

WETLANDS REGULATION UNDER THE COASTAL ACT



Coastal Commission
Wetlands Workshop
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“WETLAND” IS DEFINED BROADLY

- Statute: Section 30121
- Regulations: Section 13577(b)
- 1981 Statewide Interpretive Guidelines
- LCP definitions may be more protective

COASTAL ACT SECTION 30233

- 1) Only certain uses allowed in wetlands
- 2) Allowed uses are permitted only if there is no feasible less damaging alternative
- 3) Mitigation is required for all impacts

ALLOWED USES OF WETLANDS

- Only designated uses allowed



- Other uses not allowed, regardless of mitigation (*See Bolsa Chica Land Trust v. Superior Court*)

LEAST DAMAGING ALTERNATIVE

- Designated uses allowed only where there is no feasible less environmentally damaging alternative
- Must analyze alternative layouts or locations
- Courts have upheld denial of permits where applicants failed to consider feasible alternatives
 - *City of Chula Vista v. Superior Court*
 - *City of San Diego v. Cal. Coastal Commission*

IMPACTS MUST BE MITIGATED

- Full mitigation = no net loss of wetland acreage or function
- Prioritization of mitigation: avoidance first
- Mitigation must be certain and specific

ALL WETLANDS PROTECTED EQUALLY

- Disturbed wetlands receive equal protection: *Kirkorowicz v. Cal. Coastal Commission*; *Dunn v. County of Santa Barbara*
- Human-created wetlands generally receive equal protection: *Yamagiwa v. City of Half Moon Bay*



RELATIONSHIP OF WETLAND AND ESHA PROTECTIONS

- Many wetlands are also ESHA
- Section 30233 allows uses not permitted in ESHA; more specific provisions of 30233, rather than general provisions of 30240, govern wetland development:
Bolsa Chica Land Trust v. Superior Court
- ESHA protections still apply if they do not *conflict* with wetlands provisions

CLOSING

- 1) Only certain uses allowed in wetlands
- 2) Allowed uses are permitted only if there is no feasible less damaging alternative
- 3) Mitigation is required for all impacts

RELEVANT AUTHORITY

- *Kirkorowicz v. Cal. Coastal Commission* (2000) 83 Cal.App.4th 980 (disturbed wetlands receive equal protection; definition of “wetlands”)
- *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281 (disturbed wetlands receive equal protection; definition of “wetlands”)
- *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493 (overlap between ESHA and wetlands protections; describing allowed uses of wetlands)
- *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472 (housing and hotels not allowed uses of wetlands; discussing alternatives, mitigation issues)

RELEVANT AUTHORITY

- *City of San Diego v. Cal. Coastal Commission* (1981) 119 Cal.App.3d 228 (alternatives; road not allowed in wetland)
- *Beach Colony II v. Cal. Coastal Commission* (1984) 151 Cal.App.3d 1107 (landowner's right to reclaim wetlands created by avulsion)
- *Yamagiwa v. City of Half Moon Bay* (1st Dist., 7/27/2005) 2005 WL 1774402 (unpublished) (human-created wetlands protected; definition of "wetlands.")