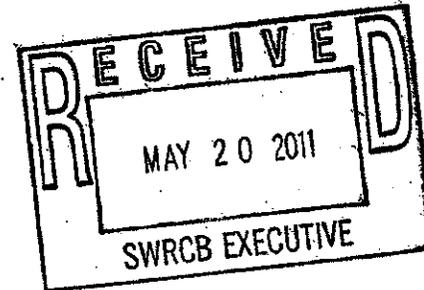


STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



May 19, 2011

State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: Wetland Area Protection Policy and Dredge and Fill Regulations, Initial Study

Dear State Water Resources Control Board:

The California Coastal Commission staff welcomes the opportunity to submit comments on the *Wetland Area Protection Policy and Dredge and Fill Regulations, Initial Study* (hereafter, "Initial Study"). The Coastal Commission is one of several state agencies with regulatory authority over development affecting wetlands, and the Commission has an MOA with the State Water Resources Control Board (hereafter "State Water Board") to coordinate the protection and restoration of wetlands and other coastal waters through the California Nonpoint Source Control Program Plan. Commission staff has also been an active member of the California Wetland Monitoring Workgroup and provided guidance regarding Coastal Commission wetland regulatory and programmatic objectives to members of the Workgroup and the Technical Advisory Team (TAT). We have provided written comments to the State Water Board, San Francisco Regional Water Board, and the Natural Resources Agency regarding these efforts¹.

We are supportive of the State Water Board's effort to develop policies to address state wetlands outside the coastal zone that have lost protection under existing federal law following the 2001 *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) and 2006 *Rapanos* U.S. Supreme Court decisions, such as vernal

- ¹ Letter to: Board Members, State Water Resources Control Board. April 16, 2007. Re: Proposed Wetland and Riparian Area Protection Policy. From: Al Wanger, Deputy Director, Energy, Ocean Resources and Water Quality, California Coastal Commission.
- Letter to: Ben Livsey, Environmental Specialist, SF Regional Water Quality Control Board. October 19, 2007. Re: California Coastal Commission Wetland Definition Process. From: Deputy Director, Energy, Ocean Resources and Water Quality, California Coastal Commission.
- Letter to: Jeanine Townsend, Clerk to the Board, State Water Resources Control Board. March 5, 2008. Re: Resolution to Develop a Policy to Protect Wetlands and Riparian Areas. From: Al Wanger, Deputy Director, Information Technology and Water Quality, California Coastal Commission.
- Letter to: Brian Baird, Assistant Secretary for Ocean and Coastal Policy, California Natural Resources Agency. July 13, 2009. Re: Draft State of the State's Wetlands. From: John D. Dixon, Ph.D., Environmental Program Manager, California Coastal Commission.
- Letter to: Brian Baird, Assistant Secretary for Ocean and Coastal Policy, California Natural Resources Agency. November 20, 2009. Re: Public Comment Period; State of the State's Wetland Report. From: John D. Engel, Ph.D., Staff Ecologist, California Coastal Commission.

pools and salt pans. The Initial Study's proposed wetland definition and policy responds to the loss of federal Clean Water Act authority over certain California wetlands resulting from the SWANCC decision by addressing wetland resources regardless of whether they constitute "navigable waters" under the aforementioned decisions. The proposed wetland definition further addresses the lack of federal jurisdiction protection over wetland systems that do not include vegetation (e.g. salt pans).

However, our main concerns regarding the State Water Board's efforts to develop a wetland definition and wetland protection policy, as laid out in our previous comment letters, have not been resolved or addressed in the Initial Study. We continue to be concerned that the wetland definition proposed by the State Water Board is put forth as a "state" wetland definition, suggesting that it applies to all state agencies, rather than a State Water Board wetland definition, which Bill Orme explained at a March 23, 2011 meeting with us, was the intention behind this effort. This is important because the wetland definition proposed by the Initial Study does not include some areas defined as wetlands by the Coastal Act and Coastal Commission Regulations. In addition, we think that the Initial Study should acknowledge the Coastal Commission's jurisdiction and regulatory approach to protecting wetlands.

