THE CITIES OF BELLFLOWER, BURBANK, CERRITOS, COMMERCE, DIAMOND BAR, DOWNEY, IRWINDALE, LA-CANADA FLINTRIDGE, LA MIRADA, LA VERNE, LAKEWOOD, LAWNDALE, MONROVIA, PALOS VERDES ESTATES, PICO RIVERA, POMONA, RANCHO PALOS VERDES, SANTA FE SPRINGS, SIGNAL HILL, SOUTH GATE, VERNON, WALNUT, AND WHITTIER, et al., municipal corporations; and THE BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, a Non-Profit Mutual Benefit Corporation, and THE BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, a Non-Profit Mutual Benefit Corporation, AND

THE CITY OF ARCADIA, a municipal corporation AND

WESTERN STATES PETROLEUM ASSOCIATION, a Trade Association Petitioners,

v.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, and DENNIS DICKERSON, Executive Officer, Los Angeles Regional Water Quality Control Board.

Respondents,
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>RESPONSE TO QUESTIONS</td>
<td>1</td>
</tr>
<tr>
<td>I.</td>
<td></td>
</tr>
<tr>
<td>A. Numerical Design Criteria and Storm Water Quality</td>
<td>1</td>
</tr>
<tr>
<td>B. The 0.75 Inch and the Other Three Numeric Design</td>
<td>1</td>
</tr>
<tr>
<td>C. The Numeric Design Criteria – Different Numbers for Different Areas</td>
<td>2</td>
</tr>
<tr>
<td>D. Numerical Design Criteria Implemented As a Range of Numbers</td>
<td>3</td>
</tr>
<tr>
<td>II.</td>
<td></td>
</tr>
<tr>
<td>A. Significance of Redevelopment and Remodeling</td>
<td>3</td>
</tr>
<tr>
<td>B. Definition of Redevelopment</td>
<td>4</td>
</tr>
<tr>
<td>C. Types of Redevelopment Projects to Be Included</td>
<td>4</td>
</tr>
<tr>
<td>III.</td>
<td></td>
</tr>
<tr>
<td>A. The Significance of Location</td>
<td>5</td>
</tr>
<tr>
<td>B. The Definition of Environmentally Sensitive Areas</td>
<td>6</td>
</tr>
<tr>
<td>C. Specific Types of Projects to Be Included</td>
<td>7</td>
</tr>
<tr>
<td>IV.</td>
<td></td>
</tr>
<tr>
<td>A. Discretionary Projects vs. Ministerial Projects</td>
<td>8</td>
</tr>
<tr>
<td>B. Interpretation of the Term Discretionary</td>
<td>8</td>
</tr>
<tr>
<td>C. The Relevance of the Term Discretionary</td>
<td>9</td>
</tr>
<tr>
<td>D. Application to New Development and Redevelopment Projects</td>
<td>10</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>10</td>
</tr>
</tbody>
</table>
INTRODUCTION

The State Board conducted a two-day hearing in the matter on June 7 and June 8. The State Board, in a letter dated June 12, requested the parties to the Petition to submit a Post-hearing Brief addressing four questions by July 7. The Los Angeles Regional Board’s response follows.

RESPONSE TO QUESTIONS

I. If There Is To Be A Numeric Design Standard For Infiltration Or Treatment, Is The 0.75-Inch Standard Appropriate? Should It Be Substituted With A Different Numeric Standard, Including Potentially Different Numbers for Different Areas? If There Were A Range Of Numbers How Would They Be Implemented?

A. Numerical Design Criteria and Storm Water Quality

A numeric design standard is the most elementary criterion necessary to ensure that post construction BMPs for new development and significant redevelopment are sized to reduce pollutants in storm water runoff to the statutory standard of MEP. The next step would be to relate treatment or infiltration volume to pollutant removal capabilities based on a technology or performance standard. As presented in the Regional Board’s oral testimony on June 8, other jurisdictions have already taken this step by establishing performance standards for total suspended solids, zinc, nitrogen and phosphorous\(^1\). The third step would be to relate the BMP performance standard to receiving water objectives and beneficial uses. For example, the Province of Ontario, Canada, specifies total suspended solids removal standards based on fish habitat protection guidelines.\(^2\) The Los Angeles Regional Board’s action is at best a first step.

