



Contra Costa County Public Works Department

Julia R. Bueren, Director

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Public Comment
Statewide Dredged or Fill Procedures
Deadline: 8/18/16 12:00 noon

August 15, 2016

Submitted Via Email



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comments on the Statewide
Dredged or Fill Procedures

Dear Ms. Townsend:

The Contra Costa County Public Works Department (CCCPWD) and Contra Costa County Flood Control and Water Conservation District (CCCFCD) appreciate the opportunity to provide comments on the *State Water Resources Control Board's Procedures for Discharges of Dredged or Fill Materials to Waters of the State* (the Proposed Procedures).

The CCCPWD manages road infrastructure in unincorporated Contra Costa County and the CCCFCD manages stormwater infrastructure in both unincorporated County and the County's incorporated cities. Both CCCPWD and CCCFCD are charged with protecting the health, welfare, and property of the residents of Contra Costa County.

We offer the following comments on the Proposed Procedures:

1. The Proposed Procedures suggest that project descriptions should characterize the discharge amount by rounding to the nearest tenth of an acre. Because many of our projects have very small impacts to Waters of the State, this requirement could have us greatly overestimating (and thereby over-mitigating) impacts to Waters of the State. We request this requirement be refined to allow applicants to more accurately report actual project impacts. Further, we recommend impacts to Waters of the State below 0.05 acre be considered non-reporting and not subject to permitting approvals or mitigation.

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2. The Proposed Procedures reference the examples of a 'letter of credit' or a 'performance bond' as financial security for mitigation assurance. We request the Final Procedures acknowledge that a 'pledge of revenue' in the form of a letter is appropriate and sufficient assurance of funds from a public agency such as CCCPWD, CCCFCD, or other cities, counties or special districts.
3. It is critical that exemption iii. from the 'Least Environmentally Damaging Practicable Alternatives' analysis requirement be interpreted by staff at the State and Regional Boards to apply to the vast majority of the types of projects CCCPWD and CCCFCD implement. Almost all of CCCPWD/CCCFCD projects are location-driven and would not achieve the goal of the project at an alternate location. Our projects include bridge replacements, road safety improvements targeted at specific deficiencies or issues, streambank stabilizations, flood water storage, etc. In workshops, conference calls, and meetings I have attended with the State Board's staff working on these Proposed Procedures it has seemed very clear the types of projects CCCPWD and CCCFCD generally conduct are exactly what Water Board staff had in mind when they drafted this exemption. We request additional examples of location-dependent projects be included in the Final Procedures to provide guidance to Regional Board staff about the types of projects the State Board staff envisioned when drafting the Proposed Procedures.
4. The Proposed Procedures reference a hierarchy of five mitigation approaches starting with purchase of mitigation bank credits as the most preferred option and moving through off-site and/or out-of-kind mitigation as the least preferred option. We recommend the Final Procedures allow a 6th mitigation option that includes creative and non-comparable mitigation for impacts to Water of the State. Although the Proposed Procedures allow for some flexibility when on-site and in-kind mitigation may not be possible or practical, we believe in some cases, the most beneficial, feasible mitigation for our typically small impacts would be direction of funds to alternative mitigation such as local watershed group planning and restoration efforts, research, or other in-direct watershed-benefitting efforts.
5. Many of our flood control channels were constructed decades ago, are surrounded by significant urbanization, and have strict operation and maintenance regimes in order to function as designed and provide the protection they were intended to provide. Routine operation and maintenance of existing facilities should be exempt from compensatory mitigation under the Final Procedures since impacts due to this work are generally temporary in nature and they generally occur in facilities where maintenance was planned to occur and, in fact, must occur in order for the public to be adequately protected (e.g., vegetation management, debris removal, silt removal, etc.).

6. The Proposed Procedures create an application process that could include much more back-and-forth between the applicant and their Regional Board than the current application process requires. While this collaborative approach seems reasonable (and even good); we find it challenging to receive prompt attention on current applications for 401 Water Quality Certifications under the existing application process due to staffing and workload challenges at our Regional Boards. While the goal is admirable, we are concerned with the Regional Board's ability to participate in this very fluid and time consuming way. The concern is that this fluid approach to determining an application complete could take what is already a lengthy process and make it even longer.
7. As with all regulatory processes, we believe the Proposed Procedures should consider the scale of a project and its associated impacts. Low impact projects should take less time, energy, detail, and effort on both sides (both our applications and the Regional Board's review). Although the Proposed Procedures do seem to acknowledge this (see Appendix A Lines 543-546 and Lines 550-553), this comment is directed in particular at the extensive and open-ended section of the Proposed Procedures titled "Additional Information Required for a Complete Application". We request clear acknowledgement in the Final Procedures that low impact projects should not trigger the optional additional information required for a complete application, and we appreciate any efforts by the State and Regional Boards to consider a projects' scale in their regulatory process.
8. The Proposed Procedures suggest many of the aspects of the application and approval process will be analyzed on a case-by-case or situation-by-situation basis. Although State Board staff has expressed that they believe this to be beneficial to the applicant (and in some cases it may be), this creates a distinct lack of certainty for those who are regulated. For example, in the 'Additional Information Required for a Complete Application' section of the Proposed Procedures, most of the listed items will be determined necessary on a case-by-case basis, and most of the items will take considerable time and effort to produce if ultimately deemed necessary. Generally when we are applying for regulatory permits, we have a goal to conduct the work within 6 months to a year of application submittal. This lack of certainty about what might ultimately be required of us could lead to projects being significantly delayed while we produce any supplemental documentation requested of us, or it could lead to us assuming we will need all items listed in this section and possibly creating more documentation than Regional Board staff will ultimately require. In either event this seems an unfortunate public disservice.

9. Current wetland delineation guidelines and procedures allow dry season delineations. The Proposed Procedures suggest the State and Regional Boards can require wet weather delineations if they believe there is a reason to do so. This requirement could add considerable time to a project's schedule and we believe it is unwarranted. The science of delineating wetlands relies on hydric indicators that are present regardless of season. A high quality wetland delineation provides accurate results even in late summer or early fall.
10. While the Proposed Procedures make it clear discharges of dredged or fill material for the purpose of maintaining constructed treatment wetlands and sedimentation/storm water treatment facilities already covered by an existing Water Board Order are excluded from the new Proposed Procedures, we believe consideration should be given to exempting operation and maintenance of these treatment wetlands, sedimentation facilities and stormwater facilities from all regulatory oversight by the State or Regional Boards. While these facilities may establish wetland characteristics, they were designed for a specific function and they must be routinely maintained in order to function as designed and intended.

Thank you again for the opportunity to comment on the Procedures for Discharges of Dredged or Fill Materials to Waters of the State. Please contact me at (925) 313-2366 or leigh.chavez@pw.cccounty.us if you have any questions regarding these comments.

Sincerely,



Julia R. Bueren
Public Works Director

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c: Members, Board of Supervisors
Lara DeLaney, County Administrator's office
Steve Kowalewski, Deputy Public Works Director
Mike Carlson, Flood Control District
Jerry Fahy, Transportation Engineering