

**San Luis Obispo County Storm Water Management Program
Response to Comments from the Natural Resources Defense Council February
26, 2007 Letter**

1. The Regional Boards' review and approval process continues to follow a problematic and confounding pattern. Staff had previously noticed the same draft Program for comment last fall with a scheduled hearing. Then, inexplicably, the hearing was cancelled with no further notice or reason. The draft Program was again re-noticed with another hearing. However, the draft resolution proposes that the County "develop" and "establish" major program components—which will escape review by the Board members during a public hearing. This process unfairly and illegally limits public review and an opportunity to comment before the Board on final program components. In addition, this piece-meal approval process unduly burdens public review by requiring the public follow an opaque and ever-changing process with draft documents totaling hundreds of pages. Federal and state law requires a more transparent process which fully incorporates public participation.

Response: The Water Boards SWMP review process has not changed and is consistent with state and federal notification requirements. The County's SWMP was publicly noticed in 2004 and comments were accepted. The County worked to modify their SWMP as a result of public comment. The Water Board again posted the County's SWMP in August 2006 to allow for public comment. Water Board staff had originally planned to include the County's SWMP on the December 2006 Water Board hearing agenda. Based on comments received during the second comment period, Water Board staff included SWMP modifications in a draft Board resolution. The resolution was posted for public comment in January 2007. The public has had several opportunities to comment on and provide input into the County's SWMP process.

The General Permit allows for a five-year ramping-up period for Phase II municipalities. The County's SWMP includes commitments to adopt numerous ordinances, develop protocols, manuals, and procedures specific to San Luis Obispo County. The County's SWMP includes adequate information to determine that the program is designed to reduce the discharge of pollutants to the MEP by the end of the five-year permit term, and to protect water quality. As the County submits the program components in its Annual Reports, the Water Board will review them to ensure they meet the MEP standard and provide for public review. The County must also ensure adequate public participation to meet the requirements of the federal stormwater regulations.

**Response to Comments from the Natural Resources Defense Council October 5,
2006 Letter**

2. The draft program repeats an intention to "develop" or "establish" basic program components that should have been developed long ago when the first draft was submitted in 2004. The limited discussion of the intention to develop these components lacks details in terms of actual commitments and requirements. (See,

e.g., Program section 4 at 50, 56, 58, 59, 62, 65, 72.) As a result of these vague provisions, and as previously determined by the Regional Board, the public is unable to review the actual program elements or determine whether they meet MEP and protect water quality. (See *Environmental Defense Center v. EPA*, 344 F.3d 832, 857-858 (9th Cir. 2003) (Ninth Circuit emphasized that a storm water management plan, which contain[s] substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable”, is an inherent part of the storm water permit)). (p 2, paragraph 4.)

Response: The County commits to develop required aspects of their program during first-term permit coverage, including drafting and adopting four ordinances, creating procedures for inspecting construction site BMPs, developing and implementing procedures and checklist for detecting illicit connections and discharges.

EPA, in the Phase II BMP and Measurable Goal examples for the construction site runoff control minimum measure¹, includes a measurable goal example of “**Establish** a set of minimum erosion and sediment control (ESC) requirements for construction sites that disturb more than 5,000 square feet, including planning, installation, inspection, and maintenance of ESC practices.” The guidance includes the measurable goal “A draft ordinance and guidance **will be prepared within one year**. A final ordinance and ESC guidance will be available **within two years**.” (Emphasis added.) The EPA regulations and guidance, as well as the Permit terms, allow Phase II municipalities to use the first permit term (5 years) to develop the program that will achieve MEP. (See, 40 CFR § 122.44(a).)

The following discusses the SWMP provisions the commenter cites. The Water Board staff recommendations are included in the proposed ordinance approving the SWMP:

Program section 4 at 50 – The County will develop and implement a procedure and checklist for detecting illicit connections and discharges in permit year one (IL4A) and will inspect the storm drain system in permit year one (IL4B). The program elements are developing illicit discharge inspection procedures that will ensure that any illicit connection or discharge detected will be eliminated. The County will inspect the storm drain system in permit year one to identify illicit connections. The County will establish a system of enforcement and penalties in permit year three (IL4C). The illicit discharge ordinance will be adopted in permit year two and therefore ordinance enforcement cannot take place until permit year three. The commenter does not identify what other program elements are needed to determine whether the County meets MEP or not. The purpose of the illicit discharge detection and elimination program is to identify and eliminate illicit discharges. The County will inspect the entire storm drain system twice per year, will trace dry weather flows to their source and will eliminate those sources. The commenter provides no information indicating what other BMPs would be more effective in identifying and eliminating illicit discharges. The draft Resolution requires the County include two additional BMPs specifying that the County will train restaurant health inspectors in illicit discharge detection and elimination and inspect 100% of

¹ See EPA website <http://cfpub.epa.gov/npdes/stormwater/measurablegoals/ex4.cfm>.

restaurants within the permit coverage area annually, and to train certified unified program agency (CUPA) inspectors in illicit discharge detection and elimination.

Program section 4 at 56 – The County will revise existing grading ordinances to require the use of good site planning, minimization of soil movement, erosion and sediment control BMPs, good housekeeping practices for recycling and disposal of discarded building materials, concrete truck washouts, chemical, litter, and sanitary waste at construction sites (CON1). The General Permit, NPDES regulations, and EPA Guidance² specifically allow a discharger to develop ordinances during the first permit term, rather than before permit coverage is approved. The ordinance will include enforcement and penalties for noncompliance.

Program section 4 at 58 – The County will create procedures for construction site inspections and establish protocols to determine inspection priorities and frequency based on water quality impacts (CON3). The County will prioritize construction sites to determine the best inspection strategy and frequency to protect water quality. The County will evaluate inspection priorities and frequencies based on potential water quality impacts. County staff will be trained in permit year one (MO1) and site inspections will begin in permit year two.

