RESPONSE TO COMMENTS

ORDER NO. 2001-01
(San Diego Municipal Storm Water Permit)
November 6, 2001

Agenda Item 9
For
San Diego Regional Water Quality Control Board Meeting
On February 21, 2001

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For

Response to Comments for Tentative Order No. 2001-01

LIST OF ABBREVIATIONS

303(d)	Water bodies listed as impaired under Section 303(d) of the Clean Water Act.
ASBS	Area of Special Biological Significance
BAT	Best Available Technology
BMP	Best Management Practice
CALTRANS	California Department of Transportation
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CSBP	California Stream Bioassessment Procedure
CTR	California Toxics Rule
CWA	Clean Water Act
CWC	California Water Code
EMAP	Environmental Monitoring and Assessment Program
ESA	Environmentally Sensitive Area
FR	Federal Register
JURMP	Jurisdictional Urban Runoff Management Program
LARWQCB	Los Angeles Regional Water Quality Control Board
MBAS	Methylene Blue Activated Substance
MEP	Maximum Extent Practicable
MLLW	Mean Lower Low Water
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS	Non Point Source
NSC	Numeric Sizing Criteria
NURP	Nationwide Urban Runoff Program

PC	Porter-Cologne Water Quality Control Act
POTW	Publicly Owned Treatment Works
SANDAG	San Diego Association of Governments
SCCWRP	Southern California Coastal Water Research Project
SDRWQCB	San Diego Regional Water Quality Control Board
SUSMP	Standard Urban Storm Water Mitigation Plan
SWRCB	State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
TAC	State Water Resources Control Board Urban Runoff Technical Advisory Committee
TIE	Toxicity Identification Evaluation
TMDL	Total Maximum Daily Load
TOC	Total Organic Carbon
TSS	Total Suspended Solids
TUa	Toxic Units Acute
TUc	Toxic Units Chronic
URMP	Urban Runoff Management Program
USEPA	United States Environmental Protection Agency
WDR	Waste Discharge Requirement
WEF	Water Environment Association
WMA	Watershed Management Area
WQA	Water Quality Act of 1987 (Amendments to the Clean Water Act)
WQO	Water Quality Objective
WURMP	Watershed Urban Runoff Management Program

INTRODUCTION

Background

The Regional Board received a total of approximately 1500 comments from almost 100 different organizations and individuals. These comments include oral comments received at the public hearing on December 13, 2000; formal written comments received by November 30, 2000 (close of written comment period); and comments received at a series of three public workshops conducted on tentative Order No. 2001-01. Public workshops were conducted on October 19, 2000, November 2, 2000, and November 16, 2000 for the purpose of obtaining public comment. In addition to being addressed in this document, each workshop comment was also responded to orally during the course of the workshops.

For purposes of developing responses, each of the approximately 1500 comments were placed into one of roughly 50 broad categories such as legal issues, construction, dry weather monitoring, cost, and education. Furthermore greater than 60% of the total comments were not unique; these comments were grouped with other similar comments in order to expedite/facilitate the responding process.

Permit Revisions

The Regional Board appreciates the efforts of all those who contributed a substantial amount of time and effort to provide comments on tentative Order No. 2001-01. The comments are valuable and many have resulted in proposed permit language changes. To the extent that a revision to the permit language is proposed as a result of a particular comment, that fact is noted in the response to that comment. The revised draft permit will be available to the public as soon as possible during the week of February 12, 2001.

Format of this Document

The overall organization of this document is consistent with the organization of tentative Order No. 2001-01. Responses to “General Comments” are presented first followed by responses to “Comments on Multiple Sections”. The remainder of the document contains responses to “Comments on Specific Sections” presented in same sequence as the sections in the tentative order, i.e., Findings 1 through 39, Directives A through R, and Attachments A through E.

Ample Legal Authority

Many of the comments received challenge the Regional Board’s authority to require one or more the directives contained in tentative Order No. 2001-01.

The tentative order is based on the federal Clean Water Act, the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable state and federal regulations, as well as all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board and the Regional Water Quality Control Plan (Basin Plan) adopted by the Regional Board.

As discussed in the Fact Sheet/Technical Report, the following five broad legal authority citations generally apply to all directives in Order No. 2001-01, and provide the SDRWQCB with ample underlying authority to require each of the directives.

CWA 402(p)(3)(B)(ii) – Prohibit Non-Storm Water
The CWA requires in section 402(p)(3)(B)(ii) that permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."

CWA 402(p)(3)(B)(iii) – Reduce to MEP and Whatever Else is Needed
The CWA requires in section 402(p)(3)(B)(iii) that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, **and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants**." *(emphasis added.)*

40 CFR 122.26(d)(2)(i)(A-F) – Obtain Adequate Legal Authority
Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A-F) provide that each Copermittee's permit application "shall consist of: (i) Adequate legal authority: A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to: (A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; (C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; (E) Require compliance with conditions in ordinances, permits, contracts or orders; and (F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit

conditions including the prohibition on illicit discharges to the municipal separate storm sewer."

40 CFR 122.26(d)(2)(iv) – Reduce to the MEP and Whatever Else is Needed

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) provides that the Copermittee shall develop and implement a proposed management program which "shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, **and such other provisions which are appropriate**. *(emphasis added.)* The program shall also include a description of staff and equipment available to implement the program. […] Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. […] Proposed management programs shall describe priorities for implementing controls."

Porter –Cologne Act section 13377 – Implement Clean Water Act and Whatever Else is Needed

California Water Code section 13377 provides that "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act (Clean Water Act), as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, **together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance**." *(emphasis added.)*

When a regional board issues waste discharge requirements to control discharges of urban runoff and storm water, it is exercising the authority of the state, as set forth in the Porter-Cologne Water Quality Control Act, in a manner that will implement the federal NPDES regulations as well as all applicable provisions of the Porter-Cologne Act, statewide Water Quality Control Plans and Policies and the Regional Water Quality Control Plan (Basin Plan). While regional board orders prescribing such requirements include the conditions and limitations prescribed for NPDES permits by the USEPA, the legal effect of waste discharge requirements depends, not on the Clean Water Act, but upon independent state law.

In other words, the regional boards have independent authority to impose requirements that exceed those contained in the federal regulations governing storm water discharges. California's Porter-Cologne Water Quality Control Act

antedates the 1972 federal Clean Water Act amendments to the Federal Water Pollution Control Act and, in some particulars, provides broader authority over activities that could affect water quality than the Clean Water Act. For example, state authority extends to all discharges of waste that could affect the quality of surface or ground water while the Clean Water Act applies only to discharges of pollutants from point sources to surface waters. The Clean Water Act explicitly preserves independent state authority to enact and implement its own standards and requirements, provided that such standards and requirements are at least as stringent as those that would be mandated by the Clean Water Act and the NPDES regulations:

> Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States. [CWA 510; 33USC1370.]

Thus, while the state is compelled to ensure implementation of the federal regulations for water pollution control, it is free to implement whatever additional water quality control measures may be authorized by state law. The California Legislature explicitly reiterated the independent regulatory discretion of the state in its amendments to reconcile Porter-Cologne with the Clean Water Act.

Discharges of Waste are Privileges, Not Rights

In addition to the Regional Board's broad legal authority and discretion as discussed above, it is important to keep in mind that the Porter Cologne Act clearly specifies that discharges of waste into waters of the state are privileges, not rights [section 13263(g)]. The Porter Cologne Act also specifies that requirements for discharges of waste need not allow use of the full waste assimilation capacity of receiving waters [section 13263(b)] and that discharges of waste may be prohibited [section 13243].

General Comments

Comment: Need more time to set up both industrial and commercial pollution prevention programs. (County of San Diego (1), County of San Diego (2))

Response: The implementation schedule for the Jurisdiction Urban Runoff Management Program, excluding Section F.1, has been extended in the revised Tentative Order from 180 days to 365 days.

Comment: Tentative Order No. 2001-01 cannot require Copermittees to "measurably increase the knowledge" or "measurably change the behavior" of target communities. (County of San Diego)

Response: As part of demonstrating that management measures have been completed to the Maximum Extent Practicable, there must be a demonstration of program effectiveness. Therefore, the requirement to demonstrate an increase in knowledge or beneficial behavior changes will remain in the Tentative Order.

Comment: The Order would undermine the Copermittees' CEQA process. The Copermittees will need to perform CEQA review before taking actions that will implement most of the requirements in the Order. The Order would force the Copermittees to amend their General Plans, amend ordinances, enter into agreements or build some type of facility. Each of these actions is likely to trigger CEQA review. The time needed to complete CEQA review varies greatly depending upon the type of review required, the size and the complexity of the proposed project. The Copermittees have identified several potential impacts to the environment that would be caused by implementing this Order. These potential impacts will compel the Copermittees at the least to prepare a Negative Declaration, and probably an Environmental Impact Report ("EIR"), before some of these requirements can be implemented. The 90- or 180-day timeline allowed for implementing most of the Order's requirements is unrealistic if merely a negative declaration is needed. The timelines are not possible if an EIR is needed. (County of San Diego, Procopio, Cory, Hargreaves & Savitch)

Response: Schedules for the implementation of the requirements of the Tentative Order have been extended. These extensions should be adequate for CEQA review.

