

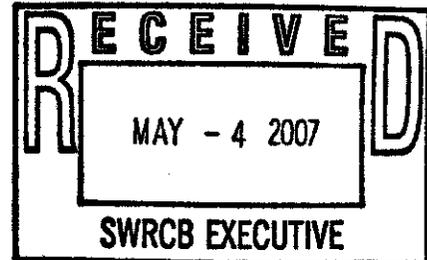
# PLAYA VISTA

THE WESTSIDE.  
RE-IMAGINED.

VIA EMAIL TO [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

May 4, 2007

Ms. Song Her  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street 24th Floor  
Sacramento, CA 95814



Dear Ms. Her:

Playa Capital Company, LLC ("Playa") appreciates this opportunity to comment on the State Board's March 2, 2007 issuance of a preliminary draft of a National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Construction Activities ("Preliminary Draft Construction General Permit" or "Preliminary Draft CGP"). Over the years, Playa has demonstrated its commitment to water quality stewardship and stormwater management by developing and implementing a number of successful stormwater management measures and Natural Treatment Systems. Playa is a permittee under the current CGP and intends to seek coverage under the new CGP when it is reissued.

## I. THE PLAYA VISTA FRESHWATER WETLANDS SYSTEM

Playa and its affiliates are the master developers of Playa Vista, a mixed-use community located on the west side of Los Angeles, east of Lincoln Boulevard, and near the Ballona Wetlands, one of the largest remaining salt marshes in the region. Playa Vista is separated from the Ballona Wetlands by Lincoln Boulevard and a Natural Treatment System called the Freshwater Marsh, which is part of an approximately 51.1-acre Freshwater Wetland System ("FWWS") that Playa is developing as the principal treatment water quality BMP of an area-wide stormwater management program. (The FWWS also includes a Riparian Corridor.) As a Natural Treatment System and Best Management Practice ("BMP"), the FWWS provides stormwater management and water quality improvements for a watershed of over 1,000 acres, encompassing both the 460-acre Playa Vista community and an approximately 600-acre off-site tributary area including the Westchester Bluffs, Lincoln Boulevard, and previously developed areas along the north side of Jefferson Boulevard. In addition to dramatically reducing the pollutant loading of urban runoff that previously flowed into the Ballona Wetlands, the FWWS supplies critical habitat for a number of birds, mammals, and other species. A perimeter trail system and viewing areas provide public access to the Freshwater Marsh and include interpretive exhibits, providing important recreational and educational opportunities. The FWWS also provides ecologically sound flood control protection for the area. The FWWS is sized and designed to handle the flood

flows anticipated after full development, ensuring the integrity of the habitat in the FWWS and protecting downstream receiving waters.

The Ballona Wetlands, to the west of the Freshwater Marsh, is owned and operated by the State Lands Commission and the State Department of Fish and Game, Wildlife Conservation Board. As mentioned, the FWWS plays a critical role in reducing the pollutant loading of the urban runoff that for many decades was allowed to flow unimpeded into the Ballona Wetlands. In order to facilitate the protective role, pre-existing drainage patterns were re-engineered, and catchments were re-routed in order to fully utilize the FWWS as a regional treatment system. Untreated urban runoff that historically reached the Ballona Wetlands is diverted now through the FWWS and routed after enhancement to the Ballona Creek Channel. Only during extraordinary storm events would the Freshwater Marsh overflow to the Ballona Wetlands, and then only after the mitigating effects of the treatment it provides.

Construction and maintenance of the FWWS was required under permits issued by federal and state agencies, including a Section 404 Permit issued by the Army Corps of Engineers, a Section 1603 Agreement with the California Department of Fish and Game, a Coastal Development Permit issued by the California Coastal Commission, and a Section 401 Certification issued by the State Water Board. The FWWS also was included as a project design feature in Environmental Impact Reports prepared for the project, which enabled comprehensive water quality analysis of the treatment capabilities of the FWWS and appropriate selection of upstream Best Management Practices to complement these pollutant-removal capabilities.

