

**California Regional Water Quality Control Board, Los Angeles Region
Los Angeles County Municipal Storm Water Discharge Permit
Response to Comments on the June 29, 2001 draft**

Commentors	Comment	Staff Response
Burke Williams and Sorenson (BWS), [R Tahir, Baldwin Park, Carson, Claremont, Compton, Duarte, Lakewood, Montebello, San Gabriel, San Marino, Whittier (RT)], Coalition for Practical Regulation (CPR), Executive Advisory Committee (EAC)	<p><u>1. Unfunded Mandate</u> Support clean water but the permit requirements cost money to implement. It constitutes an unfunded mandate.</p>	<p>Compliance with the Clean Water Act (CWA) is not predicated on the availability of funding. The requirements of the LA County MS4 permit are the same as that which would be expected under the CWA. There are no additional requirements that would constitute a supplementary requirement imposed separately and solely under the authority of the California Water Code (CWC). Thus the permit provisions are not subject to the California Constitutional bar on unfunded mandates. Proven successful financing programs nationwide include storm water utility fees and sewer fees. For more information on financing information please see, http://stormwaterfinance.urbancenter.iupui.edu/</p>
Natural Resources Defense Council (NRDC), Santa Monica Bay Keeper (SMBK)	<p><u>2. Completeness of Permit Application</u> Permittees have not submitted necessary information to the Regional Board for permit issuance. Such information is important for the successful development and implementation of programs. The Regional Board cannot lawfully issue the permit if the necessary information has not been submitted</p>	<p>The first term LA County MS4 permit was issued in 1990 prior to the promulgation of USEPA Phase I storm water regulations. Some of the application requirements under 40 CFR 122.26 may not have been strictly met at that time. Prior to the permit being reissued in 1996, Regional Board staff reviewed the reapplication and determined that it was consistent with USEPA's Reapplication Policy (61 <i>Fed. Reg.</i> 41697) which was in draft form then. This Policy essentially states that the MS4 reapplication for reissuance for a subsequent five-year permit term should contain certain basic information, information for proposed changes, and proposed improvements to the storm water management program and monitoring program. Regional Board staff concur that information necessary for the successful development and implementation of programs should be obtained. However, such information can be developed during the permit term as well, without holding up permit reissuance (See, In Re: City of Irving, Texas, NPDES Appeal No. 00-18, at 23 (EAB, July 16, 2001). Regional Board staff opine that the draft permit incorporates necessary provisions to obtain any information that is lacking for the implementation of a successful program.</p>

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<p>Diamond Bar (DB), RT, [Arcadia, Culver City, Hawthorne, (AR)], Charles Abbott and Assoc. (CAA), Rutan and Tucker (R&T), CPR, Richards Watson and Gershon (RWG), BWS, Building Industry Assoc and Construction Industry Coalition on Water Quality (BIA)</p>	<p><u>3. Enforcement</u> Retain the Notice to Meet and Confer provision that requires the Regional Board Executive Officer to meet with a Permittee prior to initiating a formal enforcement action.</p>	<p>The Regional Board is required to adhere to the State Board Enforcement Policy (Resolution No. 96-030) which established a progressive enforcement approach to ensure consistent, predictable, and fair enforcement of regulations. The Policy does not have a ‘Notice to Meet and Confer’ provision. The first level of enforcement is the issuance of a Notice of Violation (NOV). The NOV provides the Permittee the opportunity to demonstrate compliance, before the enforcement action is escalated to a penalty phase. The Regional Board Executive Officer has always been open to meeting with Permittees and interested parties to discuss permit issues irrespective of any other provision in the permit.</p>
<p>Heal the Bay (HtB), NRDC, SMBK</p>	<p><u>4. Comparison with the Ventura County and City of Long Beach MS4 Permits</u> The draft permit appears weaker in several permit provisions than either the City of Long Beach MS4 permit or the Ventura County MS4 permit. These permits should set the baseline and no section of the proposed permit for LA County should be weaker. The specific areas are, (i) TDML Language; (ii) Criteria for applying SUSMPs to ESAs; (iii) Single Family Hillside Homes; (iv) monitoring reduction for non-detected pollutants; (v) toxicity testing requirements.</p>	<p>Corrected where true. The TMDL language has been revised to be identical to that in the Ventura County and LB MS4 permits.</p> <p>In the case of SUSMP criteria for ESAs, Regional Board staff has proposed thresholds to be responsive to the State Board decision in Order No. WQ 2000-11. In that decision, the State Board set forth types of evidence and criteria necessary for inclusion of ESAs in subsequent permits, including thresholds (See memorandum from Office of Chief Counsel to Regional Board Executive Officers dated December 26, 2000). The Ventura County MS4 permit precedes the State Board decision, as does the LB MS4 permit. A petition by several Ventura County MS4 Permittees on the ESA matter is being held in abeyance by the State Board, pending Regional Board consideration of the issue during reissuance of the LA County MS4 permit. For a complete discussion of the ESA matter see, Fact Sheet/ Staff Report – Attachment, Technical Report: ‘Mitigation of Storm Water Impacts from New Development in Environmentally Sensitive Areas’.</p> <p>The draft permit incorporates narrative SUSMP requirements for single family hillside homes and applies the numerical mitigation standard to single family hillside developments of one or more acres of surface area. It is correct that the State Board decision in Order No. WQ 2000-11 approved the hillside category without a threshold and that neither the Ventura County MS4</p>

