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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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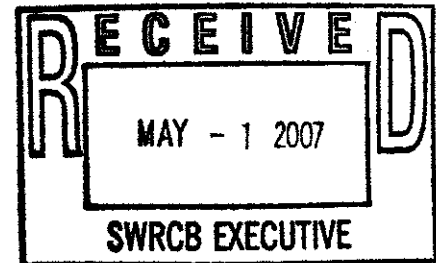
Wetland/Riparian Policy
Deadline: 5/15/07 12 noon

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

April 24, 2007

IN REPLY PLEASE
REFER TO FILE: WR-2

Mr. Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA, 95812-0100



Dear Mr. Her:

STATE BOARD NOTICE COMMENTS

This is a hard copy version of the comments we e-mailed to you on April 19, 2007, at 10:45 a.m. Thank you for giving us the opportunity to review and comment on the State Board's Notice of Public California Environmental Quality Act (CEQA) Scoping Meeting for its Proposed Wetland and Riparian Area Protection Policy. The State Board's stated purpose for the proposed policy is to have consistent Statewide definitions of wetland and riparian habitats that will be used by the agency and the State's nine Regional Water Quality Control Boards in regulating compliance with the Federal Clean Water Act and the State's Porter-Cologne Act. It is our understanding the State Board is seeking comments to identify the issues it will need to address in its upcoming CEQA document for the proposed policy.

Our comments are based on our understanding of the four alternatives the State Board proposes:

Alternative 1 – No Action

No new policy or habitat definitions would be adopted. There would continue to be no standard definition for the State Board or the nine Regional Boards.

Alternative 2 - Adopt the Federal CWA Section 404(b)(1) Guidelines as the State Policy to Regulate Impacts of Dredge or Fill Material Discharges on Wetlands and Riparian Areas

Adopt the U.S. Army Corps of Engineers' wetlands definition, apply it to "waters of the State," and use it to regulate dredge and fill activities only.

Alternative 3 - Develop a New State Policy to Regulate Impacts of Dredge or Fill Material Discharges on Wetlands and Riparian Areas

Adopt a wetlands definition that goes beyond the Corps' definition, possibly using the wetlands definition of the State's Department of Fish and Game or the Coastal Commission. Adopt a riparian habitat definition, possibly using the riparian habitat definition of the National Research Council. These definitions would apply only to dredge and fill activities.

Alternative 4 - Develop a New State Policy to Regulate a Variety of Discharges and Activities That Impact Wetlands and Riparian Areas

Same as Alternative 3 except the definitions would also apply to other activities besides dredge and fill, such as discharges of other pollutants (e.g., nutrients), hydromodification, land and vegetation clearing activities, and invasive species.

Potential Impacts from the Proposed Policy Alternatives

Adoption of Alternatives 2, 3, or 4 would have adverse impacts on the operation and maintenance of publicly owned flood protection and water conservation facilities, and as a result would have adverse impacts on public health, safety, and water supply. Due to the number of such facilities in County of Los Angeles and the millions of County residents and workers served by them, the impacts from Alternatives 2, 3, or 4 would be significant.

The compensatory mitigation requirements resulting from the adoption of Alternatives 2, 3, or 4 would also result in significant increased flood protection and water supply costs to the public.

It should be noted the August 1993 California Wetlands Conservation Policy (Executive Order W-59-93, a.k.a., "no net loss") appears to use the Corps' definition of wetlands. Adoption of Alternatives 3 and 4 would thus appear to result in regulation that unnecessarily exceeds the intent of the State's "no net loss" policy.

The August 1993 California Wetlands Conservation Policy also states:

"Many private landowners and public agencies create wetlands unintentionally or incidentally, e.g., drainage ditches, land held under agricultural best management practices, and wet areas from parking lot run-off. The State will encourage regulatory agencies to take a flexible approach in regulating these types of wetlands... Many large public and private land owners, such as flood control agencies and water districts, can often integrate substantial wetland habitat into the operation of their lands. This habitat, however, may need to be removed or modified periodically for

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the agency to achieve the primary purpose to which the land is devoted, e.g., water storage or - flood management. Many agencies with the potential of creating temporary wetland habitat would do so if they had assurances of regulatory flexibility."

In the interest of public safety and its water supply, Alternatives 2, 3, and 4 thus need to, when the Clean Water Act allows, exclude publicly owned flood protection and water conservation facilities from any wetlands definition and compensatory mitigation requirements. In cases where the Clean Water Act compliance cannot exclude flood protection and water conservation facilities, the State Board's resultant regulations need to ensure that all permanent and temporary impacts are handled case by case, in an appropriate manner, and mitigation ratios determined according to the types and the quality of vegetation that will be impacted. It is also necessary that the State Board's compensatory requirements consider and give credit for all avoidance measures and minimization efforts that have been incorporated and provided in the project by the project permittees. These measures and efforts often reduce or avoid the need for mitigation in the first place.

Also, the description of Alternative 4 lists invasive species as one of "...a variety of discharges and activities that impact wetlands and riparian areas..." that the policy under this alternative would regulate. It thus appears the State Board proposes under this alternative to require compensatory mitigation for the removal of invasive species. However, it is Public Works' understanding from State and Federal agencies that they recognize invasive species are major threats to the health of wetland and riparian habitats, and as a result, millions of taxpayer monies and private funds have been used to try to eradicate such species. It is, therefore, unreasonable and ineffective for the State Board to seek to penalize anyone or any local agency that tries to remove and eradicate these species by requiring compensatory mitigation for such efforts. Instead, it is more appropriate for the State Board to propose a policy that will issue mitigation credits for the removal and abeyance of invasive species.

Due to the potential significant adverse impacts on public safety and water supply, the State Board needs to prepare an Environmental Impact Report (EIR) for its proposed Wetland and Riparian Area Protection Policy to comply with CEQA.

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Thank you very much for the opportunity to convey our concerns to you. If you have any questions regarding our comments, please contact Ms. Patricia Wood at (626) 458-6131 or pwood@dpw.lacounty.gov.

Very truly yours,

DONALD L WOLFE
Director of Public Works



ROD H. KUBOMOTO
Assistant Deputy Director
Water Resources Division

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