

THE SMITH FIRM

ATTORNEYS

1541 Corporate Way, Suite 100
Sacramento, CA 95831
T 916.442.2019 | F 916.442.0220
www.thesmithfirm.com

Agenda Item #10

COPY

December 6, 2012

BY MAIL AND EMAIL

Mr. R. Zachary Wasserman, Chair and Commissioners
San Francisco Bay Conservation and Development Commission
50 California Street, 26th Floor
San Francisco CA 94111

RE: December 6 agenda item 8, proposed Solano County LPP amendments

Honorable Commissioners:

Suisun Marsh protection has suffered from illogical contradictions in the Solano County Local Protection Program (LPP), concerning the preservation of the Marsh's streams and riparian corridors. Proposed amendments to the plan before you, specifically proposed changes to Water Supply and Quality Section Policy SM.P 16, and Section 31-30(p), would correct this confusion.

I write representing Sustainability, Parks, Recycling and Wildlife Defense Fund. SPRAWLDEF recently prevailed in litigation which directly addressed this confusion. We support the clarifications reflected in the attached proposed amendments.

The existing language of the Program improperly differentiates between "upland" water resources and those riparian corridors and resources within the Marsh. The "uplands" above and outside the Marsh management zones actually have more restrictions and protection than inside the Marsh. At least that is the way Solano County's LPP could currently be interpreted.

SPRAWLDEF believes that any current ambiguity should be interpreted in favor of Marsh protection, consistent with the clear intent of the Marsh act.

Better yet, clarify that no development can be allowed which damages the streams and riparian corridors in the Marsh. There can be no Marsh without them. This is exactly what the proposed amendments would do. Your approval will assure consistency between the act and the Solano County program.

Thank you for your consideration.

Respectfully,

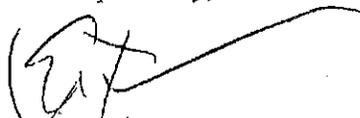

KELLY T. SMITH

EXHIBIT XI

CHAPTER 31, GRADING, DRAINAGE, LAND LEVELING AND EROSION CONTROL

(Note: Red = New Language, Black = Existing language and Strikethrough = language to be deleted)

Sec.31-20(c)(2)

(1) Prior to the issuance of a grading and drainage permit for sites located within the Suisun Marsh area, a marsh development permit ~~may be required~~ must be obtained.

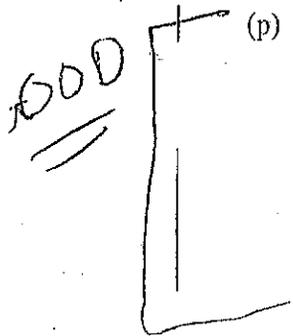
Formatted: N

(2) It shall be unlawful to do any of the following activities without a permit, within, or in areas within the buffer extending 25 feet from the top of bank to those channels within the Suisun Marsh or those channels flowing or which will flow into the Suisun Marsh as more fully shown on that diagram entitled "Protected Channels of the Suisun Marsh Watershed", on file at the Resource Management department and which is incorporated herein as though set forth in full.

Sec. 31-30 General design principles and standards.

The purpose of the general design principles and standards is to assure that development, other than agricultural activities for production, be accomplished so as to minimize adverse effects upon the existing terrain and to minimize the potential for erosion. Control measures are to apply to all aspects of the proposed grading and are intended to be operational during all stages of development. The following basic design principles and standards shall serve as minimum guidelines for grading plans and erosion, sediment and runoff control plans, as part of a permit.

(o.) Waterways shall be designed to avoid erosion as much as practical. Wide channels should be constructed with flat side slopes surfaces and the channel and slopes should be lined with grass or other appropriate vegetation. Every effort must be made to preserve natural channels and drainage ways.

 (p) Except as limited by section 28-37 of this code, Watershed and Conservation (W0 Districts, filling, grading, excavating or obstructing the bed or banks of a watercourse and removal of the riparian vegetation shall be allowed only where no reasonable alternative is available and where allowed, shall be limited to the minimum amount necessary. In the Suisun Marsh, stream modification should be permitted only if it is necessary to ensure the protection of life and existing structures from floods and only the minimum amount of modification necessary should be allowed in such cases.

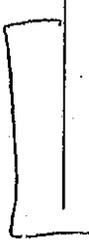
Formatted: Ir
0.5", Tab stops

Sec. 31-40 Review and approval.

Formatted: F

(a) Grading and drainage permit applications and accompanying maps and plans shall be reviewed by the Department of Resource Management and approved when found to be in compliance with the provisions of this chapter, and conformance with acceptable grading and erosion control techniques. Permits required as a condition of a building permit, use permit or other land development permit will be issued only in conjunction with, or subsequent to, approval of such a permit and not in anticipation of such a permit.

2000
/



(b) The Department of Resource Management shall issue a permit only if the Director finds that riparian habitat will be protected and that the proposed activity will not increase sedimentation and runoff within and in the Suisun Marsh to such an extent that significant adverse environmental impacts will occur in the Suisun Marsh.

immediate watershed should be preserved due to its importance in the maintenance of water quality and its value as Marsh-related wildlife habitat, and stream modification should be permitted only if it is necessary to ensure the protection of life and existing structures from floods and only the minimum amount of modification necessary should be allowed in such cases.

SM.P-14: The development of industrial facilities in, adjacent to or upstream from the Marsh should be planned to eliminate significant adverse environmental impacts on the water quality of the Suisun Marsh. Activities that could significantly alter the temperature, salinity, or turbidity of the water should be prohibited. Industrial facilities that will increase the potential for spills of toxic and hazardous materials should not be permitted unless it is established that spills of such materials will not represent a significant threat to the Marsh.

SM.P-15: Any development in the Suisun Marsh or its watershed or secondary management area proposed for areas that have poor soil conditions for construction or that are seismically active, should be controlled to prevent or minimize earth disturbance, erosion, water pollution, and hazards to public safety. Local runoff, erosion, and sediment control ordinances should be established in the immediate Suisun Marsh and its watershed to protect the Marsh from these potential adverse effects.

GOOD
=

SM.P-16: ~~Upstream land use controls shall be formulated to protect~~ Riparian corridors (the stream, its banks, and creekside vegetation) in the Marsh and its immediate watershed should be protected from encroachment and degradation by development. No development shall be permitted which would interfere with existing channel capacity or would substantially increase erosion, siltation, or other contributors to the deterioration of any watercourse.

~~SM.P-54: No development shall be permitted which would interfere with existing channel capacity or would substantially increase erosion, siltation, or other contributors to the deterioration of any watercourse.~~

~~SM.P-17: Riparian vegetation in the immediate Suisun Marsh watershed should be preserved due to its importance in the maintenance of water quality and its value as Marsh-related wildlife habitat. Stream modification should only be permitted if it is proved necessary to ensure the protection of life and existing structures from floods and only the minimum amount of modification necessary should be allowed.~~

SM.P-17: Within the watershed of the Suisun Marsh, sound agricultural practices which conserve water quality and riparian vegetation shall be encouraged.