

March 6, 2007

Mr. Jonathan Bishop
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Transportation Department
Wm. Butch Britt, Director

Central Services Department
Janice E. Turner, Director

Water & Sanitation Department
R. Reddy Pakala, Director

Watershed Protection District
Jeff Pratt, Director

Engineering Services Department
Alec T. Pringle, Director

Subject: **DRAFT VENTURA COUNTYWIDE MUNICIPAL SEPARATE
STORM SEWER SYSTEM PERMIT (NPDES PERMIT No.
CAS004002)**

Dear Mr. Bishop:

We have received the draft National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer (MS4) permit and appreciate the opportunity to provide comments on behalf of the Unincorporated Ventura County Stormwater Program. We have reviewed the document with the understanding that this is a draft and that our concerns will be taken into account before it is released as a tentative permit.

As currently crafted, the proposed Draft Order (Permit) will place undue financial and technical requirements on our program that may ultimately not result in efficiently improving water quality, which we and your agency are seeking to obtain. We concur with the comments as generated by the Ventura Countywide Stormwater Quality Management Program's letter and attachments dated March 6, 2007, and hereby incorporate our support for the record. In addition to the countywide comments, we have received a letter of concern from the Ventura County Resource Conservation District (VCRCD) addressed to the Ventura County Director of Public Works. In this letter, VCRCD voices their objection to several of the Permit's proposed requirements (Please see a copy of this letter as Attachment A.)

Additionally, we understand increased permit requirements are to be expected as part of the iterative process, and we agree with many of this draft permit's new provisions. As such, the comments presented here are not intended to argue against the increase in program requirements, but rather to maximize the overall effectiveness of the program to improve stormwater quality discharging from the MS4. Whenever possible, each comment suggests a viable alternative, however



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in many cases the comment simply requests a re-evaluation what is being requested.

Please accept these following concerns, comments and suggestions:

1. The proposed Draft Order (Permit) utilizes and relies upon BMPs in a manner inconsistent with their development and intent. The Stormwater BMP Handbook clearly states the following:

"However, due to the diversity in climate, receiving waters, construction site conditions, and local implementation across California, this handbook does not dictate the use of specific BMPs and therefore cannot guarantee compliance with NPDES permit requirements or local requirements specific to a user's site."

Yet, the Permit requires implementation of the BMPs for all new development and redevelopment. Importantly, this is not only a misapplication of the BMPs themselves; it is a clear and direct infringement upon the County's authority to regulate land uses within its jurisdiction. The County of Ventura has been utilizing BMPs for several years and evaluating and applying them on a project-by-project basis as intended by CASQA when they prepared the Handbook. We are committed not only to continuing this practice in the future, but also continuing our efforts to further refine and improve our application of BMPs to specific projects. Broad and indiscriminate application of the BMPs will effectively end this long-standing and effective process.

2. The Permit defines the permit coverage area as the entire county, with the exception of "agricultural lands" and "forest lands." This definition is problematic and should be revised. Rather than defining the permit coverage area by describing what is not included, it should state clearly what is included. As such, we believe the definition used in the current permit (i.e. urban areas as defined in the latest U.S. Census) should continue to be used. This identifies a clear, distinct and, importantly, already mapped area. If the current definition is simply unacceptable, we strongly recommend that the proposed definition be clarified and revised to read "except forest lands in public ownership, and agricultural and open space lands identified in the applicable local general plan."
3. We are concerned about the fundamental disconnect between the required BMPs and the purpose of the Permit. This disconnect is created because the BMPs in the Permit have not been analyzed to determine the efficacy in general, let alone their measurable benefits. There appears only to be an "assumption" of their effectiveness. When the BMPs are applied as anticipated by CASQA and the Clean Water Act (i.e. flexibly and site specific),

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using such a "qualitative" assessment is acceptable. However, where BMPs are required, as proposed in the Permit, this is unsound rule-making at best.

This issue is further contorted by the requirement in the Permit that alternative BMPs can be substituted only if there is documentation that it is more effective than the BMP it is replacing. Without any documentation for the required BMP, this is simply impossible. We strongly recommend that the BMPs be used as they were originally intended and as they are used in the current permit: Not a requirement that they must be used, but a requirement that they be applied as supported by local analysis on a project-by-project basis.