It should be noted that many of the requirements imposed by the Tentative Order have been in place since the adoption of Order No. 90-42. Therefore amendments to General Plans and ordinances, agreements or construction of facilities and other work necessary for compliance with this order should have either been completed or well underway.

Comment: The County is also concerned that the environmental review will not be meaningful given the prescriptive nature of the Order. CEQA demands that a public agency analyze the environmental effects of a proposed project. The analytical process is supposed to include an opportunity for the public to participate and an opportunity for the public agency to take the environmental analysis and the public input into account when it makes decisions regarding the project. The prescriptive terms of the Order will reduce the County's environmental review to mere window dressing when the County acts to implement the Order. The County will not be able to consider modifications that will mitigate impacts or alternative projects that the analysis shows to be preferred because the County will be facing significant penalties unless it adopts a project consistent with the terms of the Order. (County of San Diego)

Response: The Tentative Order provides adequate flexibility to the Copermittees to implement their urban runoff management programs. The Copermittees are provided wide discretion in the implementation of BMPs. Furthermore, concerns regarding the Tentative Order's flow requirements potential for negative impacts have been alleviated, in that greater discretion has been provided to the Copermittees.

Comment: The Tentative Order's various requirements for implementation of structural BMPs and infiltration may adversely impact wetlands by reducing flows reaching the wetlands. (IEA, BIASC, BIASD, County of San Diego)

Response: The Tentative Order will not adversely impact wetlands through a reduction in their receipt of flows. There are two conditions to consider regarding flows to wetlands: wet weather flows and dry weather flows.

The Tentative Order has been revised to include only one requirement (F.1.b.2.b.i.) regarding wet weather flows. It is important to note this requirement only applies to new development and significant redevelopment, and therefore does not effect the majority of the area of most watersheds. The requirement states: "BMPs shall […] Control the post-development peak storm water runoff discharge rates and velocities as necessary to maintain or reduce pre-development downstream erosion, and to protect stream habitat." As can be seen, the requirement attempts to maintain peak flow rates at predevelopment levels. Nowhere does the requirement make it necessary for peak flow rates to be reduced below predevelopment rates. By seeking to maintain predevelopment peak flow rates, the Tentative Order helps preserve the natural wet-weather runoff conditions, thereby protecting wetlands, as opposed to adversely impacting them.

The Tentative Order's SUSMP requirements include the option of infiltration of storm water. This in an option, and need not be used if concerns exist regarding unforeseen impacts. The Tentative Order also promotes infiltration of storm water runoff during wet weather. Again, these requirements seek to maintain the natural infiltration rates and thereby maintain the natural flow regime, which can only benefit wetlands. Development, with its associated impervious surfaces, greatly reduces infiltration at newly developed sites. Maximization of infiltration at such development sites will only swing infiltration rates back closer to their natural predevelopment levels. It is doubtful that natural predevelopment infiltration levels can even be achieved at developed sites, as many engineers attested to at the Tentative Order workshops. Therefore, it is highly unlikely that requirements promoting the use of infiltration will result in decreased flows to wetlands, thereby causing any adverse impacts. On the contrary, promotion of infiltration maintains natural groundwater recharge and overland runoff rates, both of which are necessary

for most healthy wetlands. Any argument focusing only on quantity of overland flows misses the important impact groundwater recharge typically has on wetlands.

The other flow condition the Tentative Order addresses is dry weather flows. It has been stated that the Tentative Order's prohibitions on illicit discharges (section B) will impact the artificial dry weather flows upon which some wetlands are reliant. This is incorrect. The requirements for the prohibition of non-storm water discharges in section B of the Tentative Order are almost identical to requirements regarding non-storm water discharges in the current San Diego Municipal Storm Water Permit (Order No. 90-42). Clearly, these prohibitions have not led to the halt of dry weather urban runoff within San Diego County over the last ten years. It has been further stated that Legal Authority section D.1.b of the Tentative Order will also result in decreased dry weather flows to wetlands. Again, this is not the case. This section requires the Copermittees to have legal authority to prohibit the discharges described in the section. It does not require the discharges to be prohibited in all instances, but rather requires the Copermittees to have the legal authority to prohibit such discharges in the event that prohibition is determined to be necessary. Irregardless, it is doubtful that any of the discharges discussed in section D.1.b would be beneficial to wetlands.

It has also been suggested that the provisions of the Tentative Order will require the diversion of dry weather flows to the sanitary sewer, thereby depriving wetlands of valuable artificial flows. Nowhere does the Tentative Order require diversion of any types of flow to the sanitary sewer. The Tentative Order actually does the opposite by promoting onsite controls and discouraging diversion. The draft Fact Sheet/Technical Report also discusses a preference for on site controls as opposed to diversion-type regional solutions. Furthermore, the Tentative Order's requirement that dry weather flows be diverted from structural infiltration BMPs (section F.1.b.2.i.iii) does not constitute a diversion to the sanitary sewer. Dry weather flows can simply be diverted to other BMPs such as filters, which would remove pollutants in the dry weather flows prior to their discharge to wetlands or other downstream areas.

Comment: Allow co-permittees to develop time schedules for watershed mapping and implementation of watershed URMP and submittal of reports. (County of San Diego (1), County of San Diego (2))

Response: The Copermittees may develop time schedules for watershed mapping and implementation of the Watershed Urban Runoff Management Program Report that achieve compliance with the task completion and submittal dates specified in the revised Tentative Order.

Comment: Submittal dates for the first and second unified JURMP report, and model SUSMPs reports need to be extended. (County of San Diego (1), County of San Diego (2), County of San Diego (3))

Response: The revised Tentative Order eliminates the requirement to submit both a first and second unified Jurisdictional Urban Runoff Management Program Document. The revised Tentative Order requires the submittal of one Unified Jurisdictional Urban Runoff Management Program Document 365 days following the adoption of the Tentative Order. Additional time to develop the Model SUSMP will

not provided. The submittal of the first Unified Jurisdictional Urban Runoff Management Program Report has been extended by 365 days.

Comment: Several permit requirements constitute an unfunded mandate requiring reimbursement from the State. (Building Industry of Southern California, City of Del Mar, Building Industry of Southern California (2), Coalition for Practical Regulation, City of San Juan Capistrano, Coalition for Practical Regulation (2), City of El Cajon, County of San Diego)

Response: The requirements of the tentative permit are not within the definition of "unfunded mandate" that would require reimbursement of costs under the California Constitution. This is because the requirements of the tentative permit are derived from the federal Clean Water Act, as opposed to State Law. Since the tentative order would implement a federal requirement, rather than a state requirement, the tentative order is not an "unfunded mandate" by the state. The State Water Resources Control Board (SWRCB) has previously determined in several circumstances that regional board orders are exempt from the requirement for reimbursement under the California Constitution.
Also, although this program is a federal requirement, SDRWQCB staff has provided the Copermittees with information on creating funding sources. Several Copermittees have established funding sources to mitigate the strain on the municipalities general fund.

Comment: Comment period was too short to give the necessary responses. (City of Escondido, County of San Diego)

Response: The comment period was proposed and sufficiently noticed with the release of Tentative Order 2001-01. Extension of the adoption schedule was considered and rejected by the SDRWQCB in open hearing on December 13, 2000.

Comment: 365 days is not long enough to develop and implement SUSMP. The date to implement the land use planning date and SUSMP conflict by 180 days. (County of San Diego, City of San Diego)

Response: The development and implementation of the Model SUSMP requirements of Section F.1 of the Tentative Order are realistic and achievable. Additional time has been provided for the Copermittees to implement the other requirements of the Jurisdictional Urban Runoff Management Program in order to facilitate the timely completion and implementation of the entire Jurisdictional Urban Runoff Management Program. Under the revised Tentative Order, the dates for implementation of Land Use Planning and the Model SUSMP requirements now coincide.

Comment: There appears to be a schedule conflict with regards to Section F.1.b and Sections D.2. And D.2.d. (City of La Mesa, County of San Diego)

Response: Section F.1.b contains requirements for modifications to the project approval process and is not in conflict with the requirements of Section D.2 which require each Copermittee to submit certified statements from its chief legal counsel that the Copermittee has adequate legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and the revised Tentative Order. The revised Tentative Order extends the submittal date for requirements in Section D.2 by 90 days to accommodate the Copermittees request for additional time.