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		<p>permit nor LB Ms4 permit contain one. However, Regional Board staff is persuaded that there is no technical basis to support different post-construction requirements for hillside development as compared to developments on flat land. The primary differences occur during construction and not post construction. Hillsides are more susceptible to erosion and sediment loss from exposed land than is flatland. This difference in potential risk is addressed through BMPs under the Development Construction provision. The proposed threshold will normalize the numerical mitigation standard for hillside development with general housing development.</p> <p>The monitoring reduction for non-detected parameters has been revised to be similar to that in the Ventura County MS4 permit.</p> <p>The toxicity-testing requirement has been revised to be similar to that in the LB MS4 permit.</p>
<p>Burbank (Brb), Calabasas (Cal), DB, AR, RT, R&T, RWG, BWS, BIA</p>	<p><u>5. Receiving Water Limits Language</u> The statutory requirement for municipal storm water discharges is to reduce the discharge of pollutants to the maximum extent practicable (MEP standard). [CWA § 402(p)(3)(B)(iii)] The proposed language in the draft requires also that storm water discharges achieve water quality standards, thus nullifying the MEP standard. Which criteria will the Board use when determining compliance? CWC § 13263(a) requires the Regional Board to consider reasonableness and economics when prescribing waste discharge requirements. As written it invites third party lawsuits because Permittees will be out of compliance as soon as the permit is adopted. The language in the current permit, 'timely and complete implementation of model programs....shall satisfy the</p>	<p>The draft permit incorporates the RWL adopted by the State Board in its precedential decision in State Board Order No. WQ 99-05. The State Board Office of Chief Counsel has clarified that the U.S. Appellate Court decision in <i>Defenders of Wildlife v. Browner</i> 191 F.3d 1159 (9th Cir., 1999), did not contradict the RWL and that the State Board Order stands (Memorandum dated October 14, 1999, from Senior Counsel Elizabeth Jennings to Executive Director, Walt Petit). Also, the USEPA in prior comments to the State Board on the RWL in MS4 permits cites NPDES regulations at 40 CFR 122.44(d)(1)(i) as requiring effluent limitations where discharges, 'will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.....' and that the CWA § 301(b)(1)(C) does not provide the "not in violation" exception to compliance with water quality standards when exceedences occur (Letter of March 17, 1998 from Alexis Strauss, Water Division Director, USEPA Region IX, to Walt Petit, Executive Director, State Board). The State Board's interpretation of RWL can best be inferred from the Caltrans MS4 permit it issued in 2000 (Board Order No. DWQ), which includes language very similar to the RWL in this draft permit.</p> <p>The RWL provision in the draft permit requires Permittees to implement programs to reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP). For those pollutants in storm water discharges that cause or contribute to the exceedences of water quality standards, Permittees will be required to implement additional controls to eliminate these exceedences. So long as Permittees continue to implement more and better controls to eliminate the exceedences, a citizen lawsuit brought under CWA (33 U.S.C. §1365) is unlikely to go forward. The Regional Board retains its discretionary authority to bring an enforcement action for exceedences of a water quality standard (<i>Sierra Club v. Whitman</i>, Case No. 00-16895,</p>

