

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
1515 CLAY STREET, SUITE 1400
OAKLAND, CA 94612

RESPONSE TO COMMENTS

March 7, 2007

**PROPOSED AMENDMENT OF PROVISION C.3.
NEW DEVELOPMENT AND REDEVELOPMENT PERFORMANCE STANDARDS**

ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM
NPDES PERMIT No. CAS0029831

and

FAIRFIELD-SUISUN URBAN RUNOFF MANAGEMENT PROGRAM
NPDES PERMIT No. CAS612005

and

SAN MATEO COUNTYWIDE STORMWATER POLLUTION PREVENTION PROGRAM
NPDES PERMIT No. CAS029912

This document summarizes Water Board staff's responses to public comments on the December 26, 2006, Tentative Orders amending Provision C.3. of each of the above Programs' Permits. The three Tentative Orders were transmitted for public comment on December 26, 2006, and the public comment period closed on January 28, 2007.

Comments were submitted by: the Alameda Countywide Clean Water Program (ACCWP), the San Mateo Countywide Water Pollution Prevention Program (SMWPPP), and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). Comments are restated below *in order of the provision they reference*. (Comment numbers reflect the order they appear in the Program's formal comment letter.) Each comment is followed by staff's response, except where similar comments are grouped together and responded to as a whole.

ACCWP comment 1:

It should be noted that the Tentative Order contains two findings #7.

Response:

Agreed. This error will be corrected in the ACCWP Tentative Order. Similar numbering errors will be corrected in the SMWPPP and Fairfield-Suisun Urban Runoff Management Program Tentative Order Findings sections.

SMWPPP comment 6:

Minor comment regarding Finding 8, please consider being consistent regarding the use of the word "may" regarding possible future studies. This finding describes various studies that the Executive Officer may request of Bay Area municipal stormwater permittees. We believe that the second sentence mistakenly uses the word "will" when the rest of the paragraph describes what "may" be requested in the future. Suggested wording change to the second sentence is as follows:

In addition, the allowable low-flow (also called Qcp and currently specified as 10% of the pre-project 2-year runoff from the site) from hydromodification control units ~~will~~ may be investigated with the goal that Bay Area streams are protected from cumulative impacts from increased erosion associated with urbanization.

Response:

Agreed. The word "will" will be changed to "may."

ACCWP comment 2:

This comment relates to the first finding #7. We are concerned with the substantial effort and expense that may be involved if this undertaking is specifically included in the permit and the permittees are subsequently directed to perform these investigations. It does not seem directly relevant to our program, and we would request that this paragraph be deleted. If the need for such studies arises in the future, the Executive Officer already has the authority under Water Code section 13267 to request appropriate investigations that may more directly and specifically respond to the water quality needs at that time. Such a request could be made at that time.

Response:

We disagree that the Finding should be deleted. The value of including the Finding is to make it clear that, at this time, we don't know everything we'd like to about controlling excess flows and durations of runoff. As one example, some Permittees have discussed with us the possibility that the allowable low-flow rate is too stringent, and perhaps further study will show a higher rate is equally protective. Secondly, Water Board staff has stated its intention to pursue funding to conduct its own study of the variations between the various models used for hydromodification control across the Bay Area. In addition, the same Finding is or, in the case of SCVURPPP, will be in each Program's Permit. In summary, further investigations initiated by the Water Board will be done on a regional, cooperative basis. If investigations are deemed necessary and a cooperative arrangement cannot be found, then Water Code section 13267 could be invoked.

SMWPPP comment 2:

Fully capture what is intended to be the HM Standard. Some of the information in proposed Provision C.3.f.i. should be combined with C.3.f.ii. to provide a clearer and more complete expression of what is the HM Standard. Suggested wording is as follows:

- i. No later than 90 days after Board adoption of this Order, the Permittees shall comply with this permit amendment as part of its consideration of development applications that have not been deemed complete by the Permittees.*
- ii. Hydromodification Management (HM) Standard*

Stormwater discharges from applicable new and redevelopment projects shall not cause an increase in the erosion potential of the receiving creek over the pre-project (existing) condition. Increase in peak runoff flow and increased runoff volume shall be managed so that post-project runoff shall not exceed estimated pre-project rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant general, or other adverse impacts to beneficial uses due to increased erosive force. Such management shall be through implementation of the hydromodification requirements of this Provision and in Attachment A below.

