regulation of these discharges is not within the scope of the Clean Water Act.[2] The City therefore requests that Draft Permit be revised to make clear that it only pertains to "urban" discharges.

EXISTING DEVELOPMENT RETROFIT REQUIREMENTS

Section F.3.d of the Draft Permit requires the Copermittees to develop a plan to retrofit existing development within their jurisdiction. Specifically, each permittee must implement a retrofitting program that:

- Solves chronic flooding problems,
- Reduces impacts from hydromodification,
- Incorporates Low Impact Development ("LID") principles,
- Supports stream restoration,
- Systematically reduces downstream channel erosion,
- Reduces the discharges of stormwater pollutants from the MS4 to the MEP, and
- Prevents discharges from the MS4 from causing or contributing to a violation of water quality standards.

These requirements are inconsistent with other recently issued MS4 Permits. More importantly, they are infeasible. While the Copermittees have traditional land use authority to impose requirements on new development as a condition of development, there is no similar authority to require property owners to retrofit existing development. The Draft Permit ignores this lack of authority and goes as far as to require the Copermittees to identify existing developments that are sources of pollutants and then evaluate and rank them to prioritize retrofitting. (Draft Permit, section F.3.d(1)-(2).)

Additionally, because the City has limited authority to impose retrofit requirements on existing development within its jurisdiction, the Draft Permit's retrofit provisions will result in an allocation of resources that is not likely to benefit clean water. For example, the City will be required to dedicate significant resources and time to identify and inventory existing sites and then complete evaluations and prioritization of these sites for retrofits. These intensive activities will divert resources, time, and funding away from other vital permit related programs.

Because the Copermittees have little authority to implement the Draft permit's existing development retrofit requirements, the City requests that the be removed from the Draft Permit.

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[2] To the extent that the Draft Permit attempts to regulate these discharges, it does so under the authority of state law, and must comply with other state law requirements including but not limited to Water Code sections 13241, and 13000.

THE DRAFT PERMIT UNNECESSARILY OUTLAWS IRRIGATION RUNOFF

The Draft Permit has eliminated irrigation water as an exempt discharge. The federal stormwater regulations include a list of categories of "exempt" non-stormwater discharges or flows. (40 CFR 122.26(d)(2)(iv)(B)(1).) The Copermittees' illicit discharge and illegal disposal program must address these discharges or flows when they have been identified by the Copermittees as sources of pollutants to waters of the U.S. (*Id.*) Where individual sources of discharge are identified they need to be addressed on an individual basis. This approach is supported by the EPA. (*See* Part 2 Guidance Manual at p. 6-33.)

This is a sound approach to addressing pollutants in irrigation water. While irrigation runoff may act as a conveyance of pollutants in some instances, whether it is a conveyance of pollutants needs to be evaluated on an case by case basis. This is because the tendency of irrigation water to convey pollutants is dependant on the pollutants and the source of those pollutants. Moreover, many of the pollutants that may be conveyed by irrigation overflows are naturally occurring, are regulated by the State under different permits or programs, or are diffuse and uncontrollable by the Permittees. Potable irrigation water itself is not a pollutant. Therefore, it is inappropriate to regulate irrigation runoff as a pollutant.

Furthermore, enforcing discharges of potable irrigation water from residential homes presents numerous challenges for the City. Residents without a significant water quality background are unlikely to agree that potable irrigation water is a pollutant. This will discourage public acceptance and participation in the water quality program, a program whose foundation is outreach and public education.

Lastly, it is also important to recognize that irrigation runoff is a significant water supply issue. The City, the other Copermittees, and water districts throughout the region are working toward limiting excessive irrigation runoff through numerous water conservation programs and ordinances. Therefore, reduction of irrigation runoff will be achieved through other means, and does not need to be regulated in the Draft Permit. Regulation as a water supply issue has the added benefit of public acceptance and participation in conservation programs. This will allow the benefits of fewer irrigation overflow discharges to occur without undermining public support for the City's water quality program. The City therefore requests that the exemption for landscape irrigation be restored.

THE DRAFT PERMIT'S BMP DATABASE REQUIREMENTS ARE UNNECESSARY

Draft Permit Section D.1.f. requires Copermittees to maintain a watershed based database to track and inventory approved treatment control BMPs. It additionally requires Copermittees to verify, on an annual basis, that the BMPs are being maintained and operated effectively. Compliance with this section will require a significant commitment from Copermittee staff, and may require the addition of staff. The value of the outlay of funds that compliance with this section will require is questionable in comparison to the

overall benefit to stormwater quality. This section should be removed, or the Permit should be revised to allow for inspection and verification on an as needed basis.

THE DRAFT PERMIT'S HYDROMODIFICATION AND LID REQUIREMENTS SHOULD BE CONSISTENT WITH THE NORTH ORANGE COUNTY LARGE MS4 PERMIT

During preparation of the Fourth Draft of the North Orange County Permit, the land development provision of the permit were the subject of a series of stakeholder meetings and subsequent comments by the EPA. These sections of the SARWQCB permit containing the land development provisions were revised and are currently scheduled for consideration of adoption by the SARWQCB on May 22, 2009. The City requests that SDRWQCB staff include the same or very similar land development provision within the SDRWQCB Draft Permit to facilitate consistency and feasible implementation between the two regions within Orange County.

As state above, this issue is very important to the City as it will be required to implement both programs within its jurisdiction. The North Orange County Permit's development provisions are more flexible than those currently included in the Draft Permit. It was nonetheless accepted by the EPA, the Copermittees, the building industry, and interested environmental groups. Those provisions represent mutually agreeable design standards that should be adopted in the Draft Permit.

THE DRAFT PERMIT'S STREET SWEEPING REQUIREMENTS ARE AN UNNECESSARY ALLOCATION OF RESOURCES

Draft Permit Section D.3.a.(5) requires Copermittees to design and implement a street sweeping program based on criteria which includes optimizing the pickup of "toxic automotive byproducts" based on traffic counts. Although the Permit does not specify what pollutants it is trying to capture, one can only assume that this provision is aimed at commonly utilized automotive products such as oil, gasoline, transmission fluid, brake fluid, brake dust and radiator fluids. Because the term is not defined, however, it could be broad enough to include air-deposited byproducts of combustion.

Street sweeping, and street sweepers in general, were not designed to be the primary means of collecting these by-products. It is therefore unlikely that street sweeping will be effective at collecting many of them, including any liquids that have soaked into the pavement. Additionally, whether such by-products are deposited on a given street is not necessarily a function of the traffic volume on that street. There does not appear to be a direct correlation between traffic counts and the effectiveness or need for street sweeping.

There are other pollutants such as litter, debris, and grass clippings etc. that could be detrimental to stormwater quality that are de-emphasized by the Permit's focus on traffic counts. This section should therefore be revised to both specify the types of pollutants the Copermittees should be seeking to reduce with their street sweeping programs, and to provide the Copermittees with the discretion to utilize street sweeping in a manner that maximizes its effectiveness.

THE DRAFT PERMIT'S MOBILE BUSINESS REQUIREMENTS ARE IMPRACTICAL

The North Orange County permit, which the City will also be required to implement, no longer includes a mobile business tracking requirement. Instead, the North Orange Permit requires the County, as the principle permittee to develop a program over the next permit term that could be implemented by all of the Copermittees. This approach is preferable to the language in the Draft Permit because it gives the Copermittees the flexibility to develop a program they mutually agree upon. For that reason, the City requests that the SDRWQCB either remove the mobile business provisions from the Draft Permit, or replace them with language similar to that in the North Orange County permit.

Draft Permit Section D.3.b.(3) requires the Copermittees to develop and implement a program to reduce the discharge of pollutants from various types of mobile businesses. This section requires Copermittees to develop a listing of mobile businesses, and requires the Copermittees to develop and implement a number of measures to limit the discharge of pollutants from them. As a practical matter, these requirements will be very difficult to enforce for the following reasons:

1. What constitutes a mobile business is not well defined;

2. Mobile businesses operate in multiple jurisdictions and cannot be tracked as to time and place;

3. Mobile businesses may operate on private property out of the City's view; and

4. Additional staff time will be required to roam the City looking for mobile businesses.

The Fact Sheet that the SDRWQCB has issued in support of the Permit states that the Permit has targeted mobile businesses for special attention because the Copermittees reported that discharges from such businesses have been difficult to control with existing programs. Rather than finding a solution for this problem, the Permit directs Copermittees to implement a number of non-descript solutions that will not necessarily make regulation of mobile businesses any easier. The SDRWQCB should therefore revise this section of the Permit to provide the Copermittees with the discretion to focus on mobile sources when they feel it is necessary, or if they identify mobile businesses as a significant source of stormwater pollution within their jurisdiction.

THE DRAFT PERMIT'S BUSINESS PLAN REQUIREMENTS ARE UNLIKELY TO BENEFIT WATER QUALITY

Draft Permit Section F. requires the Copermittees to conduct an annual fiscal analysis of the capital, operation, and maintenance expenditures necessary to implement the Permit's requirements. This section additionally requires each analysis to "include a qualitative or quantitative description of fiscal benefits realized from implementation of the stormwater protection program." A review of the Fact Sheet indicates that the Permit is requiring the Copermittees to conduct an economic benefits analysis of their respective stormwater programs.

This requirement is unnecessarily duplicative. As described in the Report of Waste Discharge, the Copermittees have already committed to develop a fiscal reporting strategy to better define the expenditure and budget line items included in the fiscal report. Furthermore, the SDRWQCB is already required to take the economic benefits and burdens of their actions into account when issuing stormwater permits. (*See City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613; and California Water Code § 13263.) Requiring the Copermittees duplicate these requirements is a waste of resources that could be better spent on implementing other Permit provisions. Accordingly, this section should be modified to encourage rather than require the Copermittees conduct such an analysis.

This section of the Permit additionally requires each Copermittee submit a business plan that identifies a long term funding strategy for program evolution and funding decisions. The Copermittees do not always have information on the future sources of funding as it is not often readily available. This makes production of such a document difficult. The SDRWQCB does not need to know the funding sources for each Copermittee's stormwater program. Requiring such a report is overreaching in a manner that will unnecessarily cost the Copermittees additional time and resources. This section of the Permit should therefore be modified to encourage rather than require the Copermittees develop a business plan.

THE DRAFT PERMIT INCLUDES NUMEROUS REQUIREMENTS THAT EXCEED FEDERAL LAW AND DOES NOT MAKE THE FINDINGS OR INCLUDE THE ANALYSES REQUIRED BY WATER CODE SECTION 13241

The Draft Permit includes numerous requirements that exceed the requirements of federal law. While the SDRWQCB has the authority to include such requirements in the Draft Permit, it must comply with the statutory requirements set forth in the California Porter-Cologne Water Quality Control Act. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal. 4th 613.) This includes making the findings required by Water Code sections 13000, 13241 and 13263. Additionally, as these requirements represent state, rather than federal, mandates, if they are included the final permit, the Copermittees are entitled to reimbursement from the State for the costs associated with implementing them. (California Constitution, Article XIII B, § 6.)