The public is not aware that the term 'wetland' is construed differently by different agencies and that the statutory mandates of agencies with regulatory authority over wetlands are not the same. An introductory paragraph could simply explain that existing wetland definitions differ depending on the frequency and duration of inundation or saturation that they require. The definition proposed by the State Water Board is similar to that of the Army Corps of Engineers in this regard, whereas the Coastal Commission definition, like the U.S. Fish and Wildlife definition, simply requires an area to be wet enough to support wetland plants or promote the formation of hydric soils. This includes areas further toward the dry end of the moisture gradient than the proposed State Water Board definition. Neither definition is right or wrong. The Fish and Wildlife definition was originally developed to protect wetland dependent plants and wildlife, whereas the Army Corps definition had its genesis in the Clean Water Act. It is currently common practice among wetland delineators and their clients to distinguish "Coastal Commission wetlands" and "Army Corps wetlands." We recommend that you increase the clarity of your efforts by using the more precisely descriptive term "State Water Board wetlands" rather than the generic and variously defined "wetlands," as practitioners surely will.

We recognize the value of the proposed delineation guidelines and acknowledge and appreciate that the proposed definition is more protective than the U.S. Army Corps' federal definition. We commend the technical rigor that led to their development by the State Water Board and TAT. We believe there should be a clear distinction between producing an inclusive definition of the State Water Board's regulatory authority over wetlands and the publicizing of a definition for wetland resources that purports to be a "statewide" definition, which could create confusion given the more inclusive definition used under the Coastal Act and affirmed by the courts (see, e.g., *Kirkorowicz v. California Coastal Commission* (2000) 83 Cal.App.4th 980, 990). We recommend that the Initial

Study be amended to clarify that its purpose is to establish a State Water Board wetland definition and State Water Board jurisdictional authority over those wetlands. We also encourage you to include in the Initial Study acknowledgement of the Technical Advisory Team's recommendations that there be explicit recognition that additional wetland resources exist outside the areas defined by the modified three parameter delineation process, resources which they termed "Aquatic Support Areas." They defined an "Aquatic Support Area" as

... an area that either (1) meets the hydrology criterion for wetland, but not the substrate criterion (regardless of vegetation); or (2) meets the substrate criterion, but not the hydrology criterion (regardless of vegetation); or (3) meets neither the hydrology criterion nor the substrate criterion, but meets the vegetation criterion. Such areas often exist in close proximity to wetlands or in areas that are transitioning (temporally or spatially) to or from wetlands.

Besides any protection that the State Water Board may apply to such areas, there is a practical benefit for the regulated public. Areas meeting the proposed definition of State Water Board wetlands contained in the Initial Study combined with areas meeting the definition of "Aquatic Support Areas,"^{2,3} correspond exactly with Coastal Commission wetlands. Therefore, property owners who have completed the two-part delineation for the Water Board will also have met the Coastal Commission's delineation requirements.

In addition to our main concerns and comments presented above, we provide the following observations and suggestions:

- The Initial Study does not elucidate how the wetland definition proposed in the Initial Study is more protective of wetlands than the federal wetland definition.
- We suggest including another table following Table 1 that lists all existing agency wetland definitions (e.g. CCC, CDFG, USFWS, ACOE).
- "Current Statutory & Regulatory Framework" Section, page 6, covers CEQA and NEPA; however, the Coastal Act and the Coastal Commission's statutory and regulatory framework is not included and should be.
- Table 3 should include a reference to Section 30233 of the Coastal Act, which provides the Coastal Commission's regulatory framework for development within wetlands.

² Technical Advisory Team, California Wetland and Riparian Area Protection Policy. June 25, 2009. Technical Memorandum No. 2: Wetland Definition. Produced by San Francisco Estuary Institute.

³ Technical Advisory Team, California Wetland and Riparian Area Protection Policy. April 9, 2010. Technical Memorandum No. 3: Landscape Framework for Wetlands and Other Aquatic Areas. Produced by San Francisco Estuary Institute.

State Water Resources Control Board

May 19, 2011

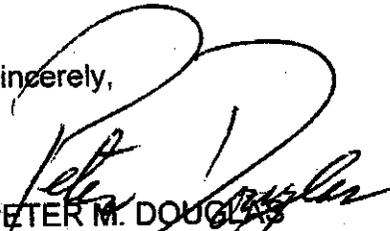
Page 4

- "State & Local Land Use Planning", page 12. There is no mention of the Coastal Act or Local Coastal Plans – a discussion of both should be added.