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	<p>requirements of this section' should be reinstated in the draft. Further, the language is inconsistent with State Board Order No. 99-05, which states that Permittees will not be in violation of water quality standards so long as they follow an implementation schedule. State Board Order No. 98-01 excised the 'cause or contribute' text from the compliance language. The U.S. Appellate Court decision in <i>Defenders of Wildlife v. Browner</i> 191 F.3d 1159 (9th Cir., 1999) defeats the interpretation in State Board Order No. 99-05.</p> <p>There is no justification for Permittees to have not upgraded the Storm Water Quality Management Plan to address water quality exceedences, especially in a third permit term. Water quality objectives in Table B of the California Ocean Plan apply to all discharges to the Ocean including non-point source and storm water.</p>	<p>9th Cir. (2001))</p>
HtB	<p><u>5.a. Numeric Effluent Limits</u> The absence of numeric effluent limits for storm water in the permit may be reasons for the extensive impairment of receiving waters from municipal storm water discharges. The ambiguous MEP standard and the iterative approach to augmenting BMPs when water quality objectives are exceeded are not enough based on the experience with implementation</p>	<p>The draft permit incorporates SWMP requirements that serve as effluent limitations consistent with the State Board precedential decisions in Order No. WQ 91-03; Order No. WQ 91-04; and Order No. WQ. No numerical effluent limitations are included at this time. However, the draft permit contains language that makes any numerical allocation or effluent limitations for pollutants in MS4 discharges that are approved through the TDML process, immediately implementable and enforceable under this permit. In addition the RWL authorizes the Regional Board to make a determination, based on receiving water monitoring data, that water quality standards are being exceeded and then require Permittees to submit an implementation plan to eliminate exceedences.</p>

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	during the two past terms of the permit.	
EAC, NRDC, CPR, RT	<p><u>6. Recognition of the EAC</u> Eliminate the requirement that EAC Meetings be subject to the Brown Act (Cal. Gov. Code § 54950 <i>et seq.</i>) because the EAC is not a political decision making body. Eliminate any formal recognition of the EAC because such recognition would also require that other interested parties and coalitions be recognized similarly.</p>	Reference to the EAC has now been deleted in the draft permit. Agree that the EAC is not a political decision making body but rather an informal executive group of permittee representatives. It would not be proper to recognize the EAC in the permit when it does not subscribe to government rules for open meetings.
AR, RT, EAC, CPR	<p><u>7. Open-ended Authority for Modification</u> The draft permit grants the Regional Board Executive Officer unfettered authority to make modifications to certain requirements without public comment.</p>	Incorrect. Modifications to the permit are governed by the ‘Standard Provision: Reopener and Modifications’ 40 CFR 122.41(f), which ensures that non-minor modifications to the permit are undertaken after public comment. Any party aggrieved by the action or inaction of the Regional Board Executive Officer may petition the full Regional Board for review (CWC). Similarly, any authority that the Regional Board delegates to the Regional Board Executive Officer under this permit, is reversible at the discretion of the Regional Board on petition (See State Board Order No. WQ 2000-11).
Covina (COV), LA County Fire, LA County (LAC), LA City (LA), [City of Los Angeles Department of Water and Power, California Water Service Company, Central Basin Water Association, Southern California	<p><u>8. Non-Storm Water Discharges</u> Authorize potable water releases, which are intermittent and generally of short duration, conditionally as is the current practice. Authorize wash-down of trauma scene wastes to the storm drain system.</p>	<p>The draft permit now includes potable water releases from drinking water distribution systems under authorized non-storm water discharges provided the release is done in accordance with American Water Works Association guidelines for dechlorination/ debromination and suspended solids removal.</p> <p>The discharge of trauma waste wash-down to the MS4 is not authorized. The Medical Waste Management Act requires that trauma scene waste be transported to a permitted medical waste transfer station or treatment facility (Cal. Health and Safety Code § 117600 <i>et seq.</i>). This Act preempts the Regional Board from authorizing the discharge of trauma scene waste to the MS4. Several municipalities already implement trauma waste management programs, which avoid discharge to the storm drain system.</p>