CONCLUSION

We appreciate your attention to our comments. The City is committed to the goal of water quality improvement and wants to work with the SDRWQCB in developing the most prudent and cost effective permit possible. We look forward to receiving your response to the above comments and concerns. If you should have any questions, please contact Devin Slaven, Water Quality Specialist, at (949) 461-3436.

Sincerely,
CITY OF LAKE FOREST

Robert L. Woodings, P.E.
Director of Public Works/City Engineer

cc: Robert C. Dunek, City Manager
Theodore G. Simon, P.E., Engineering Services Manager
Devin E. Slaven, REA, Water Quality Specialist
Chris Crompton, County of Orange, RDMD

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CITY OF LAKE FOREST

April 4, 2007

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Via Fax (858) 571-6972

Subject: Comments on Tentative Order No. R9-2007-0002, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District Within the San Diego Region

Dear Mr. Robertus:

The City of Lake Forest (City) respectfully submits this letter to the California Regional Water Quality Control Board, San Diego Region (Regional Board) to convey the City's formal written comments on Tentative Order No. R9-2007-0002/NPDES Permit No. CAS0108740 (Permit). Once adopted, the Permit will govern discharges of storm water from all Large Municipal Separate Storm Sewer Systems (MS4s) in Southern Orange County. As a regulated Large MS4 operator, the City is very concerned with a number of the Permit's proposed provisions.

As an initial matter, the City would like to address the projected timeline for the Permit's renewal. Regional Board staff have proposed closing the public comment period immediately following the April 11, 2007 Regional Board workshop. In order to facilitate greater public participation, the City hereby requests that the Regional Board keep the comment period open beyond this date. This will provide the Regional Board with the opportunity to review all of the submitted comments, and will allow all stakeholders to review any changes to the Permit that the Regional Board chooses to make.

In developing the following comments, the City worked closely with the County of Orange (County) as well as the other Copermittees to identify common concerns among the Copermittees. The City is aware that the County, as the Principle Permittee, has submitted a comment letter to the Regional Board regarding the Permit. The City would like to express its full support for the County's comments and intends the comments contained in this letter to supplement those submitted by the County and the other Copermittees. Accordingly, please consider the County's comments to be incorporated in the City's letter by this reference.

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As with the County's letter, the purpose of this letter is to continue the open dialogue between the Regional Board and the Copermittees. It is the City's belief that such a dialogue will help the Regional Board develop a permit that efficiently promotes the mutually held goal of water quality enhancement. Representatives of the City have participated, and will continue to participate in the Permit renewal process. City representatives will attend the workshop scheduled for April 11, 2007, and will pay close attention to any changes to the Permit that the Regional Board chooses to make.

Additionally, while the City shares the Regional Board's goal of water quality enhancement, the City has certain concerns about the way in which the Permit proposes to reach that goal. These concerns include the Permit's overly specific and prescriptive nature, the abbreviated timelines for compliance, and the manner in which it holds the Copermittees responsible for storm water discharges that are beyond their ability to control. Each of these concerns is set forth more fully below.

GENERAL COMMENTS REGARDING THE PERMIT

The Permit is Unnecessarily Prescriptive. Past permits have provided the Copermittees with discretion to decide which storm water pollution solutions to implement, and when to implement them. This Permit contains a number of very specific requirements that essentially remove the Copermittees' ability to decide which solutions work best. This newly prescriptive nature represents a significant departure from the previous permit, as well as from the intent of the Clean Water Act and its associated regulations. The plain language of the Clean Water Act clearly indicates that Congress envisioned individualized regulation of storm water that would provide permittees with the discretion to implement local solutions on a local level.

Despite the intent to provide MS4 operators with maximum flexibility, this Permit has increased the number of mandatory provisions and intergovernmental relationships in a manner that the Copermittees feel is counter-productive. Permit Section D.1.d.(9) is one example. That section governs site design and treatment control BMPs. It provides very specific criteria that each Copermittee must develop and require for "Priority Development Projects" and includes very detailed mandates that unnecessarily hinder the Copermittees' ability to decide which Best Management Practices ("BMPs") will work best. By removing the Copermittees' discretion, the Permit limits the ability of the Copermittees to develop and implement any new storm water quality solutions that are not specifically required in the Permit.

A second example is the requirement that the Copermittees regulate storm water discharges on a watershed basis. This requirement adds an unnecessary layer of complexity to the storm water program. Where Copermittees have multiple watersheds within their jurisdictions, watershed based regulation forces the Copermittees to duplicate their efforts in an inefficient manner. This is because many storm water quality problems transcend watershed boundaries. Rather than allowing the Copermittees to implement one

solution to address such problems, the Permit adds an unnecessary layer of bureaucracy to the process by requiring watershed based regulation.

The Orange County Copermittees have invested a significant amount of time, energy, and financial resources into their respective storm water programs. They have worked collaboratively to develop organizational and management structures that work well for them. The program has strong momentum that the overly prescriptive nature of the Permit risks losing to the detriment of clean water throughout the region.

The Permit Fails to Cite Applicable Authority or otherwise Support the Exceedance of Federal Requirements. The Permit fails to properly identify which requirements are federally mandated, and which are required by state law. The federal regulations located at 40 C.F.R. § 122.26 establish the minimum requirements for a Large MS4 permit. The Permit greatly exceeds those minimum requirements. Despite the fact that the Regional Board is required to provide the legal and factual basis for each permit provision, the Regional Board has either provided no legal basis for these exceedances, or erroneously pointed to federal sources of authority.

The Regional Board needs to demonstrate why it is necessary to exceed the federal requirements. Without appropriate findings to support the need to go beyond the federal regulations, the Permit is suspect. Additionally, such documentation is necessary because those portions of the Permit that exceed the federally required minimum represent state mandates within the meaning of Article XIII B § 6 of the California Constitution. In order to allow the Copermittees to seek reimbursement from the State so that they can adequately fund their storm water programs, the Regional Board needs to provide a differentiation of authority.

The Permit Improperly Requires the Copermittees to Regulate Phase II and Other Regional Board Regulated Entities. The Permit holds the Copermittees responsible for inputs into their respective MS4s from what the EPA has classified as Phase II storm water dischargers. The Copermittees have little to no authority over the conduct of Phase II entities within their jurisdictions. This in turn significantly limits the ability of the Copermittees to regulate the quality of the storm water that enters their MS4. The EPA and the State Water Resources Control Board have issued Phase II permit guidelines. The Regional Board should enforce these guidelines rather than forcing the Copermittees to do so. The Permit should reflect this and not hold the Copermittees responsible for enforcing storm water regulations by proxy where they have a limited ability to do so.

Likewise, Permit Section D.2.c. requires the Copermittees to both review a project developer's storm water management plan and verify that the developer has obtained coverage under the California statewide General Construction Permit. It appears that this Section will require the Copermittees to do the Regional Board's inspection work for it. This is despite the fact that the State and Regional Boards retain the funds that the General Construction permittees pay for coverage.

To address these concerns, the Permit should be modified to absolve the Copermittees of responsibility for enforcing storm water regulations against Phase II and other Regional and State Board regulated entities.

SPECIFIC PERMIT PROVISIONS OF CONCERN

Finding C.6. – 303(d) Listed Waters. Finding C.6. improperly states that Aliso Creek has been placed on the 303(d) list for Benzo[b]flouranthene, Dieldrin, and Sediment Toxicity. Aliso Creek is on the 303(d) list for indicator bacteria, phosphorus, and toxicity. Aliso Creek has not been listed for Benzo[b]flouranthene, Dieldrin, and Sediment Toxicity. These pollutants are incorrectly identified and need to be deleted from the finding.

Permit Section D. – Jurisdictional Urban Runoff Management Plan (JURMP). Permit Section D. globally requires implementation of all project development elements of the Permit within one year of its adoption. With respect to the new BMP requirements, as well as the requirement that the Copermittees update their SUSMP, and WQMP, the one year threshold is too soon. These requirements, including possible changes to the Municipal Code, may take substantial time to review and modify through City Council action. In order to realistically develop and implement all of the requirements contained in this section of the Permit, the Copermittees need more time. Accordingly, Permit section D. should be revised to provide the Copermittees with 24 months to develop and implement the program requirements.

Section D.1.f. – BMP Tracking and Maintenance. This Section requires Copermittees to maintain a watershed based database to track and inventory approved treatment control BMPs. It additionally requires Copermittees to verify, on an annual basis, that the BMPs are being maintained and operated effectively. Compliance with this section will require a significant commitment from Copermittee staff, and may require the addition of staff. The value of the outlay of funds that compliance with this section will require is questionable in comparison to the overall benefit to storm water quality. This section should be removed, or the Permit should be revised to allow for inspection and verification on an as needed basis.

Section D.1.h – Requirements for Hydromodification and Downstream Erosion. This section requires hydromodification site design measures to be implemented on all Priority Development Projects. It should be noted that some development/redevelopment projects (including infill projects) may actually discharge into engineered channels already designed to handle the flows from the development area. The Permit fails to adequately account for such situations. It does allow for conditional waivers where a downstream channel has been hardened all the way to its outfall. Even in those cases, however, the Permit still requires mitigation measures for what is essentially a non-existent impact.

Additionally, where a channel is only hardened in certain areas, and not for its entire length, the Permit provides no such waiver. The Permit still requires hydromodification

site design measures despite the fact that implementation of such measures will have little to no impact on downstream hydrologic conditions. The Permit should therefore be revised to provide a waiver with no mitigation measures in situations where a project discharges into engineered channels already designed to handle the flows from the development area.

Section D.3.a.(4) – BMP Implementation for Flood Control Structures. This Section requires each Copermittee to implement procedures to assure that flood management projects assess water quality impacts. It additionally requires Copermittees to evaluate their existing flood control devices for impacts on storm water quality. This Section thereby places the responsibility for ensuring that flood control devices comply with the terms of the Permit with the Copermittees. This is despite the fact that the Orange County Flood Control District owns, operates and maintains virtually all of the flood control devices in the Permit area. The Permit should not hold the Copermittees responsible for storm water requirements that are beyond their authority to regulate.

