

# Regional Water Quality Control Board MS4 Permit Workshop

## Prior Lawful Approval (PLA) Policy

Wednesday, October 8, 2014  
200 Civic Center  
Mission Viejo, California

# Introductions

- The Coalition
  - 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.

# Background

- Worked with Copermittees re: meaning of permit section E.3.e.(1)(a)
  - City of San Diego, County, Chula Vista, Carlsbad, San Marcos, Escondido, El Cajon, and Santee
  - Regional Board staff
  - Coast Keeper
- General agreement: the section requires clarification. But no consensus on specific language.
- Time for the Regional Board to weigh in.

# Current Permit Language in E.3.e.(1)(a)

Applications **with** lawful approval before the BMP Design Manual is updated...

may

Applications **without** lawful approval by the Copermittee by the time the BMP Design Manual is updated...

# Language Revisions Proposed by Staff

Applications **with**  
prior lawful approval  
before the BMP  
Design Manual is  
updated  
**implemented...**

Applications with  
prior lawful approval  
before the BMP  
Design Manual is  
updated  
requirements to  
apply

Applications **without**  
prior lawful approval  
by the Copermittee by  
the time the BMP  
Design Manual is  
updated  
**implemented...**

Applications with  
prior lawful approval  
by the Copermittee by  
the time the BMP  
Design Manual is  
updated  
implemented

# Issues Requiring Clarification by the Board

- What is the purpose of Section E.3.e.(1)(a)?
- What is a “Prior Lawful Approval”?
- When may a Copermittee use its discretion to allow previous land development requirements to apply?

# The Purpose of Section E.3.e.(1)(a)

- Address the disconnect between permit cycles and entitlement cycles
  - Permits are revised every 5 years.
  - Project approvals from inception to building permits are much longer (7 to 10 years)
- Provide predictability for design and financing
- Avoid takings claims against Copermitees over statutory and common-law vested rights

# Permit Cycle Disconnect Example: Redevelopment of Brown Field Airport

- 2006: RFP by City of San Diego
- 2009: Development Department approval of site design including WQTR in conformity with 2007 permit
- 2013: Certification of EIR and approval of Site Development Permit including WQTR
- 2014: Challenge to certified EIR
- 2016: Grading permits and commencement of construction

But, if required to comply w/ 2013 permit...

And if investors walk away, **back to Square 1!**

- Public is denied:
  - 6,000 new jobs, most at prevailing wage
  - A critical piece of public infrastructure
  - An economic engine in a depressed area
  - Tax revenue
  - Loss of water quality improvements for existing development on airport.



# Defining a “Prior Lawful Approval”

- Currently an undefined term in the permit
  - Creates uncertainty and fear for Copermitees
  - Creates uncertainty for the development of both public and private projects whose entitlement cycles are much longer than permit cycles.
  - Creates funding uncertainties for both public and private projects.
- Other regional boards have addressed this issue.

## Examples of PLA Policies in Other MS4 Permit Regions (see handout)

	Los Angeles County	Central Coast Region	Sacramento	Ventura County
Source	Order# R4-2012-0175	Post Construction Storm Water Management Requirements	Stormwater Quality Partnership Hydromodification Management Plan	Ventura Technical Guidance Manual
Date	November, 2012	July, 2013	February, 2013	July, 2011
• <b>Development Agreements</b>	Silent	Silent	Silent	Exempt
• <b>Vesting Tentative Maps</b>	Exempt	Silent	Silent	Exempt
• <b>Tentative Maps</b>	Silent	Silent	Exempt	Exempt
• <b>Other Discretionary Permit</b>	Exempt (1 <sup>st</sup> permit)	Exempt	Exempt	Exempt
• <b>Other Ministerial Permit</b>	Silent	Exempt	Exempt	Silent
• <b>Commencement of Work</b>	Silent	Silent	Silent	Exempt

## When may a Copermittee allow previous land development requirements to apply?

- Project complies with requirements in previous permit cycle
- The project has a vested right
- Special circumstances requiring Copermittee discretion
  - Health and Safety
  - Other

# Clarity and Consistency Benefit Everyone

- Project applicants
- Copermittees
- Regional Board
- Non-governmental organizations
- Public

# Objectives of Clear PLA Language

- Provide a clear minimum standard that each Copermittee can rely on as a basis for MS4 permit compliance.
- Recognize and honor vested rights in order to protect Copermittees from takings claims and to avoid budgetary crisis for CIP, FPPF and assessment district financing.
- Protect Copermittee land use authority by allowing them to impose higher standards required to protect health and safety or to prevent a nuisance.
- Reflect statewide trends in addressing the meaning and implementation of Prior Lawful Approval provisions, which are not unique to this permit.

## Proposed Permit Language (Replaces Section E.3.e.(1)(a); does not alter (b) through (d))

(a) 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.

- i. For private development projects, "Prior Lawful Approval" means projects that have entered into a development agreement as defined by the California Government Code or have received a first discretionary approval or ministerial permit prior to the time the BMP Design Manual is implemented. A Prior Lawful Approval shall include any subsequent discretionary or ministerial entitlement necessary to implement the initial Prior Lawful Approval.
- ii. For public projects, the Copermittee shall develop and adopt an equivalent approach to that for private projects.
- iii. For project applications that have obtained a Prior Lawful Approval before the BMP Design Manual is implemented pursuant to Provision E.3.d, the Copermittee may use its discretion to allow previous land development requirements to apply.
- iv. Projects with Prior Lawful Approvals as defined above that predate Order No.R9-2007-0001 for San Diego County Copermittees, Oder No. R9-2009-0002 for Orange County Copermittees, and Order No. R9-2010-0016 for Riverside County, Copermittees shall be required to incorporate Treatment Control BMPs necessary to achieve the water quality standards set forth in the applicable Orders identified above to the Maximum Extent Practicable, as determined by the Copermittee on a case by case basis.

# The Coalition's Request

- Direct staff to incorporate the Coalition's proposed language for E.3.e.(1)(a) into Tentative Order No. R9-2015-0001 for review and comment by all stakeholders prior to consideration for adoption by the Regional Board.

# Questions

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