## II. STATEMENT OF INTEREST

Playa has a great interest in preserving the opportunity afforded by regional Natural Treatment Systems, which impart multiple benefits such as those provided by the FWWS. In State Water Board precedent on stormwater mitigation plans, the Board encouraged "innovative regional approaches" and recommended that local stakeholders work together to "develop regional solutions so that individual dischargers are not forced to create numerous small-scale projects."<sup>1</sup> The Los Angeles Regional Water Quality Control Board ("L.A. Regional Board") considers Natural Treatment Systems to be consistent with "integrated water resources" planning,<sup>2</sup> a planning approach it is promoting in the L.A. region. As the L.A. Regional Board has stated, natural treatment "takes a holistic view of regional water resources management" and "not only provides water quality benefits to the people of the Los Angeles Region" but "allows for the incorporation and enhancement of other public goals such as water supply, recycling and storage;

<sup>1</sup> California State Water Resources Control Board, Order WQ 2000 – 11 (Oct. 5, 2000), at 21, available at [http://www.swrcb.ca.gov/resdec/wqorders/2000/wq2000\\_11.pdf](http://www.swrcb.ca.gov/resdec/wqorders/2000/wq2000_11.pdf) (last visited May 2, 2007).

<sup>2</sup> California Regional Quality Control Board, Los Angeles Region, Resolution No. 2006-011 (June 8, 2006), at 2:9, available at [http://63.199.216.5/bpa/docs/2006-011/2006-011\\_RB\\_RSL.pdf](http://63.199.216.5/bpa/docs/2006-011/2006-011_RB_RSL.pdf) (last visited May 2, 2007).

environmental justice; parks, greenways and open space; and active and passive recreational and environmental education opportunities.”<sup>3</sup>

Notwithstanding that the Water Boards’ prior policy promotes Natural Treatment Systems, we are concerned that the Preliminary Draft CGP may discourage natural treatment and instead favor Active Treatment Systems and prescriptive Hydromodification requirements that are focused at the site level. Such an approach may constrain legitimate and perhaps environmentally superior alternatives for stormwater management. As discussed in Section III below, Playa urges the State Board to ensure that any revisions to CGP requirements do not discourage Natural Treatment Systems and regional approaches to stormwater quality management.

As a permittee under the State Board’s current CGP program, and with the intention of seeking coverage under the revised permit, Playa is a Real Party in Interest in the CGP reissuance proceedings. Playa understands that the Board currently is undertaking an informal process to help the agency receive information helpful to its development of a formal draft permit, to be released in the future, at which time formal permit proceedings will commence. Therefore, in this letter we focus on the practical consequences that the implementation of the Preliminary Draft may have on natural treatment alternatives, in the spirit of assisting the Board with the development of a formal draft permit that would be more environmentally effective.<sup>4</sup>

### III. COMMENTS ON THE PRELIMINARY DRAFT CGP

The Preliminary Draft CGP directs permittees to deploy, for sites where soils consist of more than 10 percent medium silt or finer particles, either an Active Treatment System or a Source Control Option.<sup>5</sup> The Preliminary Draft also proposes stringent Hydromodification standards for new development and re-development storm water. These requirements are unnecessary where a regional natural treatment approach has been taken, and may be incompatible with such approaches. Playa urges the State Board to consider the following points:

A. Natural Treatment Systems Provide an Important Alternative to Active Treatment Systems and Upland Hydromodification Standards.

A Natural Treatment System typically employs constructed marshes, wet ponds, biofiltration systems, riparian corridors, and bioswales, creating habitat for ecosystems that can remove through natural processes sediment, nutrients, pathogens and other contaminants. Natural treatment removes multiple pollutants found in urban runoff including metals, nutrient and

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<sup>3</sup> California Regional Water Quality Control Board, Los Angeles Region, Resolution No. 2002-022 (Dec. 12, 2002), at 3:15, *available at* [http://63.199.216.5/bpa/docs/2002-022/2002-022\\_RB\\_RSL.pdf](http://63.199.216.5/bpa/docs/2002-022/2002-022_RB_RSL.pdf) (last visited May 2, 2007).

<sup>4</sup> We do so without waiver of our right and opportunity to submit comprehensive legal and factual comment during the future formal proceedings, and our right to elect, or not, formal adjudicatory process at that time.