Section D.3.a.(5) – BMP Implementation for Sweeping of Municipal Areas. This Section requires Copermittees to design and implement a street sweeping program based on criteria which includes optimizing the pickup of "toxic automotive byproducts" based on traffic counts. Although the Permit does not specify what pollutants it is trying to capture, one can only assume that this provision is aimed at commonly utilized automotive products such as oil, gasoline, transmission fluid, brake fluid, brake dust and radiator fluids. Because the term is not defined, however, it could be broad enough to include air deposited byproducts of combustion.

Street sweeping, and street sweepers in general, were not designed to be the primary means of collecting these by-products. It is therefore unlikely that street sweeping will be effective at collecting many of them, including any liquids that have soaked into the pavement. Additionally, whether such by-products are deposited on a given street is not necessarily a function of the traffic volume on that street. There does not appear to be a direct correlation between traffic counts and the effectiveness or need for street sweeping. There are other pollutants such as litter, debris, and grass clippings etc. that could be detrimental to storm water quality that are de-emphasized by the Permit's focus on traffic counts. This section should therefore be revised to both specify the types of pollutants the Copermittees should be seeking to reduce with their street sweeping programs, and to provide the Copermittees with the discretion to utilize street sweeping in a manner that maximizes its effectiveness.

Section D.3.a.(7) - Infiltration from Sanitary Sewer to MS4/Provide Preventive Maintenance of Both. This section requires implementation of controls to prevent and eliminate infiltration of seepage from sanitary sewers to MS4s. This requirement fails to recognize that the City, as well as most of south Orange County, is serviced by numerous water districts that own, operate, and maintain their own sanitary sewer infrastructure. Therefore, while these requirements may be appropriate for public agencies that own, operate, and maintain sanitary sewer infrastructure, it is infeasible for the City to operate

and maintain another agency's infrastructure. This Permit section should therefore be revised to apply only to those Copermittees that own and operate their own sanitary sewer systems.

Section D.3.b.(3) – BMP Implementation for Mobile Businesses. The Permit requires the Copermittees to develop and implement a program to reduce the discharge of pollutants from various types of mobile businesses. This section requires Copermittees to develop a listing of mobile businesses, and requires the Copermittees to develop and implement a number of measures to limit the discharge of pollutants from them. As a practical matter, these requirements will be very difficult to enforce for the following reasons:

1. What constitutes a mobile business is not well defined;

2. Mobile businesses operate in multiple jurisdictions and cannot be tracked as to time and place;

3. Mobile businesses may operate on private property out of the City's view; and

4. Additional staff time will be required to roam the City looking for mobile businesses.

The Fact Sheet that the Regional Board has issued in support of the Permit states that the Permit has targeted mobile businesses for special attention because the Copermittees reported that discharges from such businesses have been difficult to control with existing programs. Rather than finding a solution for this problem, the Permit directs Copermittees to implement a number of non-descript solutions that will not necessarily make regulation of mobile businesses any easier. The Regional Board should therefore revise this section of the Permit to provide the Copermittees with the discretion to focus on mobile sources when they feel it is necessary, or if they identify mobile businesses as a significant source of storm water pollution within their jurisdiction.

Section D.3.b.(4)(c) – Inspection of Food Service Facilities. This Section requires Copermittees to inspect each food service facility within their jurisdictions annually, and to address, among other things, the maintenance of greasy roof vents during those inspections. Requiring inspectors to access food service facility roofs will require clearance from the property owner, as well as more time to complete inspections. It will also place inspectors at risk of injury by forcing them to climb onto roof tops that may not be secure or appropriate for access.

Additionally, the Copermittees currently contract with the Orange County Health Care Agency (OCHCA) to inspect food service facilities for storm water compliance. The addition of inspections of roof vents will severely limit, if not eliminate, the Copermittee's ability to utilize OCHCA services. It will therefore add significant new costs to each Copermittee's storm water program. Furthermore, grease discharges from

food service facilities are already regulated by the Fats, Oils and Grease ("FOG") programs implemented and enforced by sewering districts/agencies. The FOG programs include requirements for proper handling of these potential pollutants. It is therefore unlikely that requiring roof vent inspections will add any additional benefit to overall storm water quality.

Lastly, neither the Fact Sheet, nor the Permit's Findings provide any justification for the addition of this requirement. Such a time consuming and dangerous method of storm water pollution control should not be instituted where there is no sound evidence that it will yield an improvement in storm water quality.

Section E.1.a. – Lead Permittee Identification. This Section requires Copermittees to designate the Lead Permittee for each watershed, and designates a Lead Permittee in the event that the Copermittees fail to designate one. It is unclear how much time the Copermittees will have to designate the Lead Permittee, and at what point the Regional Board will designate one for them. The Permit should provide the Copermittees with sufficient discretion to decide whether they need a Lead Permittee for each watershed. This provision should therefore be removed from the Permit.

Section F. – Fiscal Analysis. This section of the Permit requires the Copermittees to conduct an annual fiscal analysis of the capital, operation, and maintenance expenditures necessary to implement the Permit's requirements. This section additionally requires each analysis to "include a qualitative or quantitative description of fiscal benefits realized from implementation of the storm water protection program." A review of the Fact Sheet indicates that the Permit is requiring the Copermittees to conduct an economic benefits analysis of their respective storm water programs.

This requirement is unnecessarily duplicative. As described in the Report of Waste Discharge, the Copermittees have already committed to develop a fiscal reporting strategy to better define the expenditure and budget line items included in the fiscal report. Furthermore, the Regional Board is already required to take the economic benefits and burdens of their actions into account when issuing storm water permits. (*See City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613; and California Water Code § 13263.) Requiring the Copermittees to duplicate these requirements is a waste of resources that could be better spent on implementing other Permit provisions. Accordingly, this section should be modified to encourage rather than require the Copermittees to conduct such an analysis.

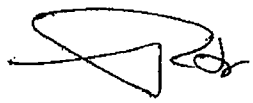
This section of the Permit additionally requires each Copermittee to submit a business plan that identifies a long term funding strategy for program evolution and funding decisions. The Copermittees do not always have information on the future sources of funding as it is not often readily available. This makes production of such a document difficult. The Regional Board does not need to know the funding sources for each Copermittee's storm water program. Requiring such a report is overreaching in a manner that will unnecessarily cost the Copermittees additional time and resources. This section

of the Permit should therefore be modified to encourage rather than require the Copermittees to develop a business plan.

CONCLUSION

We appreciate your attention to our comments. As stated at the beginning of this letter, the City submits these comments as part of the on-going, open dialogue between the Copermittees and the Regional Board to help develop a workable Permit for this region. The City is committed to the goal of water quality enhancement, and wants to work with the Regional Board in developing the most cost-effective way to reach that goal. We look forward to receiving your response to the above comments and concerns. If you should have any questions, please contact Devin Slaven, Water Quality Specialist, at (949) 462-3436.

Sincerely,
CITY OF LAKE FOREST



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Devin E. Slaven, REA, Water Quality Specialist

California Regional Water Quality Control Board
San Diego Region

Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region

Order No. R9-2009-0002
NPDES NO. CAS0108740

December 16, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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To request copies of the Orange County Municipal Storm Water Permit, please contact Ben Neill, Water Resources Control Engineer at (858) 467 – 2983, bneill@waterboards.ca.gov

Documents also are available at: http://www.waterboards.ca.gov/sandiego

WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF RUNOFF FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE WATERSHED OF THE COUNTY OF ORANGE, THE INCORPORATED CITIES OF ORANGE COUNTY, AND THE ORANGE COUNTY FLOOD CONTROL DISTRICT WITHIN THE SAN DIEGO REGION

Adopted by the
California Regional Water Quality Control Board
San Diego Region
on December 16, 2009

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The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

A. BASIS FOR THE ORDER

1. This Order is based on the federal Clean Water Act (CWA), the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable State and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board), the Water Quality Control Plan for the San Diego Basin adopted by the Regional Board, the California Toxics Rule, and the California Toxics Rule Implementation Plan.

2. This Order reissues National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108740, which was first adopted by the Regional Board on July 16, 1990 (Order No. 90-38), and then reissued on August 8, 1996 (Order No. 96-03) and February 13, 2002 (Order No. R9-2002-01). On August 21, 2006, in accordance with Order No. R9-2002-01, the County of Orange, as the Principal Copermittee, submitted a Report of Waste Discharge (ROWD) for reissuance of the municipal separate storm sewer system (MS4) Permit.

3. This Order is consistent with the following precedential Orders adopted by the State Water Resources Control Board (State Board) addressing MS4 NPDES Permits: Order 99-05, Order WQ-2000-11, Order WQ 2001-15, Order WQO 2002-0014, and Order WQ-2009-0008 (*SWRCB/OCC FILE A-1780).*

4. The Fact Sheet / Technical Report for the Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District Within the San Diego Region includes cited regulatory and legal references and additional explanatory information and data in support of the requirements of this Permit. This information, including any supplements thereto, and any response to comments on the Tentative Orders, is hereby incorporated by reference into these findings.

B. REGULATED PARTIES

1. Each of the persons in Table 1 below, hereinafter called Copermittees or dischargers, owns or operates an MS4, through which it discharges runoff into waters of the United States within the San Diego Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a

violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the United States (waters of the U.S).

Table 1. Municipal Copermittees

1. City of Aliso Viejo	8. City of Mission Viejo
2. City of Dana Point	9. City of Rancho Santa Margarita
3. City of Laguna Beach	10. City of San Clemente
4. City of Laguna Hills	11. City of San Juan Capistrano
5. City of Laguna Niguel	12. County of Orange
6. City of Laguna Woods	13. Orange County Flood Control District
7. City of Lake Forest	

C. DISCHARGE CHARACTERISTICS

1. Runoff discharged from an MS4 contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA.

2. MS4 storm water and non-storm water discharges are likely to contain pollutants that cause or threaten to cause a violation of water quality standards, as outlined in the Regional Board's Water Quality Control Plan for the San Diego Basin (Basin Plan). Storm water and non-storm water discharges from the MS4 are subject to the conditions and requirements established in the San Diego Basin Plan for point source discharges. These surface water quality standards must be complied with at all times, irrespective of the source and manner of discharge.

3. The most common categories of pollutants in runoff include total suspended solids, sediment, pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers); oxygen-demanding substances (decaying vegetation, animal waste); detergents; and trash.

4. The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and/or impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.

5. Pollutants in runoff can threaten and adversely affect human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

6. Runoff discharges from MS4s often contain pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants impact the overall quality of aquatic systems and beneficial uses of receiving waters.