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Water Company, South Montebello Irrigation District (Water)]		
HtB, NRDC	<p><u>9. Public Information and Participation Program</u> The education program should be expanded to include measures and assessment of behavioral changes resulting from educational outreach.</p>	<p>The draft permit now includes provisions to evaluate change in behavior resulting from implementation of the public education program to determine effectiveness and help focus or redirect resources.</p>
Brb, DB, AR, RT, R&T, RWG, BWS, LAC, LA, CPR, EAC	<p><u>10. Industrial/ Commercial Inspections</u> The municipality should not be held responsible for the compliance of industrial/ commercial facilities with storm water regulations. The site-education program alone should be sufficient. The municipality may carryout drive-by observations and report problem facilities to the Regional Board for follow-up.</p> <p>The industrial inspection program must require that municipalities inspect industrial facilities to verify compliance with local storm water ordinances. Municipalities must compel the implementation of additional controls at facilities when they are needed to assure compliance with local ordinances.</p>	<p>The MS4 Permittee has a responsibility to make sure that industrial sites comply with local government storm water and urban runoff ordinances. The Regional Board has the responsibility to make sure that facilities ‘discharging storm water associated with industrial activity’ comply with the state’s GIASP.</p> <p>USEPA storm water regulations require the MS4 permittee to obtain legal authority to monitor and controls pollutant discharges to the MS4 from industrial sites (40 CFR 122.26(d)(2)(iv)(C)). The legal authority includes the ability to carry out inspection, surveillance and monitoring procedures (Guidance Manual for the Preparation of Part 2 of the NPDES Applications for Discharges from Municipal Separate Storm Sewer Systems (USEPA1992)). Further, USEPA guidance states that MS4 Permittees shall, (i) identify priority industries discharging to the MS4; (ii) review and evaluate SWPPPs; (iii) require that industrial sites implement BMPs to reduce the discharge of pollutants in storm water; (iv) inspect and monitor compliance at industrial facilities discharging storm water. The USEPA clearly contemplates a dual and a cooperative oversight of facilities ‘discharging storm water associated with industrial activity’, between the permitting authority and the MS4 permittee (55 Fed. Reg. 222, 48000; and Storm Water Phase II Compliance Assistance Guide (USEPA 2000), p 4-32 and 5-11).</p> <p>Further, LA County has conducted a prioritization of critical industrial/ commercial facilities that discharge storm water (Critical Source Selection and Monitoring Report, (LACDPW 1996). It has also conducted monitoring to document that the highest risk sites are indeed significant sources of storm water pollution, and that the implementation of source control BMPs (voluntary good housekeeping measures) at high risk critical source sites are not enough to reduce the discharge of pollutants in storm water (Los Angeles County 1999-2000 Storm Water Monitoring Report (LACDPW 2000)). Given the information that is known, educational site</p>

