Comment Letter AS005

AS005

Department of Toxic Substances Control

Terry Tamminen
Agency Secretary
Cal/EPA

1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Arnold Schwarzenegger
Governor

AUG 27 2004

August 25, 2004

Dan Leavitt
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, California 95814

Dear Mr. Leavitt:

Thank you for the opportunity to comment on the draft Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed California High Speed Train System (SCH No. 2001042045). As you are aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites, pursuant to the California Health and Safety Code, Division 20, Chapter 6.8, where hazardous substances have been released. As a potential Responsible Agency under the California Environmental Quality Act (CEQA), DTSC is submitting comments to ensure that the environmental documentation prepared for this project adequately addresses the potential environmental impacts associated with any remediation activities, which may be required to address hazardous substances release(s) within the proposed project area.

We note that the draft EIR/EIS analyzes a proposed high speed train (HST) system and compares it with a No Project/No Action Alternative (No Project) and a Modal Alternative (potential improvements to the highways and airports serving the same intercity travel demand and the HST Alternative). The EIR/EIS Summary indicates that after public comments are considered, the California High Speed Rail Authority (Authority) may select a preferred HST corridor/alignment, general station locations, and recommended mitigation strategies, and may recommend further measures to consider in more detail at the project level to avoid and minimize potential adverse environmental impacts. Should the HST system be approved, subsequent phases of project development would include project specific environmental analysis for a segment or segments and station locations of the proposed HST system. AS005-1

Section 3.11 of the EIR/EIS provides a good discussion of the regulatory requirements for hazardous substances and the criteria to be used to identify study areas for the presence of hazardous waste and materials. The EIR/EIS discusses the need to check the proposed route(s) against all environmental databases to evaluate the potential for

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Mr. Dan Leavitt
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contaminated sites and the need to remediate the sites. The EIR/EIS also discusses, in very general terms, the potential impacts from hazardous substance releases on the construction, operation and maintenance of the proposed alternatives. Section 3.11.5 indicates that further analysis and specific mitigation will be included in subsequent project-level analysis and identifies tasks that will be performed during the project-level environmental review.

DTSC agrees with the discussion/analysis provided in the Program EIR/EIS. Once the preferred route is identified, the route should be the subject of an environmental database search. Site assessments should be conducted prior to construction to determine if any hazardous substances are present. For example, former agricultural land may contain pesticide residues, while land adjacent to existing roadways may contain lead that was aerially deposited from automobile exhaust. Depending on the results of the assessment, soil and/or groundwater sampling may be necessary to determine whether a site will need to be addressed at the project-specific level. AS005-1 cont.

Issues to consider during future project-specific level analyses include, but are not limited to, the following:

- an assessment of air impacts and health impacts associated with excavation activities;
- identification of any applicable local standards which may be exceeded by excavation activities, including dust levels and noise levels;
- transportation impacts from the removal or remedial activities; and
- the risk of upset should an accident occur at the site or in transit to disposal.

As a potential Responsible Agency, DTSC will continue to monitor the progress of the proposed High Speed Train System. Please contact me at (916) 322-8955 if you have any questions or would like to schedule a meeting to discuss our comments further.

Sincerely,

Guenther W. Moskat, Chief
Planning and Environmental Analysis Section

cc: See next page

Comment Letter AS005 Continued

Mr. Dan Leavitt
August 25, 2004
Page 3

cc: Ms. Maureen F. Gorsen
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Response to Comments of Guenther W. Moskat, Chief of Planning and Environmental Analysis Section, California Department of Toxic Substances Control, August 27, 2004 (Letter AS005)

AS005-1

Acknowledged.

