

April 10, 2009

Chair Lutz and Board Members  
Los Angeles Regional Water Quality Control Board  
320 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

**SUBJECT: COMMENT LETTER REGARDING CONSENSUS ON STORMWATER PERMIT LANGUAGE BETWEEN THE NATURAL RESOURCES DEFENSE COUNCIL, HEAL THE BAY AND THE VENTURA COUNTY STORMWATER PERMITTEES - TENTATIVE ORDER OF THE VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (TENTATIVE ORDER)**

Dear Chair Lutz and Members of the Board:

Notwithstanding our individual organizations' independent and strongly principled positions on the Tentative Order now being considered by your Board, positions which are detailed in separate letters regarding the upcoming Hearing and Tentative Order, the Ventura County Stormwater Permittees, Heal The Bay (HTB), and the Natural Resources Defense Council (NRDC) have been meeting regularly over the past several months in an attempt to better understand our policy differences and in an attempt to seek common ground where, and if, possible. We believed at the outset of this process, and continue to believe today, that if we can better understand each other and find agreement in at least some areas, we can provide mutual comments and offer ideas to your Board for consideration that would be better for all of our constituencies. We believe our dialogue has been successful and reflects a notably different tenor between stakeholders than has characterized MS4 permitting in the Los Angeles region.

While we had hoped to conclude our discussions in time to meet with your staff prior to the release of the Tentative Order so that they might be able to consider our common ground in their deliberations, the significant differences which we needed to overcome did not allow the time for this to happen. We are therefore providing the following description of points on which we have forged agreement as comments to your Board for your consideration as you work toward finalizing the Tentative Order for Ventura County. We should also emphasize that the agreement on the issues described below is the result of significant give-and-take by all parties. We present the matters on which we have reached consensus as a "package." As we are sure you can understand, if the Board were to eliminate or alter the approach we describe below, the consensus we have reached would lose its character and the signatories would no longer be in agreement. In that scenario, our individual positions on the matters described below would thus remain intact as detailed in our respective comment letters.

We are hopeful that our work will be positively considered by your Board and will provide a constructive basis for positively amending the Tentative Order recommended by your staff.

Our negotiations have led to agreement on the following:

1. Low Impact Development (LID) - Tentative Order, Section E, III. New Development/Redevelopment Performance Criteria

**Request of RWQCB:** Wholly replace, and incorporate the Tentative Order language contained in Attachment A.

2. Municipal Action Levels – Tentative Order, Part 2 Municipal Action Levels

**Request of RWQCB:** The Ventura County Permittees desire to eliminate entirely from the Tentative Order all of Part 2 Municipal Action Levels, Nos. 1-7 and Attachment C, Table 1 (Conventional Pollutants) & Table 2 (Metals). HTB and NRDC have agreed, given their opinion of the weaknesses in the current proposal, that they will not object to the removal of the Municipal Action Levels set forth in the Tentative Order.

3. Monitoring Program – Tentative Order, Monitoring Program CI 7388, Attachment F

**Request of RWQCB:** Incorporate in Section M the new requirement for Beach Water Quality monitoring at 10 sites. In addition, parties were in agreement for year-round weekly monitoring at the 10 sites.

4. Best Management Performance Criteria – Tentative Order, Part 4. A. 3 and Attachment C (Treatment BMP Performance Standards).

**Request of RWQCB:** No changes to the Tentative Order's BMP Performance Criteria language, or the numeric values expressed in Attachment C, Table 3 – "Effluent Concentrations as Median Values". In addition, parties were in agreement that BMP performance criteria should be accompanied by the SUSMP design storm component

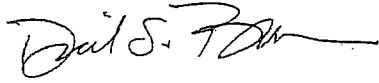
Again, in your consideration of the recommendations above, in order for the parties' agreement to remain supported, the Regional Water Quality Board needs to consider all of the recommendations collectively and not as individual components. The Agreement reached between the parties, and each party's support for the recommendations, is contingent on all of the recommendations being incorporated into the Tentative Order as described herein, and in the case of the LID provisions, as set forth in Attachment A.