4. The Permit does not appear to take local costs into consideration. Based on our preliminary analysis, the costs to the County of Ventura to comply with the Permit will be substantial. These costs are not only associated with the initial efforts to prepare the implementing ordinances and procedures (which will require far more time to prepare than provided in the Permit), they are associated with on-going monitoring, enforcement and outreach. In addition, while these public agency costs will be substantial, they will be dwarfed by the costs to local residents and businesses. Ventura County and its ten cities have been grappling for the past decade with the difficult issue of providing affordable housing. Implementation of the Permit as written will set those efforts back more than any single regulatory or fiscal action in the past 30 years.
5. We believe Ventura County, through its use of BMPs under the current permit and its long-established land use policies, has done a good job protecting our water resources, especially compared to other areas in the southern California region. As such, we do not see a need to fundamentally alter the current permit. In fact, simply re-adopting the current permit would further the goals of the CWA by allowing the County to put its resources toward evaluating and implementing additional BMPs and associated programs, rather than toward a review and analysis of the new permit and the development of the required implementing ordinances and procedures.
6. The Permit is written in language and in a format that makes it extremely difficult to understand. It is recommended that the permit should be rewritten in clear and unambiguous language for ease of understanding, compliance and enforcement. Not doing so may prove to be an undesirable source of argument for several years.
7. The Permit encourages "smart growth" principles, and page 9 of the draft response states, "The Permittees agree that principles related to smart growth such as the avoidance of extensive roads, driveways, and other

impervious features will benefit water quality". However, the Public Works Agency considers "smart growth" a policy decision that goes well beyond NPDES implementation. "Smart growth", is open to a myriad of interpretations, and as interpreted by some special interest groups, may imply "traffic calming" or other neo-traditional transportation features. In this capacity, "smart growth" can mask implementation of physical road features that are not consistent with the California Vehicle Code, the Manual for Uniform Traffic Control Devices (MUTCD), or similar legislatively mandated practices. To install traffic control devices or any physical improvements on county roadways that are not in compliance with generally accepted design guidelines or regulations, would seriously reduce the County's ability to rely on statutory immunities in the numerous tort liability cases that we are exposed to on a regular basis. As such, the Public Works Agency does not want to give the impression that we support or endorse "smart growth" unless such a policy and the specifics associated with its implementation are identified and adopted by our Board of Supervisors.

8. The concept of an uninterrupted Municipal Separate Storm System (MS4) in the unincorporated parts of Ventura County is a myth. It is important that the Regional Board understand that such systems simply do not exist in the unincorporated areas, with few exceptions such as the Oak Park community. In almost all other instances, every drainage system involves one or more jurisdictions, including private property. As such, there is no feasible way to administer such a mixture of systems.
9. The Public Works Agency opposes the requirement of street sweeping of curbed streets in commercial areas at least 2 times per month as inconsistent with current Board policy as contained in the General Plan, the "Guidelines for Orderly Development".

Additionally, under current funding limitations, there is no practical way to fund this requirement, except at the expense of other ongoing critical pavement rehabilitation or public safety efforts. The implementation of an assessment district to fund providing such an extraordinary service in the relatively few commercial areas in the unincorporated area would be highly problematic considering the limitations of California Constitution Articles XIII C and D.

10. The Permit does not appear to reference or take into account the considerable technical and scientific data, information, and recommendations contained in the National Cooperative Highway Research Program, Evaluation of Best Management Practices for Highway Runoff Control (NCHRP Report 565). This report provides a comprehensive review of the effectiveness of many BMP's and Low-impact Development (LID) facilities in

the highway environment, as well as a well written discussion of the difficulties (technical, jurisdictional, practical and political) encountered. The contents of this report should be considered and incorporated into the permit.

11. Hydrology and hydraulic analysis for land development projects within the unincorporated County of Ventura shall be as follows:

All hydrology shall be determined using the Watershed Protection District Hydrology Manual. We further recommend that the difference between a Q10 developed storm flows and Q10 undeveloped flows be retained on site using an appropriate BMP that provides for percolation, evaporation, or storm storage so that the runoff from the property being developed does not create an adverse impact with sedimentation or siltation on the receiving property. This will revise the hydrology methods required by the NPDES permit on pp 53-54 / Part 3 II .1.(e), (f), (g) and 55-56 / Part 3 II .2. (a) to a common sense and traditional approach that is specific to the County's hydrology. There are very few subdivisions of land that are 50 or more acres. The method described above will work for all new subdivisions of land in the County unincorporated areas.

