



ORANGE COUNTY
COASTKEEPER
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

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OC Watersheds
2301 North Glassell Street
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RE: **Comments on Orange County Stormwater Program NPDES Land Development Technical Advisory Group (TAG) – April 26, 2010 Meeting**

Dear Mr. Boon and Ms. Weiland,

Orange County Coastkeeper (“Coastkeeper”) and the Natural Resources Defense Council (“NRDC”) appreciate the efforts of the Orange County Stormwater Program and Geosyntec staff in developing materials presented at the final TAG meeting. Substantive disagreements remain between TAG members on critical sections of the WQMP, and our recommendations aim at directing the County of Orange towards achieving measurable water quality improvement. The purpose of this letter is to identify specific portions of the WQMP which require additional clarity and focus prior to the completion of a final draft, as well as to provide feedback on those details of the forthcoming Technical Guidance Manual (“TGM”) that were previewed at the April 26 Meeting.

We note at the outset our concern that the TAG has not made clear whether it will be submitting the TGM for public review and comment along with the Final WQMP. Given that many of the substantive requirements and procedures for meeting permit terms will be detailed in the TGM, we believe the TGM must be made available for public review and comment in order to comply with the Clean Water Act’s requirement that “programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity.” (*Environmental Defense Ctr. v. US EPA* (9th Cir. 2003) 344 F.3d 832, 857-58.) We strongly urge that the TAG submit the document for review in line with the North Orange County Permit’s requirement that “[t]he Executive Officer shall provide members of the public with notice and at least a 30-day comment opportunity for all documents submitted in accordance with this order.” (North Orange County Permit, fn. 55.)

Public Agency Projects

Section 1.6 on page 1-4 incorrectly states that the North Orange County Permit “allow[s]” a permittee to “incorporate U.S. EPA guidance, ‘Managing Wet Weather with Green

Infrastructure: Green Streets.”” Section XII.B.2.h of the North Orange County Permit unambiguously declares that each permittee “shall” incorporate such U.S. EPA guidance in a manner “consistent with the maximum extent practicable standard.” The Model WQMP must be modified to accurately reflect the requirements of the permit, meaning that Section 1.6 must be corrected.

Watershed Management Plans under the Permit’s Hydromodification Provisions do not Allow for a Permit’s LID Requirements to be Supplanted

Coastkeeper and NRDC, having previously commented on this issue, again bring to the attention of the TAG that section XII.D.5 of the North Orange County MS4 Permit does not allow the permittees to replace compliance with the permit’s onsite retention requirements with use of treatment systems or other “options more technically appropriate for the watershed.” (*See, e.g.*, Coastkeeper and NRDC letters of Jan. 22, 2010; Feb. 25, 2010.) Section XII.D.5 sets out provisions related to hydromodification, and by its clear language, does not exempt any project from the permit’s otherwise applicable LID requirements under section XII.C. As a result, Figure 7.II-2, regarding Assessment for Priority Projects, should be amended such that the leftmost entry on line 4 of the figure does not imply or explicitly authorize WMP criteria to replace the onsite retention standards otherwise required by the Permit.

The WQMP Must Provide Greater Specificity and Justification for LID Credit Programs

As U.S. EPA pointed out at the April 26 Meeting, and Coastkeeper and NRDC have discussed previously in our letter of Feb. 25, 2010, Water Quality Credits developed under the Orange County programs may be properly considered only *after* a finding of infeasibility for onsite retention has been made for a site. (See WQMP at 7.II-2.1.5.5; North Orange County Permit at XII.E.1.) In other words, any credit system should be employed only in determining a site’s obligation to address runoff not retained onsite through the permit’s provisions allowing for participation in off-site mitigation or in-lieu programs, not as a means of preemptively reducing the site’s onsite retention requirements. (*Id.*)

In addition, we note that the types of development projects identified under section 7.II-2.1.5.5 that may qualify for credits must be defined in greater detail than currently contained in the WQMP, which merely restates the vague categories listed under the North Orange County Permit. We note that the WQMP provides no technical justification for selection of a 10% credit to be given to each of these projects, or for allowing a maximum credit of 50% for projects meeting multiple criteria. This is particularly problematic given that some of the project types:

- Do not appear to offer any environmental or water quality benefit in return for receipt of a credit, such as high density development projects (>7 units per acre). This style of development reflects only use of 1/8 acre lots, typical of large areas of Orange County;
- Are vaguely defined (e.g. “City Center area”);

- Are potentially so broad as to render the incentive provided by the credit system meaningless (e.g. “Transit Oriented Development (within ½ mile of transit)”, which could apply to the vast majority of the County); or
- Are redundant, as in the case of high density development projects (>7 units per acre) and Vertical Density (allowing for >18 units per acre), which would potentially allow for projects to claim two credits for the same design feature.