7. The Copermittees discharge runoff into lakes, drinking water reservoirs, rivers, streams, creeks, bays, estuaries, coastal lagoons, the Pacific Ocean, and tributaries thereto within one of the eleven hydrologic units (San Juan Hydrologic Unit) comprising the San Diego Region as shown in Tables 2a and 2b. Some of the receiving water bodies have been designated as impaired by the Regional Board and the United States Environmental Protection Agency (USEPA) in 2006 pursuant to CWA section 303(d). Also shown in the Tables are the watershed management areas (WMAs) as defined in the Regional Board report, Watershed Management Approach, January 2002.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	**Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit**	**Major Receiving Water Bodies**	**303(d) Pollutant(s)/stressor or Water Quality Effect[1]**
Laguna Coastal Streams	Laguna HA, excluding Aliso HSA and Dana Point HSA	Laguna Canyon Creek, Pacific Ocean	Bacterial indicators Sediment toxicity
Aliso Creek	Aliso HSA	Aliso Creek, English Canyon, Pacific Ocean	Toxicity Phosphorus Bacterial indicators Benzo[b]fluoranthene Dieldrin Sediment Toxicity
Dana Point Coastal Streams	Dana Point HSA	Dana Point Harbor, Salt Creek, Pacific Ocean	Bacterial indicators
San Juan Creek	Mission Viejo HA	San Juan Creek, Trabuco Creek, Oso Creek, Canada Gobernadora, Bell Canyon, Verdugo Canyon, Pacific Ocean	Bacterial indicators DDE Chloride Sulfates Total dissolved solids

[1] The listed 303(d) pollutant(s) do not necessarily reflect impairment of the entire corresponding WMA or all corresponding major surface water bodies. The specific impaired portions of each WMA are listed in the State Water Resources Control Board's 2006 Section 303(d) List of Water Quality Limited Segments.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit	Major Receiving Water Bodies	303(d) Pollutant(s)/stressor or Water Quality Effect[1]
San Clemente Coastal Streams	San Clemente HA	Prima Deshecha, Segunda Deshecha, Pacific Ocean	Bacterial indicators Phosphorus Turbidity
San Mateo Creek	San Mateo HA	San Mateo Creek, Christianitos Creek, Pacific Ocean	

Table 2b. Common Watersheds and Municipalities

Municipality	Laguna Coastal Streams	Aliso Creek	Dana Point Coastal Streams	San Juan Creek	San Clemente Coastal Streams	San Mateo Creek
Aliso Viejo	☑	☑				
Dana Point			☑	☑		
Laguna Beach	☑	☑				
Laguna Hills *		☑		☑		
Laguna Niguel		☑	☑	☑		
Laguna Woods *		☑				
Lake Forest *		☑				
Mission Viejo		☑		☑		
Rancho Santa Margarita				☑		
San Clemente					☑	☑
San Juan Capistrano				☑		
County of Orange *	☑	☑	☑	☑	☑	☑
Orange County Flood Control District *	☑	☑	☑	☑	☑	
* Municipality also includes areas within watersheds of the Santa Ana Regional Board that are outside the scope of this Order						

8. Trash is a persistent pollutant which can enter receiving waters from the MS4 resulting in accumulation and transport in receiving waters over time. Trash poses a serious threat to the Beneficial Uses of the receiving waters, including, but not limited to, human health, rare and endangered species, navigation and human recreation.

9. The Copermittees' water quality monitoring data submitted to date documents persistent violations of Basin Plan water quality objectives for various runoff-related pollutants (fecal coliform bacteria, total suspended solids, turbidity, metals, etc.) at

various watershed monitoring stations. Persistent toxicity has also been observed at some watershed monitoring stations. In addition, bioassessment data indicates that the majority of urbanized receiving waters have Poor to Very Poor Index of Biotic Integrity ratings. In sum, the above findings indicate that runoff discharges are causing or contributing to water quality impairments, and are a leading cause of such impairments in Orange County.

10. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area is significantly greater in runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. Runoff durations can also increase as a result of flood control and other efforts to control peak flow rates. Increased volume, velocity, rate, and duration of runoff, and decreased natural clean sediment loads, greatly accelerate the erosion of downstream natural channels. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as a 3-5 percent conversion from natural to impervious surfaces. The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

11. Development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc. which can either be washed or directly dumped into the MS4. As a result, the runoff leaving the developed urban area is significantly greater in pollutant load than the pre-development runoff from the same area. These increased pollutant loads must be controlled to protect downstream receiving water quality.

12. Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d)-impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in other areas. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. Therefore, additional control to reduce storm water pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA.

13. Although dependent on several factors, the risks typically associated with properly managed infiltration of runoff (especially from residential land use areas) are not significant. The risks associated with infiltration can be managed by many techniques, including (1) designing landscape drainage features that promote infiltration of runoff, but do not "inject" runoff (injection bypasses the natural processes of filtering and transformation that occur in the soil); (2) taking reasonable

steps to prevent the illegal disposal of wastes; (3) protecting footings and foundations; (4) ensuring that each drainage feature is adequately maintained in perpetuity; and (5) pretreatment.

14. Non-storm water (dry weather) discharge from the MS4 is not considered a storm water (wet weather) discharge and therefore is not subject to regulation under the Maximum Extent Practicable (MEP) standard from CWA 402(p)(3)(B)(iii), which is explicitly for "Municipal ... *Stormwater Discharges* (emphasis added)" from the MS4. Non-storm water discharges, per CWA 402(p)(3)(B)(ii), are to be effectively prohibited. Such dry weather non-storm water discharges have been shown to contribute significant levels of pollutants and flow in arid, developed Southern California watersheds and are to be effectively prohibited under the Clean Water Act.

15. Non-storm water discharges to the MS4 granted an influent exception [i.e., which are exempt from the effective prohibition requirement set forth in CWA section 402(p)(3)(B)(ii)] under 40 CFR 122. 26 are included within this Order. Any exempted discharges identified by Copermittees as a source of pollutants are subsequently required to be *addressed* (emphasis added) as illicit discharges through prohibition and incorporation into existing IC/ID programs. The Copermittees have identified landscape irrigation, irrigation water and lawn water, previously exempted discharges, as a source of pollutants and conveyance of pollutants to waters of the United States.

D. RUNOFF MANAGEMENT PROGRAMS

1. General

a. This Order specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in storm water runoff to the maximum extent practicable (MEP). However, since MEP is a dynamic performance standard, which evolves over time as runoff management knowledge increases, the Copermittees' runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. in order to achieve the evolving MEP standard. Absent evidence to the contrary, this continual assessment, revision, and improvement of runoff management program implementation is expected to ultimately achieve compliance with water quality standards in the Region.

b. The Copermittees have generally been implementing the jurisdictional runoff management programs required pursuant to Order No. 2002-01 since February 13, 2003. Prior to that, the Copermittees were regulated by Order No. 96-03 since August 8, 1996. Runoff discharges, however, continue to cause or contribute to violations of water quality standards as evidenced by the Copermittees monitoring results.

c. This Order contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in storm water runoff to the MEP and achieve water quality standards. Some of the new or modified requirements, such as the revised Watershed Runoff Management Program section, are designed to specifically address high priority water quality problems. Other new or modified requirements address program deficiencies that have been noted during audits, report reviews, and other Regional Board compliance assessment activities.

d. Updated Jurisdictional Runoff Management Plans (JRMPs) and Watershed Runoff Management Plans (WRMPs), which describe the Copermittees' runoff management programs in their entirety, are needed to guide the Copermittees' runoff management efforts and aid the Copermittees in tracking runoff management program implementation. It is practicable for the Copermittees to update the JRMPs and WRMPs within one year, since significant efforts to develop these programs have already occurred.

e. Pollutants can be effectively reduced in storm water runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first line of defense." Source control BMPs (both structural and non-structural) minimize the contact between pollutants and flows (e.g., rerouting run-on around pollutant sources or keeping pollutants on-site and out of receiving waters). Treatment control BMPs remove pollutants that have been mobilized by wet-weather or dry-weather flows.

f. Runoff needs to be addressed during the three major phases of urban development (planning, construction, and use) in order to reduce the discharge of pollutants from storm water to the MEP, effectively prohibit non-storm water discharges and protect receiving waters. Development which is not guided by water quality planning policies and principles can unnecessarily result in increased pollutant load discharges, flow rates, and flow durations which can negatively impact receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development generates substantial pollutant loads which are discharged in runoff to receiving waters.

g. Annual reporting requirements included in this Order are necessary to meet federal requirements and to evaluate the effectiveness and compliance of the Copermittees' programs.

h. This Order establishes Storm Water Action Levels (SALs) for selected pollutants based on USEPA Rain Zone 6 (arid southwest) Phase I MS4 monitoring data for pollutants in storm water. The SALs were computed as the 90th percentile of the data set, utilizing the statistical based population approach, one of three

approaches recommended by the California Water Board's Storm Water Panel in its report, 'The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 2006). SALs are identified in Section D of this Order. Copermittees shall implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water from the permitted areas so as not to exceed the SALs. Exceedance of SALs may indicate inadequacy of programmatic measures and BMPs required in this Order.

2. **Development Planning**

a. The Standard Storm Water Mitigation Plan (SSMP) requirements contained in this Order are consistent with Order WQ-2000-11 adopted by the State Water Resources Control Board (State Board) on October 5, 2000. In the precedential order, the State Board found that the design standards, which essentially require that runoff generated by 85 percent of storm events from specific development categories be infiltrated or treated, reflect the MEP standard. The order also found that the SSMP requirements are appropriately applied to the majority of the Priority Development Project categories contained in Section D.1 of this Order. The State Board also gave Regional Water Quality Control Boards the needed discretion to include additional categories and locations, such as retail gasoline outlets (RGOs), in SSMPs.

b. Controlling runoff pollution by using a combination of onsite source control and site design BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the pollutant source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources of pollution and their prevention.

c. Use of Low-Impact Development (LID) site design BMPs at new development, redevelopment and retrofit projects can be an effective means for minimizing the impact of storm water runoff discharges from the development projects on receiving waters. LID is a site design strategy with a goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques. LID site design BMPs help preserve and restore the natural hydrologic cycle of the site, allowing for filtration and infiltration which can greatly reduce the volume, peak flow rate, velocity, and pollutant loads of storm water runoff. Current runoff management, knowledge, practices and technology have

resulted in the use of LID BMPs as an acceptable means of meeting the storm water MEP standard.

d. Retail Gasoline Outlets (RGOs) are significant sources of pollutants in storm water runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other developed areas.

e. Industrial sites are significant sources of pollutants in runoff. Pollutant concentrations and loads in runoff from industrial sites are similar or exceed pollutant concentrations and loads in runoff from other land uses, such as commercial or residential land uses. As with other land uses, LID site design, source control, and treatment control BMPs are needed at industrial sites in order to meet the MEP standard. These BMPs are necessary where the industrial site is larger than 10,000 square feet. The 10,000 square feet threshold is appropriate, since it is consistent with requirements in other Phase I NPDES storm water regulations throughout California.

f. If not properly designed or maintained, certain BMPs implemented or required by municipalities for runoff management may create a habitat for vectors (e.g. mosquitoes and rodents). Proper BMP design and maintenance to avoid standing water, however, can prevent the creation of vector habitat. Nuisances and public health impacts resulting from vector breeding can be prevented with close collaboration and cooperative effort between municipalities, the Orange County Vector Control District, and the California Department of Public Health during the development and implementation of runoff management programs.

g. The increased volume, velocity, frequency and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion, impair stream habitat in natural drainages, and negatively impact beneficial uses. Development and urbanization increase pollutant loads in storm water runoff and the volume of storm water runoff. Impervious surfaces can neither absorb water nor remove pollutants and thus lose the purification and infiltration provided by natural vegetated soil. Hydromodification measures for discharges to hardened channels are needed for the future restoration of the hardened channels to their natural state, thereby restoring the chemical, physical, and biological integrity and Beneficial Uses of local receiving waters.

