

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

April 3, 2007

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



Subject: Scoping Comments on Wetland and Riparian Area Protection Policy

Dear Ms. Her,

The East Bay Regional Park District ("District") has obtained a copy of the Informational Document and "Notice of Public California Environmental Quality Act Scoping Meeting" for the proposed "Wetland and Riparian Area Protection Policy". Herewith please find the District's scoping comments for the proposed policy.

The District owns or manages more than 97,000 acres of public parkland and open space within Alameda and Contra Costa Counties. This includes 65 regional parks and more than 1,000 miles of trails. The District routinely obtains permits and water quality certifications from the San Francisco and Central Valley Regional Water Quality Control Boards ("RWQCB") for its maintenance and construction of capital projects within our park system. This includes work in or near wetland and riparian areas throughout the East Bay.

Project Alternatives

The proposed project contains four project alternatives which the State Water Resources Control Board (SWRCB) will be considering. These are 1.) no project, 2.) adopt the Federal CWA Section 404(b)(1) Guidelines as the State policy to regulate impacts of dredged or fill material discharges on wetlands and riparian areas, 3.) develop new State policies to regulate impacts of dredge or fill material discharges on wetlands and riparian areas, and 4.) develop a new State policy to regulate a variety of discharges and activities that impact wetlands and riparian areas. All of the proposed project alternatives will affect District maintenance and construction of capital projects. They will also affect proposed development projects adjacent to District parklands.

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Alternative 1: Existing SWRCB regulations require the District to obtain a number of permits for its maintenance and capital projects. The District has obtained a regional general permit for most of these activities. This process has required considerable expense and staff effort to obtain permits, monitor and report activities, and mitigate for impacts to wetlands and riparian areas.

The District shares the SWRCB's goal of protecting water quality, wetlands and riparian areas. It is our goal to streamline the permitting processes to reduce the level of effort required to comply with SWRCB regulations and at the same time improve protection of water quality, wetlands and riparian areas.

Protection of water quality, wetlands and riparian areas are often inadequately addressed through the California Environmental Quality Act (CEQA). Local governments have not been effective or have been unwilling to enforce mitigation measures it may have adopted to protect these areas from development projects. We have seen many cases in which the local RWQCB's have lacked adequate regulations to extend protection to areas often neglected by local governments. The net result being cumulatively significant degradation of water quality, wetlands and riparian areas.

Alternative 2: It is unclear if this project alternative would include State adoption of the Clean Water Act (CWA) Section 401 regulations and thus relieve the Corps of Engineers of this regulatory responsibility. Because the CWA has been under attack, a project alternative which places more regulatory responsibility on the SWRCB could help to increase protection of water quality, wetlands and riparian areas that have experienced diminished protection at the federal level. This includes isolated wetlands, such as vernal pools, and seasonal drainages above the "headwaters".

Alternative 3: As with Alternative 1, the District's goal is to streamline the permitting process to reduce the level of effort required to comply with SWRCB regulations and at the same time improve protection of wetlands and riparian areas. This proposed alternative would regulate impacts of dredge or fill material discharges to wetlands and riparian areas. This alternative does not appear to extend protection of water quality associated with wetlands and riparian areas. While water quality is addressed under CWA Section 401 and the California Water Code, the notice does not specifically state water quality protection as a goal for this alternative. This alternative appears deficient in this respect.

Alternative 4: This alternative appears to provide the most comprehensive protection of water quality, wetlands and riparian areas by extending the scope of protective measures to regulate discharges of pollutants, hydro-modifications, land clearing and introduction of invasive species. It would also serve to fill in the "gaps" discussed under Alternatives 1, 2 and 3 above.

Beneficial Uses

There has been much discussion over the term "beneficial uses" and how it is applied under existing SWRCB regulations. While the District is supportive of beneficial use criteria, we are concerned that public access has not been adequately or fairly considered as a beneficial use in wetland and riparian areas.