Comment: What authority do land use permitting agencies have to enforce the requirements of the Tentative Order on third parties? (City of Chula Vista)

Response: Storm water permits are issued to municipalities because of their land use authority. The ultimate responsibility for the pollutant discharges, increased runoff, and inevitable long-term water quality degradation that results from urbanization lies with local governments. This responsibility is based on the fact that it is the local governments that have authorized the urbanization (i.e., conversion of natural pervious ground cover to impervious urban surfaces) and the land uses that generate the pollutants and runoff. Furthermore, the MS4 through which the pollutants and increased flows are conveyed, and ultimately discharged into receiving waters, are owned and operated by the same local governments. In summary, the municipal Copermittees under Order No. 2001-01 are responsible for discharges into and out of their storm water conveyance systems because (1) they own and operate the MS4; and (2) they have the legal authority that authorizes the very development and land uses which generate the pollutants and increased flows in the first place.

Order No. 2001-01 holds the local government accountable for this direct link between its land use decisions and water quality degradation. The permit recognizes that each of the three major stages in the urbanization process (development planning, construction, and the use or operational stage) is controlled by and must be authorized by the local government. Accordingly, this permit requires the local government to implement, or require others to implement, appropriate best management practices to reduce pollutant discharges and increased flow during each of the three stages of urbanization.

For example, since grading cannot commence prior to the issuance of a local grading permit, the Copermittees have a built-in mechanism to ensure that all grading activities are protective of receiving water quality. A Copermittee has the authority and discretion to withhold issuance of the grading permit until the project proponent has demonstrated to the satisfaction of the Copermittee that the project will not violate the Copermittee's ordinances or cause the Copermittee to be in violation of its municipal storm water permit. Since the SDRWQCB will ultimately hold the Copermittee responsible for any discharges from the grading project, the Copermittee will want to use its own permitting authority to ensure that the project proponent implements whatever measures the Copermittee deems necessary to protect discharges into its MS4.

Comment: The RWQCB should not issue a municipal stormwater permit that is so fundamentally inconsistent with similar permits issued elsewhere in the state. The foundation of the permit may not be

legal. However, legal or not, the issuance of a radically different permit in San Diego than has been issued elsewhere in the state is not good policy, and it is not fair. The Order the San Diego RWQCB has proposed is more stringent and invasive in almost all respects than prior municipal stormwater permits issued in this state. The Order is much more stringent and prescriptive, and much less flexible than permits issued to Orange County, to other Los Angeles area Copermittees, and to municipalities in Ventura, Riverside, and Santa Clara. (County of San Diego)

Response: The mission of the RWQCBs and SWRCB is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The "benefit" to which this mission statement refers is expressed in terms of the beneficial uses designated in regional water quality control plans (basin plans). Each RWQCB develops these plans for its own region, in keeping with California Water Code § 13240 et seq. Since the mission of the RWQCBs involves protecting beneficial uses that are designated by region or portion thereof, it is appropriate for the actions of a RWQCB to be specific to its region or portions thereof. In other words, in carrying out its mission, it is more important that the SDRWQCB take actions as necessary and appropriate to protect beneficial uses in the San Diego region than it is to achieve multi-regional or statewide permit consistency. The Tentative Order is intended first and foremost to protect beneficial uses in the area to which it applies, not to be consistent with permits adopted in the past that are applicable to other areas.

Comment: The federal Clean Water Act and state Water Code do not give the RWQCB the broad legal authority which staff claims, and on which the validity of the Order depends.

In the Technical Report, at pages 62 and 63 and passim, the RWQCB claims broad authority to require in this Order “Whatever Else is Needed.” This claim is based on both federal and state law. However, the Order goes well beyond any omnibus or general authority the cited statutes actually provide.

Section 401(p)(3) of the Clean Water Act provides that municipal stormwater permits

“shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

This language in section 401(p)(3) is all about controls to reduce discharges of pollutants. Even the “other provisions” the section authorizes must be appropriate for the control of such pollutants. Read by itself, this language plainly says nothing about the protection of water quality. Moreover, the language cannot be read as a subtle backdoor attempt to authorize water quality based requirements “if appropriate” since the Clean Water Act does not require municipal stormwater discharges to meet water quality standards. This language is not about the impacts of stormwater discharges on water quality, and it is not a blanket authorization for the RWQCB to require anything it wants based on amorphous or unsupported claims that such requirements are “appropriate” or “needed.”

In Defenders of Wildlife v. Browner (Ninth Cir. 1999) 191 F3d 1159, the federal appellate court with jurisdiction over California contrasted this language with provisions of the Clean Water Act that applied to industrial dischargers, and held that EPA was not obliged to require in an EPA-issued permit that municipal discharges strictly comply with state water quality standards. In dicta, the Court also advised that EPA “has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants.”

The dicta in Defenders of Wildlife does not authorize the regional water boards to require municipal stormwater discharges to meet state water quality standards in every case. At most, that dicta contemplates (as it clearly states) that this requirement could be imposed after a determination that this kind of requirement was in fact "necessary to control pollutants."

There is no determination or Finding of this kind supporting the Order. Instead, with complete circularity, Finding 13 states that compliance with receiving water limits based on water quality objectives is necessary to ensure that municipal stormwater discharges do not contribute to violations of water quality objectives. This is a legally insufficient Finding to support the water quality based requirements the Order seeks to impose.

Adding a new Finding to this Order before final promulgation would not cure this legal defect, because there is no reference in the Technical Report to evidence that could support the required Finding. Absent compelling evidence, it would be arbitrary for the RWQCB to find that application of the Clean Water Act's MEP standard by the Copermittees would not adequately control pollutants.

State law is also relevant there. The Technical Report cites to Water Code section 13377 as a source of omnibus authority. The second part of that section authorizes only "anymore stringent effluent standard or limitation," and only where "necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Water Code § 13377.)

Many of the requirements imposed by the Order and based on this purported authority are not effluent standards or limitations—they are not even discharge- related requirements. Instead, they are directives to the Copermittees to take regulatory actions against third parties. These kinds of additional requirements are not authorized by section 13377.

Any authority that section 13377 might provide to impose requirements that are not "controls to reduce the discharge of pollutants," is further limited by Water Code section 13372. This section requires that state law be construed to prevent "any inconsistency" with respect to required NPDES permits. It is absolutely fundamental to the scheme for municipal stormwater discharges laid out in the Clean Water Act that these discharges are not subject to water quality standards. Any interpretation or application of section 13377 that reversed this fundamental policy decision would be inconsistent with the Clean Water Act, and is prohibited by Water Code section 13372. Congress made a fundamental distinction between industrial discharges and municipal stormwater discharges in the Clean Water Act. The Ninth Circuit affirmed that distinction in Defenders of Wildlife. Water Code section 13372 requires this RWQCB to do likewise.

Finally, any requirements that are based on Water Code section 13377 must be justified by the RWQCB "as necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." The RWQCB has not acknowledged and has not met this burden. The burden is real. In Southern California's Edison Co. v. State Water Resources Control Board (1981) 116 Cal.App.3d 751, the Edison Company, operator of the San Onofre Nuclear Power Plant, brought an action against the State Water Resources Control Board challenging waste discharge requirements imposed upon the power plant by the San Diego Regional Water Quality Control Board under an NPDES permit and waste discharge requirements ("WDRs"). The San Diego Regional Board's Order was affirmed by the State Board. The petitioner challenged the WDRs, claiming the permit standards requiring the petitioner to remove pollutants entering into the generating stations through its water intake valve were required to have been set on a "net" rather than a "gross" basis. The State Board adopted a Water Control Plan ("Ocean Plan") from which the Regional Board presumably derived its authority to issue the permit, although that Plan

did not authorize the regulations on a gross basis as opposed to a net basis. (Id. at 757.) The trial court set aside the Regional Board's "gross standard," finding it was issued "beyond the authority of [either of] the Boards." (Id. at 754.)

On appeal, the Appellate Court held that while the Clean Water Act allows states or other agencies to enact stricter limitations than those found in the Federal Guidelines, such stricter limitations are only permitted "as necessary for the protection of the beneficial uses of the ocean." (Id. at 758-759, citing Water Code § 13377.) The court went on to find that in order for a regional board to make such a finding it must "first annunciate its reasoning; which must in turn be supported by the evidence." (Id.) In Southern California Edison Co., because the State Board's order was not supported by evidence showing that a more stringent standard was necessary to protect special beneficial uses of the ocean, "the Board's findings were inadequate" and "the absence of such evidence makes it impossible to determine whether stricter regulations than those found in the ocean plans are in fact necessary." (Id. at 759.) Finally, the Court held that as to the one finding that even addressed the issue, it "fails to explain how a specific use or uses will be benefited by implementation of the stricter standards or why stricter standards are in fact necessary." (Id. at 761.)