Comment Letter AS006

AS006

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
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(619) 767-2370

August 30, 2004

SEP - 7 2004

Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Proposed High-Speed Train System Draft Program EIR/EIS

Dear CA High-Speed Rail Authority:

Thank you for the opportunity to comment on the Proposed High-Speed Train (HST) System Draft Program Environmental Impact Report/Environmental Impact Statement (DEIR/EIS). The Program EIR/EIS addresses the potential environmental impacts of the proposed HST system at a conceptual and planning level. The document indicates the program-level analysis of the biological resource impacts uses data that is representative rather than complete, and is intended for comparison purposes between alternatives. The DEIR/EIS analyzes a proposed HST Alternative and compares it with a No Project/No Action Alternative and a Modal Alternative (potential improvements to the highways and airports serving the same intercity travel demand as the HST alternative). Should the HST advance to the next stage of analysis, subsequent phases of project development would include project-specific environmental analysis for a segment or segments and station locations of the proposed HST system. AS006-1

Commission staff has not had the opportunity to review the entire document in detail; however, at this time, given the general nature of the programmatic analysis, we would like to offer some general comments on the range of alternatives we believe should be considered in preparing a program-level EIR/EIS for this project. In particular, we feel the DEIR/EIS should include more specific analysis of the project's relationship to and affect on demand for other known transportation improvement projects, particularly those within the LOSSAN (Los Angeles to San Diego and San Luis Obispo) rail corridor and Interstate 5 (I-5) corridor in South Orange County and San Diego County.

The DEIR/EIS raises several significant questions regarding the need to coordinate the potential mass transit and highway projects being considered to serve the projected demand for transportation improvements in the future. The stated objective of the HST system is "to provide an interface with commercial airports, mass transit, and the highway network and to relieve capacity constraints of the existing transportation system as intercity travel demand in California increases, in a manner sensitive to and protective of California's unique natural resources. The system needs to be practicable and feasible as well as economically viable. The system should maximize the use of existing transportation corridors and rights-of-way, be implemented in phases, and be completed by 2020". AS006-2

Our comments will focus primarily on the portion of the proposed HST alignment in the coastal zone in Orange and San Diego Counties. Section 30252 of the Coastal Act encourages the provision and extension of transit service to serve new development and AS006-3

maintain and enhance public access to the coast. In San Diego County, the existing LOSSAN and I-5 corridors cross several lagoons which include wetlands and other environmentally sensitive habitat that are protected by Sections 30233 and 30240 of the Coastal Act. Section 30233 limits allowable uses for wetland fill to eight allowable uses, typically including water-dependent and habitat restoration activities, and not including the proposed type of development. Section 30240 of the Coastal Act limits uses within environmentally sensitive habitat areas to only uses dependent on the resources and compatible with the continuance of those habitat and recreation areas. Section 30231 requires the biological productivity of coastal wetlands to be maintained and, where feasible, restored. The Chapter 3 policies of the Coastal Act will be used as the standard of review for the portions of this project crossing the lagoons and they are attached for your reference. AS006-3 cont.

The DEIR/EIS indicates, in the Los Angeles to San Diego via Orange County region, the proposed HST Alternative would extend no further south than from Los Angeles to Irvine. The use of conventional (non-electric) train technology from Los Angeles to San Diego along an improved LOSSAN rail corridor (currently used by Amtrak, Surfliner, Metrolink, and the Coaster commute services) is being considered as part of this document. Using the technical data from this document, Caltrans and the U.S Dept. of Transportation Federal Railroad Administration (FRA) are also preparing a separate program EIR/EIS that considers conventional (non-electric) improvements on the LOSSAN corridor, since Caltrans would be responsible for those improvements.

The LOSSAN Corridor Strategic Plan has been published and the draft EIR/EIS has been released for public review. Commission staff has attended a number of meetings for this effort and participated in the screening alternatives analysis. We concur with the options being eliminated from further consideration within the LOSSAN and I-5 corridors, and have concerns regarding some remaining options as discussed in the following comments. Regarding the South Orange County Inland Bypass Alternative, please refer to the attached Coastal Commission Staff comments on the DEIR/EIS for South Orange County Infrastructure Improvement Project (SOCTIIP). Any potential HST alternative attempting to coincide with potential highway corridors traversing the San Mateo Creek watershed would raise the same significant conflicts with Coastal Act policies identified in the attached comment letter. AS006-4