It is our strong belief that public access is essential to understanding and protecting water quality, wetlands and riparian areas. The public is the most effective advocate for protection of these resources. This includes monitoring and reporting unpermitted or illegal activities. It also includes public information campaigns, public outreach and citizen suits to enforce mitigation measures and regulations. Without a public that is informed and actively involved in protecting these resources, there would not be adequate support for legislation and regulations to protect these areas. The public must be able to access these areas to gain an understanding of why they are important and why they must be protected. Closing an area to public access may actually threaten its long-term viability. It's the old adage "out of sight, out of mind".

Public access must be properly designed and managed so that there are minimal conflicts with other beneficial uses, such as wildlife. Unfortunately, there is a bias within some of the regulatory community that public access adversely affects wildlife. We can find no scientific evidence to support such conclusions. Recent studies by the San Francisco Bay Trail and the San Francisco Bay Conservation and Development Commission have documented that there may be some minor impacts to wildlife from public access, but in most cases public access is benign. In those areas where minor impacts have been documented, changes in management of public access has been effective in reducing or eliminating such impacts. Monitoring of public access in sensitive wildlife areas and adaptive management changes will provide adequate wildlife protection.

Land Management

Two key land management practices that need further consideration under potential new State regulations are vegetation management and use of buffers adjacent to wetland and riparian areas.

Vegetation Management: As described at the beginning of this letter, the District owns or manages more than 97,000 acres of parklands at 65 locations. Many of these parklands share common boundaries with urbanized areas where the risk of wildfire is an on-going management issue. At other locations, vegetation management is essential to sustain existing wildlife habitats, special-status species and biological diversity.

The District uses a number of vegetation management tools to protect public safety, wildlife habitats, special-status species and biological diversity. These include livestock

grazing (cattle, sheep and goats), mechanical clearing, prescribed fire and careful application of herbicides. About 50,000 acres of District parkland are grazed to meet these goals. The other methods are also employed, but on a much smaller scale. Livestock grazing functions at a financial break even standpoint. The other methods range from \$200 per acre to more than \$500 per acre. The use of prescribed fire is further hampered by Air Resource Board restrictions on permissible "burn days". Herbicide usage is greatly restricted by cost, controversy and now litigation, which has prohibited their use in many areas. As a result of these financial, regulatory and environmental restrictions, livestock grazing remains the only viable large-scale vegetation management tool to meet our objectives to protect public safety, wildlife habitats, special-status species and biological diversity.

Recent project approvals granted by the RWQCB's for open space being dedicated to the District has resulted in a number of restrictions on the timing and duration of grazing. These restrictions greatly hamper our ability to effectively manage vegetation consistent with the above objectives. The stated reasons for these restrictions have been the perceived conflict between livestock grazing and water quality protection. It is clear that improperly managed livestock grazing can result in adverse effects to water quality. However, there is very little scientific information that demonstrates that properly managed grazing results in adverse effects to water quality. By contrast, there is recent research published that shows that properly managed grazing can improve water quality by reducing runoff volume, natural erosion rates, sequestering nitrogen, and removing pathogens by use of managed buffers. *For some sample articles, please see "Keeping Landscapes Working", Volume 1, Issue 4 which contains a number of references to recent studies.*

Buffers: A number of criteria or guidelines have been established by various regulatory agencies and local governments which require buffers or set backs from wetlands and riparian areas. These fluctuate based upon site conditions and other factors, such as the presence of special-status species in these areas. Consideration should be given to developing guidelines for determining the type, location and size of buffers that should be provided between wetland or riparian areas and adjacent land uses. In addition, consideration should also be provided for developing guidelines to local governments who may be seeking to establish buffers or set backs, but lack the scientific information necessary to impose such restrictions or enforce restrictions on development projects.

Thank you for the opportunity to comment on this important project. Please provide me with any copies of notices, environmental documents and supporting studies for this project. If available, please provide such on CD. Please call me at (510) 544-2622 should you have any questions.

Sincerely,



Brad Olson
Environmental Programs Manager