If the State Water Board adopts the wetland definition proposed in the Initial Study without our suggested changes we believe it will cause confusion in the regulated community and lead to the perception of conflicts among state regulatory agencies that do not exist.

We hope that you will consider our thoughts and comments for revising the Initial Study. Please do not hesitate to contact Jonna Engel at (805) 585-1800) if you have any questions.

Sincerely,



PETER M. DOUGLAS
Executive Director

Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water (Cowardin, et al. 1979).

In conjunction with adopting a wetlands policy on March 9, 1987 the California Fish and Game Commission assigned the Department of Fish and Game (DFG) the task of recommending a wetlands definition. The DFG found the USFWS wetland definition and classification system to be the most biologically valid. The DFG staff use the USFWS definition as a guide in identifying wetlands while conducting on-site inspections for the implementation of its Commission's wetlands policy.

Both the Coastal Commission and the federal government provide further specificity in their wetlands definitions to guide the process of wetlands delineation. The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "**one parameter definition**" that only requires evidence of a single parameter to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

2) The preferred alternative should provide similar levels of protection for wetland resources as those currently given to state wetlands within the Coastal Zone. Coastal Act policy states:

Coastal Act § 30231 Biological productivity; water quality

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Alternative 4 would best provide this standard level of protection throughout the state. Such policies would support streamlined permitting processes that centers on similar definitions and protection policies among regulatory agencies. This will lead to greater

resource protection and improved service to permit applicants. If wetland policies are less comprehensive outside the coastal zone, the State is restricted in achieving its no-net-loss policy for wetlands (both for acreage and condition).

3) Policies of Alternative 4 will better address many of the limitations of the 401 permit history as defined by the 2006 study prepared for the State Water Resources Control Board by Richard Ambrose and others (An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Quality Control Board, 1991-2002). The study found that while the 401 program was successful in retaining wetland acreage, wetland condition was not preserved or mitigated. Specifically the study found that;

“Despite relatively high permit compliance, most mitigation sites were not optimally functioning wetlands.”

“The functional deficiencies and the likely failure of many projects to meet the “no net loss” goal of the Clean Water Act are largely due to shortcomings in mitigation planning and in the development of the permit conditions. The root of these shortcomings lies with a lack of explicit consideration of the full suite of functions, values, and services that will be lost through proposed impacts and might be gained through proposed mitigation sites and activities.”

The study concludes that “permit compliance did not guarantee optimal, or even high, wetland condition”. This finding suggest that current 401 permitting effort, limited to dredge and fill impacts, is incomplete in protecting beneficial uses and wetland condition. The Commission staff argues that it is necessary to integrate the review of potential adverse impacts from nonpoint source pollution and hydromodification into the permitting process to protect wetland habitat and beneficial uses. It must be restated that the State no-net-loss policy entails consideration of both acreage lost through fill and adverse impacts to wetland conditions (e.g. discharge of pollutants and hydromodification).

4) Adoption of Alternative 4 would best integrate and support other state programs established to insure the statewide attainment of the no-net-loss policy for wetlands.

In 2000, the State Water Resources Control Board and the California Coastal Commission signed into a partnership to develop and implement the State Nonpoint Source Control Program for California. The Nonpoint Source Program Plan was approved and adopted by both agencies, as well as USEPA and NOAA. The program established 61 Management Measures to be implemented by 2013. Several Management Measures pertain to the protection and restoration of wetlands, including:

MM5.1A; Channelization/Channel Modification. Channels should be evaluated as a part of the watershed planning and design processes, including watershed changes from new development in urban areas, agricultural drainage, or forest clearing. The purpose of the evaluation is to determine whether resulting NPS changes to surface water quality or instream and riparian habitat can be expected and whether these changes will be good or bad. Negative

changes include impacts on the physical and chemical characteristics of surface waters and on instream and riparian habitat

MM6A; Wetlands/Riparian Areas Protection Management Measure is intended to protect the existing water quality improvement functions of wetlands and riparian areas as a component of NPS programs.