Program section 4 at 59 – The County will develop and distribute, in permit year two a construction site BMP policy and procedures guidance manual (CON5) using guidance documents from the California Stormwater Quality Association. This approach allows the County to develop BMPs.

Program section 4 at 62 – The County will revise its land use ordinances to include General Permit Attachment 4 design standards (PC1A) by permit year 3. The draft Resolution requires that the County specify that they will adopt the final ordinance/revisions and begin enforcement by the end of permit year three. Similar to the grading ordinance revision process, the land use ordinances require drafting the language, public comment and participation, and Coastal Commission approval. The County will begin enforcing the ordinance revisions in permit year three. The ordinance will include all General Permit Attachment 4 requirements.

Program section 4 at 65 – The County will develop and publish a Low Impact Development (LID) design manual in permit year two (PC5). The County applied for and received grant monies to develop an LID design manual specific to San Luis Obispo County³. The commenter later suggests (p. 13, last paragraph) the County utilize various sources of information regarding LID. Water Board staff agrees that there are many LID resources available that the County should use to develop their own set of standards. A well-developed program, taking only one year, will be established by permit year two. Water Board staff does not believe that the County should rush the development of this program, and does not agree that permit coverage should be

² See above.

³ Proposition 40 Urban Stormwater Program Grant 06-214-553-0, Implementation of Low Impact Development and Design Standards in San Luis Obispo County

delayed until the program is developed. If permit coverage takes effect, developing an adequate program on schedule is an enforceable permit requirement.

Program section 4 at 72 – The County will develop and implement, in permit year two, a road and bridge maintenance procedure manual that includes water quality protections for road and bridge maintenance activities (MO5) including but not limited to proper stockpiling, erosion and sediment control BMPs, spill prevention and cleanup, saw cutting, paving and striping, equipment maintenance, proper fueling, and storm sewer maintenance. Although there are established BMPs for these practices, it will still take time for the County to compile the BMPs and provide specific implementation procedures for San Luis Obispo County. The County will implement the road and bridge maintenance program in permit year two. Any development of the program must take place in permit year one in order to implement the program and train employees in permit year two. The draft Resolution requires the County specify that the road and bridge maintenance procedures manual will be developed in permit year one.

The General Permit allows for a five-year ramping-up period for phase II municipalities and the examples listed above illustrate the County's commitment to adopt numerous ordinances, develop protocols, manuals, and procedures specific to San Luis Obispo County. The County's SWMP includes adequate information to determine that the program is designed to reduce the discharge of pollutants to the MEP by the end of the five-year permit term, and to protect water quality. As the County submits the program components in its Annual Reports, the Water Board will review them to ensure they meet the MEP standard and provide for public review. The County must also ensure adequate public participation to meet the requirements of the federal stormwater regulations.

3. Based on numerous scientific articles, storm water pollution contributes to sea otter mortality and morbidity in San Luis Obispo County's receiving waters. As the chief mechanism for controlling storm water pollution, the draft Program fails to adequately and comprehensibly include meaningful measures to address this important regional problem. (*p 3, first full paragraph.*)

Response: Recent studies indicate that there may be a correlation between toxoplasma gondii infection in Southern Sea Otters and coastal runoff. Toxoplasma gondii is associated with Southern Sea Otter mortality. The toxoplasma gondii parasite has been traced to humans and terrestrial animals. However, toxoplasma gondii cysts are only excreted by feline species. A potential toxoplasma gondii source may be urban runoff carrying cat waste infected with the parasite. The County's proposed public education and outreach program will emphasize sea otter protection utilizing educational outreach materials and radio and television public service announcements (BMP PE18). The County will distribute pet waste educational material at animal shelters, pet stores, 4H clubs, veterinarian offices, and farm supply stores. The County will promote nonprofit organizations dedicated to trap, neuter, and release/adoption programs for feral cats (BMP PE18G). The County will promote spay and neuter programs to reduce feral populations (PE18H) and will provide pet spay and neuter

educational materials to promote responsible pet ownership through the Animal Services Division (PE18I). Water Board staff was unable to find any other BMPs applicable to this problem through internet research. A recent study⁴ on outdoor fecal deposition points out that, “Long-term efforts to control cat populations in the Morro Bay area will depend on spaying and neutering feral cats and ongoing public education urging responsible pet ownership.” The County SWMP emphasizes education and promoting spay and neuter programs for feral cats.

4. The draft program contains no provisions that commit to water quality monitoring. Instead, the draft program relies solely on monitoring conducted by “volunteers.” This approach is unacceptable because there are no assurances that meaningful water quality monitoring will occur during the permit term. Water quality monitoring is essential for determining the effectiveness of the Program. The Monterey Regional Program commits to monitoring 25 percent of all outfalls at least four times a year. (*p 3, paragraph 2.*)

Response: The General Municipal Permit does not require water quality monitoring. The County is required to implement BMPs that reduce pollutant discharges to the MEP. The County has committed to support the introduction of Urban Watch, First Flush, and Snapshot Day citizens monitoring programs. Citizen water quality monitoring programs do not exist in the County, so the County will help implement the new programs. The draft Resolution requires that the County specify in the SWMP that in each annual report the County will identify the number and type of events for the upcoming year, and what the County’s role in those events will be. County staff has indicated that specifying the precise programs at this point is unrealistic, since various opportunities for County participation arise periodically. The County requires flexibility to determine which ongoing monitoring efforts will best assist the stormwater program. Once the County identifies the coming year’s projects in the Annual Report, during the year the County may substitute equivalent events or add events as opportunities arise. The Monterey Regional group’s commitment to monitor 25 percent of all outfalls will build on existing **volunteer** water quality monitoring programs. San Luis Obispo County has not previously organized these types of volunteer monitoring events and organizing and training an adequate number of volunteers will take years to implement. Water Board staff will review compliance annually and determine the need for additional monitoring. The public will have an opportunity to comment on program implementation during the annual report review process.