B. The 0.75 Inch And the Other Three Numeric Design Criteria are Appropriate

From a regulator’s view point, the ideal numerical criteria to ensure that the MEP standard is met for storm water discharges should have the following characteristics. The criteria

---

\(^1\) See Slide No. 6 of Dr. Swamikannu’s presentation and the Transcript of the June 7 Hearing. Refer also to Statements of Policy provided by Maryland, Washington and Florida contained in the record for the Hearing.

must be, (i) simple to use, (ii) practical and cost effective, (iii) prescriptive, (iv) flexible, and (v) scientific and technically defensible. The criteria must also encourage innovation.

The Regional Board’s four methods to determine the appropriate water quality design criteria for post-construction BMPs, including the 0.75-inch rainfall treatment criterion, are simple to use. They are cost-effective because the volume of rainfall or runoff to be treated is based on the water quality efficient (maximized) volume or precipitation event. The methods are also prescriptive and thus easy to follow in contrast to the Petitioners empty alternative. Three of the four design criteria provide the opportunity for site flexibility. All four design criteria produce values for storm water treatment that are similar (not surprising because the Los Angeles area is highly paved). Finally, the Regional Board has soundly documented and justified the technical and scientific basis for the numerical water quality design criteria in the record and in oral testimony before the State Board. In addition, the choice of design standards presented will promote BMP design innovation.

C. The Numeric Design Criteria – Different Numbers For Different Areas

The numerical criteria provided by the Regional Board already provides Petitioners the opportunity to account for differences in site conditions such as rainfall patterns and percent surface area imperviousness. In fact, the ASCE Method (maximized volume treatment) and the California Handbook Method (annual percent volume treatment) both calculate the runoff volume (a direct measure) to be treated to remove pollutants rather than rainfall volume (an indirect measure). Thus, if an MS4 Permittee wants to use an area sensitive method, all the permittee needs to do is select either one of these methods and obtain a site-specific or area specific value (greater than or less than the 0.75-inch design standard). The claim made by Petitioners that the design criterion is “one size fits all” is ingenuous, because only the 0.75-inch standard is numerically prescriptive. The rationale to listing the 0.75-inch standard is to provide the simplest choice of criterion that is also readily understandable. A single determinate value promotes countywide certainty and consistency for the development community. However, the 0.75-inch standard is not the sole BMP design criterion provided by the Regional Board. Three other

---

3 Some of these factors must be balanced against each other. For e.g., the simpler an approach the less rigorously scientific it is.
4 Permittees did propose a 0.6-inch design criteria in an early draft. However, admittedly that the number was selected arbitrarily.
5 See Regional Board’s calculations for the required retention basin volume using the four methods. The values are within ten percent of one another. AR 9(18)
6 See the Record of Decision and Staff Report at 2 [AR 2(2)] and Dr. Swamikannu’s June 8 testimony Slides 1 – 5 for the scientific basis; AR 14(3) for the mathematical calculations; and our May 5 Response in Opposition to Petition at 31 for a legal analysis.
derivative design criteria based on long-term precipitation records or rainfall runoff patterns are also provided.

D. Numerical Design Criteria Implemented As a Range of Numbers

As discussed earlier, three of the four methods for determining the water quality design criteria already allow for the option of area specific numerical values that are different from the 0.75 inch standard. In theory, the Los Angeles County MS4 program could have at least 86 different design standard values based on the number of municipal jurisdictions. The Los Angeles County MS4 permit allows for such differences, regardless of the merits of having so many numbers, which might be a compliance nightmare for the development community. A SUSMP that differs from the Regional Board approved SUSMP only by a numerical value that is different than the 0.75 inch, but derived using one of the other three accepted design criteria methods, would be ruled not only as being substantially similar but also of being functionally identical. If an MS4 Permittee uses this option, the Regional Board will review the calculations and accept the functionally identical design numerical value for inclusion in guidelines and in technical manuals.

II. What Types Of Redevelopment Or Remodeling Projects Should Be Included Within The Mitigation Requirements?

A. Significance of Redevelopment and Remodeling

Petitioners have argued that the current definition of “redevelopment” is confusing and may be too broad and burdensome if literally applied. They claim that a single-family homeowner making interior remodeling changes or replacing a roof would be required to install treatment control BMPs. The Regional Board did not intend for the rule to apply to internal remodeling projects or limited external work such as roof replacements. The current definition of “redevelopment” in the SUSMP, is largely a result of the Regional Board’s efforts to incorporate clarifying text proposed by Permittees.