In section S.4.4 Areas of Controversy, the DEIR/EIS indicates concerns have been raised regarding potential impacts from double-tracking (adding a second track adjacent to the existing track) in sensitive coastal lagoons for non-electric service in San Diego County. In addition, concerns have been raised regarding potential impacts on coastal bluffs, beaches, views, historic areas, and sensitive habitat communities along the coast for non-electric service improvements to the existing LOSSAN rail corridor between South Orange County and San Diego. Of the design options that were carried forward from the screening analysis, we concur with the objections that have been raised to the short tunnel concept through San Clemente, which would double-track the rail alignment along the beach through Dana Point, the Doheny State Beach facilities and below the Marblehead site. In addition, we support the design options of tunneling under Camino Del Mar or I-5 to bypass the Del Mar coastal bluffs, however further analysis is necessary to determine the least environmentally damaging option. AS006-5

The document states a fully-dedicated alignment for the HST is not possible within existing right-of-ways. In San Diego County, only two distinct alignments were studied: AS006-6

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LOSSAN and I-5. Due to the terrain and pattern of residential development in coastal San Diego County, no other options were determined feasible. In addition, within the LOSSAN corridor, in several areas, constraints have been identified that would require any potential double-tracking to occur within a new alignment, such as I-5. However, it is not clear within the document how the improvements necessary to serve the HST would compare to the double-tracking alternative being analyzed for conventional improvements to the rail, commuter and freight service along the LOSSAN corridor.

The DERI/EIS should make clear the distinction between improvements necessary for the non-electric HST compared to those necessary for double-tracking within the LOSSAN corridor, including but not limited to, relocation of the existing alignment from the beaches and bluffs in San Clemente/Dana Point and Del Mar areas. In some respects, because the fully-dedicated alignment is not feasible, it appears the coastal alignment for the HST in San Diego County is not an option. However, this is not clearly stated and the DEIR/EIS does not identify the coastal alignment as an alternative eliminated from further consideration. Please address why a clear choice between the coastal and inland alignment for the HST system is not part of this program-level analysis. AS006-6 cont.

As stated, due to environmental constraints within the existing LOSSAN corridor immediately along the coast in South Orange County and Del Mar, viable alternatives include relocating the entire alignment to I-5 in San Clemente/Dana Point, and to either I-5 or Camino Del Mar in the Del Mar area. We encourage such relocation and feel the DEIR/EIS should also address the level of use that would remain in the existing right-of-way, if such relocation should occur. The project specific DEIR/EIS for improvements in these areas should also include a thorough analysis of the impacts associated with retention or removal of the existing right-of-way alignment/improvements. Specifically regarding the Camino Del Mar vs. I-5 alternatives, a thorough analysis of the impacts to Los Penasquitos Lagoon from removal of the berm and railroad crossing compared to the impacts to San Dieguito Lagoon from a new railroad crossing must be provided in order to determine the least environmentally damaging alternative. AS006-7

Because both the HST and LOSSAN Corridor Improvement Studies contemplate alternatives utilizing the I-5 right-of-way, these projects and the associated analysis must coordinate with the Caltrans I-5 highway widening project currently under consideration. Specifically, coordination efforts and the NEPA/404 process are ongoing for the North Coast Interstate 5 HOV/Managed Lanes Corridor Project which involves either ten (10) or eight (8) general purpose plus four (4) high-occupancy vehicle (HOV) additional lanes within the I-5 corridor from State Route 52 to the Orange County line. Therefore, it appears the Modal Alternative identified in the DEIR/EIS does not represent the full scale of the highway improvements contemplated along the I-5 corridor. Due to the potential for rail improvements to also utilize the I-5 corridor, we feel this EIR/EIS should contain a comparative analysis of the effects of the proposed HST system, double-tracking and the I-5 widening project on the environment and traffic circulation. The analysis should address how implementation of the HST system and/or double-tracking would affect the demand for additional lanes on I-5 so the appropriate combination of alternate transit and highway improvements can be implemented to serve the region. AS006-8

The historic rights-of-way serving the LOSSAN and I-5 transportation corridors have been constructed on berms which have had a deteriorating effect on the tidal prism and habitat values within Los Penasquitos, San Dieguito, San Elijo, Batiquitos, Agua AS006-9

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Hedionda and Buena Vista Lagoons and their watersheds. We recognize these rail and highway corridors and impacts exist; however, any improvements to these corridors must be done in a manner that acknowledges past impacts and represents a significant benefit or improvement to the lagoon environment in order to be given serious consideration as to their permissibility under the Coastal Act. In addition, any potential impacts on the lagoon environment should be done only once for the least environmentally damaging combination of improvements having the greatest long-term benefit to coastal resources, regional traffic and public access to the coast. For any impacts that are unavoidable and allowable, maximum mitigation will be required.