5. The draft Program fails to require actual compliance inspections (in addition to education efforts/audits) of all commercial and industrial facilities. (See Program section 4 at 51.) Compliance inspections as well as business inventories are basic requirements in storm water management programs. Even though there is a vague mention of inspections of some businesses for illicit connections, it is entirely unclear

⁴ Dabritz, H.A. et al., *Outdoor Fecal Deposition by Free-roaming Cats and Attitudes of Cat Owners and Nonowners Towards Stray Pets, Wildlife, and Water Pollution*, Journal of American Veterinary Medical Association, Vol 229, No. 1, 74-81.

what percentage of inspections will be conducted and the frequency of inspections.
(p 3, paragraph 3.)

Response: The County already inspects all food establishments (including restaurants) annually, as noted below, and will continue to inspect 100% of restaurants each year. The draft Resolution requires that the County include a BMP to train restaurant health inspectors in illicit discharge detection and elimination and inspect 100% of restaurants within the permit coverage area annually and report 100% of storm water violations and follow-up actions to the Public Works Department for tracking and annual reporting. The County will inspect and clean all storm drains at least twice per year (MO3). The County will develop procedures and a checklist for detecting illicit connections and discharges in year one of the permit term (IL4). The procedures will be used during storm drain maintenance to track dry weather flows to their source. The County will trace detected dry weather flows to the source and will inspect businesses discovered as the source.

The County will provide educational materials to all residential, commercial, and industrial facilities over a three-year period (PE5, PE6, PE7). The County is the Certified Unified Program Agency (CUPA) and will continue to inspect businesses for compliance with hazardous materials BMPs and spill response. The draft Resolution requires that the County include a BMP to train CUPA inspectors in illicit discharge detection and elimination and report 100% of storm water violations and follow-up actions that occur within the permit coverage area to the Public Works Department for tracking and annual reporting. All County inspectors will be trained to identify storm water issue during their inspections and will distribute public education and outreach material during their inspections (MO1A).

6. Although the draft Program indicates that guidelines and procedures for response and enforcement will eventually be established, the delay in developing these guidelines and procedures is inexcusable considering the numerous examples widely available. The draft Program also fails to include adequate response time and enforcement measures throughout the minimum control measures. For instance, the illicit discharge and detection program doesn't describe the response procedures for when illegal actions are discovered. (Program section 4 at 49-50; see also 57, 58, 60, 63, 72, 74.) (p 3, paragraph 4.)

Response: The County will include enforcement provisions as in the ordinances associated with particular activities (illicit discharge, construction, post-construction). The County must draft the ordinances and receive public input regarding the ordinances and the enforcement penalties associated with the ordinances prior to committing to specific enforcement measures or penalties.

The County proposes to adopt, in year two of the permit term, an ordinance prohibiting illicit discharges that will include enforcement provisions (IL1). The County is required to prohibit non-storm water discharges into the MS4 and implement appropriate enforcement procedures and actions. The County will document reports of illicit

discharge and County response and follow-up actions to those reports beginning in the first year of the permit term (IL3).

7. The draft Program impermissibly delays implementation of measures for construction sites for over two to three years and fails to include basic requirements, such as required BMPs and compliance inspections. (See Program section 4 at 59.) Such a delay is unacceptable given the well-documented negative impact of construction activity on water quality as well as the rapid pace of development in the Central Coast. In addition, the draft Program should clarify the commitment and the detailed procedures for construction site inspections with meaningful measurable goals. Moreover the program fails to have any requirement for construction activity under one acre – which is regulated by other Central Coast programs. (*p 4, first full paragraph.*)

Response: The County will develop and distribute, in permit year two, a construction site BMP policy and procedures guidance manual using the California Stormwater Quality Association (CASQA) construction BMP manual (CON5). The basic program requirements are listed in BMP CON1 and include but are not limited to requiring the use of good site planning, minimization of soil movement, erosion and sediment control BMPs, good housekeeping practices for recycling and disposal of discarded building materials, concrete truck washouts, chemical, litter, and sanitary waste at construction sites.

The County will create procedures for construction site inspections and establish protocols to determine inspection priorities and frequency based on water quality impacts for San Luis Obispo County (CON3). The County will hire and train dedicated construction storm water inspectors during permit year one and will implement the inspection program in permit year two. The County commits to inspecting construction sites beginning in permit year 2. Water Board staff and the public have the opportunity to provide input into the procedures and inspection strategies for the County during the annual public participation opportunities (PP2) and during annual report review.

The General Permit and federal regulations do not require municipalities to regulate construction sites under one acre in size (40 CFR §122.34(b)(4).) The County will adopt an ordinance that will prohibit non-storm water discharges into the MS4 system (IL1). If a construction site under one acre discharges material other than storm water to the MS4 system, the County will use the illicit discharge ordinance to eliminate the discharge.

8. The majority of post-construction storm water management in new development and redevelopment is impossible to review given that much of the program has yet to be developed by the County. It is also unclear what will actually be required under this component. In addition, the majority of the program will not be developed until year three, let alone actual implementation. (See Program section 4 at 62, 64.) Because of the multi-year delay in developing and implementing basic requirements such as self-certification, inspection procedures, and revision of the County's ordinance,

general plan, and CEQA checklist, the draft Program's development review process is meaningless. Moreover, instead of relying on low impact development (LID) practices that are over half a decade old, the County should utilize more recent models in designing the LID manual (See discussion below at Part 2.B.) (*p 4, paragraph 2.*)

Response: The County will adopt ordinance revisions that will require compliance with General Permit Attachment 4 design standards (PC1), which are included in SWMP Appendix D. The County will implement a Low Impact Development incentive program in permit year two (PC5). The County listed the Los Angeles County Standard Urban Stormwater Mitigation Plan (SUSMP) as an example of available information. The County co-sponsored, with the Water Board, an LID workshop in November 2005, which brought together LID experts from across the nation and County personnel are well aware of the resources available regarding LID practices. The County applied for and received grants to implement two LID projects within the County. One project, located in Santa Margarita⁵, includes design and construction of an LID demonstration/pilot project, development of an LID design standards manual, and review of the County ordinances needed to implement LID. The other project includes an LID demonstration project in Templeton⁶ and a report that can be used to help update County Public Works Standards and encourage the use of LID. The County is committed to a comprehensive post-construction storm water program that will be developed and implemented by the end of permit year three.

