



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
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September 18, 2017

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State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Sent Via E-Mail: commentletters@waterboards.ca.gov

Subject: ***Statewide Dredged or Fill Procedures***

In addition to the comments submitted by the Association of California Water Agencies, to which the Zone 7 Water Agency was a signatory, Zone 7 would like to make the following additional comments on the “Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Statewide Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (formerly known as The Wetlands Policy).” These additional comments offered with regard to specific flood protection concerns. Note that Zone 7 provides not only the potable water supply to the Livermore-Amador Valley (including the cities of Pleasanton, Livermore, Dublin, and, through special agreement with the Dublin San Ramon Services District, a portion of San Ramon) but also groundwater management and flood protection to over 425 square miles of Eastern Alameda County.

1. **CLEAR, CONSISTENT DEFINITIONS AND GUIDELINES ARE NEEDED TO SUPPORT AND EXPEDITE WORK INTENDED FOR PUBLIC SAFETY.**

Clear and consistent regulatory guidelines – including interpretation and implementation by all Regional Board staff – are critical to help agencies navigate the permitting process in a timely manner and to implement projects that are intended for public safety and benefit.

Improve Timing and Costs for Permitting

Zone 7 owns and maintains over 45 miles of flood control channels in the Livermore-Amador Valley. The channels are maintained as part of the regional flood protection system and provide public safety from flood hazards, as well as ecological and recreational benefits. Most of these channels have experienced significant channelization and alteration over the last century as urban growth has expanded, especially so in the last 50 years. In many cases, these older channels are overly narrow and steep, often in areas with unstable soils and with residential or commercial property immediately adjacent.

We regularly experience five to ten bank failures during winter and spring storm events, and perform channel maintenance in the dry summer months. Sometimes this leaves only a short window to identify and inspect the damage, then plan, design, and complete environmental

regulatory requirements before implementing a repair by the typical October 15th permit deadline. Typical sequencing (depending on when the damage occurs) is:

- February / March / April: identify and inspect bank damage
- March / April / May: plan and design projects
- April / May / June: prepare permit applications
- June / July/ August: await permit approval and line up contractor(s)
- September / October: implement repairs before October 15 deadline (typical)

In some years, work has been postponed by a year (one summer construction cycle) because permit authorizations could not be secured in time to initiate and complete work. This can leave residents and property owners in a vulnerable state. It also increases the likelihood that an emergency project may have to be facilitated in these areas where repairs could not be undertaken before the next wet season, which is not the preference of either Zone 7 or the regulatory community.

For additional context, below are the costs associated with Zone 7's 2016 permit applications to USACE, RWQCB, and CDFW for nine "routine" channel maintenance activities. This does not include costs for onsite biological monitoring nor post-project monitoring and reporting.

Item	Estimated Cost (\$)
CEQA	20,000
Prepare permit applications	20,000
Application Fees	8,500
Wetland delineation and impacts assessment	20,000
Cultural resources report	10,000
Biological Assessment report	20,000
TOTAL	\$98,500

These costs are not insignificant, and they are equivalent to approximately 10% of Zone 7's annual summer maintenance budget. Additional costs were incurred for monitoring and reporting, and for mitigation, which are not quantified in this table.

Penalties for Actions that Mimic or Improve Ecosystem Performance

Wetland areas within stream corridors are dynamic and subject to natural processes. Flood agencies have endeavored to create and use natural in-stream or near-stream floodplains to attenuate high flows, but these areas are dynamic and cannot be guaranteed to persist in exactly the same footprint or with exactly the same vegetative assemblies. Protection of these wetland areas in their exact state would, therefore, be counter to natural processes. Likewise, previous RWQCB permits have encouraged the use of floodplain areas for the attenuation of sediment within the system and use of these floodplain areas for routine maintenance and removal of excess sedimentation in incremental episodes. An example of this was permitted for Wildcat Creek in Contra Costa County. Removal of such accumulated floodplain

sediment mimics natural scour and agencies using this method of stream management should not be penalized with additional compensatory mitigation requirements.

Overly Restrictive Exemptions

Per the definitions for both “wetland” and “artificial wetland,” a reservoir may have created seasonal wetlands in excess of one acre by its operations at the wetted edge. It could therefore be both a natural wetland and an artificial wetland. For clarity, it would be useful to call out reservoir wetlands separately in the definitions and consider an exemption for critical water supply, flood protection, and other public health and safety actions. Actions that uphold critical water supply, flood protection, and other public health and safety issues (such as dam safety) should not be impeded by these procedures when routine operations and maintenance require impacts to wetlands. As it stands, Section IV. A., Item 1, g., IV (lines 152-155, pg. 5) regarding exemptions from alternatives analysis could be interpreted to impede routine actions since they would not fall into this exemption. This characterization of an exemption for restoration is also too restrictive as restoration actions often take longer than one year to reach full implementation. In this same section, an exemption for maintenance to existing or future stormwater and sediment control facilities (like bioswales and detention basins) should be called out here since they could meet the criteria for Tier 1 projects.