Please note that agreement on the issues identified above between NRDC, HTB and the Ventura County Permittees does not provide for agreement on any other provisions in the Tentative Order. As such, each individual party is providing comments on other elements of the February 24, 2009 Tentative Order, and absent this agreement being incorporated in its entirety, each party will maintain their respective positions on all incorporated issues.

Again, thank you for your time and effort in working with us. We sincerely hope that all of the recommendations outlined above will be reflected in the final adopted Order. We will be present at your May Hearing to answer any questions that you may have, and are available to your staff at any time.

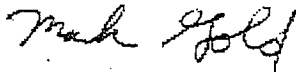
Attachment A - Proposed Low Impact Development Tentative Order Language

SIGNATURE PAGE



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David Beckman, Senior Attorney  
NRDC



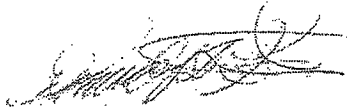
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Mark Gold, President  
Heal the Bay



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Rick Cole, City Manager  
City of Ventura



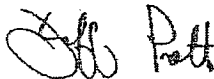
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Edmund Sotelo, City Manager  
City of Oxnard



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Mike Sedell, City Manager  
City of Simi Valley



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Jeff Pratt, Public Works Director  
County of Ventura

*III. New Development/Redevelopment Performance Criteria*

*I. Integrated Water Quality/Flow Reduction/Resources Management Criteria*

- (a) Except as provided in subpart 5.E.III. 2 below, Permittees shall require all New Development and Redevelopment projects identified in subpart 5.E.II to control pollutants, pollutant loads, and runoff volume emanating from impervious surfaces through infiltration, storage for reuse, evapotranspiration, or bioretention/biofiltration by reducing the percentage of Effective Impervious Area (ELA) to 5 percent or less of the total project area.*
- (b) Impervious surfaces may be rendered "ineffective," and thus not count toward the 5 percent ELA limitation, if the stormwater runoff from those surfaces is fully retained onsite for the design storm event specified in provision (c), below. To satisfy the ELA limitation and low-impact development requirements, the permittees must require stormwater runoff to be infiltrated, reused, or evapotranspired onsite through a stormwater management technique allowed under the terms of this permit and implementing documents.*
- (c) The permittees shall require all features constructed or otherwise utilized to render impervious surfaces "ineffective," as described in provision (b), above, to be properly sized to infiltrate, store for reuse, or evapotranspire, without any runoff, at least the volume of water that results from:
  - (1) The 85th percentile 24-hour runoff event determined as the maximized capture stormwater volume for the area using a 48 to 72-hour draw down time, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998);*
  - (2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures (July 2002 and its revisions); or*
  - (3) The volume of runoff produced from a 0.75 inch storm event.**
- (d) To address any impervious surfaces that may not be rendered "ineffective," surface discharge of stormwater runoff, if any, that results from New Development and Redevelopment projects identified in subpart 5.E.II which have complied with subparts 5.E.III.1(a)-(c), above, shall be mitigated in accordance with subpart 5.E.III.3.*