In addition, most of these lagoons are under the care of a management entity or foundation that has completed or is in the process of developing a restoration plan for the lagoon ecosystem. Any highway or rail projects should correspond to the recommendations in those plans for improvements to the lagoon environment. Any project analysis should also include consideration of impacts to the City of San Diego Multiple Species Conservation Plan (MSCP) and County of San Diego Multiple Habitat Conservation Plan (MHCP) planning efforts, portions of which have been incorporated into the certified local coastal programs (LCPs) for those areas in the coastal zone. AS006-9 cont.

In summary, we believe this document as well as the program DEIR/EIS for the LOSSAN Corridor Improvement Studies and any environmental documents for I-5 improvements should consider the full range of potential transportation improvements within I-5 and the LOSSAN corridor crossing these sensitive watersheds, so impacts can be minimized or avoided to the extent possible. The purpose of a comprehensive approach would be to determine the best combination of mass transit and highway improvements having the least impact and most benefit to coastal resources and public access. Although we understand this is program-level review, we feel this is the appropriate time to identify the issues that must be addressed in order to allow the Coastal Commission to review these potential projects for consistency with the Coastal Act. Please call me with any questions or if you need further clarification. AS006-10

Sincerely,

Sherilyn Sarb
District Manager

cc: Chuck Damm
Deborah Lee
Tami Grove
John Dixon
Teresa Henry
Richard Chavez
Bruce April
John DiGregoria
Nancy Frost
Ben Frater
Pam Beare
Bob Hoffman

(G:\San Diego\SHERILYN\Transportation\HST Comments DEIR.EIS 8.30.04.doc)

Comment Letter AS006 Continued

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR
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July 30, 2004

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Macie Cleary-Milan
Deputy Director, Environmental and Planning
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618-3304

Re: Coastal Commission Staff Comments on Draft EIR/EIS, South Orange County Transportation Infrastructure Improvement Project (SOCTIIP)

Dear Ms. Cleary-Milan:

Please accept the California Coastal Commission (CCC) staff's comments on the above-referenced Draft EIR/EIS. Due to budget constraints we have not had the opportunity to more than cursorily review this document, so these comments will necessarily be brief and incomplete.

I. Overall Concerns.

We are deeply concerned over the serious adverse environmental effects from any of the alternatives which would traverse the San Mateo Creek watershed (i.e., alternatives A7C-FEC-M, FEC-W, and FEC-M). We have not had time to review the traffic information thoroughly, but from our brief review it is unclear the degree to which mass transit options being considered for southern California (e.g., the California High Speed Rail Project) would reduce congestion on I-5 between Orange and San Diego Counties. Even assuming that one of the "build" alternatives is justified on a traffic congestion basis, we do not believe any of these three San Mateo Creek alignment alternatives could reasonably be determined the least environmentally damaging feasible alternative, given their significant and unmitigable adverse effects to one of the most, if not *the* most, undeveloped and pristine coastal watershed in southern California. Each of these alternatives would raise fundamental policy conflicts with the Coastal Act, in that the proposed highway could not be found to be an allowable use under Section 30240 of the Coastal Act, which limits uses within environmentally sensitive habitat areas to "… only uses dependent on environmentally sensitive habitat area resources," or with Section 30233 of the Coastal Act, which limits allowable uses for wetland fill to eight allowable uses (typically water-dependent and habitat restoration activities, and none of which apply to this project). In addition, these alternatives would seriously diminish the habitat values for a number of threatened and endangered species and wetlands in the San Mateo Creek watershed. They would thus be inconsistent with other sub-sections of these Coastal Act policies (including, but not limited to, the requirement of 30233 for adoption of the least environmentally damaging feasible project alternatives).

These alternatives would also be inconsistent with a number of other specific requirements of the Coastal Act, including the requirements of Section 30251 to minimize grading and natural landform alteration (these alternatives would entail 40-80 million cubic yards of grading,

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according to EIR/S Table 2.4-5, p. 2-95), and the requirements of Sections 30210-30212 and 30240(b) to protect public access and recreation (the proposal would seriously degrade the recreation values of the adjacent campground and nature trail in San Onofre State Park). We are also greatly concerned over potential water quality impacts (as addressed in Section 30231 of the Coastal Act).

