

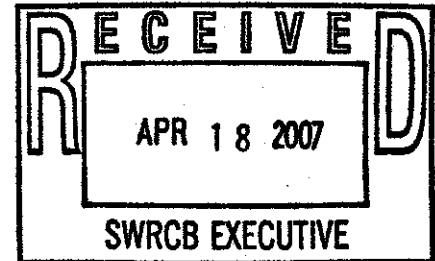


Wetland/Riparian Policy
Deadline: 4/19/07 12 noon

PORT OF OAKLAND

April 18, 2007.

Ms. Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
commentletters@waterboards.ca.gov



Dear Ms. Her:

SUBJECT: COMMENT LETTER - PROPOSED WETLAND AND RIPARIAN AREA PROTECTION POLICY

Thank you for the opportunity to provide comments in response to the "Second Revised Scoping Notice" on the Proposed Wetland and Riparian Area Protection Policy (Proposed Policy) dated April 5, 2007. The Port of Oakland (Port) is a public agency that comprises a Maritime port (marine terminals), the Oakland International Airport (OAK), and commercial real estate areas located along the eastern shore of San Francisco Bay. None of the areas under the Port's jurisdiction contain riparian habitat; however, there are wetlands located at the airport. These comments are prompted by activities conducted at OAK and thus focus on wetlands, but are applicable to riparian areas as well.

Proposed Policy Objectives

The objectives of the Proposed Policy involve providing clarity in wetland regulatory framework and ensuring statewide consistency in definitions (wetlands, riparian areas, and beneficial uses) and the assessment of impacts on water quality and beneficial uses. The Port welcomes clarity and consistency in regulatory requirements, which are needed following recent judicial limitations on federal jurisdiction. In substantial measure, the Proposed Policy is intended to fill the "gaps" created in wetlands regulation with recent judicial limitations on federal jurisdiction. The Port anticipates that the State Water Resources Control Board's (State Water Board) analysis under the California Environmental Quality Act (CEQA) will clearly describe the "gaps" in wetland protection, and how the Proposed Policy will fill those gaps.

Environmental responsibility is an important part of the Port's mission. The Port is committed to reducing environmental impacts that may result from its projects and operations. When permits and approvals are required from multiple regulatory agencies with overlapping authorities, it is not uncommon for inconsistent and even conflicting requirements to be imposed. Their resolution typically entails substantial additional costs and significant delays, with no incremental benefit to the environment. **It is important to the Port to work within a regulatory framework that avoids overlapping programs of multiple agencies.** The Proposed Policy has a potential for overlap between not only federal and state programs, but between federal, state, regional and local authorities. The Port thus urges the State Water

Board to carefully define and analyze the policy alternatives so as to streamline wetland regulation.

- State policy and wetland regulation should complement and not duplicate federal wetlands regulation. The analysis should identify where there is overlap or redundancy in regulatory programs. In particular, the discussion should include an analysis of any overlap of the defined wetlands covered by those programs.
- The analysis should specifically address the relationship of the Proposed Policy with regional wetland programs, e.g., the Stream and Wetlands System Protection Policy under development by the San Francisco Bay and North Coast Regional Water Quality Control Boards.
- The policy discussion should also include a discussion of opportunities and strategies to streamline permitting processes for protecting wetland and riparian habitats.
- The analysis should clarify the scope of authority under state law to regulate wetlands and riparian areas as defined, and to regulate activities independent of any discharge (e.g., for flood management and to address invasive species).

Alternatives and Mitigation Measures

The San Francisco Bay Regional Board requires mitigation for some maintenance activities authorized under Army Corps of Engineers (ACOE) Nationwide Permits, e.g., NWP 3, Maintenance.

- The Port urges the State Water Board to include a review of current mitigation requirements for non-reporting activities permitted under the ACOE Nationwide Permit Program. The review should also discuss how state requirements would be made consistent with the ACOE's Nationwide Permit program.

Airports are subject to Federal Aviation Administration (FAA) security and safety requirements that are likely to conflict with wetland regulations; for example, birds attracted to wetlands near airports pose a significant safety hazard to aircraft. How would the proposed alternatives be applied to special circumstances such as maintaining security and safety at airports? How might this affect wetland mitigation requirements?

- The State Water Board should consider an alternative that specifically addresses mitigation requirements for projects at airports where there is wetland or riparian habitat.
- The CEQA review should identify other state and or federal regulations/laws, i.e., the FAA Advisory Circular 150 for guidance on wildlife hazards at airports that may conflict with the proposed policy.
- The analysis should discuss or propose standard remedies for these situations, i.e., allowing FAA guidance to take precedence over state policy.
- The analysis should discuss, for each alternative, the potential impacts of exemptions for airports subject to FAA guidelines for managing wildlife hazards (for airport safety) on state requirements for wetland and riparian mitigation.

Alternative 4 would expand the extent of wetland regulation in California, yet the scope of the Policy Components is unclear.

- Please provide a more complete description of the discharges and activities affecting wetlands and riparian habitat that may be regulated under Alternative 4. Include other examples besides nutrients that may be covered.
- Explain and clarify the issues related to "invasive species" and provide a science-based definition. The relationship between invasive organisms (categorically and specifically) to water quality needs to be described, and authority to regulate explained, particularly in the absence of a discharge or release of invasive species.
- Given the expansive scope of Alternative 4, an analysis of potential restrictions to and impacts on upland areas needs to be discussed.

Potential Significant Environmental Effects

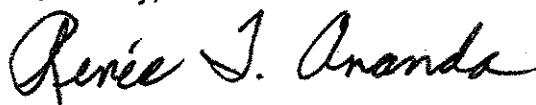
The environmental review should discuss the consistency needed within state and regional policies for defining riparian and jurisdictional wetlands and assessing functions and values. The analysis should provide detail on methodologies for assessing functions, values and impacts, and for determining significance criteria (regionally, locally). The environmental review should also discuss how the alternatives may be implemented differently between severely degraded wetlands and more pristine wetlands, and describe how the feasibility of restoring severely degraded wetlands will be evaluated.

The analysis of alternatives should consider and discuss the exemption of routine and ongoing maintenance of managed wetlands (including constructed wetlands) that provide treatment for urban runoff.

Finally, the analysis of significant environmental effects should include a discussion of the appropriate reach of wetland regulation so as to avoid a taking of private property.

Please contact me at (510) 627-1351 or Melissa Escaron, Associate Port Environmental Scientist at (510) 627-1179 regarding the Port's comments on the Proposed Wetland and Riparian Area Protection Policy.

Sincerely,



Renée T. Ananda
Port Associate Environmental Planner
Port of Oakland
Environmental Planning & Permitting Dept.

cc : Richard Sinkoff, Manager, Environmental Planning & Permitting, Port of Oakland
Diane Heinze, Environmental Assessment Supervisor, Port of Oakland
Anne Whittington, Environmental Assessment Supervisor, Port of Oakland
Melissa Escaron, Associate Port Environmental Scientist, Port of Oakland
Environmental Planning & Permitting Department Chron. File