

## Walsh, Laurie@Waterboards

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**From:** Wayne Rosenbaum <swr@envirolawyer.com>  
**Sent:** Thursday, October 02, 2014 1:18 PM  
**To:** Gibson, David@Waterboards  
**Cc:** Walsh, Laurie@Waterboards; Becker, Eric@Waterboards; 'Hansen, Mike'; 'michael.delarosa@sdcounty.ca.gov'; Guy Asaro; 'Mike McSweeney'; bhastie@rickengineering.com  
**Subject:** Request for time at the RWQCB October 8th Workshop

Dear Dave,

I write on behalf of the Coalition to request 20 minutes for a group presentation at the RWQCB MS4 permit workshop on October 8th in Mission Viejo, to present the Coalition's thoughts on the issue of Prior Lawful Approval. Coalition members include: San Diego Building Industry Association, Building Industry Association of Southern California; Associated General Contractors; Associated Builders and Contractors; San Diego Regional Chamber of Commerce; Business Leadership Alliance; San Diego Association of Realtors; San Diego Apartment Association; NAIOP (National Association of Industrial & Office Properties); BOMA (Building Office & Management Association; San Diego Chapter of the American Society of Landscape Architects.

On May 8, 2013 the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), adopted the New MS4 Permit. RWQCB staff proposes to revise Section E.3.e.(1)(a) of the New MS4 Permit to read as follows: Each Copermittee must require and confirm that for all Priority Development Project applications **that have not received prior lawful approval** by the Copermittee by the time the BMP Design Manual is implemented pursuant to Provision E.3.d, the requirements of Provision E.3 are implemented. For **project applications that have received prior lawful approval** before the BMP Design Manual is implemented pursuant to Provision E.3.d, the Copermittee **may** allow previous land development requirements to apply. [Emphasis added.] Please note that neither the adopted permit nor the proposed revision define "Prior Lawful Approval". Moreover, the permit fails to provide the Copermittees with any guidance concerning how or when they may use their discretion to allow previous land development requirements to apply.

The Coalition has worked with the Copermittees for seven months in an attempt to better define what constitutes a Prior Lawful Approval and when the Copermittee should use its discretion to allow previous land development requirements to apply to the requirements of Provision E.3 of the Permit. While the Coalition does not believe that its position is antithetical to most of the various positions expressed by various Copermittees, it is apparent that the Copermittees have not yet come to a consensus on this issue. Thus, we believe that direction from your board on this issue is essential at this time.

As the entities that design, permit, finance and build most of the public and private projects in the Region, Coalition members bring a unique prospective to the question of the appropriate application of Provision E.3 to projects that have progressed through the entitlement and permitting process but may not yet have commenced, much less, completed the construction of that project. Please understand that the Coalition is not proposing some broad exemption from Provision E.3, rather we are seeking guidance from the board regarding what it intended to be within the scope of a Prior Lawful Approval and how much discretion the Copermittees were intended to have pursuant to Provision We believe that given 20 minutes, the Coalition can present information to the Board Members that will be of significant value in coming to terms with a very complex problem that is likely to reoccur with every iteration of the permit.

Thanks,

Wayne

**S. Wayne Rosenbaum**

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