In order to determine which categories of redevelopment or remodeling projects should be subject to the SUSMP requirements, the Regional Board reviewed the rule implementation in other leading jurisdictions. Washington, Maryland and Florida apply the requirement to control

---

7 Board Order No. 96-054 at 34. “develop a program on planning control measures consistent with [SUSMP]...[S]hall initiate implementation...following approval of the model [SUSMP]”
9 See comment letters from the Executive Advisory Committee [AR 6(10)] Los Angeles County [AR 2(16)]. Permittees recommended that the definition include the phrase “the addition, to an already developed site, of 50 percent or more impervious area or improvements to 50 percent or more of the existing improvements on site”.

3
storm water pollution from redevelopment projects to all categories of urban development based on a minimum threshold of impervious area addition, not just specific types of development.\textsuperscript{10} After all, when the pollutants created by urbanization have the potential to adversely impact receiving waters, restricting the application of the rule to too few project categories might defeat the important objective of reversing the adverse impacts of past urban development practices. The application of SUSMP requirements to redevelopment projects offers the singular opportunity to regulators, not only to hold the line on water pollution from storm water discharges, but also to cost effectively reverse the adverse impacts on water quality of past urbanization.

B. Definition of Redevelopment

The Regional Board proposes the following definition of “redevelopment”\textsuperscript{11} to clear up any ambiguity of the kind suggested by Petitioners. “Redevelopment” means:

“On an already developed site, the creation or addition of 5,000 square feet or more of impervious surfaces. If the creation or addition of impervious surfaces is fifty percent or more than the existing impervious surface area, then storm water runoff from the entire area (existing and additions) must be considered for purposes of storm water mitigation. If the creation or addition is less than fifty percent of the existing impervious area, then storm water runoff from only the addition area needs mitigation. Redevelopment includes, but is not limited to: the expansion of a building footprint or addition or replacement of a structure; structural development including an increase in gross floor area and/or exterior construction or remodeling; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities related with structural or impervious surfaces”.

C. Types of Redevelopment Projects to Be Included

The Los Angeles Regional Board’s application of SUSMP requirements to redevelopment projects is limited in scope, unlike the other leading jurisdictions. It applies to only nine specific categories of redevelopment projects\textsuperscript{11} and only as follows: for, (a) exterior surfaces or foundation, removal and replacement which results in the creation or addition of 5,000 square feet or more of impervious surfaces (except projects in environmentally sensitive areas where the creation or addition must exceed 1,250 square feet),\textsuperscript{12} and (b) other impervious

\textsuperscript{10}See statements of policy submitted by, E. Livingston, Florida Department of Environmental Protection (May 31, 2000) at p 2; E. O’Brien, Washington Department of Ecology (May 25, 2000) at p 4; and B. Clevanger, Maryland Department of the Environment (May 31, 2000) at 5, May 31 Evidence and Exhibit Supplement

\textsuperscript{11}See Standard Urban Storm Water Mitigation Plan at 3.  AR 14(1).

\textsuperscript{12}See \textit{Infra} at 25 for CEQA rule on redevelopment threshold
surfaces, the removal down to bare soil or base course and replacement, which results in the
creation or addition of 5,000 square feet or more of impervious surfaces (except projects in
e environmentally sensitive areas where the creation or addition must exceed 1,250 square feet).

III. Should Location Such As Environmentally Sensitive Areas Be A Factor in Determining the
Application of the SUSMP? If So, What Specific Types Of Projects Should Be Included?

A. The Significance of Location

The location of new development and redevelopment projects in “environmentally
sensitive areas” may demand that special requirements be imposed. The purpose of such
requirements is to ensure that unique characteristics of project siting be considered in mitigating
potential adverse impacts. The USEPA, in discussing storm water controls, notes: “Sensitive area
protection is an important element of conservation design…These areas are particularly
susceptible to degradation by storm water runoff.” 13 There are two main reasons why the
application of requirements for new development and redevelopment should apply to projects
situated in “environmentally sensitive areas.”

