



GARY L. PRYOR
DIRECTOR

County of San Diego

DEPARTMENT OF PLANNING AND LAND USE

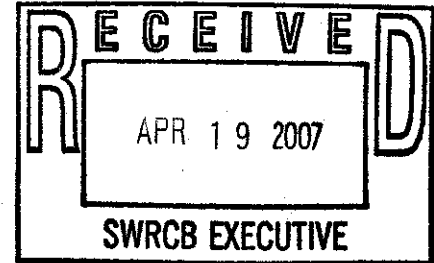
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Wetland/Riparian Policy
Deadline: 4/19/07 12 noon

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April 19, 2007



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

Via U.S. mail and E-mail
(commentletters@waterboards.ca.gov)

COMMENTS ON THE PROPOSED WETLAND AND RIPARIAN AREA PROTECTION POLICY SCOPING DOCUMENT

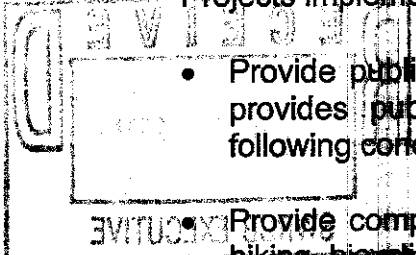
The County of San Diego has received and reviewed the Informational Document for the Proposed Wetland and Riparian Area Protection Policy Scoping Document dated March 2007 and appreciates this opportunity to comment. The County appreciates the State's efforts to increase the efficiency and effectiveness of wetland and riparian area requirements to increase the overall level of water quality protection in the state. However, the County has comments that identify issues that may have an affect on the unincorporated lands of San Diego County and that should be explored in an environmental document.

The County Department of Planning and Land Use (DPLU), Department of Public Works Environmental Services Unit (DPW ESU), and the Department of Parks and Recreation (DPR) have completed a review of the document and have the following comments for your consideration:

1. In the spirit of increasing water quality protection in the State, the County of San Diego respectfully requests that consideration be given to streamlining the regulatory/permitting process for projects funded and implemented pursuant to the California River Parkways Act of 2004 Chapter 3.8 (commencing with Section 5750). This will increase the ability of grantees to

complete projects within the specified grant period and reduce costs and time expended by the State and grantees on administrative work, thus increasing the amount of money available to complete the project.

Projects implemented pursuant to The River Parkway Act of 2004 must:

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- Provide public access or be a component of a larger parkway plan that provides public access. In addition, projects must meet two of the following conditions:
 - Provide compatible recreational opportunities including trails for strolling, hiking, bicycling, and equestrian uses along rivers and streams.
 - Protect, improve, or restore riverine or riparian habitat, including benefits to wildlife habitat and water quality.
 - Maintain or restore the open-space character of lands along rivers and streams so that they are compatible with periodic flooding as part of a flood management plan or project.
 - Convert existing developed riverfront land into uses consistent with river parkways.
 - Provide facilities to support or interpret river or stream restoration or other conservation activities.

The County believes that it would be beneficial to look closely at improving the State's ability to provide recreational uses -- such as trails and interpretive facilities -- while protecting the wetland/riparian resources.

Projects are not eligible for funding unless they meet statutory requirements for river parkway projects including the California Environmental Quality Act (CEQA), Division 13 (commencing with Section 21000). In addition, priority is given to projects that are implemented pursuant to approved Watershed Plans and include water quality and watershed protection benefits as required by the California Water Code, Section 79541.

By streamlining of regulatory/permit processing for river parkway projects implemented pursuant to the California River Parkways Act of 2004, the State would be promoting consistency between its policy to provide funding for river parkway projects (a beneficial use) and statewide requirements for evaluating the condition of wetland and riparian area resources.