MM6B; Wetlands/Riparian Areas Restoration Management Measure refers to the recovery of a range of functions that existed previously by reestablishing hydrology, vegetation, and structure characteristics. Damaged or destroyed wetland and riparian areas should be restored where restoration of such systems will significantly abate polluted runoff.

Coastal Commission leads a group of state agency staff working to implement these management measures through coordinated planning that helps to identify where different departments can cooperate to better protect state wetland resources (see examples below). Alternative 4 supports these cross-agency efforts by developing statewide definitions of wetland and riparian resources.

5) Alternative 4 would better support other state programs to track and assess state actions to meet the no-net-loss policy. State efforts include adoption of Level 1-2-3 assessment and monitoring framework as defined in the 2003 EPA document (*Elements of a State Water Monitoring and Assessment Program*), use of wetland and riparian definitions being developed and expanded by the State Wetland Monitoring Program and Riparian Joint Venture, use of standardized assessment methodologies (e.g., the California Rapid Assessment Method for wetlands.) and wetland project tracking protocols (Wetland Tracker). Many of these tools are being integrated into state programs (Surface Water Ambient Monitoring Program, SWRCB Consolidated Grants Program, Fish and Game Section 1600 Streambed Alteration permit, and Regional monitoring programs such as the Southern California Wetland Restoration Project).

6) Finally, adoption of a consistent wetland policy similar to Alternative 4 would be responsive to the decisions of the voters of California who passed numerous bond measures (Prop 12, 13, 40, 50, & 84) to protect and restore water resources and wetland habitats. California tax payers have spent over 2.5 billion dollars to preserve and restore wetland and riparian habitat since 1993 (Clark and Hurd 2005, Wetland and Riparian Restoration Management Measure Tracking). For example, the State Board Consolidated Grants program spent at least 39.5 million dollars in 2006 on wetland and river restoration projects including 20 projects to restore habitat, 4 projects to remove invasive plant species (11.5 million dollars), and 9 projects that address historic hydromodification which has degraded state wetlands and riparian areas. State policy to protect current wetland resources should support our investments to restore degraded resources. Alternative 4 is the only alternative which achieves this level of protection.

The Coastal Commission Staff will continue to work through state partnerships including the Nonpoint Source Program to support consistent and effective wetland

protection policies and restoration efforts. If you have any questions, please contact me at (415) 904-5200 or Ross Clark (NPS Program Wetland Coordinator) at (831) 427-4873.

Thank you,

Al Wanger
Deputy Director
Energy, Ocean Resources and Water Quality

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



March 5, 2008

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

Regarding: Resolution to Develop a Policy to Protect Wetlands and Riparian Areas

The California Coastal Commission is one of several state agencies with regulatory authority over impacts to wetlands. The Commission has also signed an MOU with the State Water Resources Control Board to coordinate the protection and restoration of wetlands through the Nonpoint Source Pollution Control Program. The Commission Staff provides the following comments in order to facilitate more consistent wetland policies throughout California. We support the three step process outlined in the proposed resolution to develop a strong wetland and riparian protection policy to protect the quality of California waters and their beneficial uses.

We have reviewed the "Resolution to Develop a Policy to Protect Wetlands and Riparian Areas". The recognition that the current limitation to wetland protection within current State Board programs is notable and the intent to address those limitations is appropriate. Finding a rigorous resolution that protects all wetland types within California is critical. While a single wetland definition consistent among regulatory authorities may not be feasible, greater comparability should be a key objective of the State Board process.

Please note that both the Coastal Commission and the federal government provide specificity in their wetlands definitions to guide the process of wetlands delineation. The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "one parameter definition" that only requires evidence of a single parameter to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands

can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

Coastal Act Section 30121 defines the term "wetland" as:

[L]ands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

These statutes should be taken into account as the State Board uses the proposed "collaborative" process to define wetlands under its authority, expands the defined beneficial uses and possible water quality impacts associated with development, and expands those protections to the riparian habitats.