First, the geographic location of a development project can impact an ecologically fragile
area. A sensitive habitat has a much lower capacity to withstand pollutant shocks than might be
acceptable in the general circumstance, and so deserves special attention. The California Public
Resources Code (CPRC) § 30240 (b) conditions the siting of developments in areas adjacent to
“environmentally sensitive areas” to prevent adverse impacts.14 Similarly, the California
Environmental Quality Act (CEQA)15 excludes from its categorical rule exemption, those projects
situated in “environmentally sensitive areas”.16 In essence, a project that is ordinarily
insignificant in its impact on the environment may in a particularly sensitive environment be
significant.17

Further, the State Board sees fit to designate by the location of discharge ‘Areas of
Special Biological Significance’ (ASBS) to protect natural water conditions and prohibit waste
discharges unless the State Board finds that there would be “no adverse impacts to beneficial

13 See the USEPA Report “Preliminary Data Summary of Urban Storm Water Best Management Practices” EPA No. 821-R-99-012
(1999) at 5-40.
14 Public Resources Code § 30240(b) states, “Development in areas adjacent to environmentally sensitive habitat areas shall be sited
and designed to prevent impacts which would significantly degrade those areas…”
15 CEQA is an environmental statute that requires public agencies to fully consider the potential environmental impact of projects prior
to approval.
16 See CPRC § 21000.
17 19 CCR 15300.2. This sub-section lists location in an environmentally sensitive area as an exception to categorical exemptions
determined by the Secretary for Resources. Categorical exemptions are deemed to not have a significant effect on the environment.
uses.” The State Board here accepts a shifting of the burden to itself to make the affirmative
determination rather than allow permissive action by default because of discharge location.

Examples from other jurisdictions abound. The State of Washington implements a
procedural variation of the ASBS, where it requires “a use authorization” for storm water
discharges potentially impacting public aquatic lands. Florida imposes more stringent
conditions for storm water treatment on new development and redevelopment projects based on
the discharge location.

The Los Angeles Regional Board’s application of SUSMP requirements to projects in
“environmentally sensitive areas” is another basic first step. The rule merely applies requirements
based on location rather than imposes more stringent criteria. The consideration by the Regional
Board of location of projects for the SUSMP requirements to apply is not new, nor without
precedent.

Second, an environmental agency such as the Regional Board has a co-stewardship
responsibility, when implementing water quality regulations, to ensure that its actions are in
harmony with overlapping environmental mandates for other state and federal resource
conservation agencies. The Regional Board, in part, elected to apply SUSMP requirements to
projects in environmentally sensitive areas to complement implementation rather than jeopardize
or harm the environmental mandates of other State or federal agencies.

B. The Definition of Environmentally Sensitive Areas

The SUSMP cross-references the applicability of SUSMP requirements to “environmentally
sensitive area” to designations by other public agencies with designation powers, such as the State Board
and the California Resources Agency, not itself. CPRC § 30107.5 defines an “environmentally
sensitive area” as: “an area in which plant or animal life or their habitats are either rare or
especially valuable because of their special nature or role in an ecosystem and which would be
easily disturbed or degraded by human activities and developments.” The SUSMP requirements
apply to development and redevelopment projects, which are “located in, discharging directly to, or
adjacent to an environmentally sensitive area.”

18 See California Ocean Plan and Regional Board Basin Plan at 5-1. AR 10(17)
19 The State of Washington under the use authorization may require, “…application of more stringent requirements that [it] determines
are necessary to meet statutory obligations to protect the quality of the state’s aquatic lands” See supra at 8.
20 The State of Florida raises the storm water treatment performance standard for new developments to 95% for direct discharges to
Outstanding Florida Waters from 85% percent for other waters. Florida, Urban Stormwater Program, Policy Statement and AR. 11(1)
21 Such agencies include, the California Coastal Commission, the California Department of Fish and Game, the U.S. Fish and Wildlife
Service, and the U.S. National Oceanographic and Administrative Service to name a few.
22 See Staff Report and Record of Decision at 11 (January 18, 2000) AR 2(2) , for a fuller discussion.
For the record, the Regional Board proposes to clarify two areas of this definition that
could be subject to some ambiguity. These are, (i) the meaning of the phrase “directly adjacent”,
and (ii) the phrase “directly discharging to.” “Directly adjacent” means situated within 200 feet
of the contiguous zone required for the continued maintenance, function, and structural stability
of the environmentally sensitive area. “Directly discharging to” means outflow from a drainage
conveyance system that is composed entirely or predominantly of flows from the subject
property, development, subdivision or industrial facility, and not commingled with the flows from
adjacent lands.

