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COUNCIL MEMBER

**Building**  
TEL 650.330.6704  
FAX 650.327.5403

**City Clerk**  
TEL 650.330.6620  
FAX 650.328.7935

**City Council**  
TEL 650.330.6630  
FAX 650.328.7935

**City Manager's Office**  
TEL 650.330.6610  
FAX 650.328.7935

**Community Services**  
TEL 650.330.2200  
FAX 650.324.1721

**Engineering**  
TEL 650.330.6740  
FAX 650.327.5497

**Environmental**  
TEL 650.330.6763  
FAX 650.327.5497

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TEL 650.330.6640  
FAX 650.327.5391

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TEL 650.330.6706  
FAX 650.327.1759

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TEL 650.330.2500  
FAX 650.327.7030

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TEL 650.330.6780  
FAX 650.327.1953

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TEL 650.330.6670  
FAX 650.327.5382

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TEL 650.330.6702  
FAX 650.327.1653

**Police**  
TEL 650.330.6300  
FAX 650.327.4314

**Transportation**  
TEL 650.330.6770  
FAX 650.327.5497



701 LAUREL STREET, MENLO PARK, CA 94025-3483  
www.menlopark.org

April 3, 2009

Mr. Bruce Wolfe, Executive Officer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Ste. 1400  
Oakland, CA 94612

***SUBJECT: COMMENTS ON THE REVISED (2009) TENTATIVE ORDER FOR  
THE MUNICIPAL REGIONAL STORMWATER NATIONAL  
POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT***

Dear Mr. Wolfe:

Since implementation of the first stormwater permit in 1993, the City of Menlo Park has undertaken a very proactive municipal stormwater pollution prevention and control program. The City is committed to stormwater pollution prevention and control programs and activities with proven effectiveness.

The purpose of this letter is to provide comments on the revised 190-page Tentative Order (MRP) released in February 2009. These comments are specific to the City of Menlo Park, and are in addition to other comments submitted by the San Mateo Countywide Water Pollution Prevention Program and the Bay Area Stormwater Management Agencies Association on our behalf.

We are pleased that the tentative order shows improvement over the administrative draft permit released in 2006 and the subsequent tentative order released in December 2007. However, the efforts to reinvent stormwater pollution prevention and control programs are still very prescriptive, onerous, and inflexible. We are gravely concerned about the impacts to City operations and finances that will result from the MRP's requirements. Mandating additional unfunded needs during the current economic crisis creates a "Catch 22" for cities that will be very difficult, if not impossible, to overcome. Menlo Park, like many other municipalities in the area, is wrestling with balancing the budget while remaining responsive to community and infrastructure needs. Additional financial burdens placed upon municipalities will cause other critical needs to go unmet.

The MRP will add over \$300,000 in new costs on top of the City's current NPDES compliance expenditures of over \$500,000 per year, for a total of over \$800,000 in annual expenditures. The MRP will increase the City's costs by over 60% commencing in the first year and continuing throughout the permit period. The City's revenues from stormwater management assessments are just over \$300,000. In addition, the MRP's new demands will require the countywide program to double its budget and to divert other revenue that currently support the City's compliance activities, further diminishing available funding.

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Stormwater program management is primarily funded through a regulatory fee which does not contain provisions for increases. Therefore, any stormwater program budget increases will need to be borne by the City's General Fund (as an interim measure) until a future *and successful* Proposition 218 vote. An independent funding needs report prepared for the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) indicated that passage of a vote for stormwater increases is not probable during difficult economic times.

City staff attended your presentation at the San Mateo County Board of Supervisors' Environmental Quality Committee meeting on November 18, 2008. We were encouraged by your remarks that the MRP would allow for implementation over a four-year period as your agency was cognizant of the financial limitations of the permittees. We are now very disturbed to find that not only does the Tentative Order require immediate implementation of some kind on every provision, but also that at least two provisions have been expanded upon to become more costly and labor-intensive since the previous draft versions (the new requirement in Provision C.3, New Development and Redevelopment, to implement 10 "green street/parking lot" pilot projects regionally with extensive ongoing monitoring, and the expanded scope of Provision C.8, Water Quality Monitoring, to add very costly and prescriptive testing requirements that will have little benefit to water quality).

Other new provisions included in the MRP create potential conflicts with California Government Code §65300, *et seq.* (City's General Plan authority), the California Building Code, California drainage law and the Americans with Disability Act. The City believes these new provisions require significant legal interpretation, along with technical and economic analyses by the Regional Board, prior to being incorporated into the permit. The Porter-Cologne Water Quality Control Act (§ 13241, Water quality objectives) requires the Regional Board to factor economic considerations into its water quality control plans. The draft Tentative Order issued to the Ventura County Watershed Protection District, et al, attempts to argue that the order is not an "unfunded mandate" by citing court decisions that include such statements as "permittees...voluntarily availed themselves of the permit" and "...permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution." These arguments are unconvincing when considered in light of the fact that neither discharging stormwater nor levying fees subject to voting requirements are activities the City would initiate on a voluntary basis.

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Finally, the comment period allowed for this version of the MRP was insufficient and unreasonable given the extent of the changes made by the Regional Board without consultation with the permittees. We urge you to direct your staff to meet with the permittees to discuss appropriate modifications to the permit, and to consider this and other comment letters submitted by members of SMCWPPP, the List of Issues Table included with the SMCWPPP comment letter, comments submitted by the BASMAA, and the Santa Clara Valley Urban Runoff Pollution Prevention Program's comments. We look forward to providing additional comments at the May 13<sup>th</sup> public hearing.

Sincerely,

  
Glen Rojas, City Manager  
City of Menlo Park

Cc: Kent Steffens, Director of Public Works  
Lisa Ekers, Engineering Services Manager