3. **Construction and Existing Development**

a. In accordance with federal NPDES regulations and to ensure the most effective oversight of industrial and construction site discharges, discharges of runoff from industrial and construction sites are subject to dual (State and local) storm water regulation. Under this dual system, each Copermittee is responsible for enforcing its local permits, plans, and ordinances, and the Regional Board is

responsible for enforcing the General Construction Activities Storm Water Permit, State Board Order 99-08 DWQ, NPDES No. CAS000002 (General Construction Permit) and the General Industrial Activities Storm Water Permit, State Board Order 97-03 DWQ, NPDES No. CAS000001 (General Industrial Permit) and any reissuance of these permits. NPDES municipal regulations require that municipalities develop and implement measures to address runoff from industrial and construction activities. Those measures may require the implementation of additional BMPs than are required under the statewide general permits for activities subject to both State and local regulation.

b. Identification of sources of pollutants in runoff (such as municipal areas and activities, industrial and commercial sites/sources, construction sites, and residential areas), development and implementation of BMPs to address those sources, and updating ordinances and approval processes are necessary for the Copermittees to ensure that discharges of pollutants from its MS4 in storm water are reduced to the MEP and that non-storm water discharges are not occurring. Inspections and other compliance verification methods are needed to ensure minimum BMPs are implemented. Inspections are especially important at high risk areas for pollutant discharges.

c. Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the urban stream is both an MS4 and receiving water.

d. As operators of the MS4s, the Copermittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or a violation of water quality standards.

e. Waste and pollutants which are deposited and accumulate in MS4 drainage structures will be discharged from these structures to waters of the U.S. unless they are removed. These discharges may cause or contribute to, or threaten to cause or contribute to, a condition of pollution in receiving waters. For this reason, pollutant discharges from storm water into MS4s must be reduced using a combination of management measures, including source control, and an effective MS4 maintenance program must be implemented by each Copermittee.

f. Enforcement of local runoff related ordinances, permits, and plans is an essential component of every runoff management program and is specifically required in the federal storm water regulations and this Order. Each Copermittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent

or reduce pollutants in storm water runoff, and for the allocation of funds for the capital, operation and maintenance, administrative, and enforcement expenditures necessary to implement and enforce such control measures/BMPs under its jurisdiction. Education is an important aspect of every effective runoff management program and the basis for changes in behavior at a societal level. Education of municipal planning, inspection, and maintenance department staffs is especially critical to ensure that in-house staffs understand how their activities impact water quality, how to accomplish their jobs while protecting water quality, and their specific roles and responsibilities for compliance with this Order. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.

g. Public participation during the development of runoff management programs is necessary to ensure that all stakeholder interests and a variety of creative solutions are considered.

h. Retrofitting existing development with storm water treatment controls, including LID, is necessary to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards. Although SSMP BMPs are required for redevelopment, the current rate of redevelopment will not address water quality problems in a timely manner. Cooperation with private landowners is necessary to effectively identify, implement and maintain retrofit projects for the preservation, restoration, and enhancement of water quality.

4. **Watershed Runoff Management**

a. Since runoff within a watershed can flow from and through multiple land uses and political jurisdictions, watershed-based runoff management can greatly enhance the protection of receiving waters. Such management provides a means to focus on the most important water quality problems in each watershed. By focusing on the most important water quality problems, watershed efforts can maximize protection of beneficial use in an efficient manner. Effective watershed-based runoff management actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems. Watershed-based runoff management that does not actively reduce pollutant discharges and abate pollutant sources causing or contributing to watershed water quality problems can necessitate implementation of the iterative process outlined in section A.3 of the Tentative Order. Watershed management of runoff does not require Copermittees to expend resources outside of their jurisdictions. Watershed management requires the Copermittees within a watershed to develop a watershed-based management strategy, which can then be implemented on a jurisdictional basis.

b. Some runoff issues, such as general education and training, can be effectively addressed on a regional basis. Regional approaches to runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs.

c. It is important for the Copermittees to coordinate their water quality protection and land use planning activities to achieve the greatest protection of receiving water bodies. Copermittee coordination with other watershed stakeholders, especially the State of California Department of Transportation, the United States Department of Defense, and water and sewer districts, is also important.

E. STATUTE AND REGULATORY CONSIDERATIONS

1. The Receiving Water Limitations (RWL) language specified in this Order is consistent with language recommended by the USEPA and established in State Board Water Quality Order 99-05, *Own Motion Review of the Petition of Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES Permit No. CAS0108740*, adopted by the State Board on June 17, 1999. The RWL in this Order require compliance with water quality standards, which for storm water discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored BMPs over time. Compliance with receiving water limits based on applicable water quality standards is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality standards and the creation of conditions of pollution.

2. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for surface waters in Orange County: Municipal and Domestic Supply (MUN)[2], Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional beneficial uses are identified for coastal waters of Orange County: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).

3. This Order is in conformance with State Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*, and the federal Antidegradation Policy described in 40 CFR 131.12.

[2] Subject to exceptions under the "Sources of Drinking Waters" Policy (Resolution No. 89-33)

4. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Copermittee from developing a non-point source plan, for the urban category, under CZARA. The Regional Board addresses septic systems through the administration of other programs.

5. Section 303(d)(1)(A) of the CWA requires that "Each state must identify those waters within its boundaries for which the effluent limitations...are not stringent enough to implement any water quality standard (WQS) applicable to such waters." The CWA also requires states to establish a priority ranking of impaired water bodies known as Water Quality Limited Segments and to establish Total Maximum Daily Loads (TMDLs) for such waters. This priority list of impaired water bodies is called the Section 303(d) List. The current Section 303(d) List was approved by the State Board on October 25, 2006. On June 28, 2007 the 2006 303(d) list for California was given final approval by the United States Environmental Protection Agency (USEPA).

6. This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402. (33 U.S.C. § 1342(p)(3)(B).) Second, the local agency Copermittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges. Third, the local agency Copermittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. Fourth, the Copermittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their storm water discharges. Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under State law predates the enactment of Article XIIIB, Section (6) of the California Constitution. Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. sec. 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. sec. 122.44(d)(1)(vii)(B).)

7. Runoff treatment and/or mitigation must occur prior to the discharge of runoff into receiving waters. Treatment BMPs must not be constructed in waters of the U.S. or State unless the runoff flows are sufficiently pretreated to protect the values and functions of the water body. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. Without federal authorization (e.g., pursuant to Clean Water Act Section 404), waters of the U.S. may not be converted into, or used as, waste treatment or conveyance facilities. Similarly, waste discharge requirements pursuant to California Water Code Section 13260 are required for the conversion or use of waters of the State as waste treatment or conveyance facilities. Diversion from waters of the U.S./State to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements.

8. The issuance of waste discharge requirements and an NPDES permit for the discharge of runoff from MS4s to waters of the U.S. is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with the CWC section 13389.

9. Multiple water bodies in Orange County have been identified as impaired and placed on the 303(d) list. In 2004, Bacteria Impaired Waters TMDL Project II included six bacteria impaired shorelines in Dana Point Harbor and San Diego Bay: Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park, B Street, G Street Pier, Tidelands Park, and Chula Vista Marina in San Diego Bay. Since then, only Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay can be confirmed as still impaired by indicator bacteria. On June 11, 2008 the Regional Board adopted a Basin Plan amendment to incorporate *Bacteria Impaired Waters TMDL Project II for San Diego Bay and Dana Point Harbor Shorelines.* On June 16, 2009, the State Board approved the Basin Plan amendment. This action meets requirements of section 303(d) of the Clean Water Act (CWA). The Basin Plan amendment process is authorized under section 13240 of the Water Code. The State's Office of Administrative Law (OAL) approved the TMDLs on September 15, 2009. The effective date of the TMDLs is the date of OAL approval. USEPA approved the TMDLs on October 26, 2009.

10. Storm water discharges from developed and developing areas in Orange County are significant sources of certain pollutants that cause, may be causing, threatening to cause or contributing to water quality impairment in the waters of Orange County.

Furthermore, as delineated in the CWA section 303(d) list in Table 3, the Regional Board has found that there is a reasonable potential that municipal storm water and non-storm water discharges from MS4s cause or may cause or contribute to an excursion above water quality standards for the following pollutants: Indicator Bacteria, Phosphorous, Toxicity and Turbidity. In accordance with CWA section 303(d), the Regional Board is required to establish Total Maximum Daily Loads (TMDLs) for these pollutants to these waters to eliminate impairment and attain water quality standards. Therefore, certain early pollutant control actions and further pollutant impact assessments by the Copermittees are warranted and required pursuant to this Order.

Table 3. 2006 Section 303(d) Listed Waterbodies in So. Orange County

Waterbody	**Pollutant**
Aliso Creek	Indicator Bacteria, Phosphorus, Toxicity
Aliso Creek Mouth	Indicator Bacteria
Dana Point Harbor	Indicator Bacteria
English Canyon Creek	Benzo[b]fluoranthene, Dieldrin, Sediment Toxicity
Laguna Canyon Channel	Sediment Toxicity
Oso Creek (at Mission Viejo Golf Course)	Chloride, Sulfates, Total Dissolved Solids
Pacific Ocean Shoreline, Aliso HSA	Indicator Bacteria
Pacific Ocean Shoreline, Dana Point HSA	Indicator Bacteria
Pacific Ocean Shoreline, Laguna Beach HSA	Indicator Bacteria
Pacific Ocean Shoreline, Lower San Juan HSA	Indicator Bacteria
Pacific Ocean Shoreline, San Clemente HA	Indicator Bacteria
Pacific Ocean Shoreline, San Joaquin Hills HSA	Indicator Bacteria
Prima Deshecha Creek	Phosphorus, Turbidity
San Juan Creek	DDE, Indicator Bacteria
San Juan Creek (mouth)	Indicator Bacteria
Segunda Deshecha Creek	Phosphorus, Turbidity

11. This Order incorporates only those MS4 Waste Load Allocations (WLAs) developed in TMDLs that have been adopted by the Regional Water Board and have been approved by the State Board, Office of Administrative Law and U.S. EPA. Approved TMDL WLAs are to be addressed using water quality-based effluent limitations (WQBELs) calculated as numeric limitations (either in the receiving waters and/or at the point of MS4 discharge) and/or as BMPs. In most cases, the numeric limitation must be achieved to ensure the adequacy of the BMP program. Waste load

allocations for storm water and non-storm water discharges have been included within this Order only if the TMDL has received all necessary approvals. This Order establishes WQBELs and conditions consistent with the requirements and assumptions of the WLAs in the TMDLs as required by 40 CFR 122.44(d)(1)(vii)(B).