While we approve broadly of attempts to encourage development in many of the identified categories over Greenfield projects, we suggest that the TAG provide specific, technical criteria for each development project type, and that any credit system should be related specifically to the water quality benefit derived from the identified development type. We note that the current approach taken in the WQMP would not satisfy the South Orange County Permit’s requirement that any “credit system clearly exhibits that it will not allow PDPs to result in a net impact from pollutant loadings over and above the impact caused by projects meeting LID requirements.” (South Orange County Permit at F.1.d.(7)(g).)

Criteria for Determining BMPs that are suitable for Consideration

Coastkeeper and NRDC encourage the revision of the Model WQMP’s section on Rain Water Harvesting (RWH) BMPs, Section 2.2.5.2, to replace the discussion on the “reduction of runoff over existing conditions” to read “pre-development conditions.” As written, the Model WQMP could conclude that a parking lot was an “existing condition” and any RWH BMP which reduced runoff over that parking lot could be deemed “wholly or partially infeasible.”

Minimum Retention Requirement

At the April 26 meeting, the TAG presentation stated that “if incremental benefit of retention is less than half of target, then [the project is] not required to provide retention before moving to biotreatment.” (Orange County TAG for NPDES New Development/Significant Redevelopment Program, April 26, 2010 presentation, at p. 29.) There is categorically no justification for this cutoff to be used in determining whether onsite retention is to be required at a given project. Both permits fully contemplate that any amount of runoff up to the design storm sizing criteria that can be feasibly retained onsite, regardless of volume, is to be retained onsite. (See South Orange County Permit, at F.1.d.(4)(d) (“If onsite LID BMPs *are technically infeasible* . . . LID biofiltration BMPs may treat any volume that is not retained onsite. . . .”); North Orange County Permit, at XII.C.2, fn. 56 (bio-treatment “may be considered only if infiltration, harvesting and reuse and evapotranspiration *cannot be feasibly implemented* at a project site.”).) The TAG should remove this proposed standard from the WQMP and TGM.

Use of Green Roofs

As discussed in our February 25, 2010 letter, the TAG has given insufficient attention to successful programs in the United States which demonstrate both the cost-effectiveness and

proven benefits of green roof technology. For example, a study of green roofs in Portland, OR, revealed substantial long term benefits for installing green roofs on private and public buildings citywide.¹ Owners of private buildings who installed a green roof saw a reduction in private infrastructure and O&M costs as well as reduced energy demand and costs, with an associated increase in roof longevity.² Publicly owned buildings with installed green roofs saw benefits including “reduced public costs to manage stormwater, avoided public stormwater infrastructure needs and O&M costs, reduced carbon emissions, improved air quality, and increased habitat areas.”³

The TAG should encourage the adoption of green roof technology for publicly financed development because the benefits identified above greatly outweigh any potential cost.⁴ Further, publicly owned buildings and large common interest developments possess the resources to properly maintain green roofs throughout their lifecycle to ensure proper water quality controls, and such guarantees of maintenance capacity should make green roof integration mandatory where the BMP is feasible. After the establishment of the green roof, the cost of maintenance of the BMP is comparable to the annual maintenance costs of a traditional roof. However, the green roof provides volume reduction, peak flow reduction, energy conservation, habitat, a reduced urban heat island effect, improved property value for neighboring property owners, and a reduction in the size of other stormwater management facilities which offset the cost of the green roof by 30 to 60 percent.⁵ If properly utilized, green roofs are an appropriate and “feasible” BMP throughout Orange County, absent an actual finding under the guidelines of the permit that such a proven technology is technically infeasible for a specific site.

Thank you for your consideration, please do not hesitate to contact us if you have any questions regarding this or any previous comment.

Sincerely,



Garry Brown
Executive Director
Orange County Coastkeeper



Noah Garrison
Project Attorney
Natural Resources Defense Council

¹ Cost Benefit Evaluation of Ecoroofs – 2008, Environmental Services City of Portland. The study was based on a five-story commercial building with a 40,000 square foot roof in downtown Portland. *See also*, Cooling Los Angeles – A green roof resource guide - 2006, Environmental Affairs Department City of Los Angeles.

² City of Portland, at 3

³ Id. at 3.

⁴ City of Portland, 18.

⁵ Id. at 3.