<sup>5</sup> Preliminary Draft CGP at IX.G.1.

organic compounds, in addition to bacteria and pathogens, and may contribute significantly to the implementation of Total Maximum Daily Loads. In addition to providing treatment for permissible dry weather runoff, natural treatment offers opportunities for capture and reuse of stormwater, including use as wildlife habitat, open space, greenways, noncontact recreation, environmental education, runoff reduction, and/or flood control. Playa is concerned that the Preliminary Draft's proposed Active Treatment and Hydromodification standards are unnecessarily rigid and discourage dischargers from implementing Natural Treatment Systems with sediment and erosion control BMPs—an environmentally beneficial alternative to the chemical processes in an Active Treatment System and upland Hydromodification controls. Playa believes that Natural Treatment Systems with appropriate upstream erosion and sediment controls provide all of the benefits associated with Active Treatment Systems and upland Hydromodification standards, namely, effective treatment of runoff and management of potential flood flows to prevent downstream scour and erosion of stream channels. But, in addition, Natural Treatment Systems also have ecological value as habitat, and provide recreational and educational opportunities. They also can be sized and engineered to serve as regional systems, addressing urban runoff from the already built-out environment, which is not otherwise subject to a retrofit program. Further, they provide the flexibility to address pre-existing undesirable conditions by re-plumbing drainage patterns and modifying catchment areas to protect sensitive water resources, such as the Ballona Wetlands in the case of the FWWS.

In contrast to Active Treatment Systems, Natural Treatment Systems do not rely on chemical coagulation, chemical flocculation, or electrocoagulation to reduce turbidity caused by fine suspended sediment. Such chemicals may harm ecological resources, whereas Natural Treatment Systems create a safe harbor for such resources, providing new habitat for plants and animals that otherwise may not be present. Of particular concern are catastrophic failures of Active Treatment Systems, which have released treatment chemicals downstream and caused toxicity problems in other areas.

The successful use of erosion and sediment control BMPs and a Natural Treatment System at the Playa Vista development project provides an example of an effective alternative to an Active Treatment System. The FWWS captures, reuses, and treats runoff from the Playa Vista development and other property in the area. As in most Natural Treatment Systems with upland erosion and sediment control BMPs, turbidity after natural treatment is very low and protective of receiving waters. But, unlike an Active Treatment System, the constructed 25-acre Freshwater Marsh offers flood control and aesthetic, recreational, and ecological benefits in addition to improving water quality.

The Preliminary Draft CGP offers no feasible alternative to active treatment. Not only does the Preliminary Draft fail to evaluate Natural Treatment Systems as an alternative to Active Treatment Systems, the Preliminary Draft fails to offer any reasonable alternative for medium to large projects. The Preliminary Draft contains a Source Control Option to active treatment, but CGP applicants with medium to large projects likely are precluded from choosing the Source Control option, which limits the areas of active construction to five acres at any one time.<sup>6</sup> Each five acres must be fully stabilized before active construction commences on the next five acres,

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<sup>6</sup> Preliminary Draft CGP at IX.H.1.b.

and all areas of inactive construction must have 100 percent soil cover throughout the entire construction period. Thus, while the Source Control Option may offer very small construction projects a feasible alternative to an Active Treatment System, it would create extensive delays and inefficiencies for medium-to-large development projects or other projects requiring mass grading—if not bar such projects altogether. Another potential outcome of the Source Control Option is much longer time periods with mass grading underway. For example, a project developer with a 200-acre project who tries to limit active construction to five acres at a time could face a substantially extended period of mass grading activities. While the Source Control Option may reduce the amount of area where mass grading is actively underway at any one time, it may also significantly increase the exposure period. Accordingly, the Source Control Option, as drafted, cannot be characterized as a valid—or environmentally preferred—alternative for many projects.

**B. The Preliminary Draft's Hydromodification Standards Create Redundancy, Are Not Appropriate in Many Circumstances, and May Foreclose Better Environmental Outcomes.**

Playa questions whether the Preliminary Draft's proposed standards regulating post-construction Hydromodification impacts are misplaced. Certainly, such standards would be more appropriately addressed earlier in the planning process, not in the eleventh hour before construction commences. Reviewing planning-level design requirements long after all local approvals have been obtained is inconsistent with the State Board's position that the CGP should "not preempt or supersede the authority of local storm water management agencies . . . ."<sup>7</sup> Furthermore, the State board can more appropriately regulate post-construction Hydromodification impacts through Phase I and Phase II MS4 permits, local land use planning, and California Environmental Quality Act ("CEQA") processes.

Moreover, Playa does not understand why the Preliminary Draft imposes rigid Hydromodification standards that create a one-size-fits-all approach to hydrology control, thereby preventing dischargers from improving drainage systems and patterns and ultimately receiving waters. In essence, the Preliminary Draft seeks to "freeze" hydrology by requiring post-project runoff volumes from impervious surfaces to approximate pre-project runoff volume; by preserving pre-construction drainage divides, time of concentration, and drainage patterns; and prohibiting physical changes to directly connected receiving waters.