9. The draft program indicates that it will "Implement routine inspection and cleaning procedures for schedules for storm drain catch basins and other components of the storm sewer system that require cleaning at least twice per year on an ongoing basis." (Program at 71.) This BMP will be implemented in year 2. Based on this brief description it is unclear what the County proposes to do with respect to storm drains. A basic component of storm water management programs is to inspect and clean all catch basins and storm drains multiple times throughout the year, and definitely prior to the rainy season. Other programs also include stepped-up inspection and cleaning for hot-spot areas. All of these measures are lacking in the proposed program. (*p 4, paragraph 3.*)

Response: The County must specify that the storm sewer inspection and maintenance procedures and schedules are for all components of the storm drain system. The Monterey Regional SWMP includes a BMP to inspect 100% of confluent manholes in Hot Spot areas listed in the SWMP annually. San Luis Obispo County is committing to inspecting and cleaning the entire storm drain system twice annually. The draft Resolution requires that the County SWMP include language clarifying that the entire storm drain system will be inspected twice per year and cleaned twice per year or more

⁵ Proposition 40 Urban Stormwater Program Grant 06-214-553-0, Implementation of Low Impact Development and Design Standards in San Luis Obispo County

⁶ Proposition 40 Urban Stormwater Program Grant 06-216-553-0, Florence Street LID Pedestrian Improvements, County of San Luis Obispo

frequently as necessary, and that the County document the criteria to determine how frequent particular areas need to be cleaned.

10. The draft Program merely indicates that street sweeping will occur on a “quarterly or sooner” basis in “heavily soiled areas” and will begin in the second permit year. (Program section 4 at 70.) Such street sweeping efforts are unacceptable given that street sweeping is a basic municipal activity and most communities have weekly street sweeping – especially in high traffic areas. Moreover, it is unclear what the draft Program purposes to do for all other streets. (*p 4, paragraph 4.*)

Response: The commenter suggests that the County is committing to Quarterly Street sweeping in heavily soiled areas only. BMP MO2A reads, “Sweep county roads with storm drains, curb, and gutter in the NPDES permit coverage area on a quarterly basis or sooner in heavily soiled areas.” BMP MO2A indicates that County will sweep quarterly. They will sweep sooner (more frequently) in heavily soiled areas. The County does not currently have a street sweeping program. The County must obtain equipment and hire personnel to conduct the street sweeping program. The benefits should be immediate once the program begins because the County has not swept streets in previous years. It is not clear what other streets the commenter is referring to with the statement, “it is unclear what the draft Program proposes to do for all other streets.”

The US EPA menu of BMPs includes street sweeping and indicates, “A successful program will need to be flexible to accommodate climate conditions and areas of concern. Areas of concern should be based on traffic volume, land use, field observations of sediment and trash accumulation and proximity to surface waters (CASQA, 2003). Street sweeping in these areas may need to be increased and the schedule amended. It is recommended that schedules include minimum street sweeping frequencies of at least once a year.”⁷ San Luis Obispo County’s initial program will include quarterly street sweeping. The draft Resolution requires the County update the SWMP and identify heavily soiled areas or other areas that will require street sweeping more frequently than quarterly. The County must explain how they will identify areas for more frequent street sweeping in BMP MO2A. The County must include a BMP for sweeping County-owned parking lots and include parking lots in the frequency analysis in BMP MO2A. The County must commit to track curb miles swept and the amount of material collected annually.

11. The County cannot proffer a collection of pre-existing activities to meet its obligations under the Clean Water Act and Porter-Cologne Act. Moreover, the County cannot use its pre-existing activities as a basis to delay implementation of basic program components – especially when these components are currently implemented within the Central Coast as well as in similarly sized communities throughout the United States. In fact, the County has had over two years to “develop” and “establish” these components since the first draft was submitted in 2004. (*p 5, paragraph 1.*)

⁷ <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=99>

Response – The US EPA points out that permittees can use existing activities to meet Phase II storm water requirements. "EPA also recognizes that some MS4s may already be meeting the minimum measures, or that only one or two additional practices may be needed to achieve the measures. Existing stormwater management practices should be recognized and appropriate credit given to those who have already made progress toward protecting water quality. There is no need to spend additional resources for a practice that is already in existence and operational."⁸

The County has worked to revise the SWMP since the 2004 submittal, but is not obligated to establish program components prior to receiving Water Board approval for the SWMP.

10 (a) Examples of components that are delayed are:

- Storm drain stenciling for all communities (Program section 4 at 20, 40)

Response: The County will mark all storm drains in the permit area by permit year three. All new development will require storm drain markings starting in permit year one.

- Mapping delayed over five years (Program section 4 at 48)

Response: Mapping for all County areas will occur in permit years one and two. The County will update the maps annually thereafter (IL2).

- Ordinance adoption delayed to years 2-5 (Program section 4 at 47, 53, 56, 62)

Response: Two of the ordinances will be adopted in year two and the other two ordinances will be adopted in year three. Ordinance drafting and adoption takes time. The County has staggered the development and adoption of the ordinances over a three-year period to allow for adequate time to develop a well-planned set of requirements and to allow public participation.

- Illicit discharge and detection checklist and enforcement delayed to year 3 (Program section 4 at 50, 51, 52)

Response: The County will develop and implement procedures and a checklist for detecting illicit connections and discharges in permit year one (IL4). Enforcement does not take place until year three because the illicit discharge ordinance will be adopted in permit year two. The County must

⁸ See US EPA web site http://cfpub.epa.gov/npdes/stormwater/menuofbmps/bmp_background.cfm

have authority to enforce against illicit dischargers before it can proceed with enforcement.

- Municipal staff training of construction sites (Program section 4 at 59)

Response: Staff training begins in permit year one and is conducted annually throughout the permit term (MO1).