Neither the Clean Water Act nor the Porter-Cologne Act authorizes the RWQCB to impose the numerous programs and unfunded mandates set forth in the Tentative Order, particularly where the RWQCB has not provided sufficient evidence to justify the need for such stricter standards. Examples of overly restrictive provisions of the Tentative Order that are not supported by sufficient evidence include those provisions of the permit that prohibit the discharge of wash water from residential areas, the requirement that the Copermittees control the discharge of pollutants "to" the MS4, the requirement that the permittees carry out all "inspection surveillance and monitoring" apparently to be determined in the future by the Regional Board or through some private lawsuit, and numerous other provisions of the Tentative Order including the numerical sizing criteria set forth in the provisions dealing with SUSMPs. Further, the Regional Board has failed to annunciate its reasoning to support why such stricter standards are "necessary," and there is no evidence cited in the Technical Report to support such standards or reasoning. The stricter standards as set forth in the Tentative Order are not authorized under either the Clean Water Act or State Law.

The County believes the dicta in this case erroneously interprets what section 402(p)(3)(B) authorizes. This section need not and should not be read to authorize application of water quality prohibitions to municipal stormwater discharges; that would be a strained interpretation that is not consistent with the basic statutory scheme Congress created for municipal stormwater. Instead, the phrases “reduce the discharge of pollutants” at the beginning of the section, and “control of such pollutants” at the end of the section should be read as meaning the same thing. The authorization to do more in section 402(p)(3)(B) would then merely authorize expansion of the specific list of MEP techniques included as examples in the section. See comment “O” above. (County of San Diego)

Response: Water Code 13263 & 13377 give RWQCB authority to regulate discharges to preserve highest reasonable water quality and water quality needed to sustain beneficial uses, including aquatic habitat, etc. NPDES regulations mandate reduction of pollutants in storm water that cause or contribute to pollution to MEP by municipalities; evidence establishes risk of unreasonable degradation and pollution associated with urban runoff and support’s RWQCB imposition of requirements implementing “MEP” performance standards.

While CWA does not require municipalities to satisfy receiving water standards; [Defenders of Wildlife v Browner (9th c, 1999), 191F3d 1159] WQ sections 13263 & 13377 requires WDRs functioning as NPDES permits to implement water quality objectives (i.e., water quality standards) in basin plans and

provisions of the CWA and NPDES regulations needed to protect beneficial uses, and to prevent nuisance.

Comment: Tentative Order No. 2001-01 violates California Water Code section 13360 by specifying the "particular manner in which compliance may be had," in the form of specific BMPs. (County of San Diego)

Response: California Water Code (CWC) section 13360 generally prohibits the Regional Boards from specifying the manner of compliance with state waste discharge requirements. However, CWC section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Since tentative Order No. 2001-01 is written to implement CWA requirements, it does not violate section 13360 for the SDRWQCB to include specified programs of Best Management Practices (BMPs) to be implemented by the municipalities in order to carry out CWA requirements. Specificity is even more crucial in waste discharge requirements for storm water discharges given their lack of numerical effluent limits. In order to reduce storm water pollution to the maximum extent practicable (MEP), the tentative order must require specific styles of BMPs (i.e., structural or source control), but that is not to say that the SDRWQCB is dictating one specific BMP to accomplish the task. The municipalities often have many BMPs available to get the job done.

Comment: The Order unnecessarily and inappropriately creates additional and more severe penalties for requirements that should not be included in the Order, including restatements of existing non-water quality requirements.

Violation of any requirement of a valid NPDES permit can subject the "discharger" to severe penalties, as a result of EPA, RWQCB, or citizens' enforcement actions. This enforcement system should not be abused by adding requirements to an NPDES permit that do not directly implement the Clean Water Act and the state Water Code.

In the Order, the RWQCB has chosen to direct municipalities to become general permit enforcers, pollution prevention regulators, and water quality regulators. See comments "S" and "T" above. Even if the County were inclined to agree that it should implement these kinds of programs, it could not accept the burden of implementing such difficult programs within 180 days under the threat of Clean Water Act penalties. Continued inclusion of these kinds of programs as requirements of the Order, rather than as suggestions or guidance, would leave the County with no prudent option but to oppose the Order.

The Order also attempts to transform other existing non-water regulatory requirements into NPDES requirements. For example, the Order prohibits unlawful disposal of storm drain wastes. This activity is already illegal, and is already subject to appropriate penalties. The Order also requires "proper" disposal of unused pesticides, herbicides and fertilizers from municipal facilities. But "improper" disposal is already illegal. (County of San Diego)

Response: To the extent that the Tentative Order may require proper disposal of wastes, pesticides, herbicides, etc., the requirements are very broad. The Tentative Order's requirements addressing disposal are only included to help ensure such substances are not disposed of in the MS4. Therefore, the Tentative

Order's requirements on disposal are directly related to the Tentative Order's prohibition of illicit discharges. As such, they are appropriate requirements for the Tentative Order.

Comment: The theory behind the permit is that water pollution can be prevented by stopping water. (Building Industry Association of San Diego County)

Response: The Tentative Order seeks to ensure that the beneficial uses of a receiving water are protected despite discharges from MS4s into that receiving water. Beneficial uses are defined as the uses of water necessary for the survival or well being of humans, plants, and wildlife. Municipal storm water NPDES permits contain requirements to achieve numeric and narrative receiving water quality objectives which are established to protect these beneficial uses. The Tentative Order includes these water quality objectives and a prohibition that MS4 discharges may not cause the water quality objectives in the receiving water to be exceeded. By definition, when the water quality objectives of a receiving water are exceeded, the beneficial uses of that water are not adequately protected.

Typical NPDES permits are based on the concept of employing full-scale treatment of an effluent to remove pollutants at the end of the pipe (i.e., just before being discharged into receiving waters). Accordingly, typical NPDES permits contain numeric effluent limits which are arithmetically derived from receiving water quality objectives for each pollutant of concern in the effluent. However, municipal storm water permits are not typical NPDES permits because they are not based on the concept of full-scale treatment of polluted storm water. Full scale end of pipe treatment for storm water is not considered economically and technologically feasible at this time. Therefore municipal storm water permits do not contain numeric effluent limits, but rather are based on the concept that pollutants can be effectively reduced in storm water to the maximum extent practicable by the application of a wide range of best management practices (BMPs). The technology-based performance standard of “maximum extent practicable” refers to evaluation and implementation of BMPs to the maximum extent practicable, except where (1) other effective BMPs will achieve greater or substantially similar pollution benefits; (2) the BMP is not technically feasible; or (3) the cost of BMP implementation greatly outweighs the pollution control benefits.

In other words, in municipal storm water permits, receiving water quality objectives are attained by way of BMP implementation, including use of pollution prevention, source control, and treatment control BMPs. To protect receiving water beneficial uses, municipal storm water permits require the use of best management practices which prevent the generation of pollutants and keep runoff from coming into contact with pollutants, to be supplemented by the use of methods that remove or treat pollutants. The BMPs available to the Copermittees include many that do not act by "stopping water" but rather through a variety of means ranging from prevention and source reduction, which may not involve flow at all, to structural treatment BMPs that effectively remove pollutants from urban runoff prior to discharge to receiving waters. Within the framework of the Tentative Order, the Copermittees have the discretion to determine which BMPs to implement.

Comment: Beach closings will not be prevented with this permit since they are predominantly caused by sewage spill. (Building Industry Association of San Diego County)

Response: As discussed in the Fact Sheet/Technical Report and Findings 2-7, sewage spills are only one of many sources of the significant pollutant loadings characteristic of urban runoff. The Tentative

Order provides a regulatory framework within which the Copermittees will implement programs to reduce to the maximum extent practicable pollutants in urban runoff discharged from their MS4s and prevent their discharges from causing or contributing to exceedances of water quality objectives.

Urban runoff is fundamentally important to the water quality of Southern California. It has been found to be a leading cause of water quality impairment in the San Diego Region and nationwide. Untreated pollutants in urban runoff, indiscriminate of dry or wet weather conditions, routinely find their way to creeks, lagoons, bays, and ocean. These pollutants are transported by runoff from over watering of residential lawns, runoff from rainfall, and runoff from other sources. San Diego area urban runoff is commonly contaminated with pesticides, fertilizers, animal droppings, trash, food wastes, automotive byproducts, and many other toxic substances which are generated in the urban environment. Water that flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas carries these untreated pollutants through storm drain networks directly to the receiving waters of the region. Southern California, with the highest coastal population density of the entire country, suffers multiple tribulations from these urban generated pollutants.

The United States Environmental Protection Agency (US EPA) recognizes urban wet weather flows as the number one source of estuarine pollution in coastal communities. This trend is reflected locally by the 1998-1999 City of San Diego and Co-Permittee NPDES Stormwater Monitoring Program Report, which names urban runoff as one of the most significant contributors of pollution to our waterways and coastal areas. Furthermore, this document reports that monitoring efforts indicate that instream concentrations of pathogen indicators (fecal coliform and streptococcus) and heavy metals (such as cadmium, copper, lead, and zinc) exceed state and federal water quality criteria. Storm water within the region has also been found to contain the pesticides diazinon and chlorpyrifos (Dursban) at levels that can cause chronic or acute toxicity.