2. **INFORMATION REQUIRED FOR A COMPLETE APPLICATION SHOULD NOT IMPEDE WORK BENEFITTING PUBLIC SAFETY.**

With an often too-short window to submit permit applications to maintain channels for public safety, clear and consistent guidelines are needed to help expedite the application process. Onerous requirements may delay or impede work and unduly increase cost.

The proposed guidelines leave it such that the applicant may or may not be required to submit additional information on a “case by case” basis, such as a second season wetland delineation and an assessment of the change in flow as a result of the project. While it is understandable that the SWRCB wishes to retain some flexibility in application requirements because all projects are not created equal, this clause may leave agencies like Zone 7 in a difficult situation when permit authorizations for annual summer channel maintenance (stemming from winter storms) are required in a fairly tight window. An unintended consequence of this guideline is that agencies may choose to over-compensate and develop much more information than actually required, just to avoid a scenario where the project could be delayed because the RWQCB determined that additional information was necessary. This could be seen as unduly wasteful by local residents and taxpayers, as well as by those responsible for the financial health of the local agency.

Also, some permit application requirements, bolstered by these proposed additional requirements, may not be reasonably accomplished by individuals and small groups (creek groups, local landowners, etc.) who seek permits to do work. For some, the process is already overly intimidating and complicated, and requires multiple experts to support even a simple project application.

3. **FOCUS ON PARTNERING OPPORTUNITIES RATHER THAN LIMITING TO SITE BY SITE MITIGATION FOR WORK INTENDED FOR PUBLIC SAFETY.**

The state's position of no net losses is appreciated from an environmental standpoint, but RWQCB mitigation requirements should be applied fairly and take into account local conditions and issues, and we support the guidelines containing flexibility in finding appropriate mitigation locations that may not be within the same watershed as the impact. To this end, the Regional Boards may find more success in seeking solutions to preserve or enhance the state's water quality by finding regional opportunities to partner with local agencies to enhance watersheds rather than relying on mitigation as the primary tool aimed at avoiding impacts and piecemealed enhancement or restoration.

Flood Control agencies, like Zone 7, must conduct channel maintenance in order maintain adequate flood protection for the communities served. In the case of Zone 7, many of the channels in our service area are undersized and over-steepened, and/or have problems like incision or sediment accumulation as the channels have had to adapt to expansive urban growth in past decades. These channels are not (and never were) lush creek corridors – and, while there may be some opportunity for limited improvement, the lack of space, access, or sufficiently good soils may preclude any meaningful improvements to these waters of the state. Requiring mitigation for routine repairs of this sort of channels where the agency's intent is only to restore the channel's designed capacity and function often seems unnecessary and may not result in any meaningful ecological or water quality uplift.

For example, during a recent conversation with RWQCB staff, we understand that the addition of trees such as willows will be required as onsite mitigation for any new channel repair. Our repair sites, typically consisting of sections 50 to 200 linear feet in length, are scattered across the 120 miles of waterways in service area. The effort required to successfully maintain small patches of new trees across the watershed would be very significant. Plus, many channels do not have sufficient flow capacity to accommodate additional "roughness" or even space at the upper edge of the bank to safely accommodate tree trunks alongside our maintenance vehicles. Such a strict requirement for mitigation would be unduly burdensome on local agencies and likely would not result in the desired outcome. A better approach may be to partner with local agencies and others to develop opportunities to focus on specific, targeted solutions that will preserve or enhance waters of the state – and create opportunities in these locations for mitigation.

4. **OTHER.**

A couple of other, more specific comments follow:

- a. Page 5: Under item 'f' in the Project Application Submittal section includes a change in impacts assessment to a nearest one-thousandth of an acre (down from one tenth). This equates to approximately 43.6 square feet or a 6-ft by x 7-ft square – a very small area even for minor channel repair projects like what Zone 7 typically undertakes. This required level of precision seems unnecessary and possibly not realistic depending on the type of project.

- b. Page 25: Timing. Timing the discharge to avoid the seasons when recreational activity etc. occurs may not be feasible. Project permits typically require maintenance work to be done in the dry months, which is often also the time when recreational use of channels may be the highest.

Thank you for the opportunity to comment on this effort. If you have any questions on this letter, please feel free to contact either me (at 925 454-5016 or jduerig@zone7water.com) or Carol Mahoney (at 925 454-5064 or cmahoney@zone7water.com).

Sincerely,



G.F. Duerig
General Manager

cc: Carol Mahoney
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