One substantive point we would mention at this stage is to note that point 6b of the proposed resolution states that, in Phase I of the development of the Policy, State Water Board staff would be directed to develop a wetland definition "that would rely on the United States Army Corps of Engineers' wetland definition to the extent feasible, but would also reliably define the diverse array of California wetlands." We believe that the latter part of that direction and a recognition of the fundamental impetus for the current resolution support the development of a broad definition that recognizes the existence of all wetland resources, including those overlooked by the Army Corps definition, and that is therefore as protective of wetland resources as possible. Consistent with this approach, we note that the Coastal Act definition of wetlands is broader than the Army Corps definition. See Cal. Pub. Res. Code § 30121 and Cal. Code Regs., tit. 14, § 13577(b). We are aware of no reason why the Development Team and the State Water Board could not adopt a definition akin to the Coastal Act definition, and we would encourage them to do so. If, however, the State Water Board adopts a definition narrower than the Coastal Act definition, we would request that the definition be adopted in a manner that makes clear its purposes for reasons other than the Coastal Act and that avoids any confusion or doubt about the continued relevance of the Coastal Act definition for Coastal Act purposes.

Commission staff fully support the proposed idea to adopt appropriate assessment methods to evaluate program success (Phase 1c) and would like to highlight the significant success the state has all ready made in developing these tools. Specifically, it should be noted that the State and Regional Boards have worked collaboratively with the Resources Agency, the California Coastal Commission and State Coastal Conservancy, with funding support from the USEPA to develop several standardized tools to achieve these objectives. Efforts to integrated standard data resources among regulatory agencies should continue as a component of this policy development process.

Finally, point 7 of the proposed resolution indicates that a "California Water Board development team" ("Development Team") would be created to work on the development of a policy to protect wetlands and riparian areas (the "Policy"). It also indicates that the Development Team would be directed to coordinate with, among others, other state agencies. We very much appreciate the fact that the proposed resolution would expressly support coordination with other state agencies, and finds this collaboration critical to the ultimate success of the policy. Unfortunately, due to our limited staff resources, we can only play a secondary role in this process. Nevertheless, we request that we continue to be kept informed as the process moves forward, and we hope to be able to participate more actively in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred Wanger", with a long, sweeping flourish extending to the right.

Alfred Wanger
Deputy Director, Information Technology and Water Quality
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



October 19, 2007

To: Ben Livsey
Environmental Specialist
SF Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Regarding: California Coastal Commission Wetland Definition Process.

We have reviewed the draft : *Recommended Approach: Wetland Definition* document you provided and would like to make these initial comments and clarifications. Several references to the California Coastal Commission (CCC) approach to wetland identification within the document are incorrect. Please note that the CCC does not use the DFG wetland definition or protocol for wetland delineation. Specifically, when fewer than 3 wetland of the US Army Corps. wetland delineation parameters are present, the CCC does not require evidence of the presence of wetland functions as does the Department of Fish and Game.

Specifically, There is no single agreed-upon general definition of wetlands, although most definitions are similar. **Coastal Act Section 30121** defines the term “wetland” as:

[L]ands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

In conjunction with adopting a wetlands policy on March 9, 1987 the California Fish and Game Commission assigned the Department of Fish and Game (DFG) the task of recommending a wetlands definition. The DFG found the USFWS wetland definition and classification system to be the most biologically valid. The DFG staff use the USFWS definition as a guide in identifying wetlands while conducting on-site inspections for the implementation of the Fish And Game Commission's wetlands policy.

Both the Coastal Commission and the federal government provide further specificity in their wetlands definitions to guide the process of wetlands delineation. The Coastal Commission’s regulations (California Code of Regulations Title 14 (14 CCR)) establish a “**one parameter definition**” that only requires evidence of a single parameter to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

There is however, no requirement to show wetland functions when fewer than 3 wetland parameters are present. This distinction will be important as the State and Regional Boards moves forward with developing a more consistent wetland definition and protection policy.

Please feel free to rely on Coastal Commission wetland staff to assist you in your important efforts to generate a more consistent state definition of wetlands within California.

Sincerely,

Al Wanger
Deputy Director, Ocean Resources, Energy and Water Quality
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



November 20, 2009

Brian Baird
Assistant Secretary for Ocean and Coastal Policy
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Public Comment Period; State of the State's Wetland Report

Dear Brian,

The California Coastal Commission staff welcomes the opportunity to submit comments on the October 2009 draft of the *State of the State's Wetlands* report during the public comment period. We appreciate your review and incorporation of our comments and edits on the July 2009 draft *State of the State's Wetlands* report that we submitted July 13, 2009.