Polluted urban runoff causes many impacts in Southern California, including increased public health risks, high concentrations of toxic metals in harbor and ocean sediments, and toxicity to aquatic life. A study exploring the health risks associated with urban runoff in Southern California was conducted in 1995 by the Santa Monica Bay Restoration Project using a survey of 15,000 bathers at three Santa Monica beaches. The study concluded that there is a 57% higher rate of illness in swimmers who swim adjacent to storm drains than in swimmers who swim more than 400 yards away from storm drains.

This potential for public health risks resulting from urban runoff is reflected in the San Diego region as well. In 1999, there were 29 days in which the San Diego County Health Department issued general advisories to avoid waters 300 feet either side of all storm drain outlets in order to protect the public from potential adverse health effects caused by urban runoff. Also, in 1999 there were 720 combined beach closures and postings in San Diego County. The San Diego County Department of Health does not recommend the public recreate in closed or posted waters due to associated health risk. A breakdown of the beach closure and posting data is as follows: 127 of these closings were related to sewage spills, 71 related to river mouth outlets or some other excavation, and 522 of the days were related to some exceedance of water quality standards. Urban runoff can also impact drinking water; contamination by urban runoff has forced the closure of potable water reservoirs within the City of San Diego in order to protect public health.

The San Diego Regional Water Quality Control Board (SDRWQCB) finds that such problems are indeed frequently urban runoff related. For instance, a common conveyance for a sewage spill to reach a beach is through the municipal storm water system. Also, exceedances of standards at some of the Region's beaches have unquestionably resulted from pollutants conveyed by the storm water drainage system. In addition, urban runoff is increasingly being targeted as the cause of beach closures and postings in other

areas of the San Diego region and Southern California. Urban runoff has been identified as a principal contributor to fecal coliform contamination in Orange County's Aliso Creek, a creek which often causes beach postings when flowing into the ocean. Municipal enforcement efforts focusing on urban runoff have also resulted in reduced coliform levels in receiving waters in Encinitas. Finally, US EPA goes on to say that urban storm water runoff and sewer overflows have become the largest cause of beach closings in the United States for the previous three years, becoming more significant than such sources as oil spills and publicly owned treatment works.

Regardless of how beach posting and closure data is interpreted, one thing is clear: Beneficial uses are not being met for the waters in the San Diego Region, and urban runoff is a significant contributor to this receiving water impairment. For San Diego, known throughout the world for its beach lifestyle, these statistics are bound to have increasingly serious effects on tourism revenue as well as the local cultural identity.

Comment: The permit conflicts with US EPA Phase II Storm Water Regulations which encourage implementation on a regional or watershed basis. (Building Industry Association of San Diego County)

Response: The Tentative Order requires the Copermittees within a watershed to collaborate to develop and implement a Watershed Urban Runoff Management Program.

Comment: Since the region's storm water problems stem from existing land use actions, new development and redevelopment would carry a disproportionate share of the financial obligation to implement the provisions of the permit. (Building Industry Association of San Diego County)

Response: The Tentative Order does not require new development and redevelopment to carry a disproportionate share of the financial burden to implement the provisions of the permit. The requirements on new development and redevelopment are required under the Federal NPDES regulations, and are designed to prevent new development and redevelopment from exacerbating existing conditions. The SWRCB supports this approach, stating in Order WQ 2000-11 that "[i]n the context of the entire effort required by the permit, the development controls can be seen as preventing the existing situation from becoming worse." The requirements for new development and redevelopment are only one section of the Tentative Order; the entire rest of the Tentative Order is focused on existing problems stemming from existing development conditions. The controls on new development do not result in a disproportionate financial obligation, since incorporation of BMPs during the planning phase of development has been consistently shown to be the most cost effective approach to reduce pollutant loads to receiving waters (USEPA, 1999b).

Comment: The creation of storm water utility districts would ensure equitable financial responsibility and provide essential regulatory flexibility to more accurately respond to specific pollutants of concern on a per watershed basis. The board is urged to consider this more practical and cost effective approach. (Building Industry Association of San Diego County)

Response: Nothing in the Tentative Order prevents the Copermittees from forming a storm water utility district to aid in funding and implementation of their urban runoff management programs.

Comment: SDRWQCB Has Failed To Show That The Proposed Permit Will Reduce Pollutants To The "Maximum Extent Practicable" As Required By CWA and Porter-Cologne.

SDRWQCB has failed to establish any findings to support the determination that the permit is protective of water quality. There has also been no determination made as to whether the program required by the permit is necessary, cost effective, or capable of implementation by the Copermittees or third parties.SDRWQCB has failed to establish any findings to support the determination that the permit is protective of water quality. Further, there are no findings which indicate that implementation of the permit will result in the reduction of pollutants in receiving water to the maximum extent practicable (MEP). (Building Industry Association of San Diego County)

Response: MEP is the acronym for Maximum Extent Practicable. MEP is the technology-based standard established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water (MS4s) must meet. It is implementation of actions required by the permit, not the permit itself, that will meet MEP. That implementation is the responsibility of the Permittees.

Comment: There has been no initial determination that any pollutants even exist in the storm water runoff. The necessity of determining the existence and source of pollutants was reaffirmed recently by the City of Huntington Beach. The City recently identified a prime suspect which caused beach closures in 1999: bird waste from a nearby marsh. These findings confirm the necessity to identify the source of pollutants, and analyze the methods used to treat them in order to meet MEP. The findings by the City of Huntington Beach also suggest that the objectives of the CWA and Porter-Cologne cannot and quite possibly should not be achieved in every circumstance. (Building Industry Association of San Diego County)

Response: Findings 3, 4, 5, 6, 7, and 9, together with their corresponding discussions in the draft Fact Sheet/Technical Report, identify the pollutants commonly found in urban runoff and their impacts to receiving waters. The Copermittees' monitoring efforts frequently find pollutants in storm water runoff at concentrations which exceed USEPA benchmark values for storm water, exceed water quality objectives, and cause toxicity.

Comment: The Proposed Permit Improperly Relies on Volume/Flow Control to Prevent Pollution.

The proposed Permit and Draft Fact Sheet/Technical Report for SDRWQCB Order No. 2001-01 ("Fact Sheet") professes to address both volume/flow control and specific pollutants of concern, examination of the proposed permit's actual application makes clear that it is a volume and flow control program, doing nothing by its own provisions to identify and clean up existing sources of pollution. Rather it relies upon volume capture and/or treatment from new development and redevelopment. By focusing on this high cost and low impact approach, adoption of the proposed permit would be an outright rejection of SDRWQCB's responsibility to bring about actual solutions to the existing problem. […]

The Fact Sheet in the proposed permit quotes Governor Davis:

"In his veto message of a $6.9 million bill that would have funneled money to Orange County to help curb urban runoff and clean beaches, Davis said the legislation 'focuses on a temporary, seasonal fix and does not provide for identification and elimination of the sources of contamination.'" (Fact Sheet, p. 33.)

The Governor's observation applies to the entire proposed permit.

[…]

The proposed permit instead seeks to classify all runoff affiliated with development or redevelopment as polluted. There is no attempt whatsoever to distinguish between types of runoff and the content of runoff. The "urban runoff" is impermissible under the proposed permit.

[…]

This across the board focus upon prospective urban runoff – without differentiation – to the exclusion of identifying and meaningfully remediating existing sources and collections of pollutants is an arbitrary and capricious exercise of SDRWQCB's discretion in adopting the proposed permit. (Building Industry Association of San Diego County)

Response: The Tentative Order addresses both urban runoff flows and the pollutants found in them. The Tentative Order also addresses urban runoff from all sources, including both existing and new development.

While the Tentative Order does address changes in peak flow rates resulting from new development, it does so in a limited manner. Based on the comments from many interested parties, the prohibition against any increase in peak flow rates resulting from new development has been changed; the requirement to address changes in peak flow rates now only applies to development falling under the SUSMP categories, where the potential for downstream erosion exists. The necessity for the control of peak flow rates increases from development is strongly supported. USEPA states: "In many cases the impacts on receiving waters due to changes in hydrology can be more significant than those attributable to the contaminants found in storm water discharges" (USEPA, 1999a). Furthermore, the SWRCB upheld in Order WQ 2000-11 that control of peak flow rates from SUSMP priority development projects was appropriate.

The Tentative Order does not treat all urban runoff from new development as polluted; rather, it finds that to adequately control pollutant discharges and changes in flow from new development, structural treatment BMPs must be implemented at various priority development project categories. The SWRCB has found that structural treatment BMPs are needed at SUSMP priority development project categories, stating in Order WQ 2000-11 that such an application constitutes MEP.