2. *Alternative Compliance for Technical Infeasibility*

- (a) *To encourage smart growth and infill development of existing urban centers where onsite compliance with post-construction requirements may be technically infeasible, the permittees may allow projects that are unable to meet the Integrated Water Quality/Flow Reduction/Resources Management Criteria in subpart 5.E.III.1, above, to comply with this permit through the alternative compliance measures described in subpart 5.E.III.2.c, below.*
- (b) *To utilize alternative compliance measures, the project applicant must demonstrate that compliance with the applicable post-construction requirements would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from conditions including the following:*
- (1) *Locations where seasonal high groundwater is within 5 feet of the surface;*
  - (2) *Locations within 100 feet of a groundwater well used for drinking water;*
  - (3) *Brownfield development sites or other locations where pollutant mobilization is a documented concern;*
  - (4) *Locations with potential geotechnical hazards;*
  - (5) *Smart growth and infill or redevelopment locations where the density and/or nature of the project would create significant difficulty for compliance with the onsite volume retention requirement; and*
  - (6) *Other site or implementation constraints identified in the LID Technical Guidance document required by subpart 5.E.IV.5.*
- (c) *Alternative Compliance Measures. When a permittee finds that a project applicant has demonstrated technical infeasibility, the permittee shall identify alternative compliance measures that the project will need to comply with as a substitute for the otherwise applicable post-construction requirements listed in subparts 5.E.III.1(a)-(c) of this permit. The Ventura County Technical Guidance Manual shall be revised to identify the alternative compliance measures and shall include the following requirements:*

- (1) *Minimum onsite requirement. The project must reduce the percentage of Effective Impervious Area to no more than 30 percent of the total project area and treat all remaining runoff, pursuant to the design and sizing requirements of subparts 5.E.III.1(b)-(d).*
- (2) *Offsite mitigation volume. The difference in volume between the amount of stormwater infiltrated, reused, and/or evapotranspired by the project onsite and the otherwise applicable requirements of subparts 5.E.III.1(a)-(c) (the "offsite mitigation volume"), above, must be mitigated by the project applicant either by performing offsite mitigation that is approved by the permittee or by providing sufficient funding for public or private offsite mitigation to achieve equivalent stormwater volume and pollutant load reduction through infiltration, reuse, and/or evapotranspiration.*
- (3) *Location of offsite mitigation. Offsite mitigation projects must be located in the same sub-watershed (defined as draining to the same hydrologic area in the Basin-Plan) as the new development or redevelopment project. A list of eligible public and private offsite mitigation projects available for funding shall be identified by the Permittees and provided to the project applicant. Offsite mitigation projects include green streets projects, parking lot retrofits, other site specific LID BMPs, and regional BMPs. Project applicants seeking to utilize these alternative compliance provisions may propose other offsite mitigation projects, which the Permittees may approve if they meet the requirements of this subpart.*
- (4) *Timing and Reporting Requirements for Offsite Mitigation Projects. The Permittee(s) shall develop a schedule for the completion of offsite mitigation projects, including milestone dates to identify, fund, design, and construct the projects. Offsite mitigation projects shall be completed as soon as possible, and at the latest, within [3, 4] years of the issuance of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite mitigation project, unless a longer period is otherwise authorized by the Executive Officer. For public offsite mitigation projects, the permittees must provide in their annual reports a summary of total offsite mitigation funds raised to date and a description (including location, general design concept, volume of water expected to be retained, and total estimated budget) of all pending public offsite mitigation projects. Funding sufficient to address the offsite mitigation volume must be transferred to the permittee (for public offsite mitigation projects)*

Comment [BLI]: The NGOs and permittees did not reach consensus on this number.

*or to an escrow account (for private offsite mitigation projects) within one year of the initiation of construction.*

(5) *The project applicant must demonstrate that the EIA achieved onsite is as close to 5 percent EIA as technically feasible, given the site's constraints.*

(d) *Watershed equivalence. Regardless of the methods through which permittees allow project applicants to implement alternative compliance measures, the sub-watershed -wide (defined as draining to the same hydrologic area in the Basin Plan) result of all development must be at least the same level of water quality protection as would have been achieved if all projects utilizing these alternative compliance provisions had complied with subparts 5.E.III.1(a)-(d) of the permit. The permittees shall provide in their annual report to the Regional Board a list of mitigation project descriptions and pollutant and flow reduction analyses (compiled from design specifications submitted by project applicants and approved by the permittee(s)) comparing the expected aggregate results of alternative compliance projects to the results that would otherwise have been achieved by meeting the 5 percent EIA requirement onsite.*