Specific Suggestions and Edits

- We remain concerned regarding any suggestion that the ongoing State Water Resources Control Board (SWRCB) work can or will result in the development of a binding statewide wetlands definition. The last sentence in the "Identifying Wetlands" box, page 3, states "The State Water Resources Control Board is beginning to develop a scientific definition that covers all kinds of wetlands in the state, and that all state agencies could use." Noble as that goal may be, it is critical that we recognize the reality that it is not clear that development of a statewide definition is possible, practical, or appropriate. Accordingly, we respectfully request that you: (1) edit the sentence to clarify that the SWRCB is working on a wetlands definition that all state agencies can use, but that each agency is governed by its own statutory and regulatory rules, and that, as a result, any definition developed by the SWRCB that is inconsistent with an agency's rules will not be binding on that agency; or (2) remove this sentence from the text.

While we support the continued efforts by the SWRCB to develop a statewide wetland definition, we remain concerned that the result may not be suitable for all agencies; that is (1) any common statewide wetland definition would have to be consistent with all applicable statutes, and standardization should not result in the erosion of existing wetland protection (e.g., the Coastal Act's strong wetland policies), and (2) a complicating factor is that statutes are often subject to a range of different interpretations, so different agencies may interpret the same or similar statutory language differently and those differing interpretations may be reflected in regulations that would have to be changed in order to achieve a truly common statewide definition, which would require a

statutory mandate and funding. As we explained in our March 5, 2008 letter to the SWRCB, the Coastal Act definition is broader than the Army Corps of Engineers' definition (See Cal. Pub. Res. Code § 30121 and Cal. Code Regs., tit. 14, § 13577(b)), and the regulated community should be aware of that fact. Indeed, if the definition adopted by the SWRCB proves to be narrower than the one that is applied under the Coastal Act, it will be important to clarify with the general public that the definition adopted by the SWRCB will be not be employed in all aspects of state law.

- A mapping system for wetlands is necessary for state-wide tracking of the general extent and condition of California's wetland resources. However, it is unlikely that any feasible system will be able to maintain an inventory of all of California's smaller wetlands. Therefore, from a regulatory point-of-view, it is important to recognize that the fact that wetlands may not be mapped at a particular location is not a reasonable basis for presuming that no wetlands exist there.

We suggest that this issue be inserted on page IV, in the paragraph that begins "According to the U.S. Fish and Wildlife Service's....." as follows:

According to the U.S. Fish and Wildlife Service's National Wetlands Inventory, to date, about 82 percent of California's wetlands have been mapped. Ongoing implementation of wetland monitoring will provide, over time, a more complete picture of the "State of the State's Wetlands," including new information on trends and assessment of gains on wetland area. However, while a mapping system for wetlands is clearly necessary for state-wide tracking of the general extent and condition of California's wetland resources, it is unlikely that any mapping system will be able to maintain an inventory of all of California's smaller wetlands. Therefore, it is important to recognize that the fact that wetlands may not be mapped at a particular location, is not a reasonable basis for presuming that no wetlands exist there. In addition to mapping efforts, a coordinated data management system is rapidly emerging; however, much work remains to be done before this system will be able to assimilate information across agencies and programs.

- p. IV. First paragraph, last sentence. We suggest changing to: ***"Similarly, approximately 60 percent of the miles of state riparian habitat are considered "healthy".***
- p. V. 2.C. Please elaborate by replacing with: ***"The National Wetlands Inventory, operated by the federal government through the USFWS, has been responsible to date for mapping over 80 percent of California's wetlands. This enormous accomplishment is at a stage where it can be handed off to the State to complete. The Department of Fish and Game should be the lead state agency responsible for maintaining and updating wetland and riparian maps and making them readily available to the public. The Department of Fish and Game, whose biogeographic division manages and maintains the California Natural Diversity Data Base and the public site, Biosis, is the natural choice for this role.***