Finally, the Tentative Order does not only focus on new development, but also has extensive requirements for existing development. The Tentative Order requires that BMPs be implemented for the following types of existing land uses or activities: construction, municipal, commercial, residential, and industrial.

Comment: The SDRWQCB fails to demonstrate the constitutional justification for the exercise of federal jurisdiction over these wholly intrastate facilities, in advance of any discharge to waters of the United States in violation of the Commerce Clause. (Building Industry Association of San Diego County)

Response: State and Federal lands and activities will be addressed under the Phase II Storm Water NPDES Regulations in March 2003. The operators of these facilities will be added as Copermittees or otherwise be required to meet or exceed the requirements of the Jurisdictional Urban Runoff Management Program for the area in which they are located. The Tentative Order does not require the Copermittees to control runoff from freeways, agricultural land, etc. over which they do not have jurisdiction, provided that discharges from such sources do not enter their MS4s. Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their physical jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

Comment: The SDRWQCB despite its cursory denial in Finding 36, made no determination whether permit compliant MS4 discharges will cause or contribute to the unreasonable degradation of receiving water quality and therefore violate the state and federal Antidegradation Policies. (Building Industry Association of San Diego County)

Response: Tentative Order No. 2001-01 does not violate the state and federal Antidegradation Policies. The Policies ordinarily are triggered by new discharges, expansion of existing facilities, or a reduction in the level of treatment of an existing discharge, “since such activities would presumably lower water quality." US EPA Questions & Answers on Antidegradation, at p. 6. The antidegradation issues were analyzed in detail during the adoption of the original San Diego Municipal Storm Water Permit, Order No. 90-42, therefore, a new analysis for the reissuance of waste discharge requirements is unnecessary. Furthermore, Tentative Order No. 2001-01 complies with the Policies by requiring Copermittees to “meet waste discharge requirements which will result in the best practicable treatment or control of the discharge” and through the implementation of “cost-effective and reasonable best management practices.”

Comment: Flexibility in BMP design is needed to address non-stormwater quality issues associated with their construction, such as vector management (e.g. mosquito breeding). (County of Orange Public Facilities & Resources Dep)

Response: Flexibility in BMP design is provided in the Tentative Order. Structural treatment BMPs are only required to be a specific size. The type of BMPs to be implemented, as well as their design, is left to the discretion of the Copermittees.

Comment: The Tentative Order improperly delegates the Regional Board's enforcement duties to the municipalities. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Tentative Order No. 2001-01 in no way delegates the SDRWQCB's enforcement authority to Copermittees. Throughout the tentative Order, Copermittees are required to implement and enforce their permit required legal authority. The genesis of this requirement is 40 CFR (Code of Federal Regulations) 122.26(d)(2)(i). This section states that Copermittees must demonstrate that they have adequate legal authority to: (1) control "the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;" (2) prohibit "illicit discharges to the municipal storm sewer;" (3) control "the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;" (4) control "among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;" (5) "[r]equire compliance with conditions in ordinances, permits, contracts or orders;" and (6) "[c]arry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer."

The federal regulations in 40 CFR 122.26 establish a dual system for regulation of industrial and construction site discharges through municipal storm water conveyance systems. Industries and construction sites are permitted under statewide general NPDES industrial or construction storm water permits. These permits require industries and construction sites to do the following: (1) to reduce pollutants to comply with best available technology (BAT) and best conventional technology (BCT) performance standards and (2) to not cause or contribute to violations of applicable water quality objectives. In addition, industries and construction sites are subject to regulation by municipalities through storm water ordinances developed according to municipal storm water permits issued by the state. Pursuant to Clean Water Act section 402(p)(3)(iii) municipalities are required to implement controls to reduce the discharge of pollutants from municipal storm water conveyance systems to the maximum extent practicable (MEP). Because storm water from industrial facilities may be a major contributor of pollutants to municipal storm water conveyance systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their urban runoff management program. (See Federal Register preamble, Volume 55, No. 222, November 16, 1990, page 48000.)

The US EPA intended that the municipalities and delegated states share the responsibility of regulating storm water discharges from industrial and construction site activities. The US EPA believed that this dual approach would result in the most effective regulation. Since municipalities are ultimately responsible for discharges from their municipal storm water conveyance systems, it is in their best interest to regulate what is discharged into their system.

To satisfy the conditions of its own municipal storm water permit, a municipality may need to impose additional requirements on industrial or construction site dischargers. This need may apply to industries and construction sites which are permitted under the statewide general industrial or construction storm water permits, as well as those which are not. Therefore, a municipality should develop a mechanism to assure that all industrial and construction sites that discharge to the municipality's storm water conveyance system, know their obligation to comply with the terms of the municipality's storm water ordinance. (See Guidance Manual for the Preparation of Part 2 of The NPDES Permit Applications for discharges from Municipal Separate Storm Sewer Systems, pages 3-1 to 3-2.)

To the extent that a discharge from an industrial or construction site facility covered under the statewide general storm water permit causes a violation of an applicable receiving water objective contained in a municipality's storm water permit, both the industrial or construction site discharger and the municipality may be liable.

Comment: The permit does not extend clear, concise numeric sizing requirements to existing development, as it does for new development and significant redevelopment. (San Diego Baykeeper)

Response: While the Permittees may choose to implement numeric sizing criteria on existing development, the SDRWQCB will not be making this a requirement under the Tentative Order. The reasoning for this is to provide their Permittees maximum flexibility to choose from a wide spectrum of best management practices. In some cases retrofitting existing development with BMPs that are based on numeric sizing criteria will be the best approach. In other cases, another approach will have to be utilized as the numeric sizing will be technologically or economically prohibitive.

Comment: The co-permittees contentions that reducing pollutant loads in stormwater flows will harm wetlands or riparian habitat are unlikely ; to the contrary, selection of BMPs that will filter, infiltrate or treat runoff will benefit wetlands and the riparian habitat by providing cleaner water flows. (Surfers Tired of Pollution)

Response: Comment noted.

Comment: Constructed wetlands should not be considered as mitigation or rationalization for the destruction of existing habitat, filling or grading existing natural wetlands or vernal pools, or channelization of natural waterways, nor should co-permittees be permitted to claim that BMPs require them to degrade existing habitat, wetlands, vernal pools or lakes, rivers or streams in order to mitigate stormwater runoff from new development or redevelopment. (Surfers Tired of Pollution)

Response: Comment noted.

Comment: The Regional Board should encourage a cooperative approach and take the time to understand the real constraints faced by cities rather than imposing conditions which cities cannot implement, resulting in hard feelings and exposing the cities to litigation from the environmental community. (Coalition for Practical Regulation)

Response: Comment noted.

Comment: I strongly urge you and your board to support the current permit to keep the water safe for us, our children, and our wildlife. (Harmon, Warren)

Response: Comment noted.

Comment: There will be opposition to the permit from those who consider the cost too high, but it will be cheaper in the long run to adopt 2001-01and protect the quality of our water. (Hinton, Mel)

Response: Comment noted.

Comment: Strict controls over runoff should be established to maintain existing water quality in the face of the expected growth in population and land development. (Hinton, Mel)

Response: Comment noted.

Comment: There are areas of the permit that are unduly vague, such as in the areas of education and enforcement. The IEA would like to see guidelines set by the RWQCB in these areas to avoid confusion and inequitable enforcement of regulations. (Industrial Environmental Association)

Response: Where the Tentative Order is not prescriptive, it is to provide the Copermittees discretion in developing and implementing their programs.

Comment: Many areas of the permit call for prohibitions on specific discharges or industries, regardless of size. It does not seem efficient nor effective to prohibit minor discharges from very small businesses or minor sources. The IEA encourages the RWQCB to adopt a small business and/or small discharge exemption. (Industrial Environmental Association)

Response: The prohibition of non-storm water discharges in required by the Clean Water Act. The Clean Water Act does not include exemptions based on size of discharges. However, certain non-storm water discharges, listed in section B.2, are allowed if the Copermittees find that they are not a significant source of pollutants. For these types of non-storm water discharges, size of discharge may be considered.

Comment: Significant Redevelopment
Pollutants of Concern
Maximum Extent Practicable
Environmentally Sensitive Area
Tributary to an Environmentally Sensitive Area
We urge the Regional Board to include in this permit, clear, measurable definitions of the above referenced terms. (McKenna & Cuneo, L.L.P.)

Response: Please refer to the definitions and clarifications regarding significant redevelopment, pollutants of concern, maximum extent practicable, environmentally sensitive area, and tributary to an environmentally sensitive area addressed elsewhere in the response to comments.

Comment: The Permit imposes specific requirements on projects subject to the SUSWMP that may be impossible to achieve in the Urban Core. If the proposed SUSWMP requirements are infeasible for Urban Core projects, the Draft Permit should allow Copermittees to develop alternative requirements that achieve the same goal.

However, in order to assure that the Permit imposes the proper requirements on varying projects, a definition of Urban Core is required.

