

Clerk to the Board, Executive Office,  
State Water Resources Control Board

Comment Letter – Wetland and Riparian Area Protection

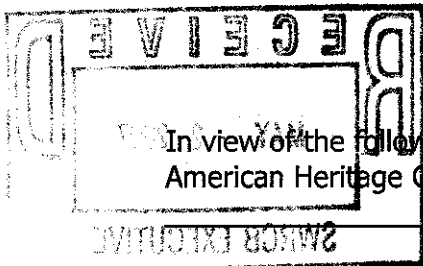
I would like to submit initial comments and concerns in regard to the wetland and riparian protection policies now under consideration.

In developing these policies:

1. Consultation with California Indian tribes of the area is necessary, as much of the land adjacent to wetland and riparian areas was inhabited and/or burial areas that are considered sacred sites. These sites should be afforded consideration and protection, as indicated by legislative action on the state level. (see citations from CA Native American Heritage Commission website, regarding notice and consultation for tribes, including sect. 5097.95, and CEQA). California Indian tribes also have historic water rights.
2. In view of 90-98% of wetlands and riparian areas in CA having already been destroyed, "no-net loss" does not seem to be strong enough as a policy. Better than "no-net loss" would be actual recovery, re-creation, and restoration of wetland/riparian areas, along with buffer zones and associated upland areas, which are essential to the existence and function of these hydrologic and habitat areas.
3. Preservation of (intermittent) vernal pools, springs, and water sources associated with wetlands and riparian areas should be incorporated into policy.
4. Channelization, re-contouring, dewatering, and irrigation practices (including adjacent and surrounding areas) must be considered in regard to the overall function and health of wetland and riparian ecologies.
5. Oversight is needed of toxic and chemical run-off, and residue from use of pesticides, rodenticides, fertilizers, herbicides, as well as building materials and urban waste products, that enter into creeks and wetlands, and seep into underlying aquifers.
6. Habitat associated with wetlands and riparian areas should be addressed, such as trees for nesting birds that may be near a designated wetland or riparian area, and is critical to maintain for the existence and welfare of species.
7. Connectivity and safe crossing passages for wildlife must be designed to provide access to water sources for animals.

For the above reasons, the proposed Alternative 4 in the Scoping document seems preferable in allowing fuller consideration of a wider range of issues.

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In view of the following, I believe that the Water Board must notice tribes and the Native American Heritage Commission in regard to water policy planning processes and decisions.

<http://www.nahc.ca.gov/govcode.html>

#### Government Code

#### § 6254 (r): California Public Records Act Exemption from Disclosure

Exempts from disclosure public records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

#### § 65092: Public notice to California Native American Indian Tribes

Includes California Native American tribe that is on the contact list maintained by the Native American Heritage Commission in the definition of "person" to whom notice of public hearings shall be sent by local governments.

#### § 65351: Native American Involvement in General Plan Proposals

Requires local planning agencies to provide opportunities for involvement of California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, in the preparation or amendment of the general plan

#### § 65352: Referral of Action on General Plan Changes to Native Americans

Requires local planning agencies to refer proposed actions of general plan adoption or amendment to California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, with a 45 day opportunity for comments.

#### § 65352.3- 65352.4: Consultation with Native Americans on General Plan Proposals

Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission prior to the adoption or amendment of a city or county general plan for the purpose of protecting cultural places on lands affected by the proposal.

#### § 65560, 65562.5: Consultation with Native Americans on Open Space

Includes protection of Native American cultural places as an acceptable designation of open space. Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission for the purpose of protecting cultural places located within open space.

#### § 12600-12612: Attorney General- Environmental Action

Permits the attorney general to intervene in any judicial or administrative proceeding concerning pollution or adverse effects on the environment. Authorizes the attorney general to maintain an action for equitable relief in the name of the people of the state against any person for the protection of the natural resources of the state from pollution, impairment or destruction. Includes historic sites in the definition of natural resources. Authorizes the court to hold the defendant accountable for the protection of natural resources of the state from pollution, impairment or destruction.

§ 25373, 37361: City/County Protection of Historic Resources

Allows city and county legislative bodies to acquire property for the preservation or development of an historic landmark. Allows local legislative bodies to enact ordinances to provide special conditions or regulations for the protection or enhancement of places or objects of special historical or aesthetic interest or value.

§ 50280-50290: Mills Act (Historical Property Contracts)

Allows the negotiation of contracts between a private owner of a "qualified historical property" and provides additional guidelines for such contracts.

<http://www.nahc.ca.gov/publicresource.html>

Public Resources Code

§ 5020.5: State Historical Resources Commission

Directs the State Historical Resources Commission to develop criteria and methods for determining the significance of archeological sites, for selecting the most significant sites, and for determining whether the most significant sites should be preserved intact or excavated and interpreted. Directs the commission to develop guidelines for the reasonable and feasible collection, storage, and display of archeological specimens.

§ 5020.7: Public promotion of historical resource protection

Directs public agencies to encourage owners of both identified and unidentified historical resources to perceive historical resources as assets and to elicit the support of owners and of the general public for the preservation of historic resources.

§ 5024: State-owned historical resources

Directs all state agencies to preserve and maintain all state-owned historical resources with the assistance of the State Historic Preservation Officer.