12. Post Construction BMPs could only be required on a private project through a discretionary permit process and that the Post Construction BMP clearly alleviates an adverse impact. These requirements could not be attached to ministerial permits such as a building permit. For the County of Ventura, Post Construction BMPs could be conditioned as part of the development, but its future maintenance and inspection could not be performed by the local agency due to access and privacy limitations by the subsequent owners. There would be no public easements and no monies for inspecting Post Construction BMPs on private property. We would only recommend Post Construction BMPs on subdivisions involving 5 or more parcels and when there is a homeowner's association being formed for the maintenance of improvements of such BMPs on private property. This pertains to pp 54-55 / Part 3 III .2. (a) & (b) and 58 / Part 3 III. 6.

13. The ban of "no grading" on slopes steeper than 20% in the rainy season is unreasonable in the County unincorporated areas. The County of Ventura issues approximately 100 grading permits per year and most of those grading permits are single lot developments that range in size from ¼ acre to 5 acres of disturbed area. Historically sediment runoff is efficiently minimized when a County grading permit has been issued, ongoing inspection is being performed by the County Public Works Agency, and there is either a SWPCP or SWPPP in place during the rainy season. Very few violations have ever occurred with this approach. Additionally the rainy season should be

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November 1 through April 15 for the entire County of Ventura. October is not a rainy season by any definition in any ordinance that the County has on file with regard to the rainy season definition. Ventura County rainfalls do not justify making October part of the rainy season. The County of Ventura also disagrees with the statement in Part 4 F that "sediment is a primary pollutant impacting beneficial uses of a watercourse." Sediment can have a beneficial value and it is part of the natural erosion process, which is taking place all the time. For this reason the sentence should be deleted.

The recommended grading restriction wording for Part 4 F1. (a) (1) (A) found on page 63 is:

(A) In the unincorporated areas of the County of Ventura, no grading greater than 50 CY shall occur between November 1 and April 15 (rainy season) for development projects on slopes greater than 20% without the implementation of a local or state SWPPP and a grading permit issued by the local agency.

(B) no change to wording.

(C) Within or adjacent to an environmentally sensitive area (ESA) as designated by the local agency.

14. The Permit has wording on page 67 could be removed and will not have a bearing on fulfilling the permit obligations by the local agency. The County of Ventura recommends that Part 4, F5. (a) (1) (A) (i), (ii), and (iii) be deleted and revise the wording in (iv) to read "*The project engineer or architect shall prepare the Local and State SWPPP and include a statement that they have selected the appropriate BMPs to minimize any adverse impacts by sedimentation and siltation to the downstream watercourse. This statement shall be sealed with the professional engineer or architect's stamp.*"

15. The Permit wording on page 68 can be simplified in Part 4 F5. (a) (2) (B): "*The Local SWPPP shall be signed by the property owner or owner's representative/designee. If the Local SWPPP is for a local agency, then the appropriate authority for the local agency shall sign the document.*"

The County of Ventura appreciates this opportunity to provide comments to the Permit and we want to reiterate our commitment to the collaborative effort in maintaining and enhancing water quality in our watershed. However, we have significant concerns about the Permit as currently proposed, including the TMDL provisions in the Permit. Additionally, we believe that a Permit can be developed that provides a practicable means for Ventura County to support its ongoing water quality and pollution prevention efforts. We look forward to working with the

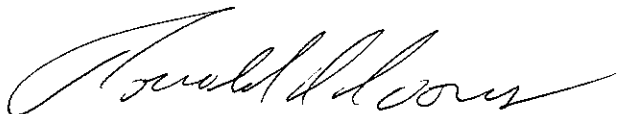
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Regional Board to incorporate these changes into the Order. If you have any questions regarding this letter, please contact me at (805) 654-2073.

Respectfully submitted,



Ronald C. Coons, Director

Attachment A: VCRCD Letter – March 2, 2007

C: Chris Stephens, Director of RMA
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