

Dredge or Fill Procedures

The State Water Resources Control Board (State Water Board) is considering adopting a Statewide Wetland Definition and Procedures for Discharges of Dredged or Fill Material (Procedures) that would codify and standardize the evaluation of impacts and protection of waters of the state from impacts due to dredge and fill activities. The proposal consists of: 1) a wetland definition; 2) a jurisdictional framework for determining if a feature that meets the wetland definition is a water of the state; 3) wetland delineation procedures; and 4) procedures for application submittal, and the review and approval of dredge or fill activities. As drafted, these Procedures clarify what is considered a wetland – and what is not. [A final draft of the Procedures is available here.](#)

Why are the Procedures Needed?

- There is currently no state definition of what is a wetland. These procedures would provide a clear and consistent definition.
- There is currently no standardized procedure for the evaluation and protection of waters of the state related to dredge and fill activities.
- Because of past land development, the state has lost nearly 90 percent of state wetlands, with as much as 95 percent of historic coastal wetlands now gone. These draft Procedures provide much needed protection for California's remaining wetlands. The draft Procedures are based in large part on the scientific documentation and conclusions supporting the US Army Corp of Engineers' three-pronged definition of a wetland.
- The Procedures are intended to protect and enhance the rich diversity of wetlands throughout the state and improve consistency in wetland regulation and management.
- These draft Procedures will protect all waters of the state at a time when the current federal Administration is proposing to dramatically reduce the scope of federal Clean Water Act jurisdiction.

What Will the Procedures Do?

- Advance statewide efforts to ensure no overall net loss of wetlands, and support a long-term net gain in the quantity, quality and sustainability of wetlands in California in a manner that fosters creativity, stewardship, and respect for private property (consistent with Executive Order W-59-93-California's "No Net Loss" Policy).
- Support the Water Boards' environmental priorities for protecting and enhancing California's vital wetland areas through watershed-based regulatory and monitoring strategies.
- Establish a uniform regulatory approach across all Water Board regions that complements the federal Clean Water Act section 404 program for the discharge of dredged or fill material into all waters of the state, including wetland areas that qualify as waters of the state.

- Enhance the Water Boards' ability to support efforts of other agencies and groups in the conservation planning of watersheds, wetlands, and other aquatic resources (e.g., watershed plans such as habitat conservation plans and national community conservation plans).
- Strengthen regulatory effectiveness and improve consistency across all Water Boards.
- Streamline the dredge/fill permitting process.
- Establish procedures for regulation of dredged or fill discharges to all waters of the state, including those outside of federal jurisdiction.

State Water Board Definition of a Wetland

The Procedures define an area as a wetland if it meets three criteria: wetland hydrology, wetland soils, and (if vegetated) wetland plants. An area is a wetland if: (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation. The Procedures provide the same wetland delineation methods that are used by the Army Corps of Engineers.

The Federal and the Water Board Jurisdiction and Definition of a Wetland

Waters of the State, by definition, includes more aquatic features than Waters of the U.S., which defines the jurisdiction of the federal government. Waters of the State are not so limited. In addition, the federal definition of a wetland requires a prevalence of wetland vegetation under normal circumstances. To account for wetlands in arid portions of the state, the Water Boards' definition differs from the federal definition in that an area may be a wetland even if it does not support vegetation. If vegetation is present, however, the Water Boards definition requires that the vegetation be wetland vegetation. The State Water Board's proposed definition clarifies that vegetated and unvegetated wetlands will be regulated in the same manner.

Jurisdictional Framework

The Procedures also include a jurisdictional framework that applies to aquatic features that meet the wetland definition. The jurisdictional framework will guide applicants and staff in determining whether an aquatic feature that meets the wetland definition will be regulated as a water of the state. The jurisdictional framework is intended to exclude from regulation any artificially-created, temporary features, such as tire ruts or other transient depressions caused by human activity, while still capturing small, naturally-occurring features, such as seasonal wetlands and small vernal pools that may be outside of federal jurisdiction. The Procedures do not expand the Water Boards' jurisdiction beyond areas already under Water Boards' jurisdiction.

Application and Analysis Procedures

The procedures clarify what information and analysis the applicant needs to submit to have a complete application. The procedures standardize when an alternative analysis needs to be

conducted and set a minimum mitigation ratio for any permanent impacts to waters of the state resulting from dredge and fill activities.

Timeline

After several years of work with stakeholders, draft versions of the Procedures were released for public comment in July 2016 and July 2017. A final draft of the Procedures, Staff Report, and Response to Comments were released on January 3, 2019. Staff workshops were held in San Diego on January 9, 2019, and in Sacramento on February 6, 2019. A Board workshop was held on January 22, 2019. Following these workshops and additional stakeholder discussions, staff released a revised version of the Procedures and a list of additional policy changes requested by stakeholders on February 22, 2019. The Board will consider these documents at a Board workshop on March 5, 2019.

The State Water Board is scheduled to consider adoption of the Procedures on April 2, 2019.

Additional Information

Additional information regarding the proposal is available on the project website at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.shtml

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