- Post-construction measure delayed until year 3 (Program section 4 at 62-64)

Response: The County will adopt revisions to the County Land Use ordinance in permit year three to require specific post-construction requirements for new development and redevelopment projects (CON1). The SWMP is a five-year program with numerous commitments throughout the permit cycle. The commenter assumes that modifying the proposed schedule to adopt the ordinance in year one or two will not affect any other SWMP commitments. The County has prioritized the development of various SWMP components in order to maximize the number and types of BMPs that will be implemented. The commenter provides no reason for moving the post construction measure up a year and has not provided an argument for the relative importance of this BMP over any other which is due for permit year one or two. The General Permit allows a ramping-up period for permittees to get programs established.

- Street sweeping delayed to year 3 (Program section 4 at 70)

Response: The County does not have an existing street sweeping program. The County must purchase equipment and hire and train staff to implement the street sweeping program while implementing all other year one and two SWMP BMPs.

- Storm drain inspection and cleaning delayed to year 2 (Program section 4 at 71)

Response: The County will inspect the storm drain system twice per year starting in permit year one (IL4). The County will clean the storm drain system twice per year (MO3), but must first hire and train additional personnel to properly clean the system twice per year.

12. The draft Program misapplies the MEP standard by excluding consideration of its guiding principle—technical feasibility. This misapplication of the MEP standard is compounded by the draft Program's concentration on costs and available resources as a basis for limiting its BMP and measures. (See, e.g., Program section 1 at 2, section 2 at 10.) These assertions are difficult to understand considering that the County's proposed 2006-2007 budget for all funds is \$434,540,960 with general fund

budget of \$357,975,916. (County Budget Message 2006-2007 (May 8, 2006).) Thus, the County's storm water budget of \$138,000 even with a reported \$28,000 increase for the new program is less than 1 percent of all funds. Cost limitations become more tenuous given that the County boasts "continued solid growth in local revenue" and "an improved state financial outlook". (County Budget Message 2006-2007 (May 8, 2006).) (*p 5, paragraph 2.*)

Response: The storm water budget referenced covers the County's storm water program manager. The County submitted a budget estimate letter dated September 11, 2006, indicating that the County's estimated annual SWMP implementation costs for permit year one will be \$1.64 million⁹. This represents spending of over \$70 per household, well in excess of the costs in the January 2005 State Water Board NPDES Stormwater Cost Survey, which ranged from \$18-\$46 per household.

The commenter does not indicate whether particular BMPs were excluded based on a lack of technical feasibility, or whether particular additional BMPs should be included or developed.

13. The components of the draft Program fail to include detailed commitments and quantifiable targets. For instance, the public education and public participation program fails to indicate what will actually be required. It fails to include the corresponding quantitative numbers, such as, events attended, the audience reached, surveys conducted, or financial commitment by the County for public participation events, like coastal and creek cleanup. (See, e.g., Program section 4 at 39-41.) Moreover, the commitments of the other six communities covered by the Program are unclear or non-existent with respect to storm water pollution control. (*p 5, paragraph 3.*)

Response: The SWMP contains numerous quantifiable targets including distributing educational materials to all residents (PE5), developers (PE8), commercial facilities (PE6), and industrial sites (PE7) within three years. The County will conduct a public opinion survey in year one, with a target to achieve 20% response rate or greater (PE2A). The County will conduct follow-up surveys in permit years three and five (PE2B). The County's educational program will reach 35% of school children per year (PE10). The County will support and participate in at least one public event per year in each community covered by the permit, for a total of ten events per year (PE16). The County will broadcast storm water television and radio public service announcements, with goals to reach 180,000 individuals with television (PE3) and 60,000 individuals with the radio ads (PE4).

The County's SWMP contains adequate quantifiable BMPs, and although there are numerous unquantifiable goals, the combination is appropriate. The draft Resolution requires that the County's annual reports include specific information about all events and programs cosponsored by the County that are listed throughout the SWMP,

⁹ County of San Luis Obispo September 11, 2006, Budget Letter submittal to the Water Board.

including the number and type of events/programs anticipated for the upcoming year, and the County's role in those events and programs.

14. The proposed Program fails to adequately address storm water pollution impacts on the California sea otter. Abundant scientific evidence shows that land based pollution—including but not limited to polluted storm water runoff—is the leading source of sea otter mortality and morbidity caused by infectious disease. Several scientific articles identify surface runoff as a possible source of pathogens causing otter deaths. In light of the overwhelming scientific evidence and importance of otters, the proposed Program—as the chief tool for controlling polluted storm water runoff—must include a comprehensive and proactive component to address storm water pollution impacts on sea otters. In this connection, given that the Regional Board documents take the position that “non-point sources” i.e. runoff, as opposed to primary-treated wastewater, is the likely source of pathogens affecting the otter, that failure to require effective program elements here is difficult to understand. (pp. 6-13.)

Response: See response to comment 2.

15. The draft Program proposed to rely on materials that are nearly half a decade old in developing its LID manual. Instead, the draft Program should utilize more recent LID materials. Recent advancements have been made in the implementation of LID practices, as discussed in *Rooftops to Rivers*. A list of resources discussing these advancements is also attached to this letter. Specifically, in developing its manual, the County should utilize sources, inter alia, such as: 1) Low Impact Development: Technical Guidance Manual for Puget Sound (Jan. 2005); (2) Technical Memorandum No. 1: Review of Low-Impact Development Techniques (Jan. 2004); (3) Technical Memorandum No.3: Suggested Adaptations to BMPs in Washington Stormwater Management Manual to Include Benefits of LID Techniques (Jan. 2004). Equally important we urge swifter implementation of LID measures considering their technical feasibility, cost-effectiveness, and the rapid development in the County. (*p 13, last paragraph.*)

Response: See response to comment 7.