- p. V. 4.A. We suggest inserting “This could be accomplished through the Department of Fish and Game’s biogeographic division in coordination with their management and maintenance of the California Natural Diversity Data Base and Biosis” as follows: **“.....riparian areas, and other associated habitats. This could be accomplished through the Department of Fish and Game’s biogeographic division in coordination with their management and maintenance of the California Natural Diversity Data Base and Biosis.”**
- p. 3. First paragraph, second sentence under “Why Are Wetlands Important?”, we suggest inserting “serve as critical nursery areas” as follows: “.....maintain natural communities of plants and animals, **serve as critical nursery areas**, and provide opportunities for education and recreation”.
- p. 5. We suggest inserting new section “**Critical Nursery Areas**” after the “Maintenance of Biodiversity” section. Under “Critical Nursery Areas” insert **“Wetlands provide critical nursery areas for many species of birds, fish, and invertebrates. They are an essential component in the early life cycle of a large number of species.”**
- p. 6. Third paragraph, second sentence. We suggest that “riverine” be removed from the sentence that reads “Salt marsh and riverine wetlands associated with streams.....” Or that the sentence is revised to read: **“Estuarine and riverine wetlands show declining health.....”**
- p. 12. We suggest inserting the following at the end of the last paragraph: **“It should be noted that while many agencies do require wetland mitigation for projects with wetland impacts, follow-up monitoring and assessment of mitigation success is usually not required. The California Coastal Commission is unique in imposing a standard of long-term monitoring on wetland mitigation projects (most often a minimum of 5 years) and requirements for adaptive management if the project does not meet the established success criteria. In addition, the Commission applies a 4:1 mitigation ratio to most projects in recognition of the temporal losses and strong evidence that wetland creation and restoration project failures are common, that adaptive management and eventual results often require more time than envisioned, and that projects are often not timely implemented in relation to when the impact occurs. These approaches could be implemented by other agencies.”**

General Comments

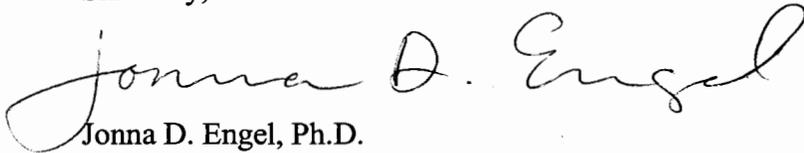
- We believe it would be useful to add another paragraph to the acknowledgements section (page IV) that captures the depths of work done by two groups who also contributed to the development of the tools and generated the data necessary to report on the current state of California’s wetlands. The State Wetland Development Program (WDP) members worked diligently to integrate these tools into state objectives, create data sets, and complete the interpretation of state and watershed level wetland condition analysis. Some members of the WDP were cited (USEPA, SFEI and SCCWRP) but others were not, including the Central Coast Wetland Group (through Moss Landing Marine Labs in

collaboration with the California Coastal Commission) and the North Coast CRAM team (through the Humboldt Harbor District).

- We believe establishment of regional advance mitigation initiatives, modeled along the lines of the Southern California Wetlands Recovery Project (SCWRP), in that they would identify appropriate wetland mitigation opportunities, is a critical step in California's efforts to implement the California Wetlands Conservation Policy of wetland protection, restoration, and monitoring. Statewide we have found it very challenging to find suitable wetland mitigation opportunities, on a project by project basis, for impacts in the coastal zone. We see an enormous opportunity for regional advance mitigation initiatives to play a role in identifying high priority/high quality regional wetland mitigation opportunities, that lack funding, and that would employ mitigation requirements of individual projects to help achieve something greater than the piece-meal mitigation of the one project at a time approach.
- Monitoring for different purposes generally requires different methods, some of which will be project specific; for example, monitoring to track regional trends in wetland health can be done with a different set of protocols (e.g. CRAM) than would be required for a monitoring program intended to determine compliance with legally mandated performance standards. These necessary differences in approach are discussed in the original CRAM documents, and it would be useful for them to be acknowledged in the State of the State's Wetlands.

We appreciate the opportunity to review this document again during the public comment period. Please let us know if you need further clarification on any of our comments.

Sincerely,



Jonna D. Engel, Ph.D.
Staff Ecologist