Response:

Agreed. Rearranging the sentences as suggested is clearer. Most of the suggested language will be incorporated into the Tentative Orders.

ACCWP comment 3:

C.3.f.ii. This is the first reference in the Tentative Order to the term, "erosion potential." The Tentative Order does not require evaluation of erosion potential in applying the HM standard. Specifically, the design criteria and procedures described in Provision C.3.f.vii. for on-site and regional control measures (the types of HM controls likely to be used for most projects) do not require conducting the extensive field and modeling studies for evaluation of erosion potential in order to meet the HM standard. Thus, we request that this Provision be clarified to specify that *"if erosion potential is not directly evaluated pursuant to Provisions C.3.f.vii, the HM standard is considered to be met by implementation of the C.3.f.vii and viii measures and Attachment A measures set forth in the order."*

Response:

We agree with this comment in concept, but will use the approach suggested in SMWPPP comment 2 (above) to accomplish the same purpose.

ACCWP comment 4:

C.3.f.ii. The term "redevelopment" should be footnoted to indicate that *'for purposes of this Provision, the term "redevelopment" is defined as a project on a previously developed site that results in the addition or replacement of impervious surface.'* This is the definition of "redevelopment" that is used in finding #37 of Order No. R2-2003-0021. This definition should also be included in the HMP amendment as the HMP provisions may be carried forward in the MRP.

Response:

The Tentative Orders will be revised to include a reference to the definition of the term "redevelopment" from Order No. R2-2003-0021. Please note this definition could be superseded by any definition adopted in any future permit reissuances.

ACCWP comment 5:

C.3.f.iv. The exempted category e. of "interior remodels and routine maintenance and repair" should not be required to incorporate and provide the measures required of categories a-d. It doesn't seem to reasonably/effectively apply to this category as it does to a-d. The reference to category e. in the second sentence should be deleted so that this sentence only refers to exempt categories a-d.

SMWPPP comment 3:

Delete reference to interior remodels and routine maintenance as regards the implementation of hydrologic source controls. Proposed Provision C.3.f.iv. lists category "e. Interior remodels and routine maintenance or repair" as exempt from the HM Standard, but these types of projects would be required to implement hydrologic source controls. We believe that the existing permit excludes interior remodels and routine maintenance or repair from the requirements of Provision C.3 (see existing permit Provision C.3.c.i.3). This existing exclusion makes sense because there are no opportunities to implement hydrologic source controls for these types of projects. Suggested changes to the second sentence of proposed Provision C.3.f.iv are as follows:

Permittees shall require project proponents of exempt categories a – e d (below) to incorporate site design/landscape characteristics which maximize infiltration (where appropriate), provide retention or detention, slow runoff and minimize impervious land coverage (i.e., use hydrologic source, controls) to the maximum extent practicable.

SCVURPPP comment 2:

Revise proposed Provision C.3.f.iv. "Applicable Projects" to delete references to types of projects in the "exempt categories" list that are already exempt from all C.3. requirements under existing Provision C.3.c.i. These types of projects include: "Sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features associated with streets, roads, highways, or freeways under the Permittees' jurisdictions"; and "interior remodels and routine maintenance repair". By listing these in the exempt categories under the proposed Provision C.3.f.iv. (C.3.f.iv.b. and C.3.f.iv.e. respectively), these types of projects would be required to implement hydrologic source controls to the maximum extent practicable (MEP), which is a substantial change from the current Provision C.3.

Furthermore, we suggest that the entire list of projects exempt under the current Provision C.3.c.i. be repeated in the Tentative Orders, so that there is no confusion when the MRP is adopted and the current C.3. provisions are superseded.

ACCWP comment 6

C.3.f.iv. The exempted category e. of "interior remodels and routine maintenance and repair" should reference that category "*as described in Provision C.3.c.i .3*". This is necessary to provide a more detailed description of this exempt category and avoid confusion regarding the meaning of this category.