2. The SWRCB would like to utilize a "staff report" in lieu of EIR to certify this policy in compliance with the California Environmental Quality Act (CEQA) (§21080.5 **Regulatory plan in lieu of EIR; limits programs; interdisciplinary approach**). The Department of Planning and Land Use believes that an EIR should be prepared in accordance with Chapter 3 of CEQA. The most compelling reason for this would be that the process being proposed by the State does not require a full evaluation of cumulative impacts that this action could have on the environment. Secondly for certification, §21080.5 requires the Agency use an interdisciplinary approach in the development of the policy. While it is clear that there has been coordination with the North Coast and San Francisco Regional Boards there appears to be little coordination with in the Southern California region. There are significant differences in the wetland and riparian habitats in Southern California from those in Northern California. The State Agency should coordinate closely with the scientific, public and private entities that have experience in Southern California wetland, riparian and water quality issues. The County of San Diego would appreciate the opportunity to work with the State and Regional Boards on the development of a state-wide definition of wetland and riparian habitats. It should be noted that the CDFG and many of the local agencies have existing definitions for these resources and any definition created should be consistent with those.
3. The project description and accompanying documentation appear to suggest that additional regulation or authority is necessary to ensure that the state meets the "no net loss" policy. The County believes that the current regulations and authorities available to the State (Porter-Cologne and Waste Discharge Permits) and Local Agencies (CEQA) if adequately implemented and enforced are sufficient to protect wetlands and riparian habitat and that "additional" regulations and authority is unnecessary.
4. The County would support clarifying existing Beneficial Uses over developing new or additional uses. Beneficial Uses for both wetland and riparian areas are covered under the current list including; Warm and Cold Freshwater Habitat, Wildlife Habitat as well as the Preservation of Biological Habitat of Special Significance.
5. Alternatives:
 - a. The County would support Alternative 1 No Action Alternative. Currently the existing regulations and authorities of the Federal, State and Local Agencies provide ample opportunity to protect and implement wetland and riparian habitat protection. Adequate implementation and enforcement of existing regulations should be considered as the environmentally superior alternative. However, the County would also support a new alternative or

a modified alternative one that addresses the definition and consistency issues discussed in the public notice. The County would like to reiterate that it may be difficult to have a single statewide definition for wetlands and riparian areas as there are significant variations in these habitat types north to south as well as east to west. Also many State and Local agencies have current definitions of these habitat types that should be considered when the State develops its definition.

- b. Alternative 2: Adopt Federal 404(b)(1) guidelines as State Policy. This would restrict the ability of the State to regulate outside those of the Federal Guidelines and would be limited to only dredge and fill.
 - c. Alternative 3: Develop a New State Policy to Regulate Impacts of Dredge or Fill Materials. These new requirements would address; Cumulative Impacts, Functional Assessments, Mitigation Sequencing and Compensatory Mitigation and Performance Standards. The County does not believe that there is a need to add additional regulation to an already regulated resource. Adequate protections of Aquatic Resources should be achievable under current regulations and policies including the Waste Discharge Regulations, CEQA and other federal, state and local regulations. Any new requirements above and beyond that dictated by CEQA should be accompanied by state funding available to local jurisdictions and agencies, per the California Constitution Article 13, Section 6.
 - d. Alternative 4: Develop a New State Policy to Regulate a variety of Discharges and Activities that Impact Wetlands and Riparian Areas. This would result in a significant expansion of State authority and jurisdiction and could allow regulation of upland projects that do not have a clear or direct impact to wetland or riparian habitats. The State currently should have some authority on these projects through its Responsible Agency review of projects that are subject to CEQA. Any regulation of non-federal wetlands or waters by the SWRCB or Regional Water Quality Control Board (RWQCB) should be consistent with the existing regulatory process described in section 1600 of the California Fish and Game Code which is administered by the California Department of Fish and Game.
6. Per Section 21080.5 the County of San Diego would like notification of all future documents and actions related to this subject.

The County of San Diego appreciates the opportunity to comment on the above reference document and to continue to participate in the environmental review process for this project. We look forward to receiving and future environmental

documents related to this project or providing additional assistance at your request. If you have any questions regarding these comments, please contact Jennifer Campos at (858) 495-5204.

Sincerely,



GARY L. PRYOR, Director
Department of Planning and Land Use

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