Playa recognizes the overall goal of the State Board in crafting these standards but submits that such standards are, at best, redundant when BMPs and Natural Treatment Systems are in place. At worst, such standards could prevent vast improvements to drainage systems, hinder water quality and flood control developments, and discourage the environmental, ecological, and aesthetic benefits that often accompany Natural Treatment Systems. The proposed Hydromodification controls are biased in favor of preserving pre-existing conditions, and ignore the possibility that treatment systems can serve multiple, long-lasting purposes and actually improve surrounding areas. For example, an overly protective policy of preserving all drainage divides and patterns would have prevented Playa from re-routing pre-existing drainage patterns

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<sup>7</sup> Preliminary Draft CGP at I.3.

to enhance pollutant removal at a regional level. By capturing off-site water and re-directing it away from the Ballona Wetlands, Playa's Natural Treatment System has helped restore the degraded salt water marsh. Playa additionally notes that the Ballona Creek Channel, as a concrete-sided, hard bottom system, is not sensitive to changes in runoff volumes and velocities from upstream construction. In such cases where a discharger drains to an already stabilized system, the proposed Hydromodification standards would serve no apparent purpose. At the same time, the proposed standards are too simplistic to effectively regulate post-construction Hydromodification impacts. For example, the proposed standards address only certain types of flow characteristics (volume and time of concentration), and therefore preclude the use of a number of Hydromodification control tools that address other Hydromodification issues. In other locations where stream restoration may be an option, requiring on-site volume controls on the last remaining development would not be as effective as putting those resources into a creek restoration effort. In sum, Hydromodification controls should be carefully considered and implemented on a watershed-by-watershed basis and not imposed through a restrictive, one-size-fits-all standard.

#### IV. CONCLUSION

The Preliminary Draft CGP departs from the State Board's prior policy of promoting BMPs including Natural Treatment Systems and innovative regional solutions, such as those which have been employed effectively at Playa Vista to protect water quality. In effect, the Preliminary Draft requires Active Treatment for almost all sites larger than five acres. Prescriptive Active Treatment, Source Control and Hydromodification provisions appear to have been selected without reasonable consideration to alternative approaches, most importantly Natural Treatment Systems used in combination, during the construction phase, with effective erosion and sediment control BMPs. Our experience indicates that this alternative is important and viable, in addition to protecting water quality, also producing ecological, recreational and educational benefits not provided by the Board's approach. The Board should give further consideration to this alternative and consider revising the Preliminary Draft to ensure its continued availability as an effective, and perhaps environmentally superior, approach to stormwater management.

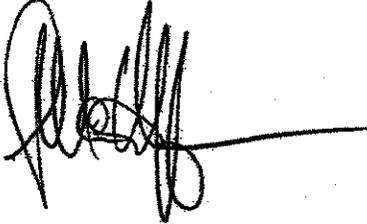
Playa also is concerned that the Active Treatment and Hydromodification provisions will discourage the further use of Natural Treatment Systems. Establishing habitat and wildlife is a substantial undertaking, with certain risks involved. The addition of coagulants and flocculents at a point upstream of a Natural Treatment System, such as likely will be involved with Active Treatment, creates added risk, and significant additional complexity to maintaining a functional ecology in the Natural Treatment System. Options to meet upland Hydromodification standards may be land intensive and expensive, resulting in less land and fewer financial resources being available for Natural Treatment Systems, which themselves are land intensive and expensive.

Playa respectfully requests the State Board to consider the importance and environmental value of Natural Treatment Systems and the effectiveness of well-designed and implemented erosion and sediment control programs. Playa also urges the agency to reconsider whether mandating Active Treatment Systems and inflexible Hydromodification standards for medium-to-large scale development projects will yield the most beneficial results in all circumstances. Finally, Playa, as a current CGP permittee and potential re-applicant, has an interest in the State Board setting forth a reasonable administrative process for permit applicants and, therefore, Playa supports the

Los Angeles Chamber of Commerce's separately submitted comments to that effect, and incorporates them by reference as if fully set forth herein.

If the agency has any questions, or if we can be of any further assistance, please do not hesitate to contact me at (310) 448-4629.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Marc Huffman', with a long horizontal line extending to the right.

J. Marc Huffman  
Vice President, Entitlements