Response to the four comments above:

- We agree with ACCWP and SMWPPP that interior remodeling and routine maintenance projects were not intended to incorporate hydrologic source controls, and reference to such will be deleted from the Tentative Orders.
 - We do not agree with SCVURPPP that newly created or replaced sidewalks, etc., should not incorporate hydrologic source controls to the MEP. If there is an opportunity to include landscape-based stormwater detention in these projects, we believe that is an appropriate and economical time to do so.
 - We agree with SCVURPPP and ACCWP that it is important to tie the project exemptions in this Tentative Order (HM control) to the project exemptions in Provision C.3.c. (for stormwater treatment). Language clarifying this tie will be added to the Tentative Order.
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ACCWP comment 7:

C.3.f.iv. The Redevelopment Project Area category d. exemption should apply to the entire redevelopment area, not just be limited to brownfield sites or "portions" of a site that creates affordable housing units.

Response:

We disagree that exemptions for brownfield sites and affordable housing projects should be broader than what is stated in the Tentative Order. Redevelopment offers an opportunity to more economically provide for control of stormwater runoff flows and durations.¹ In addition, much of the Bay Area is already developed, and it is through redevelopment that some of the water quality impacts associated with impervious surfaces can be reduced. Thus, we believe that exemptions for redevelopment projects should not be broadened.

ACCWP comment 8:

C.3.f.iv. This Provision states that future amendments/reissuances will apply to the categories, definitions, descriptions and limitations in the order. While these issues are always reviewable as new information becomes available, we hope that this considerable effort to establish appropriate HM standards and criteria will carry forward into the adoption of the anticipated Municipal Regional Permit.

Response:

We acknowledge and appreciate the Programs' considerable effort to establish HM standards and criteria. The Programs are involved in the public process for the Municipal Regional Permit. It would be inappropriate for Board staff to speculate what the Board might adopt in the future.

SMWPPP comment 5:

Clarify whether applicable projects would also include small projects where the combined amounts of impervious surface created and replaced totals one acre or more. Proposed Provision C.3.f.iv. states that applicable projects are ones that create or

¹ See the Fact Sheet for the Tentative Orders for supporting documentation.

replace one acre or more of impervious surface. Provision C.3.c.i.3 of the existing permit describes significant redevelopment projects as ones "on a previously developed site that results in addition or replacement, which combined total 43,560 sq ft or more of impervious surface on such an already developed site." We appreciate your clarification of what is an applicable project.

Response:

The intent, in both the Permit and this Tentative Order, is to require stormwater controls at projects with one acre or more of impervious surface, be it newly created or redeveloped. The Tentative Order will be revised to clarify that applicable projects are those in which the combined amounts of impervious surface created and replaced totals one acre or more.

ACCWP comment 9

C.3.f.v. There is lack of clarity regarding coverage for some redevelopment projects under Provisions C.3.f.iv. and C.3.f.v. Our understanding of the intent is that for redevelopment projects that create or replace one acre or more of impervious surface (sub provision iv), an additional exemption exists for such projects where there is no increase in impervious surface (sub provision v). It should be clearly stated in sub provision v. that *"this exemption applies to redevelopment projects that create or replace one acre or more of impervious surface"*. Without this change, it appears that inconsistent criteria may apply to redevelopment projects. We have provided suggested language in our previous comments to provide clarity.

SCVURPPP comment 3:

Clarify the requirements for redevelopment projects. There is inconsistency in the description of redevelopment project requirements between proposed Provisions C.3.f.iv and C.3.f.v., and within C.3.f.v. itself. Proposed Provision C.3.f.v. should include the clarification that *"this exemption applies to redevelopment projects that create and/or replace one acre or more of impervious surface"*. In addition, subsection C.3.f.v.d. appears to add the requirement that *"hydrologic source controls will be incorporated into redevelopment projects to the MEP"*, even if there is no increase in impervious surface. This is a substantial change from the hydromodification control requirements adopted for Santa Clara and Contra Costa, and we request that this phrase be deleted from proposed Provision C.3.f.v.d.

Response:

We disagree with SCVURPPP's suggestion that subsection C.3.f.v.d. is a substantial change from the adopted Contra Costa HM requirements; please refer to Order No. R2-2006-0050, Attachment A, II.1. Rather, our intent in including subsection C.3.f.v.d. is to provide consistency in HM requirements for redevelopment projects between the Contra Costa and other programs.

We agree that the requirements for redevelopment projects could be clearer, and will revise the Tentative Orders to read:

“Redevelopment projects in which the combined amounts of impervious surface created and replaced totals one acre or more, and which are not exempt under Provision C.3.f.iv. above, shall be required to meet the following requirements:”

ACCWP comment 10:

C.3.f.v. We request that sub provisions v.a&b be deleted. The basic requirements necessary for exempting redevelopment projects are listed in sub provision v.c&d and the additional demonstrations seem unnecessary.