§ 5024.1: California Register of Historical Resources

Establishes the California Register of Historical Resources, duties of the committee overseeing the administration of the register, and criteria for inclusion of resources on the Register.

§ 5079.10-5079.15: California Heritage Fund

Establishes the California Heritage Fund in the State Treasury for implementation of laws providing for historical resource preservation.

§ 5079.20-5079.28: State acquisition of property to preserve historical resources

Defines methods by which the State Public Works Board may acquire property, on behalf of the (Treasury), for the purpose of meeting the policies and objectives of the California Register to protect and/or provide public access to cultural or historical resources.

§ 5079.40-5079.44: Grants for historical resource preservation

Directs the (Treasury) to provide competitive grants to public agencies and non-profit organizations for historical resource preservation projects, not to exceed \$1,000,000 or 50% of project costs.

**§ 5097.1-5097.6: Parks and Recreation Code and Sites**

Requires state agencies proposing any major public works project on state lands to have plans reviewed by the Department of Parks and Recreation. Authorizes the Department of Parks and Recreation to conduct archeological site surveys for historical features on land affected by projects. Authorizes the state agencies to undertake surveys, excavation, or other operations on the state lands, or request such activities be done on their behalf by the Department of Parks and Recreation. Prohibits any archeological program from delaying state construction projects. Prohibits the removal, destruction, or defacement of any archeological or historical feature situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

**§ 5097.9: Non-interference with Native American religious expression**

Establishes that public agencies, or private entities using, occupying or operating on public property under public permit, shall not interfere with free expression or exercise of Native American religion and shall not cause severe or irreparable damage to Native American sacred sites, except under special determined circumstances of public interest and necessity.

**§ 5097.91-5097.94: Native American Heritage Commission (NAHC)**

Creates the nine-member Native American Heritage Commission appointed by the governor and directs that at least five members shall be elders, traditional people, or spiritual leaders of California Native American tribes. Directs the commission to identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands, and to perform other duties regarding the preservation and accessibility of sacred sites and burials and the disposition of Native American human remains and burial items.

**§ 5097.95: State and local agency cooperation with the NAHC**

Directs all state and local agencies to cooperate with the Native American Heritage Commission in transmitting to the commission copies of appropriate sections of all CEQA environmental impact reports related to property identified by the commission as of special religious significance to Native Americans, or which is reasonably foreseeable as such property.

**§ 5097.96: The NAHC inventory of Native American sacred places**

Authorizes the Native American Heritage Commission to prepare an inventory of sacred places located on public lands and to review the administrative and statutory protections accorded to such places. Directs the commission to submit a report to the Legislature recommending actions, as the commission deems necessary, to preserve such sacred places and to protect the free exercise of Native American religions.

**§ 5097.97: NAHC investigations**

Enables the Native American Heritage Commission to investigate the effect of proposed actions by a public agency if such action may cause severe or irreparable damage to a Native American sacred site located on public property or may bar appropriate access thereto by Native Americans. Authorizes the commission to recommend mitigation measures for consideration by the agency if the commission finds, after a public hearing, that the proposed action would result in such damage or interference. Allows the commission to ask the attorney general to take appropriate action if the agency fails to accept the mitigation measures.

**§ 5097.98: NAHC identifying most likely descendant**

Requires the Native American Heritage Commission, upon notification by a county coroner, to notify the most likely descendants regarding the discovery of Native American human remains. Enables the descendants, within 24 hours of notification by the commission, to inspect the site of the discovery of Native American human remains and to recommend to the landowner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. Requires the owner of the land upon which Native American human remains were discovered, in the event that no descendant is identified, or the descendant fails to make a recommendation for disposition, or the land owner rejects the recommendation of the descendant, to reinter the remains and burial items with appropriate dignity on the property in a location not subject to further disturbance.

**§ 5097.99: Prohibition of possession of Native American artifacts and remains** Public resource  
Prohibits acquisition or possession of Native American artifacts or human remains taken from a Native American grave or cairn after January 1, 1984, except in accordance with an agreement reached with the Native American Heritage Commission.

**§ 5097.991: Repatriation of Native American remains**

States that the policy of the state is that Native American remains and associated grave artifacts shall be repatriated.

**§ 5097.993-5097.994: Native American Historic Resource Protection Act**

Establishes as a misdemeanor, punishable by up to a \$10,000 fine or both fine and imprisonment, the unlawful and malicious excavation, removal or destruction of Native American archeological or historic sites on public lands or on private lands. Exempts certain legal acts by landowners. Limits a civil penalty to \$50,000 per violation.

**§ 21083.2: California Environmental Quality Act- Archeological Resources**

Directs the lead agency on any project undertaken, assisted, or permitted by the state to include in its environmental impact report for the project a determination of the project's effect on unique archeological resources. Defines unique archeological resource. Enables a lead agency to require an applicant to make reasonable effort to preserve or mitigate impacts to any affected unique archeological resource. Sets requirements for the applicant to provide payment to cover costs of mitigation. Restricts excavation as a mitigation measure.

**§ 21084.1: California Environmental Quality Act- Historic Resources**

Establishes that adverse effects on an historical resource qualifies as a significant effect on the environment. Defines historical resource.