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		visits and drive-by observations by themselves will not be enough to meet the statutory standard of MEP. At a minimum a MS4 Permittee must implement an inspection program for high-risk industrial/ commercial facilities to verify implementation of controls to reduce the discharge of pollutants. A review of USEPA issued MS4 permits nationwide indicates that an inspection program is incorporated as a basic requirement (Palm Beach County, FL; Tulsa, OK; Denver, CO). Similarly, Regional Board issued MS4 permits in California include an inspection expectation (San Diego County; Santa Clara County; Alameda County; Sacramento County)
Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, Upper LA Water Master	<u>11. Development Planning</u> SUSMP provisions seek to regulate local land-use authority and local government decision making. CEQA preempts such development planning provisions.	Incorrect. The draft permit recognizes that MS4 Permittees are obligated to consider potential storm water impacts when making planning decisions and approving development projects or building permits. The SUSMP provisions are not intended to restrict or control local land-use decision-making, only that the potential discharge of storm water pollutants be mitigated. On the other hand MS4 Permittees have to demonstrate that their programs for development planning meet the MEP standard. Failure to use the full authority granted to them on land-use planning matters under State law does not meet the MEP standard. CEQA is a procedural statute enacted to ensure that public agencies consider environmental impacts in development decisions they make. For water quality purposes, CWA and CWC are controlling, not CEQA. For a complete discussion of the CEQA matter see, Fact Sheet/ Staff Report – Attachment, Technical Report: Storm Water Mitigation Requirements for Priority Planning Projects for the Protection of Water Quality
Brb, Htb, SMBK, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, LA, Cal	<u>11a. Peak Flow Control</u> There appears to be no authority in the CWA for the permitting authority to regulate flow. Develop consensus language on peak flow control. Provide the flexibility to conduct an assessment under the monitoring program and consider alternate solution to avoid accelerated downstream erosion and protect stream habitat.	Clearly the CWA authorizes the control of activities, discharges, and pollutants when beneficial uses are adversely impacted (<i>Jefferson County. PUD No. 1 v. Washington Dept. of Ecology</i> , 511 U.S. 700 (1994)). USEPA Phase II storm water regulations state that for post-development, “[the] consideration of the increased flow rate, velocity, and energy of storm water discharges must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards, and to prevent the degradation of receiving streams” 64 <i>Fed. Reg.</i> 68761). Several studies have demonstrated a definite nexus between pollutant discharges and increased flow from increases in impervious surface area (<i>Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool</i> ; Schueler, T. and R. Claytor, <i>Effects of Water Development and Management on Aquatic Ecosystems</i> (1995), ASCE, New York; <i>Leopold, L. B., 1973, River channel change with time: an example, Geological Society of America Bulletin</i> , v. 84, p. 1845-1860; <i>Hammer, T. R., 1972, Stream channel enlargement due to urbanization: Water Resources Research</i> , v. 8, p. 1530-1540; <i>Booth, D. B., 1991, Urbanization and the natural drainage system--impacts, solutions and prognoses: The Northwest Environmental Journal</i> , v. 7, p. 93-118; <i>Klein, R. D., 1979, Urbanization and stream quality impairment: Water Resources Bulletin</i> , v. 15, p. 948-963; <i>May, C. W., Horner, R. R., Karr, J. R., Mar, B. W.,</i>

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		<p>and Welch, E. B., 1997, <i>Effects of urbanization on small streams in the Puget Sound Lowland ecoregion: Watershed Protection Techniques</i>, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. <i>Hydraulic geometry, stream equilibrium and urbanization</i>; Rhodes, Dallas P. and Williams, Garnet P. <i>Adjustments to the fluvial system</i>. 333-350. 1979; Dubuque, Iowa, Kendall/Hunt. <i>Tenth Annual Geomorphology Symposia Series</i>; and Schueler, Tom, 1994. <i>The importance of imperviousness. Watershed Protection Techniques</i>, 1(3).</p> <p>The Peak Flow Control provision in response to comments has been amended to include a time period for development of criteria after the completion of a Peak Discharge Impact Study. It has been clarified that the criteria apply to natural drainage systems, a term which is defined. In addition, the flexibility to develop a watershed strategy to control peak flow rather than through the use of site-by-site criteria is included.</p>
<p>Western States Petroleum Association (WSPA), Brb, Htb, SMBK, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, BIA</p>	<p>11.b SUSMP Applicability The draft permit extends numerical design criteria for all projects, (not just discretionary), to projects in ESAs, and to retail gasoline outlets. The State Board in its ‘SUSMP’ decision rejected these categories. Retain applicability of the numerical design criteria to just CEQA discretionary approvals. Revise the residential development category to projects with 100,000 square feet or more of directly connected impervious area (that is not low or moderate-income housing). Object to the change in thresholds for numerical mitigation criteria to apply from 10,000 square feet single-family hillside developments to one acre and ten or more of housing developments to 1 acre. The 1-acre threshold, which is obtained from USEPA Phase II regulations, does not apply to Permittees because they are in Phase</p>	<p>Incorrect. The State Board decision in Order No. WQ 2000-11 was precedential in upholding the requirement for new development and significant redevelopment to mitigate post-construction storm water based on a numerical design criteria for treatment control BMPs. The decision also set forth types of evidence and criteria necessary for extension of SUSMP requirements in future MS4 permits to all projects (not just discretionary), the application of the numerical mitigation criteria to retail gasoline outlets, and inclusion of ESAs, (See memorandum from Office of Chief Counsel to Regional Board Executive Officers dated December 26, 2000). For a complete discussion of the evidence for extension of the SUSMP requirements to these categories, see, Fact Sheet/ Staff Report – Attachment, (i) Technical Report: Storm Water Mitigation Requirements for Priority Planning Projects for the Protection of Water Quality; (ii) Technical Report: ‘Mitigation of Storm Water Impacts from New Development in Environmentally Sensitive Areas’; and (iii) Technical Report: Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts.</p> <p>The State Board SUSMP decision upheld the application of SUSMP requirements to 10 or more unit home developments (about one acre) and not 100,000 square feet residential development (about 2.5 acres). To be consistent with USEPA Phase II storm water regulations the draft permit lowers the threshold for industrial/ commercial development from 100,000 square feet of impervious surface area to one acre of surface area (43,560 sq. ft) beginning 2003. This provision ensures that the SUSMP thresholds for industrial/ commercial development and residential development converge in 2003.</p> <p>The basis of the threshold for hillside residential developments has been previously discussed (See, Response in ‘Comparison with the LA County and City of Long Beach MS4 Permits’).</p>