SMWPPP comment 4:

Focus and simplify the list of requirements for projects that do not increase the amount of impervious surface. Proposed Provision C.f.v. lists two basic requirements for exempting redevelopment projects. These requirements are:

- 1) show that the project does not increase impervious surface; and
- 2) show that there will not be an increase in the efficiency of the drainage collection and conveyance system compared with the pre-project condition.

The term "efficiency" of drainage collection is vague and we suggest that it either be replaced with "time of concentration," which is a well understood term, or be deleted where the use of the word "efficiency" is unnecessary. Suggested wording changes to the first sentence and item d. under proposed Provision C.f.v are shown below:

A redevelopment project may be exempted from the HM standard if a comparison of the project design to the pre-project condition shows the project will not increase impervious area and also will not decrease the ~~efficiency~~ time of concentration of drainage collection and conveyance compared with the pre-project condition ...

d. A qualitative comparison of pre-project to post-project ~~efficiency~~ drainage collection and conveyance that demonstrates that the project will incorporate hydrologic source controls to the maximum extent practicable.

We believe that the additional requirements listed under a and b of this section are unnecessary if the two basic requirements listed above as 1) and 2) are met. Please consider deleting subsections a and b to simplify and focus this permit requirement in order to eliminate unnecessary assessments and extraneous descriptions.

SCVURPPP comment 4:

Simplify the list of requirements for redevelopment projects that do not increase the amount of impervious surface. Proposed Provision C.3.f.v. lists two basic criteria for exempting redevelopment projects (that are not already exempt per C.3.f.iv.c. and d.). These requirements are: 1) show that the project does not increase impervious surface; and 2) show that there will not be an increase in the efficiency of the drainage collection and conveyance system compared with the pre-project condition. The proposed provision states that a pre- and post-project comparison must be done to demonstrate that the two exemption criteria will be met. The comparison must include:

- a. Assessment of site opportunities and constraints to reduce imperviousness and retain or detain site drainage;

- b. Description of proposed design feature and surface treatments used to minimize imperviousness;
- c. Inventory and accounting of existing and proposed impervious areas; and
- d. A qualitative comparison of pre-project to post-project efficiency of drainage collection and conveyance...

The requirements for the pre-project and post-project comparison are excessive and will require substantial additional effort by the project applicant and the reviewing agency. We agree with the San Mateo and Alameda programs that the requirements listed under (a) and (b) of this section are unnecessary if the two basic criteria listed above as 1) and 2) are met. Please delete subsections (a) and (b) to clarify and simplify the permit requirement. Modification of the permit requirement would not substantially change the information submitted to support the exemption request.

Response to the three comments above:

We disagree. (a) and (b) focus on avoiding and minimizing imperviousness and associated impacts via site design even though HM controls are not required. These are consistent with requirements in the Contra Costa County HM permit amendment.

ACCWP comment 11:

C.3.f.vii. We believe that it is important to provide additional flexibility regarding how the HM standard may be met. In view of the evolving and incomplete understanding about how best to control redevelopment projects sites, it is important that an array of different methods be available for project proponents to use to meet these requirements. Therefore, we request that the Tentative Order be revised to allow project applicants to use any of the design criteria that the Water Board has approved for use by different municipal stormwater programs. This will serve to "level the playing field". We request addition of the following language at the end of Provision C.3.f.vii: *"h. Or any of the other control design criteria that have been approved by the Board for use in other counties or cities provided that the design criteria have been tailored appropriately for local rainfall conditions at the proposed project location."*

SMWPPP comment 1:

Allow additional flexibility in how the Hydromodification Management (HM) Standard may be met. Given the evolving and incomplete understanding about how best to control potential increases in the flow and duration of runoff from different types of new and redevelopment project sites, it is important that an array of different methods be available for project proponents to use to meet these requirements. On this basis, it is suggested that the Tentative Order be modified to allow project applicants to use any of the design criteria that the Water Board has approved for use by different municipal stormwater programs. The following language is suggested for inclusion at the end of proposed Provision C.3.f.vii: *h. Or any of the other control design criteria that have been approved by the Water Board for use in other counties or cities provided that the design criteria have been tailored appropriately, for local rainfall conditions at the proposed project location.*

SCVURPPP comment 1:

Allow for application of a consistent approach by all Phase 1 Municipal Stormwater (MS4) Programs to meet the Hydromodification Management (HM) Standard.