A TMDL is the total amount of a particular pollutant that a water body can receive and still meet Water Quality Standards (WQSs), which are comprised of Water Quality Objectives (WQOs), Beneficial Uses and the States Policy on Maintaining High Quality Waters[3]. The WQOs serve as the primary basis for protecting the associated Beneficial Use. The Numeric Target of a TMDL interprets and applies the numeric and/or narrative WQOs of the WQSs as the basis for the WLAs. This Order addresses TMDLs through Water Quality Based Effluent Limitations (WQBELs) that must be consistent with the assumptions and requirements of the WLA[4]. Federal guidance[5] states that when adequate information exists, storm water permits are to incorporate numeric water quality based effluent limitations. In most cases, the numeric target(s) of a TMDL are a component of the WQBELs. When the numeric target is based on one or more numeric WQOs, the numeric WQOs and underlying assumptions and requirements will be used in the WQBELs as numeric effluent limitations by the end of the TMDL compliance schedule, unless additional information is required. When the numeric target interprets one or more narrative WQOs, the numeric target may assess the efficacy and progress of the BMPs in meeting the WLAs and restoring the Beneficial Uses by the end of the TMDL compliance schedule.

This Order fulfills a component of the TMDL Implementation Plan adopted by this Regional Board on June 11, 2008 for indicator bacteria in Baby Beach by establishing WQBELs expressed as both BMPs to achieve the WLAs and as numeric limitations[6] for the City of Dana Point and the County of Orange. The establishment of WQBELs expressed as BMPs should be sufficient to achieve the WLA specified in the TMDL. The Waste Load Allocations (WLAs) and Numeric Targets are the necessary metrics to ensure that the BMPs achieve appropriate concentrations of bacterial indicators in the receiving waters.

[3] State Water Resources Control Board, Resolution No. 68-16
[4] 40 CFR 122.44(d)(1)(vii)(B)
[5] USEPA, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits,* 61 FR 43761, August 26, 1996
[6] The Waste Load Allocations are defined in Resolution No. R9-2008-0027, A Resolution to Adopt an Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to Incorporate Total Maximum Daily Loads for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay.

12. This Order requires each Copermittee to effectively prohibit all types of unauthorized discharges of non-storm water into its MS4. However, historically pollutants have been identified as present in dry weather non-storm water discharges from the MS4s through 303(d) listings, monitoring conducted by the Copermittees under Order No. R9-2002-0001, and there are others expected to be present in dry weather non-storm water discharges because of the nature of these discharges. This Order includes action levels for pollutants in non-storm water, dry weather, discharges from the MS4 designed to ensure that the requirement to effectively prohibit all types of unauthorized discharges of non-storm water in the MS4 is being complied with. Action levels in the Order are based upon numeric or narrative water quality objectives and criteria as defined in the Basin Plan, the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), and the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). An exceedance of an action level requires specified responsive action by the Copermittees. This Order describes what actions the Copermittees must take when an exceedance of an action level is observed. Exceedances of non-storm water action levels do not alone constitute a violation of this Order but could indicate non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions established in this Order. Failure to undertake required source investigation and elimination action following an exceedance of 2a non-storm water action level (NAL or action level) is a violation of this Order. The Regional Board recognizes that use of action levels will not necessarily result in detection of all unauthorized sources of non-storm water discharges because there may be some discharges in which pollutants do not exceed established action levels. However, establishing NALs at levels appropriate to protect water quality standards is expected to lead to the identification of significant sources of pollutants in dry weather non-storm water discharges.

13. In addition to federal regulations cited in the Fact Sheet / Technical Report for the Order NO. R9-2009-0002, monitoring and reporting required under Order No. R9-2009-0002 is required pursuant to authority under CWC section 13383.

F. PUBLIC PROCESS

1. The Regional Board has notified the Copermittees, all known interested parties, and the public of its intent to consider adoption of an Order prescribing waste discharge requirements that would serve to renew an NPDES permit for the existing discharge of runoff.

2. The Regional Board has held public hearings on April 11, 2007, February 13, 2008, July 1, 2009, and November 18, 2009 and heard and considered all comments pertaining to the terms and conditions of this Order.

IT IS HEREBY ORDERED that the Copermittees, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted thereunder, and the provisions of the Clean Water Act (CWA) and regulations adopted thereunder, must each comply with the following:

A. PROHIBITIONS AND RECEIVING WATER LIMITATIONS

1. Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited.

2. Storm water discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.[7]

3. Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses, water quality objectives developed to protect beneficial uses, and the State policy with respect to maintaining high quality waters) are prohibited.

   a. Each Copermittee must comply with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order through timely implementation of control measures and other actions to reduce pollutants in storm water discharges in accordance with this Order, including any modifications. If exceedance(s) of water quality standards persist notwithstanding implementation of this Order, the Copermittee must assure compliance with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order by complying with the following procedure:

      (1) Upon a determination by either the Copermittee or the Regional Board that storm water MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Copermittee must notify the Regional Board within 30 days and thereafter submit a report to the Regional Board that describes best management practices (BMPs) that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report may be incorporated in the Annual Report unless the Regional Board directs an earlier submittal. The report must include an implementation schedule. The Regional Board may require modifications to the report;

[7] This prohibition does not apply to MS4 discharges which receive subsequent treatment to reduce pollutants to the MEP prior to entering receiving waters (e.g., low flow diversions to the sanitary sewer).

(2) Submit any modifications to the report required by the Regional Board within 30 days of notification;

(3) Within 30 days following approval of the report described above by the Regional Board, the Copermittee must revise its Jurisdictional Runoff Management Program and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required; and

(4) Implement the revised Jurisdictional Runoff Management Program and monitoring program in accordance with the approved schedule.

b. The Copermittee must repeat the procedure set forth above to comply with the receiving water limitations for continuing or recurring exceedances of the same water quality standard(s) unless directed to do otherwise by the Regional Board Executive Officer.

c. Nothing in section A.3 must prevent the Regional Board from enforcing any provision of this Order while the Copermittee prepares and implements the above report.

4. In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in Attachment A to this Order.

B. NON-STORM WATER DISCHARGES

1. Each Copermittee must effectively prohibit all types of non-storm water discharges into its MS4 unless such discharges are either authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit; or not prohibited in accordance with sections B.2 and B.3 below.

2. The following categories of non-storm water discharges are not prohibited unless a Copermittee or the Regional Board identifies the discharge category as a source of pollutants to waters of the U.S. Where the Copermittee(s) have identified a category as a source of pollutants, the category shall be addressed as an illicit discharge and prohibited through ordinance, order or similar means. The Regional Board may identify categories of discharge that either requires prohibition or other controls. For such a discharge category, the Copermittee, under direction of the Regional Board, must either prohibit the discharge category or develop and implement appropriate control measures to prevent the discharge of pollutants to the MS4 and report to the Regional Board pursuant to Section K.1 and K.3 of this Order.

a. Diverted stream flows;
b. Rising ground waters;
c. Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to

MS4s;

d. Uncontaminated pumped ground water[8];
e. Foundation drains[8];
f. Springs;
g. Water from crawl space pumps[8];
h. Footing drains[8];
i. Air conditioning condensation;
j. Flows from riparian habitats and wetlands;
k. Water line flushing[9,10];
l. Discharges from potable water sources not subject to NPDES Permit No. CAG679001, other than water main breaks;
m. Individual residential car washing; and
n. Dechlorinated swimming pool discharges[11].

3. Emergency fire fighting flows (i.e., flows necessary for the protection of life or property) do not require BMPs and need not be prohibited. As part of the Jurisdictional Runoff Management Plan (JRMP), each Copermittee must develop and implement a program to address pollutants from non-emergency fire fighting flows (i.e., flows from controlled or practice blazes and maintenance activities) identified by the Copermittee to be significant sources of pollutants to waters of the United States.

a. Building fire suppression system maintenance discharges (e.g. sprinkler line flushing) contain waste. Therefore, such discharges are to be prohibited by the Copermittees as illicit discharges through ordinance, order, or similar means.

4. Each Copermittee must examine all dry weather effluent analytical monitoring results collected in accordance with section F.4 of this Order and Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2009-0002 to identify water quality problems which may be the result of any non-prohibited discharge category(ies) identified above in section B.2. Follow-up investigations must be conducted as necessary to identify and control, pursuant to section B.2, any non-prohibited discharge category(ies) listed above.

[8] Requires enrollment under Order R9-2008-002. Discharges into the MS4 require authorization from the owner and operator of the MS4 system.
[9] This exemption does not include fire suppression sprinkler system maintenance and testing discharges. Those discharges may be regulated under Section B.3.
[10] Requires enrollment under Order R9-2002-0020.
[11] Including saline swimming pool discharges directly to a saline water body.

C. NON-STORM WATER DRY WEATHER ACTION LEVELS

1. Each Copermittee, beginning no later than May 1, 2011, shall implement the non-storm water dry weather action level (NAL) monitoring as described in Attachment E of this Order.