C. Specific Types of Project to be Included

The SUSMP does not explicitly identify which categories of projects in environmentally
sensitive areas are subject to its requirements. The Regional Board’s original intent was to
provide municipalities with some discretion as to which categories to include or exclude. One
may reasonably exempt a few select categories of development based on the rationale that the
SUSMP requirements may impose undue burden or that the category of projects have
insignificant impact.

Rather than list the types of categories that might be included under the SUSMP
requirements, as implied in the question, the Regional Board would support either: (i) the
exclusion of a few specific project categories, or (ii) the establishment of a lower threshold than
the general rule. The project categories or the threshold may be selected based on the legal
principle that statutes [regulations and permit conditions] which are pari materia should be read
[and interpreted] together and harmonized where possible (NRDC v. Arcata, 59 Cal.App. 3d
959(1976)).

We note that CEQA exempts from its requirements projects located in environmentally
sensitive areas, if additions to existing structures are less than 2,500 square feet. We propose
the following as the determinative threshold for SUSMP requirements to apply in
“environmentally sensitive areas” for new development and redevelopment projects irrespective
of project category: “for projects in, directly adjacent to, or discharging directly to an
environmentally sensitive area, the addition or creation of 2,500 square feet or more of

---

23 For a discussion on minimum dimensions to protect aquatic resources, see, “The Architecture of Stream Buffers”, T. Schuler,
24 The Arcata Court ruled that timber harvesting activities regulated by the Forest Practice Act of 1972 were also subject to CEQA,
where the Forest Practice Act was silent on the matter, because it involved “Discretionary” action by a public official.
25 19 CCR 15301. In part this section categorically exempts from CEQA requirements projects in environmentally sensitive areas if
“the addition will not result in an increase in more than, (1) 50 percent of the floor area of the structures before the addition or 2,500
square feet whichever is less;” If the project is not in an environmentally sensitive area, the exemption threshold is 10,000 square feet.
CEQA also categorically exempts single family residences, small apartments and duplexes, and small commercial structures
developments in areas not designated environmentally sensitive.
impervious area. For redevelopment projects, the addition of impervious area must be more than 1,250 square feet.”

**IV. Should the SUSMP Apply to Both Discretionary Projects and Ministerial Projects? How Should the Term Discretionary Be Defined?**

**A. Discretionary Projects vs. Ministerial Projects**

In CEQA, a “Discretionary Project” is one which requires the exercise of judgement or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A “Ministerial Project” is a one where a governmental decision involves little or no personal judgement by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgement in reaching a decision.\(^\text{26}\)

**B. Interpretation of the Term Discretionary**

Petitioners have argued that the application of SUSMP requirements is limited to “Discretionary” projects because the “enumerated categories” appear in Board Order No. 96-054 in a subsection qualified by the term “discretionary projects.” However, the term “Discretionary” is not defined in the permit. A definition is included in the SUSMP but the term “Discretionary Projects” was deleted from the main body of text. The Regional Board elected to interpret application of the SUSMP requirements in the broadest possible manner.\(^\text{27}\) New development storm water controls for projects in “enumerated categories” should not be limited by the condition of “Discretionary”.

A review of an interpretation by the California Supreme Court of the term “Discretionary” clearly establishes that it must be read principally on policy considerations relevant to the governmental entity having jurisdiction rather than through a plain semantic inquiry. [Lipman v. Brisbane Elementary Sch. Dist., 55 Cal.2d. 224 (1961); Johnson v. California, 69 Cal.2d. 782 (1968)]\(^\text{28}\) Further, where the nature of a development project involves both “Ministerial” and “Discretionary” aspects, courts have held that the rule application should

---

\(^{26}\) The environmental application of the term “Discretionary” derives from a California Supreme Court ruling in Johnson v. State of California, 69 Cal.2d. 782 (1968) where the court ruled that a basic policy decision is considered “Discretionary” and thus subject to immunity from civil action, but not ministerial actions which must face case-by-case adjudication. CEQA guidelines adopt the court interpretations of the two terms.

\(^{27}\) Regional Board Response to Petition at 25 discusses the Board rationale in more detail.