There are four different methods for design of hydromodification controls adopted into and/or proposed for the various Bay Area MS4 permits: 1) use of continuous simulation modeling; 2) use of the Bay Area Hydrology Model; 3) use of sizing charts for specific BMPs; and 4) use of standardized BMPs with surface area sizing factors. Because municipalities and developers are just beginning to design and incorporate these control measures into projects, the flexibility to have a range of design tools available, particularly for small sites or those with special constraints or challenges, is important. The Water Board has advocated and continues to strive for a level playing field; this flexibility would provide consistency among the various MS4 HMPs and permits. For these reasons, we request that the Tentative Orders be modified to allow project applicants to use any of the design tools and associated design criteria that the Water Board has approved for use by different Bay Area municipal stormwater programs. We support the language proposed by the San Mateo and Alameda Programs for inclusion at the end of proposed Provision C.3.f.vii:

h. Other [hydromodification] control design criteria that have been approved by the Water Board for use in other counties or cities may be used to comply with the HM Standard, provided that the design criteria have been tailored appropriately for local rainfall conditions at the proposed project location.

Response to the three comments above:

In discussing these comments, ACCWP and SMWPPP representatives clarified the intent of this comment - that the Tentative Orders memorialize the Board's intention to allow other counties to use the Contra Costa Clean Water Program's (CCCWP) HM sizing charts **after** CCCWP monitoring (required in the CCCWP HM provisions) or further study demonstrates the effectiveness of the CCCWP methods in controlling excess erosive flows. We agree that this is appropriate. Because it is not the purpose of Permit provisions to memorialize points of agreement, we will add a finding to the Tentative Orders to memorialize this intention, which will read:

“On July 12, 2006, the Board issued Order No. R2-2006-0050, amending the Contra Costa Clean Water Program's (CCCWP) NPDES Permit No. CAS0029912 to include requirements to control excess stormwater runoff flows and durations from new and redevelopment. The Order allowed the use of sizing charts to design flow duration control devices, and required CCCWP to conduct a specific monitoring program to verify the performance of these devices. Following the satisfactory conclusion of this monitoring program, or conclusion of other study(s) that demonstrate devices built according to the CCCWP specifications satisfactorily protect streams from excess erosive flows, the Board intends to allow the use of the CCCWP sizing charts, when tailored to local conditions, by other stormwater Programs and Permittees. Similarly, any other control strategies or criteria approved by the Board would be made available across the Region. This would be accomplished through Permit amendment or in another appropriate manner following appropriate public notification.”

ACCWP comment 12:

C.3.f.ix. We believe that an "impracticability" sub provision is important in the Tentative Order. However, the criteria for such a determination should not be as narrowly drafted as indicated in this Provision. The rationale for impracticability alternatives is that a project proponent should be able to create and implement alternatives that fit the circumstances while at the same time providing water quality benefit. If the impracticability criteria are so narrowly drawn, project proponents may not be able to use this alternative. For example, the criteria as drafted require a project proponent to contribute financially to an alternative HM project as set forth in the Provision. However, permittees may be legally prevented by the requirements of the Mitigation Fee Act (See Government Code §§ 66000-66025) from adopting ordinances, regulations or imposing fees that would require such contribution. This financial contribution should be deleted or at least made discretionary. The Mitigation Fee Act issue could be resolved by modification of the last sentence of the first paragraph of Provision C.3.f.ix as follows: "In addition, *to the extent that permittees have the legal authority to require this financial contribution*, the project shall contribute financially to an alternative HM project as set forth below" (additional language is in *italics*).

SCVURPPP comment 5:

Revise Provision C.3.f.ix. We agree with the Alameda program that having a usable "impracticability" provision is important. The criteria for impracticability needs to include situations other than economic impracticability. The option for a fee alternative also needs to be consistent with the Mitigation Fee Act (Government Code §§ 66000-66025).