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	<p>1.</p> <p>The City supports the extension of SUSMP requirements to all projects (including those receiving administrative review). Support the extension of numerical mitigation criteria to retail gasoline outlets and developments in environmentally sensitive areas.</p>	<p>The 10,000 square feet threshold was a staff proposal considered in the first draft but has no precedent in the LB MS4 and Ventura County MS4 permits.</p> <p>The LA County MS4 Permittees are subject to USEPA Phase I storm water regulations for MS4 discharges. Additionally, Phase I storm water regulation included regulatory requirements for construction projects 5 acres or greater and facilities discharging storm water associated with industrial activity. USEPA Phase II requirements cover small MS4s and small construction projects (1-5 acres). The 1 acre threshold for construction projects is obtained from USEPA Phase II storm water regulations. It is incorrect to state that the one-acre is an inappropriate threshold for SUSMP requirements because LA County MS4 Permittees are in Phase I.</p>
<p>California Coastal Commission (CCC), Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, BIA</p>	<p><u>11c. ESAs</u> There is no reason to include ESAs under SUSMP requirements since they are heavily regulated by other agencies and are subject to many other environmental regulations.</p> <p>Support the extension of numerical mitigation criteria to ESAs. There is no justification to condition the applicability of SUSMP requirements to projects in ESAs, such as ‘2,500 square feet of impervious surface area’ and ‘likely to affect sensitive biological species or habitat’.</p>	<p>Regional Board staff has proposed thresholds for ESAs to be responsive to the State Board decision in Order No. WQ 2000-11. In that decision, the State Board set forth types of evidence and criteria necessary for inclusion of ESAs in subsequent permits, including thresholds (See memorandum from Office of Chief Counsel to Regional Board Executive Officers dated December 26, 2000). For a complete discussion of the ESA matter see, Fact Sheet/ Staff Report – Attachment, Technical Report: ‘Mitigation of Storm Water Impacts from New Development in Environmentally Sensitive Areas’.</p>
<p>Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, BIA, WSPA</p>	<p><u>11d. Definition of Redevelopment</u> The State Board’s SUSMP decision did not include the word, “replacement”, in the definition of redevelopment.</p>	<p>Correct. The addition of the word ‘replacement’ constitutes a clarification. The State Board’s SUSMP decision did not clarify this issue. The USEPA describes Redevelopment as “alterations to a property that change the footprint of a site or a building....” (Storm Water Phase II Compliance Assistance Guide, (USEPA 2000) p 4-34. USEPA’s description encompasses replacement of an existing impervious surface in addition to creation and addition of impervious cover. The intent of the Regional Board in adopting SUSMP requirements was expressly to ensure that when highly developed communities, such as those in Los Angeles County, replace themselves through generations, the opportunity to mitigate the adverse impacts of storm water pollution from urbanization is not lost (See Meeting Transcript, comment by Dennis Dickerson, Regional Board Executive Officer, at Regional Board Meeting on January</p>