2. In response to an exceedance of an NAL, each Copermittee must investigate and identify the source of the exceedance in a timely manner. However, if any Copermittee identifies exceedances of NALs that prevent them from adequately conducting source investigations in a timely manner, then the Copermittees may submit a prioritization plan and timeline that identifies the timeframe and planned actions to investigate and report their findings on all of the exceedances. Following the source investigation and identification, the Copermittees must submit an action report dependant on the source of the pollutant exceedance as follows:

   a. If the Copermittee identifies the source of the exceedance as natural (non-anthropogenically influenced) in origin and in conveyance into the MS4; then the Copermittee shall report their findings and documentation of their source investigation to the Regional Board within fourteen days of the source identification.

   b. If the Copermittee identifies the source of the exceedance as an illicit discharge or connection, then the Copermittees must eliminate the discharge to their MS4 and report the findings, including any enforcement action(s) taken, and documentation of the source investigation to the Regional Board within fourteen days of the source identification. If the Copermittee is unable to eliminate the source of discharge within fourteen days, then the Copermittee must submit, as part of their action report, their plan and timeframe to eliminate the source of the exceedance. Those dischargers seeking to continue such a discharge must become subject to a separate NPDES permit prior to continuing any such discharge.

   c. If the Copermittee identifies the source of the exceedance as an exempted category of non-storm water discharge, then the Copermittees must determine if this is an isolated circumstance or if the category of discharges must be addressed through the prevention or prohibition of that category of discharge as an illicit discharge. The Copermittee must submit their findings in including a description of the steps taken to address the discharge and the category of discharge, to the Regional Board for review with the next subsequent annual report. Such description shall include relevant updates to or new ordinances, orders, or other legal means of addressing the category of discharge. The Copermittees must also submit a summary of their findings with the Report of Waste Discharge.

   d. If the Copermittee identifies the source of the exceedance as a non-storm water discharge in violation or potential violation of an existing separate NPDES permit

(e.g. the groundwater dewatering permit), then the Copermittee must report, within three business days, the findings to the Regional Board including all pertinent information regarding the discharger and discharge characteristics.

e. If the Copermittee is unable to identify the source of the exceedance after taking and documenting reasonable steps to do so, then the Copermittee must identify the pollutant as a high priority pollutant of concern in the tributary subwatershed, perform additional focused sampling and update their programs within a year to reflect this priority. The Copermittee's annual report shall include these updates to their programs including, where applicable, updates to their watershed workplans (Section G.2), retrofitting consideration (Section F.3.d) and program effectiveness work plans (Section J.4).

f. The Copermittees or any interested party, may evaluate existing NALs and propose revised NALs for future Board consideration.

3. An exceedance of an NAL does not alone constitute a violation of the provisions of this Order, but an exceedance of an NAL may indicate lack of compliance with the requirement that Copermittees effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions set forth in Sections A and B of this Order. Failure to timely implement required actions specified in this Order following an exceedance of an NAL constitutes a violation of this Order. However, neither compliance with NALs nor compliance with required actions following observed exceedances, excuses any non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4s or any non-compliance with the prohibitions in Sections A and B of this Order. NALs provide an assessment of the effectiveness of the prohibition of non-storm water discharges and of the appropriateness of exempted non-storm water discharges. During any annual reporting period in which one or more exceedances of NALs have been documented the Copermittee must submit with their next scheduled annual report, a report describing whether and how the observed exceedances did or did not result in a discharge form the MS4 that caused, or threatened to cause or contribute to a condition of pollution, contamination, or nuisance in the receiving waters.

4. Monitoring of effluent will occur at the end-of-pipe prior to discharge into the receiving waters, with a focus on Major Outfalls, as defined in 40 CFR 122.26(B 5-6) and Attachment E of this Order. The Copermittees must develop their monitoring plans to sample a representative percentage of major outfalls and identified stations within each hydrologic subarea. At a minimum, outfalls that exceed any NALs once during any year must be monitored in the subsequent year. Any station that does not exceed an NAL for 3 years may be replaced with a different station.

5. Each Copermittee shall monitor for the non-storm water dry weather action levels, which are incorporated into this Order as follows:

a. Action levels for discharges to inland surface waters:

Table 4.a.1: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Fecal Coliform	MPN/ 100 ml	200[A] 400[B]	-		BPO
Enterococci	MPN/ 100 ml	33	-	104[C]	BPO/OP
Turbidity	NTU	-	20		BPO
pH	Units	Within limit of 6.5 to 8.5 at all times			BPO
Dissolved Oxygen	mg/L	Not less than 5.0 in WARM waters and not less than 6.0 in COLD waters			BPO
Total Nitrogen	mg/L	-	1.0	See MDEL	BPO
Total Phosphorus	mg/L	-	0.1	See MDEL	BPO
Methylene Blue Active Substances	mg/L	-	0.5	See MDEL	BPO

A – Based on a minimum of not less than five samples for any 30-day period
B – No more than 10 percent of total samples may exceed 400 per 100 ml during any 30 day period
C – This Value has been set to Ocean Plan Criteria for Designated Beach Areas
BPO – Basin Plan Objective OP – Ocean Plan
MDAL – Maximum Daily Action Level AMAL – Average Monthly Action Level

Table 4.a.2: Priority Pollutants

		Freshwater (CTR)		Saltwater (CTR)	
Parameter	Units	MDAL	AMAL	MDAL	AMAL
Cadmium	ug/L	*	*	16	8
Copper	ug/L	*	*	5.8	2.9
Chromium III	ug/L	*	*	-	-
Chromium VI (hexavalent)	ug/L	16	8.1	83	41
Lead	ug/L	*	*	14	2.9
Nickel	ug/L	*	*	14	6.8
Silver	ug/L	*	*	2.2	1.1
Zinc	ug/L	*	*	95	47

CTR – California Toxic Rule
* - Action Levels developed on a case-by-case basis (see below)

The NALs for Cadmium, Copper, Chromium (III), Lead, Nickel, Silver and Zinc will be developed on a case-by-case basis because the freshwater criteria are based on site-specific water quality data (receiving water hardness). For these priority pollutants, the following equations (40 CFR 131.38.b.2) will be required:

Cadmium (Total Recoverable) = exp(0.7852[ln(hardness)] -2.715)
Chromium III (Total Recoverable) = exp(0.8190[ln(hardness)] + .6848)
Copper (Total Recoverable) = exp(0.8545[ln(hardness)] - 1.702)
Lead (Total Recoverable) = exp(1.273[ln(hardness)] - 4.705)

Nickel (Total Recoverable) = exp(.8460[ln(hardness)] + 0.0584)
Silver (Total Recoverable) = exp(1.72[ln(hardness)] - 6.52)
Zinc (Total Recoverable) = exp(0.8473[ln(hardness)] + 0.884)

b. Action levels for discharges to bays, harbors and lagoons/estuaries:

Table 4.b: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000	BPO
Fecal Coliform	MPN/100 ml	200[A],400[B]	-		BPO
Enterococci	MPN/100 ml	35	-	104[C]	BPO
Turbidity	NTU	75	-	225	OP
pH	Units	Within limit of 6.0 to 9.0 at all times			OP
Priority Pollutants	ug/L	See limitations in Table 4.a.2			

A – Based on a minimum of not less than five samples for any 30-day period
B – No more than 10 percent of total samples may exceed 400 per 100 ml during any 30 day period
C – Designated Beach Areas
OP – California Ocean Plan 2005 BPO – Basin Plan Objective
MDAL – Maximum Daily Action Level AMAL – Average Monthly Action Level

c. Action levels for discharges to the surf zone:

Table 4.c: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000 1,000[A]	OP
Fecal Coliform	MPN/100 ml	200[B]	-	400	OP
Enterococci	MPN/100 ml	35	-	104[C]	OP

A – Total coliform density shall not exceed 1,000 per 100 ml when the ratio of fecal/total coliform exceeds 0.1
B – During any 30 day period
C – Designated Beach Areas
OP – California Ocean Plan 2005

DIRECTIVE C: NON STORM WATER DRY WEATHER ACTION LEVELS

D. STORM WATER ACTION LEVELS

1. Beginning Year 3 after Order adoption date, a running average of twenty percent or greater of exceedances of any discharge of storm water from the MS4 to waters of the United States that exceed the Storm Water Action Levels (SALs) for the pollutants listed in Table 5 (below) will require each Copermittee to affirmatively augment and implement all necessary storm water controls and measures to reduce the discharge of the associated class of pollutants(s) to the MEP standard. The Copermittees must utilize the exceedance information when adjusting and executing annual work plans, as required by this Order. Copermittees shall take the magnitude, frequency, and number of constituents exceeding the SAL(s), in addition to receiving water quality data and other information, into consideration when reacting to SAL exceedances in an iterative manner. Failure to appropriately consider and react to SAL exceedances in an iterative manner creates a presumption that the Copermittee(s) have not complied with the MEP standard.

Table 5. Storm Water Action Levels

Pollutant	Action Level
Turbidity (NTU)	126
Nitrate & Nitrite total (mg/L)	2.6
P total (mg/L)	1.46
Cd total (µg/L)	3.0
Cu total (µg/L)	127
Pb total (µg/L)	250
Ni total (µg/L)	54
Zn total (µg/L)	976

2. The end-of-pipe assessment points for the determination of SAL compliance are all major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6). The Copermittees must develop their monitoring plans to sample a representative percent of the major outfalls within each hydrologic subarea. At a minimum, outfalls that exceed SALs must be monitored in the subsequent year. Any station that does not exceed an SAL for 3 years may be replaced with a different station. SAL samples must be 24 hour time weighted composites.

3. The absence of SAL exceedances does not relieve the Copermittees from implementing all other required elements of this Permit.

4. This Permit does not regulate natural sources and conveyances of constituents listed in Table 5. To be relieved of the requirements to prioritize pollutant/watershed combinations for BMP updates and to continue monitoring a station, the Copermittee must demonstrate that the likely and expected cause of the SAL exceedance is not anthropogenic in nature.

5. The SALs will be reviewed and updated at the end of every permit cycle. The data collected pursuant to D.2 above can be used to create SALs based upon local data.

It is the goal of the SALs, through the iterative and MEP process, to have outfall storm water discharges meet all applicable water quality standards.

E. LEGAL AUTHORITY

1. Each Copermittee must establish, maintain, and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. Nothing herein shall authorize a Co-Permittee or other discharger regulated under the terms of this order to divert, store or otherwise impound water if such action is reasonably anticipated to harm downstream water right holders in the exercise of their water rights. This legal authority must, at a minimum, authorize the Copermittee to:

   a. Control the contribution of pollutants in discharges of runoff associated with industrial and construction activity to its MS4 and control the quality of runoff from industrial and construction sites. This requirement applies both to industrial and construction sites which have coverage under the statewide general industrial or construction storm water permits, as well as to those sites which do not. Grading ordinances must be updated and enforced as necessary to comply with this Order;

   b. Prohibit all identified illicit discharges not otherwise allowed pursuant to section B.2;

   c. Prohibit and eliminate illicit connections to the MS4;

   d. Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;

   e. Require compliance with conditions in Copermittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

   f. Utilize enforcement mechanisms to require compliance with Copermittee storm water ordinances, permits, contracts, or orders;

   g. Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Copermittees. Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation, the United States Department of Defense, or Native American Tribes is encouraged;

   h. Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits and with this Order, including the prohibition on illicit discharges to the MS4. This means the Copermittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from industrial facilities discharging into its MS4, including construction sites;

   i. Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s from storm water to the MEP; and

j. Require documentation on the effectiveness of BMPs implemented to reduce the discharge of storm water pollutants to the MS4 to the MEP.