Response to the two comments above:

In discussing these comments, ACCWP and SMWPPP representatives clarified their concern, that they may not have the administrative procedures in place to handle mitigation funds. The representatives suggested wording for a Finding, which will be added to the Tentative Orders, to memorialize the Board's intent to allow other criteria for alternative compliance as our understanding and experience evolve. The new finding will read:

"This Order allows for alternative compliance when on-site and regional HM controls and in-stream measures are not practicable. Alternative compliance includes contributing to or providing mitigation at other new or existing development projects that are not otherwise required to have HM controls. The Order provides flexibility in the type, location, and timing of the mitigation measure in Provision C.3.f.ix.d. The Board recognizes that handling mitigation funds may be difficult for some municipalities due to administrative and legal constraints. The Board intends to allow flexibility for project proponents and/or Permittees to develop new or retrofit stormwater treatment or HM control projects within a broad area and reasonable timeframe. Toward the end of the Permit term, the Board will review alternative projects and determine whether the impracticability criteria and options should be broadened or made narrower."

ACCWP comment 13:

C.3.f.x.a. It isn't standard practice to record surface flow directions for entire project sites. This record collection and retention requirement should only apply where it is conducted on a project.

Response:

We disagree that site plans need not identify surface flow directions. It is our experience that runoff flow direction must be shown in some way in order to calculate and review the proper sizing for stormwater treatment and flow control devices. The State-wide Construction General Permit (99-08 DWQ) also requires that a site map showing drainage patterns across the project be included in the Storm Water Pollution Prevention Plan.

ACCWP comment 14:

Attachment A -A map is included in Attachment A to include areas of HM applicability in Alameda County. We request that the attached reformatted version of the map be substituted for the map in the Tentative Order. This attached map provides improved clarity and readability. The changes made do not affect the determination of areas of applicability. The proposed version shows major highways in black rather than pink, and a border with index coordinates has been added to assist users in locating project sites. In Attachment A, the text referring to colors of streets and highways should be changed also.

Response:

Agreed. This improved map will replace the map in the ACCWP Tentative Order, as will associated references to colors of streets and highways.

SCVURPPP comment 6:

The Provisions should allow for reevaluation of the allowable low flow from hydromodification controls for specific streams. The Alameda Tentative Order allows its Permittees to conduct channel stability assessments to determine if a certain receiving stream has a higher resistance to erosion and higher critical flow, based on a "User Guide." All Bay area stormwater programs should be allowed to use a similar methodology to determine stream-specific low flow criteria.

Response:

We prefer to address SCVURPPP's request to allow future study of channel stability in the Municipal Regional Permit, which will address SCVURPPP's HM requirements. The User Guide in the ACCWP Tentative Order will be approved if it is based on the same methodologies that have already been reviewed by Board staff and made available for public review. ACCWP asked for this option because certain streams/flood control channels could potentially have higher resistance to erosion and may be candidates for further study in the future. To our knowledge, FSURMP and SMWPPP do not foresee conducting further channel stability assessments. Further, we suggest SCVURPPP and ACCWP jointly complete a User Guide, if possible, for this purpose.

SCVURPPP comment 7:

The Provisions should allow for reevaluation of the impracticability criterion (i.e., the total cost of treatment and hydromodification management (HM) measures exceeds 2% of the project cost) as experience is gained with actual projects. To date, no HM measures have been constructed in the Bay Area, and no data have been collected to determine whether the 2% “cost cap” is reasonable. SCVURPPP is planning to fund the development of a cost-estimating methodology and to collect data on several proposed projects in the State to examine the appropriateness of this criterion. We expect the work to be completed within the next few months, and we are planning to share the results with Water Board staff and other stormwater programs to facilitate discussion of this issue.

Response:

We agree that more experience and knowledge are needed regarding the 2% “cost cap.” In addition to SCVURPPP’s study, Water Board staff in southern California regions may be investigating this topic. Following completion of such studies, any resulting modification of the impracticability criteria would require public review and Board consideration. Thus, it is appropriate to provide a finding, rather than a provision, that allows for reevaluation of the cost criterion. A finding will be added to the Tentative Orders to read:

The Board recognizes that the collective knowledge of management of erosive flows and durations from new and redevelopment is evolving, and that the topics listed below are appropriate topics for further study. Such study may be initiated by Board staff, or the Executive Officer may request that all Bay Region municipal stormwater permittees jointly conduct investigations as appropriate. Any future proposed changes to the Permittees’ HM provisions may reflect improved understanding of these issues:

...

- the appropriate basis for cost-based impracticability of treating stormwater runoff and controlling excess runoff flows and durations.