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		26, 2000). The redevelopment provision in the draft permit specifically excludes routine maintenance activity and single-family structures in response to comments submitted by Permittees.
Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC	<u>11e. CEQA Guidelines Update</u> The requirement is redundant because LA County already has similar guidelines. Compliance expectation is unclear because both construction and post-construction activities are included.	LA County MS4 Permittees include 85 entities and not all of them use LA County's CEQA guidelines. CEQA is a procedural statute enacted to ensure that public agencies consider environmental impacts in development decisions they make. The guidelines are intended to ensure that local government officials consider both the adverse environmental impacts of development during construction and post-construction during decision-making. The CEQA guideline provision is intended for LA County MS4 Permittees to demonstrate that they meet the MEP statutory standard under their development review and building approval powers.
Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC	<u>11f. General Plan Update</u> The Regional Board does not have a right to review or approve proposed updates or amendments to General Plans. State law requires that storm water quality be addressed only in the conservation element.	Under State Law, General Plan amendments and update are the privilege of the local government elected officials. The Regional Board has the right to provide comment on updates and amendments (Govt. Code § 65350 <i>et seq.</i>) and is requiring adequate notice to comment. The opportunity to make policy that promotes the consideration of adverse impacts of storm water discharges from new development and redevelopment exists in several other General Plan elements (not just Conservation). Failure to use the full authority granted to MS4 Permittees under State law to express policy direction through updates or amendments to the General Plan does not meet the MEP standard. Further, this provision is very similar to that in the current LA County MS4 permit but without the notification requirement.
BIA	<u>12. Development Construction</u> Adoption of the draft permit will effectively nullify coverage of construction projects under the GCASP (State Board Order No. 99-05-DWQ).	Incorrect. The GCASP regulates directly construction projects subject to USEPA Phase I storm water regulations. The LA County MS4 permit regulates directly municipal Permittees (not land developers or owners) and requires MS4 Permittees to implement a program to control storm water discharges associated with new development and redevelopment. Nullification of coverage under the GCASP for a construction project occurs only when the Regional Board adopts a separate general or individual permit for construction projects within the Regional Board jurisdiction and not when it adopts an MS4 permit.
Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, BIA	<u>12a. Construction Site Inspections</u> The municipality should not be held responsible for the compliance of construction sites also regulated under the statewide construction storm water permit.	The MS4 Permittee has a responsibility to implement an inspection program to make sure that construction sites irrespective of size comply with local government storm water and urban runoff ordinances (40 CFR 122.26(d)(2)(iv)(D)). The draft permit requires construction sites one acre or greater to demonstrate compliance through the implementation of a local SWPPP approved by the municipality. The Regional Board has the responsibility to make sure that construction sites five acres or greater comply with the state's GCASP. The local SWPPP may substitute for the State SWPPP if the local SWPPP is at least as stringent, but the compliance obligation is dual and not mutually exclusive. The USEPA clearly contemplates a dual and a cooperative oversight of construction projects subject to state permitting between the permitting

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Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC, BIA	<p><u>12b. Small Construction Projects</u> The municipality should not be required to obtain state permit coverage for construction projects between 1 and five acres beginning 2003 because the requirement does not currently exist. The State has not completed its rule making.</p>	<p>authority and the MS4 Permittee. (See comment on Industrial/commercial inspections)</p> <p>Incorrect. USEPA Phase II regulations are final (64 <i>Fed. Reg.</i> 68722). The regulations require the state permitting authority to implement a permitting scheme to cover small construction projects (1-5 acres). The draft permit consistent with the regulations requires coverage for small construction projects beginning 2003.</p>
Brb, DB, AR, RT, R&T, RWG, BWS, CPR, EAC	<p><u>13. Illicit Discharge/ Illicit Connection Elimination</u> Make the requirement to map illicit connections and incidents of illicit discharges for priority action an optional task. Illicit discharges are best identified by drive-by (“off-site”) inspections. The requirement to map is too costly because it would require a GIS.</p>	<p>The provision has been modified to require the listing of all illicit connections and illicit discharges (in lieu of mapping). MS4 Permittees are required to conduct field screening of open channels and underground pipes according to a schedule. This change makes the program consistent with the LB MS4 Permit.</p>
Cal	<p><u>14. Standard Provision</u> Delete the standard provision, ‘Bypass’ because it may result in an automatic violation during heavy storms if treatment control BMPs are installed.</p>	<p>The USEPA requires that this Standard Provision be included in MS4 permits because it has been deemed applicable. The purpose of the provision is to provide clarification as to under what circumstances a “Bypass” can occur without it being a violation of the MS4 permit. A treatment control BMP that is designed for water quality purposes and to bypass non-water quality events would not be considered to violate this provision when a “Bypass” occurs under design conditions.</p>
NRDC, R&T, Cal	<p><u>15. Definition of Pollutant</u> The definition of the term pollutant includes language that inverts the burden of proof to demonstrate that a discharge of pollutant did not occur. Delete phrases in the definition that do not comport with the definition in the CWA</p>	<p>Extraneous phrases have been deleted and the definition is now referenced to the CWA</p>
LAC, HtB	<p><u>16. Monitoring</u> Require use of State Board ‘Policy for Implementation of Inland Waters and</p>	<p>The draft permit has been amended to require tributary monitoring to determine if water quality standards are being exceeded in inland surface waters. The existing steady state land-use model will require significant data collection and modification to improve its predictive ability on</p>

