

**JAMUL DULZURA
COMMUNITY PLANNING GROUP
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December 14, 2012

Mr. Rich Crompton, Director
County of San Diego Department of Public Works
5510 Overland Ave, Ste 410
San Diego, CA 92123

**SUBJECT: Comment – Tentative Order No.R9-2013-0001, Regional MS4 Permit,
Place ID: 786088Wchiu**

Dear Mr. Crompton,

The Jamul Dulzura Community Planning Group feels compelled to provide written comments on the draft San Diego Regional MS4 Permit to ensure that water quality regulations are practical, cost-effective, and scientifically based. While we are not directly regulated by the Regional MS4 Permit, we are concerned that public funds may have to be spent to comply with requirements that are not proven or effective, and that this will ultimately reduce the funding available for community projects and essential public services.

It is vital that the resources required to implement regulations are balanced with other public and environmental programs. For this reason we have joined the County's call to action to protect water quality while controlling the mounting and unsubstantiated costs of increased regulation on local governments, business and industry. As written, the Tentative Order will result in a significant and unprecedented level of regulation and cost without clear scientific basis or environmental benefit. The three main areas of concern in the draft permit are: 1) a far-reaching Bacteria Total Maximum Daily Load (TMDL), 2) additional requirements for development projects, and 3) performance standards that unnecessarily expose municipalities to third-party lawsuits. These requirements needlessly increase costs for regulated parties and may further constrain development in the region.

The cost to comply with the Bacteria TMDL is estimated between \$2.6 billion and \$4.9 billion for the named watersheds in the region over the 20 year TMDL compliance timeline, of which only 18 years remain. The numeric targets in this TMDL may never be attainable even if the County and other municipalities were to spend billions in public resources. This puts us in an untenable situation with the public, who will ultimately fund this effort. Technology simply does not exist to return urbanized watersheds back to pristine, "reference" conditions. The TMDL compliance targets must be attainable. The Bacteria TMDL requirement should not be incorporated into the MS4 Permit until there are more practical goals to work toward. We cannot ask the public to fund a program that will not succeed.

The cost of doing business in California has already pushed many businesses and developers out of the state. The draft permit will impose significant hardships on development. Permit requirements would require almost all development projects in the County to comply with hydromodification requirements, regardless of whether the projects themselves contribute to the problem. It also requires that new and re-development projects return site hydrology to pre-development conditions as opposed to pre-project conditions. Returning urban infill projects to conditions that existed under "natural", pre-urban conditions would be a substantial constraint to re-development. Over the last several years, local governments in San Diego have worked together with Regional Board staff and a host of technical experts to develop a Hydromodification Management Plan with reasonable and scientifically based standards. The

Regional Board recently approved that Plan. This draft permit ignores all of the good work invested in that Plan, which was developed at a significant cost to the public. In its place, it would impose new, one-size-fits-all requirements that impose a standard that is unrealistic and without scientific justification. The result of all these changes is that the structures built to mitigate development impacts will need to be bigger and will cost significantly more than the current approved program. Implementing these requirements would be an economic burden to our region and, are targeted at an unobtainable endpoint.

Accordingly, we would like for the Regional Board to honor existing plans, including the Hydromodification Management Plan. SANDAG has worked for many years through a comprehensive public process to develop the Regional Transportation Plan and Regional Comprehensive Plan that provides the framework for local General Plans. These plans recognize regional smart growth opportunity areas, including infill development. These are sound principals. Urban infill reduces aerial deposition which then reduces pollutant loading in urban runoff. Re-development is considered an environmentally preferable method of development. The MS4 permit should encourage re-development, retrofit landscapes, and green streets, through greater flexibility and reduced requirements rather than penalizing it with additional cost and constraints. To this end, any new regulations must be integrated into approved plans and must not be a burdensome, additional layer.

Finally, the draft permit includes performance standards that should be amended so that regulated municipalities are not unnecessarily exposed to third-party litigation. This Permit's receiving water limitations language is contrary to the intent of the federal Clean Water Act, which is to assure municipal agencies will be regulated to a reasonable standard. The State and Regional Water Boards have the discretion and a responsibility to ensure that water quality regulations are applied in a context that results in economic and environmental sustainability. It is imperative to reduce the threat of litigation when a municipality is engaged in a good faith effort to comply. The current receiving water provisions do not serve the environment, the public or the permittees. Public funds should be used to implement comprehensive programs that are proactive and adaptive to promote clean water goals.

Local government must have the flexibility to make policy decisions for the good of our residents. The 21 Copermittees in our region (the County, 18 cities, Port District, and Airport Authority) already spend close to \$120 million a year to comply with current permit requirements. Heal the Bay's own report cards show that water quality at local beaches is improving. We would like to see the Regional Board adopt a permit that will be cost neutral and that local municipalities will have the flexibility to apply funding to priority areas.

We are hopeful that the final permit language will result in programs that make sense from both an environmental and economic standpoint. Please contact me if you have questions or would like to discuss our concerns.

Sincerely,



Michael Casinelli, Chair
Jamul Dulzura Community Planning Group

CC:

Vice Chairman Gary Strawn, San Diego Regional Water Quality Control Board (SD RWQCB)

Board Member Eric Anderson, SD RWQCB

Board Member Henry Abarbanel, SD RWQCB

Board Member Tomas Morales, SD RWQCB

✓ Executive Officer David Gibson, SD RWQCB

Mr. Wayne Chiu, SD RWQCB