2. Each Copermittee must submit within 365 days of adoption of this Order, a statement certified by its chief legal counsel that the Copermittee has taken the necessary steps to obtain and maintain full legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order except for the updated requirements for low impact development and hydromodification in section F.1. Each Copermittee must submit as part of its updated SSMP, a statement certified by its chief legal counsel that the Copermittee has taken the necessary steps to obtain and maintain full legal authority to implement and enforce the low impact development and hydromodification requirements in section F.1. These statements must include:

a. Identification of all departments within the jurisdiction that conduct runoff related activities, and their roles and responsibilities under this Order. Include an up to date organizational chart specifying these departments and key personnel.
b. Citation of runoff related ordinances and the reasons they are enforceable;
c. Identification of the local administrative and legal procedures available to mandate compliance with runoff related ordinances and therefore with the conditions of this Order;
d. A description of how runoff related ordinances are implemented and appealed; and
e. Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions.

F. JURISDICTIONAL RUNOFF MANAGEMENT PROGRAM (JRMP)

Each Copermittee must implement all requirements of section F of this Order no later than 365 days after adoption of the Order, unless otherwise specified in this Order. Prior to 365 days after adoption of the Order, each Copermittee must at a minimum implement its Jurisdictional RMP document, as the document was developed and amended to comply with the requirements of Order No. R9-2002-001.
Each Copermittee must develop and implement an updated JRMP for its jurisdiction. Each updated JRMP must meet the requirements of section F of this Order, reduce the discharge of storm water pollutants from the MS4 to the MEP, and prevent runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.

1. DEVELOPMENT PLANNING COMPONENT

Each Copermittee must implement a program which meets the requirements of this section and (1) reduces Development Project discharges of storm water pollutants from the MS4 to the MEP; (2) prevents Development Project discharges from the MS4 from causing or contributing to a violation of water quality standards; (3) prevents illicit discharges into the MS4; and (4) manages increases in runoff discharge rates and durations from Development Projects that are likely to cause increased erosion of stream beds and banks, silt pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

a. GENERAL PLAN

Each Copermittee must revise as needed its General Plan or equivalent plan (e.g., Comprehensive, Master, or Community Plan) for the purpose of providing effective water quality and watershed protection principles and policies that direct land-use decisions and require implementation of consistent water quality protection measures for all development and redevelopment projects.

b. ENVIRONMENTAL REVIEW PROCESS

Each Copermittee must revise as needed its current environmental review processes to accurately evaluate water quality impacts and cumulative impacts and identify appropriate measures to avoid, minimize and mitigate those impacts for all Development Projects.

c. APPROVAL PROCESS CRITERIA AND REQUIREMENTS FOR ALL DEVELOPMENT PROJECTS

For all proposed Development Projects, each Copermittee during the planning process, and prior to project approval and issuance of local permits, must prescribe the necessary requirements so that Development Project discharges of storm water pollutants from the MS4 will be reduced to the MEP, will not cause or

contribute to a violation of water quality standards, and will comply with Copermittee's ordinances, permits, plans, and requirements, and with this Order. Performance Criteria: Discharges from each approved development project must be subject to the following management measures:

(1) Source control BMPs that reduce storm water pollutants of concern in runoff, including prevention of illicit discharges into the MS4; prevention of irrigation runoff; storm drain system stenciling or signage; properly designed outdoor material storage areas; properly designed outdoor work areas; and properly designed trash storage areas;

(2) The following LID BMPs listed below shall be implemented at all Development Projects where applicable and feasible.

(a) Conserve natural areas, including existing trees, other vegetation, and soils.
(b) Construct streets, sidewalks, or parking lot aisles to the minimum widths necessary, provided that public safety is not compromised.
(c) Minimize the impervious footprint of the project.
(d) Minimize soil compaction to landscaped areas.
(e) Minimize disturbances to natural drainages (e.g., natural swales, topographic depressions, etc.)
(f) Disconnect impervious surfaces through distributed pervious areas.

(3) Buffer zones for natural water bodies, where feasible. Where buffer zones are infeasible, require project proponent to implement other buffers such as trees, access restrictions, etc;

(4) Measures necessary so that grading or other construction activities meet the provisions specified in section F.2 of this Order; and

(5) Submittal of proof of a mechanism under which ongoing long-term maintenance of all structural post-construction BMPs will be conducted.

(6) Infiltration and Groundwater Protection

To protect groundwater quality, each Copermittee must apply restrictions to the use of treatment control BMPs that are designed to primarily function as centralized infiltration devices (such as large infiltration trenches and infiltration basins). Such restrictions must be designed so that the use of such infiltration treatment control BMPs must not cause or contribute to an exceedance of groundwater quality objectives. At a minimum, each treatment control BMP designed to primarily function as a centralized infiltration device must meet the restrictions below, unless it is demonstrated that a restriction is not necessary to protect groundwater quality. The Copermittees may collectively or individually develop alternative restrictions on the use of

treatment control BMPs which are designed to primarily function as centralized infiltration devices. Alternative restrictions developed by the Copermittees can partially or wholly replace the restrictions listed below. The restrictions are not intended to be applied to small infiltration systems dispersed throughout a development project.

(a) Runoff must undergo pretreatment such as sedimentation or filtration prior to infiltration;

(b) All dry weather flows containing significant pollutant loads must be diverted from infiltration devices and treated through other BMPs;

(c) Pollution prevention and source control BMPs must be implemented at a level appropriate to protect groundwater quality at sites where infiltration treatment control BMPs are to be used;

(d) Infiltration treatment control BMPs must be adequately maintained so that they remove storm water pollutants to the MEP;

(e) The vertical distance from the base of any infiltration treatment control BMP to the seasonal high groundwater mark must be at least 10 feet. Where groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained;

(f) The soil through which infiltration is to occur must have physical and chemical characteristics (such as appropriate cation exchange capacity, organic content, clay content, and infiltration rate) which are adequate for proper infiltration durations and treatment of runoff for the protection of groundwater beneficial uses;

(g) Infiltration treatment control BMPs must not be used for areas of industrial or light industrial activity; areas subject to high vehicular traffic (25,000 or greater average daily traffic on main roadway or 15,000 or more average daily traffic on any intersecting roadway); automotive repair shops; car washes; fleet storage areas (bus, truck, etc.); nurseries; and other high threat to water quality land uses and activities as designated by each Copermittee unless first treated or filtered to remove pollutants prior to infiltration and a comprehensive site-specific evaluation has been conducted; and

(h) Infiltration treatment control BMPs must be located a minimum of 100 feet horizontally from any water supply wells.

(7) Where feasible, landscaping with native or low water species shall be preferred in areas that drain to the MS4 or to waters of the United States.

d. STANDARD STORM WATER MITIGATION PLANS (SSMPS) – APPROVAL PROCESS CRITERIA AND REQUIREMENTS FOR PRIORITY DEVELOPMENT PROJECTS

Within two years of adoption of this Order, the Copermittees must submit an updated model SSMP, to the Regional Board's Executive Officer for a 30 day public review and comment period. The Regional Board's Executive Officer has the discretion to determine the necessity of a public hearing. Within 180 days of determination that the Model SSMP is in compliance with this Permit's provisions, each Copermittee must update their own local SSMP, and amended ordinances consistent with the model SSMP, and shall submit both (local SSMP and amended ordinances) to the Regional Board. The model SSMP must meet the requirements of section F.1.d of this Order to (1) reduce Priority Development Project discharges of storm water pollutants from the MS4 to the MEP, and (2) prevent Priority Development Project runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.[12]

(1) Definition of Priority Development Project (PDP):

Priority Development Projects are:

(a) All new Development Projects that fall under the project categories or locations listed in section F.1.d.(2), and

(b) Those redevelopment projects that create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site and the existing development and/or the redevelopment project falls under the project categories or locations listed in section F.1.d.(2). Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to SSMP requirements, the numeric sizing criteria discussed in section F.1.d.(6) applies only to the addition or replacement, and not to the entire development. Where redevelopment results in an increase of more than fifty percent of the impervious surfaces of a previously existing development, the numeric sizing criteria applies to

[12] Updated SSMP and hydromodification requirements must apply to all priority projects or phases of priority projects which have not yet begun grading or construction activities at the time any updated SSMP or hydromodification requirement commences. If lawful prior approval of a project exists, whereby application of an updated SSMP or hydromodification requirement to the project is illegal, the updated SSMP or hydromodification requirement need not apply to the project. Updated Development Planning requirements set forth in Sections F.1. (a) through (h) of this Order must apply to all projects or phases of projects, unless, at the time any updated Development Planning requirement commences, the projects or project phases meet any one of the following conditions: (i) the project or phase has begun grading or construction activities; or (ii) a Copermittee determines that lawful prior approval rights for a project or project phase exist, whereby application of the Updated Development Planning requirement to the project is legally infeasible. Where feasible, the Permittees must utilize the SSMP and hydromodification update periods to ensure that projects undergoing approval processes include application of the updated SSMP and hydromodification requirements in their plans.

the entire development.

(c) One acre threshold: In addition to the Priority Development Project Categories identified in section F.1.d.(2), Priority Development Projects must also include all other pollutant-generating Development Projects that result in the disturbance of one acre or more of land within three years of adoption of this Order.[13] As an alternative to this one-acre threshold, the Copermittees may collectively identify a different threshold, provided the Copermittees' threshold is at least as inclusive of Development Projects as the one-acre threshold.

(2) Priority Development Project Categories

Where a new Development Project feature, such as a parking lot, falls into a Priority Development Project Category, the entire project footprint is subject to SSMP requirements.

(a) New development projects that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site) including commercial, industrial, residential, mixed-use, and public projects. This category includes development projects on public or private land which fall under the planning and building authority of the Copermittees.

(b) Automotive repair shops. This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

(c) Restaurants. This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812), where the land area for development is greater than 5,000 square feet. Restaurants where land development is less than 5,000 square feet must meet all SSMP requirements except for structural treatment BMP and numeric sizing criteria requirement F.1.d.(6) and hydromodification requirement F.1.h.

(d) All hillside development greater than 5,000 square feet. This category is defined as any development which creates 5,000 square feet of impervious surface which is located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater.

(e) Environmentally Sensitive Areas (ESAs). All development located within or directly adjacent to or discharging directly to an ESA (where discharges

[13] Pollutant generating Development Projects are those projects that generate pollutants at levels greater than natural background levels.