Response to Comments from the Natural Resources Defense Council December 10, 2004 Letter

16. The County of San Luis Obispo (County) and neighboring municipalities must take a more integrated approach by submitting a single SWMP, imposing requirements for entities in the entire region. The SLO County Partners for Water Quality realized that an integrative approach was “more cost effective and efficient to develop and implement Storm Water Pollution Prevention Public Education and Outreach Plan on a regional basis rather than as individual agencies. (*p 9, paragraph 4.*)

Response: Although there may be advantages to a regional approach, it is not a requirement at this time. The County participates in the San Luis Obispo County Partners for Water Quality, which includes the cities within San Luis Obispo County. The group shares public education and outreach resources to reach as many citizens as possible with a consistent message for all communities.

17. Although BMPs must be used to address the six minimum control measures (MCM), the more fundamental purpose of a stormwater management program is to “reduce the discharge of pollutants from the permitted MS4 to MEP to protect water quality” and to meet water quality standards. The County’s SWMP notes that “[t]he NPDES Phase II Final Rule and the MS4 General Permit mandate that regulated entities develop and implement SWMPs to reduce stormwater pollutants to receiving waters to the maximum extent practicable.” This policy statement must also include that SWMPs must reduce pollutants to MEP and comply with receiving water limitations. *(p 11, first full paragraph.)*

Response: SWMP Section 3.1 includes the statement, “The Stormwater Phase II Final Rule and the MS4 General Permit require that the County implement a SWMP that reduces stormwater discharges to the maximum extent practicable to protect water quality, meet water quality standards, and comply with receiving water limitations.”

18. The Public Education and Outreach BMPs fail to target specific audiences. The SWMP identifies only four major target audiences (homeowners, construction industry, commercial, and school age children and you adults). *(p 13, paragraph 3.)*

Response: The SWMP targets seven audiences including residential audiences (PE5), commercial businesses (PE6), industrial facilities (PE7), development and construction industry (PE8), school age children (PE10), college students (PE11), and tourists (PE12).

19. The Public Education and Outreach program needs to be enhanced by describing what type of “reach out” materials will be used and who specifically in the targeted audiences, they will be reaching out. The SWMP must include more specificity about how the County and other interested entities will target the identified audiences. This is especially important for targeting commercial businesses and homeowners because these groups are almost completely left out of the program. *(p 13, paragraph 3.)*

Response: The County will distribute educational materials to commercial businesses such as restaurants, automobile service facilities, mobile cleaning businesses, contractors, landscape service companies, property management companies, and to all residents in the permit areas. SWMP section 4 pages 25 – 36 provides details regarding the type of outreach materials used by the County. The County will use brochures, flyers, bookmarks, web site, television ads, radio ads, information booths at public events, eco-bags, enviroscape watershed model, storm drain markings, and the Our Water Our World Program in local hardware stores to reach out to the community.

The County will conduct public opinion surveys (PE2) in permit years one, three, and five. The survey data will help guide the County's message, who they should target more aggressively, and the most effective way to distribute the information.

20. The County SWMP must tie the construction industry educational measures in the latter MCMs into the Public Education and Outreach measures to comply with the MEP standard. *(p 14, paragraph 1.)*

Response: BMP PE8 provides for the distribution of educational materials to the development and construction industry. The County commits to distributing educational materials to all construction permit applicants (CON4) and will develop and distribute construction site BMP policy and procedures guidance manuals (CON5).

21. The Public Education and Outreach program needs more specificity with respect to message strategy and specific education strategies. Message strategies include more analysis of information and audiences, demographic composition, survey of common perception, initial program messages, and tailoring core messages. Specific education strategies include methods of education (training videos, workshops, activity specific BMP training, newsletters, flyers, BMP manuals, bumper stickers, hotlines, watershed signs, special events, etc.), media relations, partnerships, and government relations. *(p 14, paragraph 3.)*

Response: Initial specific educational strategies will include television and radio ads, web site, brochures and flyers, public event participation, eco-bags, storm drain markings, a low impact development manual, and using the enviroscape watershed model. The County will conduct public opinion survey in permit years one, three, and five (PE2). The initial survey will help the County understand public awareness and attitudes towards urban runoff and allow the County to direct the public education and outreach program. The County will also implement a community based social marketing incentive program to motivate storm water pollution prevention behavior changes (PE25).

22. The Public Education and Outreach program needs a more aggressive implementation schedule. For example, BMP#2 needs to require that the County cover each school every two years. The County SWMP must address education about pet waste in a more expeditious manner. *(p 14, paragraph 4.)*

Response: The County will distribute educational materials to all schools in the permit area every three years (PE10A). The County annually provides Sammy the Steelhead activity books to pre-school and grade 1 children (PE10B) and provides Sammy's Club educational materials and activities for children pre-school through grade 6 (PE10C). The County will distribute pet waste educational materials starting in permit year one (PE18).

23. The Public Participation MCM requires more BMPs. The County's SWMP contains only a few of the possible BMPs outlined by the EPA for public participation. The

EPA provides an enhanced menu of BMPs that are needed for this program to meet the MEP standard and meet water quality standards such as wetlands plantings and reforestation programs as a means to enhance public participation. (*p 15, paragraph 2.*)

Response: The County will promote and support community reforestation programs (PP5C), volunteer water quality monitoring (PP5), a storm drain marking program (PP4), and adopt a storm drain programs (PP7). The County will hold two stakeholder meetings/workshops per year to allow for public participation and annual report review (PP2). The BMP Menu is intended as a list of possible BMPs. EPA does not suggest that a particular discharger adopt all, or even a minimum number, of the potential BMPs. Water Board staff will review BMP effectiveness annually and will recommend SWMP changes as needed.

24. The EPA menu for public participation BMPs also includes watershed organizations, stakeholder meetings, attitude surveys, and community hotlines. The County's SWMP includes stakeholder provisions, but must include the other three BMPs amongst others. (*p 15, paragraph 3.*)

Response: The County SWMP includes stakeholder meetings (PP2), public opinion surveys (PE2A), and community hotlines (PE17). The BMP Menu is intended as a list of possible BMPs. EPA does not suggest that a particular discharger must adopt all, or even a minimum number, of the potential BMPs.