\(^{28}\) In these cases, the California Supreme Court rejected a pure mechanical analysis of the term “discretionary” and relied greatly on the policy considerations relevant to the purposes of the governmental action in ruling on the merits of the claim.
be interpreted to “afford the fullest possible protection to the environment”[People v. Dept. of Housing and Community Development, 45 Cal.App.3d 185 (1975); Day v. City of Glendale, 51 Cal. App. 3d 817 (1975)]29. The Regional Board is thus on firm ground when it adopted SUSMP requirements to apply to all development and redevelopment projects in ‘enumerated categories” irrespective of whether they are considered ‘Discretionary’ or ‘Ministerial’ in a municipal jurisdiction.

C. The Relevance of the Term Discretionary

The definition of “Discretionary” as it is applied in development planning is derived from CEQA. However, whether a project is “Discretionary” or “Ministerial” under CEQA should have little bearing on the Regional Board’s ability to subject it to storm water control requirements for new development and significant redevelopment. This is especially true where the origin of the definition in environmental regulation affords municipalities a procedure to limit public review of the potential environmental significance of the action.30

In essence, a strict application of the term under CEQA would allow one municipality to consider a SUSMP project category “Discretionary” while in another municipality it may be deemed “Ministerial” because of a municipality preferences and idiosyncrasies. A “Ministerial” project will escape SUSMP requirements if applicability is limited to projects considered “Discretionary.” Also under CEQA, similar projects within a municipality may be subject to different treatment depending on designation as “Ministerial” or “Discretionary” on the basis of subtle differences in project characteristics or zoning considerations.31 Clearly, the Regional Board did not intend for different standards to govern different municipalities or even different standards for similar projects within the same municipality. The determinative consideration for the application of SUSMP requirements should be whether a particular category of development has been determined to cause or contribute to significant pollution of storm water. These categories should be required to implement post-construction BMPs to mitigate storm water pollution.32 The classification under CEQA should not be the determining factor.

29 In these cases, the Appellate Courts ruled that environmental statutes and regulations should be interpreted to afford the maximum protection to the environment within the reasonable scope of statutory language.
30 In Day v. Glendale, 51 Cal.App.3d. 877 (1975), the court ruled that projects not explicitly identified as “Ministerial” in CEQA cannot be considered exempt if they contained some elements that are “Discretionary”. Quoting the court, “[to do so] would eviscerate CEQA, a result clearly not intended by the Legislature”.
31 For example in the City of Santa Monica, a restaurant development would be considered “Discretionary” under CEQA only if it served alcohol. A gas station development would be considered “Ministerial” if it is not adjacent to a residential zone [personal communication by Mr. P. Foley, Planning Department, City of Santa Monica, 06/26/2000]. The sale of alcohol at a restaurant or the proximity of a gas station to homes has little or no relevance to its impact on storm water quality.
32 The Staff Report and Record of Decision at 11-12 discusses the rationale for these categories to be included. AR 3(7).
D. Application to New Development and Redevelopment Projects

The Regional Board proposes that the definition of “Discretionary Projects” be deleted from the SUSMP section on ‘Definitions’ since the term no longer has any significance and does not appear in the main body of text. However, if it is found necessary to define the term “Discretionary Project” because it appears in the Los Angeles County MS4 permit, then the Regional Board proposes the following definition:

“Discretionary Project” means a project, other than a project which is in a category enumerated by the Regional Board or State Board, and which requires the exercise of judgement or deliberation when the public agency or public body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.”

CONCLUSION

Numerical design criteria for treatment BMPs are indispensable, if the Regional Board is to ensure that storm water controls at new development and redevelopment are being implemented “to reduce pollutants to the maximum extent practicable.” The choice of design criteria provided by the Regional Board offers municipalities the opportunity to set a design standard that may be different from the 0.75-inch standard, when area conditions substantially differ. The Regional Board supports, “the addition or creation of 5,000 square feet of impervious area or more” in eight of the nine SUSMP categories, as the threshold for SUSMP requirements to apply for redevelopment and remodeling projects, the exception being projects in environmentally sensitive areas. Location of projects should be an important factor in determining the applicability of SUSMP requirements. Consistent with thresholds under CEQA, the Regional Board recommends that the addition or creation of 2,500 square feet or more of impervious surfaces to be considered the minimum threshold for projects in environmentally sensitive areas to be subject to the SUSMP requirements. Finally, the SUSMP requirements should apply to all projects in “enumerated categories” not just projects considered “Discretionary” under CEQA. For these reasons, the State Board must uphold the actions of the Regional Board in adopting the SUSMP and the requirements therein.

33 See SUSMP, AR 14(1)