The level of urbanization in the urban core creates several unique problems when attempting to apply SUSWMPs to new construction and significant reconstruction. They include the cost of land, development (use) density, urban in fill, "Smart Growth," and ability to control pollutants, etc. SDRWQCB Staff fails to recognize the significant and different challenges that the SUSWMP imposes on geographies with varying levels of development.

As discussed below, the definition of Maximum Extent Practicable (MEP), in conjunction with the Waiver provisions of the SUSWMP may have the effect of creating different requirements for the Urban Core. Because these differing requirements may create what others will perceive as preferential treatment for the Urban Core, it is important that the Draft Permit defines the term "Urban Core" carefully, and narrowly.

Proposed Definition
This proposal defines the Urban Core as those watersheds, or portions of watersheds that meet the following criteria:
I . At least 90% of the land surface is currently impervious;
2. Average vehicular traffic on main roadways exceeds 25,000 ADT;
3. Average vehicular traffic on intersecting roadways exceeds 15000 ADT; and
4. Average land values exceed the Countywide average by 25%.

C. Rationale
The Draft Permit does not discuss the concept of the "Urban Core. The definition of Urban Core, however, ultimately affects two important concepts imbedded in the Draft Permit: "Maximum Extent Practicable" ("MEP") and the Waiver Provisions.

First, this proposed definition of Urban Core considers the issue of impervious surfaces; a concept that the Regional Board already concedes will result in greater volumes of water to be "mitigated" through treatment or infiltration. These volumes directly relate to project costs, which as described below, are integral to the definition of MEP.

Second, it considers the issue of traffic density. The Regional Board Staff is already aware that in high traffic density areas, infiltration, the most cost effective mitigation tool, will not be allowed without pretreatment. Ultimately, this prohibition will drive-up costs, which, in turn, will limit MEP. Defining the Urban Core in the manner proposed above also considers land values. Again, the cost of land will affect the cost of any Treatment Control BMPs that, in turn, will limit MEP. The Draft Permit states that the Waiver Provision is triggered by a finding of "extreme limitations of space for treatment on a redevelopment project". One rational basis for a finding of extreme of "impracticability for a specific property is that the value of the land required for the Treatment Control BMPs is so high that the project is no longer economically viable. (McKenna & Cuneo, L.L.P.)

Response: The commentor asserts that new development and significant redevelopment within the “urban core” should not be subject to the SUSMP requirement for implementation of structural treatment

BMPs which meet numeric sizing criteria. However, the implementation of structural treatment BMPs which meet numeric sizing criteria is quite feasible within the urban core.

Not all structural treatment BMPs require large amounts of land, which may be expensive in the urban core. For example, sand filters or catch basin inserts can be used. USEPA specifically identifies these BMPs for urban core use, stating "media filters are commonly used to treat runoff from small sites such as parking lots and small developments, in areas with high pollution potential such as industrial areas, or in highly urbanized areas where land availability or costs preclude the use of other BMP types. Filters should be placed off-line (i.e., a portion of the runoff volume, called the water quality volume, is diverted to the BMP, while any flows in excess of this volume are bypassed) and are sometimes designed to intercept and treat only the first half inch or inch of runoff and bypass larger storm water flows. A benefit of using filters in highly urbanized areas is that the filter can be placed under parking lots or in building basements, limiting or eliminating costly land requirements" (USEPA, 1999a). While these BMPs may not address increases in peak flow rates resulting from development, the permit provides that peak flow rates need not be controlled where potential for erosion does not exist (see change at permit section F.1.b.2.b.i). This would apply to significant parts of the urban core of downtown San Diego, which discharges directly into the bay.

Furthermore, the "heavy use" nature of the urban core requires BMP implementation. As the commentor states, the urban core experiences pervasive imperviousness (which reduces on site treatment) and high levels of vehicular traffic, which is a common source of pollutants in urban runoff. Rather than preclude structural treatment BMP use in the urban core, this "heavy use" instead necessitates the need for urban core structural treatment BMP implementation.

In addition, the SUSMP provisions provide for a waiver if implementation of all BMPs is found to be infeasible. If a project in the urban core cannot implement any BMP, a waiver may be granted.

Finally, exempting the urban core from SUSMP structural treatment BMP requirements would not be consistent with SWRCB guidance. SWRCB Order WQ 2000-11 found that the SUSMP provisions constitute MEP. Relaxing of the SUSMP provisions would therefore be below the MEP standard.

Comment: The document contains numerous acronyms, many of which are unique to this document. This makes for very difficult reading, particularly if one is interested in only one section or topic. Recommendations: (a) Provide a list of acronyms and their definitions, and more preferably, include a glossary -including the acronyms. (b) Provide a flow chart showing how all of the activities and decisions interrelate. (Padre Dam Municipal Water District)

Response: A list of acronyms is included in the draft Fact Sheet/Technical Report. A glossary is included in Attachment D of the Tentative Order. The Task and Submittal Summary Tables should be sufficient summarize the schedule for tasks and submittals required by the Tentative Order. Development of a flow chart is beyond the current scope of "response to comments," but will be considered after adoption of the Tentative Order.

Comment: The requirements of this permit should be in alignment with that of permits already issued to Caltrans, and others. Requirements should be consistent to avoid disconnects in operational methodology between agencies. (SANDAG)

Response: To the extent feasible, the requirements of the Tentative Order are consistent with permits already issued within the region. However, the Tentative Order regulates discharges of a different nature than other permits within the region. Due to the large volume of urban runoff regulated by the Tentative Order, and the continued impairment of receiving waters caused by urban runoff, the Tentative Order may contain specific requirements addressing municipal urban runoff not contained in other permits.

Comment: We urge that the Board resist the pressures to weaken this permit or to delay its adoption and implementation. There may be cases in which all of the elements of the proposed schedule can not be met. We urge that the Board treat these requests deliberately so that flexibility is allowed to address limited valid issues, but that shortsighted efforts to delay the process are rejected. (San Diego Audubon Society)

Response: Comment noted.

Comment: CALTRANS facilities and activities have a major impact on the water quality and development patterns of our region, as mentioned above. We understand that there may be problems with addressing actions of CALTRANS and other agencies that are not controlled by local jurisdictions. That is not a reason to exclude these sources of pollution. (San Diego Audubon Society)

Response: To the extent that Caltrans activities discharge to Copermittees' MS4s, the Tentative Order places responsibility on the Copermittees for such discharges. Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

Therefore, while the Tentative Order does not address all Caltrans discharges, it does address them to the extent that they enter the Copermittees' MS4.

Comment: We urge that the permit include the regulation of these state and federal agencies. The impacts of their(Border Patrol & other state and federal agencies) operations could be significantly improved if the measures described in this permit were required and enforced for their activities. If Jurisdictional conflicts occur, we urge that the Board use these conflicts to elevate the issues to state and federal agencies and our state and federal legislators so the problems will be resolved to allow the Board to comprehensively and effectively protect our water quality. (San Diego Audubon Society)

Response: Phase II of the Federal NPDES storm water regulations will cover state and federal facilities. To the extent that the Border Patrol (or other state and federal agencies) own and operate a MS4, as well as meet the criteria for applicability under Phase II, the Border Patrol (or other state and federal agencies) will be issued Phase II NPDES storm water permits. Implementation of Phase II is anticipated for 2003.

Comment: The Tentative Order establishes policy inconsistent with the Clean Water Act and State Board policies, and may therefore set a precedent for future municipal storm water permits. (California Stormwater Quality Task Force)

Response: Tentative Order No. 2001-01 is consistent with the Clean Water Act (CWA) and State Board policies. Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. The tentative Order's required programs are consistent with the CWA because they reduce the discharge of pollutants to the maximum extent practicable (MEP). Furthermore, the CWA and federal regulations describe only minimal storm water program components. Although the tentative Order may describe portions of program components that are not specifically addressed in the federal requirements and regulations, the SDRWQCB has made express findings that these components are significant sources of storm water pollution. Since the CWA and federal regulations do not exclude sources that are significant pollutant contributors, it is appropriate to cover the sources in the tentative Order.

Comment: To supplement funding for stormwater management programs, Copermittee's should be encouraged to issue citations containing administrative fines to repeat violators of local discharge control measures (Surfrider Foundation)

Response: As noted in Sections F.2.h and F.3.b.7, the Tentative Order does encourage the implementation of sanctions to ensure compliance. Such sanctions include non-monetary penalties, fines, bonding requirements, and permit denials for non compliance. The Copermittees have the authority and discretion to adopt ordinances and issue citations for the violations of those ordinances. The manner in which monies collected by a Copermittee for discharge violations is used is entirely the discretion of the Copermittee.