25. The public education and outreach target dates must be accelerated. For example the storm drain-marking program, BMP #11, needs to collapse the first two measurable goals into year one. The County must attempt to mark a greater percentage of storm drains each year. (*p 15, paragraph 4.*)

Response: The County will recruit and organize community volunteers and mark all storm drains in the permit area by the end of permit year three (PP4A). The County will require all new development projects mark storm drains beginning in permit year one (PP4B). The commenter has not provided an argument for the relative importance of this BMP over any other which is due for permit year one or two. The General Permit allows a ramping-up period for permittees to get programs established.

26. BMP #12 to adopt an ordinance prohibiting illicit discharges only outlines the general policy in support of an ordinance and only provides a vague description of how it will accomplish this goal. The SWMP fails to identify exactly what an ordinance should contain, and what authority the County needs for an effective storm water management program. A model ordinance must be included to provide this detail. (*p 16, paragraph 2.*)

Response: The County will adopt an ordinance prohibiting illicit discharges into the storm sewer system that will include a system of enforcement and penalties (IL1). The County is not required to include a model ordinance in the SWMP, but has indicated

that it will use model ordinances to help draft the ordinance. The SWMP includes a list of non-storm water discharges and the manner in which the County will deal with the discharges (table 4.3.1).

27. For measurable goal 12-2, the SWMP must include a public review process for the ordinance before it reaches its final form. This accomplishes numerous goals, including greater involvement by the public and creating an ordinance tailored to the specific needs of the citizens of San Luis Obispo. The County failed to include how it intends to meet this goal. The last sentence of the BMP states, [t]he County will educate county employees, business, and the general public about storm water pollution from illicit discharges and illegal dumping to the storm sewer system to support compliance.” This last sentence is its own BMP and it should be set out separately and should include target dates for educating the various groups. (p 16, paragraph 2.)

Response: The County is obligated to follow a public process for ordinance drafting, review, and adoption. BMPs PE5 – PE12 are public education and outreach BMPs that address how the County will educate various target audiences including residents, commercial facilities, industrial facilities, developers, contractors, school children, and tourists.

28. The County must accelerate the pace of storm sewer system mapping program. Under the County SWMP it will take five years to map the entire storm sewer system. (p 16, paragraph 3.)

Response: The County will complete the storm sewer system maps for the permit areas by the end of permit year two (IL2) and will update the maps annually.

29. BMP #15 to post signs prohibiting illegal dumping in areas experiencing large amounts of illegal dumping fails to discuss which areas are covered and when the signs will be posted. (p 17, first full paragraph.)

Response: The County will survey county road maintenance employees to identify and prioritize the top ten locations with illegal dumping issues. The County will post signs prohibiting dumping in the top ten areas (IL8) by the end of permit year three.

30. BMP #18, which is to provide a storm water pollution prevention hotline for the public, does not explain how the public will find out about the hotline and how the hotline will address the reports of illicit discharges. The BMP needs to be integrated with a hotline in the Public Participation and Involvement MCM. (p 17, paragraph 2.)

Response: The pollution prevention hotline will be integrated and will cover all citizen reports concerning stormwater pollution issues (IL3A). The County will document all calls, follow up actions, and will track response times and trends. The County will advertise the hotline and provide instruction for using the hotline in materials distributed through the public education and outreach program (IL3B).

31. The BMPs addressing construction site runoff do not include mechanisms to receive public information on construction activities and storm water. *(p 17, paragraph 4.)*

Response: The County will use their public storm water pollution prevention hotline to receive information from the public regarding construction activities (CON7). Hotline operators will be trained to forward citizen reports about construction activity to Planning and Building Code Enforcement. The County will promote the use of the hotline through its public education and outreach program (PE17B).

32. BMP #19 provides a plan to educate the construction industry, but the BMP and measurable goals do not describe how and when this information will be disbursed. Further there is no description of the means used to educate the construction industry about reducing storm water impacts on water quality. *(p 18, first full paragraph.)*

Response: The County will provide construction education material with permit applications (CON4). The County will also develop and distribute construction site BMP policy and procedures guidelines (CON5) and a low impact development manual (PC5).

33. BMP #20 requires revision of land use ordinances but does not detail how much revision is needed and what types of problems these revisions will solve. This BMP needs a model ordinance to make it more specific. *(p 18, paragraph 2.)*

Response: The County will revise the existing grading ordinance to comply with the General Municipal Permit requirements including provisions for enforcement and penalties for noncompliance. The number of revisions and the type of problems the revisions will solve depends on the current land use ordinances. The County will ensure the ordinance is consistent with the General Construction Storm Water Permit (CON1).

34. BMP #21 states that “[t]he County will create a procedure for reviewing construction site plans.” This language lacks details, which would create certainty in the goals of the program and the ability to have actual measurable goals. The SWMP must contain specific procedures and enforcement control measures. There must be timetables and guidelines about when, how, and why these reviews will be undertaken. *(p 18, paragraph 3.)*

Response: The County will review grading plans to verify that erosion and sediment control BMPs are included and adequate prior to issuing permits for the project (CON2). The County will inspect construction sites (CON3) to ensure BMPs are implemented and maintained as outlined in the site storm water pollution prevention plans and will enforce construction site requirements (CON1B).

35. The Construction Site Runoff MCM is wholly inadequate because of huge holes in its BMPs to address this extremely important MCM. The EPA National Menu of BMPs

provides an invaluable source for specific BMPs that combat construction runoff such as sanctions such as fines, bonding, nonmonetary penalties, and/or permit denials for lack of compliance. This same document contains suggestions for site plan review and site inspection and enforcement control measures. (*p 18, paragraph 4.*)

Response: The SWMP includes BMPs that address construction BMP implementation and enforcement. The County must revise its grading ordinance to provide enforcement authority for the County. If the County proposes an ordinance that does not include enforcement authority that meets the MEP standard, the ordinance will not be in compliance with the requirements of the General Permit, and the Water Board will require any necessary revisions at that time.