Commentors	Comment	Staff Response
	Bays and Estuary Plan Minimum Levels (MLs) for toxic pollutant parameters. Require tributary monitoring to verify land-use model. Require annual sediment toxicity testing and benthic community analysis in estuaries.	<p>tributary loads. Regional Board staff consider that the effort would not be worthwhile because the Regional Board intends to rely on the predictive ability of a dynamic model currently being developed in partnership with the Southern California Coastal Research Project in order to establish TMDLs.</p> <p>The draft permit has been revised to ensure that monitoring protocols achieve Minimum Levels (MLs). This change is to ensure that the most current analytical methods are used to measure pollutants in storm water.</p> <p>Sediment testing, bioassessment and benthic analysis in estuaries are best conducted as part of a regional study. The draft permit requires LA County to participate in the next Southern California Bight-wide Study in partnership with SCCWRP to generate this information.</p>

List of Commentors on June 29, 2001 Draft.

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|--|--|---|--------------------------------|
| City of Arcadia (ARC) | City of Baldwin Park (BWP) | City of Burbank (BUR) | City of Calabasas (CAL) |
| City of Carson (CAR) | City of Cerritos (CER) | City of Claremont (CLA) | City of Compton (COP) |
| City of Covina (COV) | City of Culver City (CUV) | City of Diamond Bar (DIB) | City of Duarte (DUA) |
| City of Hawthorne (HAW) | City of Industry (IND) | City of Irwindale (IRW) | City of La Mirada (LAM) |
| City of Lakewood (LAK) | City of Los Angeles (LAC) | County of Los Angeles (LACO) | City of Monrovia (MON) |
| City of Montebello (MOL) | City of Norwalk (NOR) | City of Paramount (PAR) | City of Pico Rivera (PIR) |
| City of San Gabriel (SGA) | City of San Marino (SNM) | City of Santa Clarita (SNCL) | City of Santa Fe Springs (SFS) |
| City of South Pasadena (SPA) | City of Temple City (TPL) | City of Vernon (VRN) | City of Whittier (WHT) |
| Coalition for Practical Regulation (CPR) | Rutan and Tucker (RT) | Richards Watson and Gershon (RWG) | |
| Charles Abbott and Assoc (CAA) | Executive Advisory Committee (EAC) | Burke, Williams & Sorensen, LLP (BWS) | |
| California Coastal Commission (CCC) | State of California Department of Health Services | County Sanitation Districts of Los Angeles County | |
| Upper Los Angeles River Area Watermaster | Water Replenishment District (WRD) | City of Los Angeles Department of Water and Power | |
| California Water Service Company | Central Basin Water Association | Southern California Water Company | |
| South Montebello Irrigation District | Building Industry Association (BIA) | Western States Petroleum Association (WSPA) | |
| So. Ca. Building Industry Assoc (BIA) | Construction Industry Coalition on Water Quality (CICWQ) | | |
| Bull Shot System, Inc. (BULSYS) | National Association of Industrial and Office Properties (NAIOP) | Heal the Bay (HTB) | |
| Natural Resources Defense Council | Santa Monica Baykeeper (SMBK) | | |