaining the current Policy wetland definition:</p> <ol style="list-style-type: none"> 1. Steering Committee has reviewed this issue and made the decision to keep the proposed definition because it ensures equal protection for both vegetated and unvegetated wetlands. 2. Definition was developed by a team of eminent wetland scientists and received a favorable peer review. 3. Non-vegetated wetlands, unless “isolated”, are regulated by the Corps’ as waters of the U.S.; since both types of water bodies are regulated by the Corps, the only actual difference is how each agency “names” the water body.
6.	UTIL	<p>Issue 6: Should Mitigation Location Requirements Specifically Address Linear Projects?</p> <p><u>Staff Recommendation:</u> Change the Policy section V.4.B.2 Mitigation types and location to allow consolidation of mitigation for projects in multiple watersheds.</p>
7.	UTIL	<p>Issue 7: Should Utility Projects Be Required to Evaluate “Off-Site “ Alternatives and Should Projects Be Required to Evaluate Alternatives If Only Incurring Temporary Impacts?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. New utility and other linear projects are required to consider new alignments to avoid environmental impacts. Projects with temporary impacts likewise should</p>

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		consider alternatives to reduce temporary impacts that may take many years to fully restore. The Policy currently waives consideration of alternative locations for projects that by their nature cannot be moved, which would include utility maintenance projects
8.	UTIL	<p>Issue 8: Should the Policy Adopt the Corps’ Definition of “A Single and Complete Linear Project”?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. . CEQA does not allow segmenting projects. For purposes of CEQA, a "project" is "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. We issue one Certification for the entire linear project which is applied to the multiple NWP.</p>
9.	UTIL	<p>Issue 9: Should Mitigation and Monitoring Plan Approval Be Required Prior to Issuance of Certification?</p> <p><u>Staff Recommendation:</u> Yes to conform to the federal rule. Flexibility can be added by stating plan contents can be commensurate with size and scope of impacts. Also, timing of the mitigation project can be stated as “to the extent practicable, in advance of or concurrent with impacts.”</p>
10.	CVJV	<p>Issue 10: Should the Policy Provide for Separate Application Requirements for Ecological Restoration Projects?</p> <p><u>Staff Recommendation:</u> Consistent with current regulations, staff recommends the following general statement at the beginning of section V.2.(B) Contents of A Complete Application (see Markup Version, Lines 336-339):</p> <p><u>Application information required in this section that is included in other federal or state agency project applications or agreements need not be duplicated on the Certification application form if the applicant provides a copy of this information and clearly references</u></p>

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		<u>where the Certification application items can be found.</u>
11.	CVJV	<p>Issue 11: Should the Policy Require Monitoring Requirements for Ecological Restoration Projects?</p> <p><u>Staff Recommendation:</u> Staff recommends that the Policy specifically allows for reduced monitoring requirements for ecological restoration projects since restoration funding for monitoring is very limited and other agencies adequately monitor the performance of the restoration projects. However, staff does recommend minimal monitoring of restoration projects using the California Rapid Assessment Method (CRAM). This would allow the Water Boards to evaluate whether the structural components of the restoration projects were successfully put into place and that the work has not/will not adversely affect the beneficial uses of the aquatic resources. This would involve a baseline condition assessment that includes a pre-construction assessment and a post-construction assessment two years later.</p>
12.	CVJV	<p>Issue 12: Should the Policy definition of “Ecological Restoration Projects” provide more specificity about the restoration programs?</p> <p><u>Staff Recommendation</u> Amend the existing definition by including all but the first sentence of CVJV’s proposed definition; retain the Policy definition’s first sentence. The CVJV definition is consistent with the Corps NWP 27 definition of Aquatic Restoration, Establishment, and Enhancement Activities.</p>
13.	ENVIR	<p>Issue 13: Should the Policy re-instate the “alternative analysis” and the “least environmentally damaging practicable alternative” procedures from previous Policy versions (v.4.3)?</p> <p><u>Staff Recommendation (see Markup Version, Lines 456-577)</u> Add a new section on alternative analysis to V.3. “Factual Determinations.” This section would use wording from previous Policy version 4.3 describing the requirements of identifying the “least environmentally practicable alternative (LEDPA).” Also as “clean-up,” move the exceptions to alternative analysis to this section from section V.2. “Application Submittal.”</p>
14.	ENVIR	<p>Issue 14: Should the Policy re-instate wording in section V.2 “Application Submittal” that applicants must include a description of avoidance and minimization measures?</p>