II. Specific Comments.

Page ES-27 should read "consistency certification," not "consistency determination" in the paragraph beginning "CCC."

We take exception to the conclusion on page ES-49 that because there have been variations in past studies concerning noise impacts on birds, "substantive adverse impacts to local avifauna … is not anticipated." This conclusion is unwarranted and defies common sense.

Page ES-43 notes that the California Coastal Act contains more stringent regulations than the Army Corps. For clarification, including for consideration of mitigation measure WW-11 on page ES-45, and for any consistency certification and/or coastal development permit ultimately submitted, the TCA will need to perform wetland delineation(s) using Coastal Act definitions. To assist this effort, please review Attachment 1 to this letter, which clarifies the difference between "Army Corps" and "CCC" wetland definitions. Furthermore, what is omitted in the EIS discussion, is that one of the "more stringent" policies (as discussed in Section I above), is that under the Coastal Act's "allowable use" test, any alternative which involves fill of wetlands could not be found consistent with Section 30233 of the Coastal Act.

Page ES-108-109, discussing Coastal Commission procedures and concerns, is incomplete. The alternatives cited as not triggering a CDP (because they are outside the coastal zone) should be followed by: "However, if any of those alternatives would affect coastal zone resources, a consistency certification would be required." The following list Coastal Commission concerns contained on these EIS pages is overly narrow, as it omits public access and recreation concerns (including effects on San Onofre State park campground, which is used for coastal recreation and was established as mitigation for a campground originally within the coastal zone but displaced by the San Onofre Nuclear Generating Station). The list should also include water quality, air quality, marine resources, recreational fishing, geologic hazards, minimizing energy consumption and vehicle miles traveled, and public works capacities and facilities.

We strongly reject the conclusion stated on page ES-109 that because development in the coastal zone would need a coastal development permit, "Therefore, the SOCTIIP build Alternatives have no cumulative impacts on the coastal zone." All of the SOCTIIP "build" Alternatives, but most particularly the alternatives traversing the San Mateo Creek watershed (i.e., alternatives A7C-FEC-M, FEC-W, and FEC-M), would have significant adverse individual and cumulative impacts on a number of coastal zone resources. Furthermore, we do not understand how this EIS conclusion could be reconciled with the conclusion on page ES-54 that:

> *Under NEPA, the unavoidable adverse impacts of the SOCTIIP build Alternatives related to wildlife and vegetation would be substantial and adverse even after mitigation … For*

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the FEC-M, FEC-W, A7C-FEC-M, CC, CC-ALPV, and ALC-ALPV Alternatives, the effects of general habitat loss, wildlife loss (including sensitive species) and habitat fragmentation are anticipated to result in substantial impacts even after mitigation.

The accompanying mitigation measures on pp. ES-52-53 and ES-58-60 (for threatened and endangered species) may minimize wildlife impacts, but given the proposed significant adverse effects from direct habitat displacement, habitat fragmentation, 40+ (up to 80) million cubic yards of grading (Table 2.4-5, p. 2-95), noise, runoff and erosion, we do not believe these measures would adequately mitigate, or reduce to a level of non-significance, the significant adverse effects on the affected sensitive wildlife resources.

Page 4.10-16 (mitigation measure WW-3). For alternatives FEC-M, FEC-W, A7C-FEC-M, and any other alternative for which a consistency certification will be submitted, please add the Coastal Commission to the list of agencies to receive any mitigation, management, monitoring measures, water quality plans, and other resource agency coordination measures.

Page 4.10-7. The discussion about the Coastal Commission could be confusing, as it mentions the Coastal Zone Management Act but not the specific requirement for a consistency certification. This could be remedied by referencing any such discussion elsewhere in the document, or by adding a sentence to this effect in this paragraph. Also, for clarity, we recommend a more specific description of the coastal zone in San Clemente and northwestern Camp Pendleton, along the lines of: "the coastal zone in the project area generally ranges from about 1000 ft. in northern San Clemente to about 4000 ft. in the San Mateo Creek watershed."