36. The County SWMP fails to include specifics about the requirements of Attachment 4 of the General Permit and how the County intends to ensure that discharges do not cause or contribute to a violation of an applicable water quality standard. (*p 19, paragraph 3.*)

Response: The County will revise existing land use ordinances to include the General Permit Attachment 4 design standards (PC1). The County will establish post-construction storm water management as part of the development review process in permit year one (PC3). All projects will be reviewed for site designs consistent with the required design standards. The County will inspect all projects to ensure that post-construction runoff controls are installed and properly maintained (PC4).

37. The General Permit requires the implementation of strategies, “which include a combination of structural and/or non-structural BMPs appropriate for the community.” The SWMP includes a few non-structural BMPs including zoning and sprawl reduction, but it needs more. It must include more non-structural and structural BMPs, which are wholly lacking from the program. The County SWMP must include more of these measures with specifics about the method and timeframe of implementation. (*p 19, paragraph 4.*)

Response: Non-structural BMPs include ordinance adoption with General Permit Attachment 4 Design Standards (PC1), CEQA initial study checklist revision (PC2), making post-construction storm water management review a part of the development review process (PC3), post-construction BMP site inspections (PC4), provide Low Impact Development (LID) education and outreach materials to project applicants, contractors, and developers, and an LID incentive program. Post construction structural BMPs will be included in the County LID design manual (PC5) that will be published in permit year two.

38. The County SWMP must include SUSMPs. SUSMPs were developed to address stormwater pollution from new development and redevelopment because they are major sources of pollution. Utilization of design standards, such as SUSMPs, is key because it is an effective way to combat storm water pollution. However, because of

the inadequacy of the current program, the County must comprehensively revise the program to add specific details and BMPs for the various components. *(p 20, first full paragraph.)*

Response: The County will develop and implement a Low Impact Development (LID) design standards manual that will contain post construction BMPs (PC5) and will consider the SUSMPs in developing the manual. The County's ordinance will also include the design standards of Attachment 4 of the General Permit.

39. The Pollution Prevention and Good Housekeeping MCM need more aggressive target dates. BMP #28 needs a more rapid implementation schedule. The current schedule allows four years to train County employees. *(p 21, paragraph 2.)*

Response: The County will train all municipal operations staff annually (MO1B) starting in permit year one.

40. The implementation schedule for BMP #29 must also be accelerated. More storm drains must be cleaned per year to have an effective program. *(p 21, paragraph 2.)*

Response: The County will implement routine inspection and cleaning for the storm sewer system twice per year starting in permit year two (MO3) starting in year one.

41. BMP #35 requires more specificity in order to transform it into a BMP envisioned by federal law and the General Permit. The measurable goal 35-4 states that the County will, "Audit for compliance periodically as part of the county facility inspection program." The County SWMP must have greater detail as to how many times facilities will be audited and which facilities will be targeted. *(p 21, paragraph 3.)*

Response: The County will inspect all County facilities annually to ensure ongoing compliance with facility storm water pollution prevention plans (MO6).

42. The EPA advises that there be "ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices." The BMPs in this MCM (Pollution Prevention and Good Housekeeping) examine existing projects, but do not ensure that new flood management projects assess the impacts on water quality. The closest that the SWMP comes to addressing these future projects is in BMP #28 which is simply an educational program for employees of the government. *(p 21, paragraph 4.)*

Response: The County's operations and maintenance programs require the use of BMPs to ensure water quality protection (MO1). All County staff will be trained annually to incorporate pollution prevention BMPs. The revised initial CEQA checklist (PC2) will include urban runoff quantity considerations for all projects. County flood control projects must go through the CEQA process.

43. The municipal maintenance BMPs generally lack specificity and breadth in their coverage of municipal activities. Many of the BMPs need accelerated target dates. BMP #29 deals with developing and implementing a schedule for storm drain cleaning. Under the BMP 90% of the storm drains will have implementation of a cleaning schedule in five years. (*p 22, paragraph 1.*)

Response: See response to comment 26.

44. BMP #37, which deals with county landscaping procedures, is extremely vague. The County will review procedures for “storm water pollution prevention consideration.” In the measurable goals section, the County will audit for compliance “periodically.” Measurable goals are meant to be quantifiable in order to allow assessment of SWMPs. (*p 22, paragraph 2.*)

Response: The County will implement landscaping and lawn care storm water pollution prevention procedures for County facilities including parks, golf courses, and other recreational facilities, government buildings, operational facilities, and parking lots (MO11). In permit year one, the County will audit its landscape and lawn care procedures and practices for storm water pollution prevention opportunities. The County will revise procedures and train employees in permit year two based on the audit findings (MO11B). The County will inspect the facilities for compliance annually (MO11C).

45. The municipal maintenance program needs requirements for public vehicle maintenance procedures and facilities. (*p 22, paragraph 3, first bullet.*)

Response: The County will implement procedures to prevent storm water runoff pollution from County vehicle and equipment washing (MO9) including using commercial vehicle washing systems that discharge to the sanitary sewer system.

46. The municipal maintenance program needs BMPs for landscape and recreational facilities management, including procedures for proper application of pesticides, procedures to prevent the disposal of landscaping materials into the MS4, procedures to schedule irrigation to minimize pesticide and fertilizer runoff, and BMPs to minimize trash and debris entering the MS4. (*p 22, paragraph 3, second bullet.*)

Response: See response to comment 30.

47. The municipal maintenance program needs BMPs for conducting emergency repairs of essential public facilities and services and responding to natural disasters. (*p 22, paragraph 3, third bullet.*)

Response: Essential public facilities include sanitary sewer collection and treatment systems, and water supply systems. In the case of a natural disaster, the County’s emergency response plan will dictate the County’s response and priorities. Public

health and safety are the first priorities following a major natural disaster. The County will be required to comply with SWMP requirements, but the Water Board will consider natural disasters or disasters outside the control of the County when evaluating compliance with the General Permit.

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