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		<p><u>Staff Recommendation:</u> (see Markup Version, Lines 385-391) Change the reference to the application requirements in California Code of Regulations, section 3856 to the first item in the list, and generally describe the items, but highlight the need to describe avoidance as follows: A. Contents of a Complete Application:</p> <p>1) Items listed in California Code of Regulations, title 23, section 3856 “Contents of a Complete Application.” These items generally include applicant contact information, copies of related federal permits, a description of the project purpose, and a complete project description that includes a description of steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.</p>
15.	ENVIR	<p>Issue 15: Should the Policy direct that the watershed approach be applied in the analysis of project avoidance of impacts to waters of the state?</p> <p><u>Staff Recommendation</u> No change to the Policy is recommended. The Policy states that the watershed approach will be applied “for the review and approval of discharges of dredged or fill material into waters of the state.” The Policy’s watershed approach also broadens the analysis of project impacts from acres alone to considering effects on “the abundance, diversity, and conditions of aquatic resources in a watershed [that] support the beneficial uses of waters of the state</p>
16.	ENVIR	<p>Issue 16: Should the Policy protect uplands adjacent to waters?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. This Policy pertains to dredge and fill regulatory controls. As part of compensatory mitigation requirements, buffers are encouraged. Otherwise, the Water Boards must rely on other controls such as the Construction General Permit for controlling discharges from upland areas. Phase 2 and 3 of the Policy will consider the application of voluntary and regulatory buffer controls</p>

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17.	ENVIR	<p>Issue 17: Should the Policy clarify the criteria for placing Prior Converted Croplands under Policy authority (clarify the “recapture” criteria)?</p> <p><u>Staff Recommendation</u> (see Markup Version, Lines 274-292)</p> <p>Add the following to subsection V.1.(B)(1) Prior Converted Croplands:</p> <p>Prior Converted Cropland. Wetland areas that have been determined to be prior-converted cropland by the Natural Resources Conservation Service, and the determination has been certified, are excluded from this procedures. <u>The prior converted cropland (PCC) exclusion will no longer apply if: (1) the PCC changes to a non-agricultural use, or (2) the PCC is “abandoned,” i.e., not planted to an agricultural commodity for more than five consecutive years and wetland characteristics return, or (3) the Water Boards determine that a condition in subsection V.1.C. (Inapplicability of Exclusions) applies to the PCC. .</u></p>
18.	ENVIR	<p>Issue 18: Should the Policy section on adapting the level of information provided by the applicant to the complexity of project be limited to alternatives analysis?</p> <p><u>Staff Recommendation:</u> (see Markup Version, Lines 539-546)</p> <p>Move subsection V.2.(A) Adaptability to subsection V. 3.(B) Alternatives Analysis</p>
19.	ENVIR	<p>Issue 19: Should Minimal Impact Projects be qualified as to the range of activities that might occur?</p> <p><u>Staff Recommendation</u> (see Markup Version, Lines 861-868 [definition]; Lines 548-563 [Policy])</p> <p>As discussed above in Issue 3, change the definition of “Minimal Impact Project” as follows</p> <p><u>Minimal Impact Project</u>– means a project of such size, scope or nature that it will cause <u>only minor individual and cumulative environmental effects minimal impacts to the aquatic environment, both individually and cumulatively,</u> and dredged or fill discharges are limited to not more than <u>15000 10,000</u> square feet (<u>0.34 0.23</u> ac), and <u>600 400</u> linear feet for fill and excavation discharges, and not more than <u>75 50</u> cubic yards for dredging discharges. <u>A Minimal Impact Project must meet the terms and conditions of an applicable Corps’ Nationwide Permit to demonstrate that project activities will have minimal impact on the aquatic environment, both individually and cumulatively.</u></p>

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20.	ENVIR	<p>Issue 20: Should all elements of a complete application be listed in the Policy, even if partially redundant with existing certification regulations in California Code of Regulations, section 3856? CWA 404 and 401 regulations.</p> <p><u>Staff Recommendation</u> (see Markup Version, Lines 385-391) Change Policy wording for this section as noted in Issue 13 above (for brevity, a summary of contents should be provided).</p>
21.	ENVIR	<p>Issue 21: Should the Policy state that a 1:1 mitigation ratio is the minimum required for compensatory mitigation (Heal the Bay proposes a minimum of 3:1 to account for risk)?</p> <p><u>Staff Recommendation:</u> No change to Policy is recommended. Currently the Policy states that a 1:1 mitigation ratio is “presumed” to be the minimum necessary. The reason for this flexibility is that there may be instances where the applicant is offering a mitigation site that is far more valuable in terms of beneficial uses than what was impacted. In that case, the Water Boards may agree to a less than 1:1 ratio.</p>
22.	ENVIR (Heal the Bay)	<p>Issue 22: Should the Policy require buffers be included as part of compensatory mitigation projects?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended. As mentioned in Issue 16, the Policy encourages buffers as part of a compensatory mitigation project. However, consistent with the Corps’ mitigation rule in the 404(b)(1) Guidelines, it is left to the discretion of the Water Board whether to require buffers (the Guidelines leave it up to the District Engineer)</p>
23.	ENVIR (Heal the Bay)	<p>Issue 23: Should the Policy broaden the wetland definition?</p> <p><u>Staff Recommendation:</u> No change to the Policy is recommended.</p>