Page 4.10-7 (as well as the discussion on 4.10-15). The wetland discussion references Army Corps delineations, but not Coastal Act delineations, which differ (please see the third "specific comment" above (p. 2), and Attachment 1). Page 4.10-15 more specifically references the Coastal Act, but we want to be clear how the wetland criteria differ, which any wetland delineator will need to take into consideration.

Page 4.11-42. The document states the mitigation ratios would be 1:1 or whatever regulatory standard is applicable. Please be advised that depending on the resource and the impact, as a general rule of thumb the Commission generally requires greater than a 1:1 ratio. For example, in our recent objection to the "Border Fence" project, the CCC determined the mitigation ratios proposed insufficient, requiring "…increas[ing]… the habitat mitigation ratios to 4:1 for coastal salt marsh (including disturbed coastal salt marsh), to 3:1 for disturbed maritime succulent scrub, to 3:1 for southern maritime chaparral, and to 3:1 for disturbed coastal sage scrub." (CC-063-03)

Page 4.11-52. Please explain why Caltrans will be assuming mitigation responsibilities for mitigation after 3 years of corridor operation, and how funding for such mitigation will be guaranteed.

III. <u>Procedural Issues</u>. As we informed TCA in our letter to Nancy Lucast dated September 25, 1996 (Attachment 2), a number of the alternative alignments being considered would trigger the need for a consistency certification to the Commission, as well as, depending on the alternative,

Page 4

possible coastal development permits from the City of San Clemente and/or the Coastal Commission (if any physical development is proposed seaward of the coastal zone boundary).

Alignments now entitled A7C-FEC-M, FEC-W, and FEC-M would require submittal of both a consistency certification (for the entire project) and a coastal development permit application (for the portion of the project seaward of the coastal zone boundary on Camp Pendleton) to the Commission, for the reasons explained in the attached letter.

Any coastal development permitting requirement would arise under the California Coastal Act of 1976, as amended (PRC 20 Section 30000, et seq.). The federal consistency requirement arises under Section 307 of the Coastal Zone Management Act, 16 U.S.C. Section 1456 (with implementing regulations at 15 CFR Part 930).

Thank you for the opportunity to comment. If you have any questions or comments, please feel free to contact me at (415) 904-5289.

Sincerely,

MARK DELAPLAINE
Federal Consistency Supervisor

Attachments (2)

cc: San Diego Coast District Office
South Coast District Office

Comment Letter AS006 Continued

Attachment 1

Definition of Wetlands

Various state and federal agencies are charged with regulating the use of wetlands within the Coastal Zone, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), and the California Coastal Commission. While each of these agencies regulates wetlands under a different statutory authority, they all define "wetland" based on three basic parameters: hydrology, soil type, and vegetation. Generally speaking, the Corps uses the narrowest definition, requiring evidence of each of the three wetland parameters. USFWS, CDFG, and the Commission generally accept evidence of positive field indicators of any one of the three parameters to demonstrate that an area is a wetland, i.e. areas wet long enough to bring about the formation of hydric soils or to support the growth of wetland plants. This difference is often expressed as a "three parameter" versus a "one parameter approach."

For additional background, the wetland definition used by the Corps is provided in the Corps 1987 Wetland Delineation Manual (Environmental Laboratory 1987) states in part:

> *Definition: The CORPS (Federal Register, Section 328.3(b), 1991) and the EPA (Federal Register, Section 230.4(t), 1991) jointly define wetlands as: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

The USFWS, CDFG, and Coastal Commission wetland definitions (the last of which is the applicable standard of review in this case) are all based on a classification scheme published in Cowardin et al. (1979). The Cowardin classification system provides:

> *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. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes[1]; (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.*

Consistent with Cowardin, the wetland definitions provided under the Coastal Act and the Commission's administrative regulations are based on periodic or permanent wetland hydrology. Coastal Act Section 30121 defines wetland as:

> *Wetland means lands 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, or fens.*

[1] Normally, a particular vegetation type (e.g., hydrophytic vegetation) is considered to predominate when it makes up more than 50% of the vegetation.

Commission Regulation Section 13577(b) elaborates:

> *...Wetlands are lands 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 or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substance 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 deepwater habitats....*

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CHAPTER 3

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