Comment: There is no recognition of other agencies that receive and treat urban runoff or those that must protect drinking water supplies from the impacts of urban runoff. We suggest that there be a more direct avenue for water agency involvement in the process. The Stormwater Permit addresses the federally mandated Clean WaterAct (CWA) but does not address the federally mandated Safe Drinking Water Act (SDWA). (Sweetwater Authority)

Response: The Copermittees are encouraged to coordinate with outside agencies in the Tentative Order in Finding 31, which states "Copermittee coordination with other watershed stakeholders, especially Caltrans and the Department of Defense, is also critical."

Comment: Protection from Existing Development: Sweetwater Authority agrees that urban runoff discharges are a leading cause of receiving water quality impairment in the San Diego Region. Nearly twenty years ago, the Authority began a process for protecting the water quality of Sweetwater Reservoir through the conceptualization, design and eventual construction of an Urban Runoff Diversion System (URDS) to capture urban runoff flows from development upstream of the reservoir. While successful implementation of the proposed Stormwater Permit may significantly control urban runoff from future development, ongoing operation and maintenance of the URDS will Protect Sweetwater Reservoir from water quality impacts originating from existing developments. (Sweetwater Authority)

Response: Comment noted.

Comment: The draft document will require Copermittees to implement Urban Runoff Management Programs (URMPs) designed to reduce discharges of pollutants and flow into and from municipal storm sewer systems. To be most effective, the permit states that "URMPS must contain both structural and non-structural best management practices (BMPs)." Sweetwater Authority's expertise should be included in the process of protecting the Sweetwater River watershed. (Sweetwater Authority)

Response: The Copermittees are encouraged to coordinate with outside agencies in the Tentative Order in Finding 31, which states "Copermittee coordination with other watershed stakeholders, especially Caltrans and the Department of Defense, is also critical."

Comment: On May 8, 1985, the County Board of Supervisors approved a request by Sweetwater Authority to collect fees from new development. Specifically, the Board directed the Department of Planning and Land Use (DPLU) to continue a practice of placing conditions on development proposals, to the satisfaction of Sweetwater Authority, regarding the protection of Sweetwater Reservoir. For future developments, including significant redevelopment in the Sweetwater River watershed, cooperation with Sweetwater Authority should be required in order to continue the implementation of this long standing policy and practice. The URDS was constructed at Sweetwater Authority's expense with the understanding that future watershed development would financially contribute to this structure, which was built solely to protect the reservoir from cumulative impacts of development. The payment of fees to mitigate cumulative impacts of urban runoff should be considered when determining the waste discharge requirements for new developments in the Sweetwater River watershed. (Sweetwater Authority)

Response: The Copermittees are encouraged to coordinate with outside agencies in the Tentative Order in Finding 31, which states "Copermittee coordination with other watershed stakeholders, especially Caltrans and the Department of Defense, is also critical."

Comment: The permit is sensible and equitable in that it vests responsibility for controlling water quality impacts with the parties that actually cause the impacts. (Environmental Health Coalition)

Response: Comment noted.

Comment: The permit is a smart approach to growth because it requires developers to plan for future impacts and address the impacts now instead of later. (Environmental Health Coalition)

Response: Comment noted.

Comment: The permit will assure a suitable minimal baseline if enforcement is adequate and if Copermittees act responsibly. (Environmental Health Coalition)

Response: Comment noted.

Comment: The permit is clear and it provides the maximum amount of specificity possible given the limits of the Board's legal authority. (Environmental Health Coalition)

Response: Comment noted.

Comment: The Board should issue a reference sheet to the public which explains the differences between the old and new permits. (Environmental Health Coalition)

Response: A comparison of the requirements of Order 90-42 (the current San Diego Municipal Storm Water Permit), the Federal NPDES storm water regulations, the 1995 draft of the reissuance of the San Diego Municipal Storm Water Permit, the 1998 draft of the reissuance of the San Diego Municipal Storm Water Permit, and the Tentative Order has been developed. The comparison was provided to Regional Board members for the December 13, 2000 Public Hearing. It is available on the SDRWQCB website at http://www.swrcb.ca.gov/rwqcb9/Programs/Storm_Water/permits_comparisondsj2.pdf.

Comment: Regional Board staff have done an excellent job in preparing and presenting the new permit. (Environmental Health Coalition)

Response: Comment noted.

Comment: The Fact Sheet is detailed, concise, and deeply relevant. (Environmental Health Coalition)

Response: Comment noted.

Comment: The San Diego permit is a great improvement on the Los Angeles Permit and supports the direction of the State Board. Further, we believe that the staff has done an excellent job reflecting the comments and intent of the State Board direction. The permit is reasoned in that it focuses on significant impacts to water quality and thereby avoids being arbitrary in its application. While we look forward to when all sources of pollution are regulated, we support the proposed phasing of "worst-first" sources as long as the others will follow in future revisions of the regulations. (Environmental Health Coalition)

Response: Comment noted.

Comment: A clause should be added to the permit which makes it clear that there will be future permit revisions and amendments to ultimately achieve optimal water quality protection. (Environmental Health Coalition)

Response: The Tentative Order encourages a long-term view of urban runoff management. It includes several components which are designed to expand over the long-term. For example, the watershed requirements included in the Tentative Order are designed to expand in future re-issuances of the Tentative Order. As such, the long-term context of the Tentative Order is sufficient.

Comment: The Permit appears to be an attempt to expand legal authority over local government in a manner not prescribed (though not specifically precluded) by the Clean Water Act. Such unrestricted expansion of control is troubling. (City of San Juan Capistrano)

Response: The Tentative Order does not expand on the legal authority provided the SDRWQCB by the Clean Water Act and Porter-Cologne. The increased detail in the Tentative Order is supported by the Clean Water Act, Porter-Cologne, and more recent guidance from USEPA and the SWRCB. Where the Tentative Order has increased detail, the detailed requirements are included as necessary to achieve water quality standards.

The Clean Water Act supports increased detail in permits, where necessary, in section 402(p)(3)(B)(iii), which requires that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." Porter-Cologne also supports this approach in section 13377, which requires "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act (Clean Water Act), as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with anymore stringent effluent standards or limitation necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."

More recent USEPA guidance also supports more detail in storm water permits where needed to meet water quality standards. In its "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits" USEPA states "The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards." The

SWRCB cited this guidance in Order WQ 2000-11, which upheld SUSMP requirements as a correct interpretation of the MEP standard.

Comment: Provide Co-permittees a written commitment that SDRWQCB staff will participate in their programs over the next 5 years and then follow through with active participation, support and involvement. (San Diego Co-permittees)

Response: SDRWQCB staff will be an active participant by fulfilling stormwater program commitments prescribed by the SWRCB in its annual program workplan. These tasks include regulating storm water discharges in accordance with federal regulations, conducting a designated number of audits and compliance inspections of the co-permittees, conducting comprehensive reviews of a designated number of MS4 submittals and a cursory review of other submittals, conducting and attending workshops, develop outreach materials and program guidance, respond to public inquiries, etc.

Comment: In several places throughout the tentative order it states that compliance should be an "iterative process" that is comprehensive, effective, and flexible. The Co-permittees agree with this approach but the specificity of the tentative order seems to be in direct conflict with this approach. (San Diego Co-permittees)

Response: The term "iterative process" only appears in the Tentative Order once, at Finding 14, where it applies to section C of the Tentative Order. The term specifically refers to the process to be undertaken in the situation where discharges from an MS4 persist in causing or contributing to an exceedance of water quality objectives, despite the Copermittee's full implementation of its urban runoff management program (see section C of the Tentative Order). The term does not mean that compliance with the whole urban runoff management program and Tentative Order should be an "iterative process." Instead, the term means that efforts required to meet water quality standards, which go above and beyond those required in the urban runoff management program and other sections of the Tentative Order, may be implemented in an "iterative process."

Comment: We are concerned about the Order's directive to require interagency agreements and JPA type cooperation between municipalities. Several issues have been left undefined and require co-permittees to propose task definitions to SDRWQCB. If municipalities, environmental groups, or regulated agencies can't agree on some of the parameters of some of the Order's directives, we will find courts making the decisions. Effort directed towards defending a municipality's interpretation of the Order takes away from the time and resources devoted to the primary responsibility - that of keeping pollutants out of the receiving waters. (City of Imperial Beach)

Response: A certain level of Copermittee coordination is necessary to effectively implement the permit throughout the region. Some Copermittees request more emphasis on Copermittee collaboration within the Tentative Order to promote regional consistency. USEPA supports Copermittee collaboration, stating "Coapplicants […] may use interjurisdictional agreements to show adequate legal authority and to ensure planning, coordination, and the sharing of the resource burden of permit compliance. When more than one entity is submitting an application for a MS4 (either as coapplicants or as individual applicants for different parts of a system), the role of each party must be well defined. Each applicant or coapplicant

must show the ability to fulfill its responsibilities, including legal authority for the separate storm sewers it owns or operates" (USEPA, 1992).

The Tentative Order's requirements for Copermittee collaboration are relatively broad in order to allow the Copermittees discretion and flexibility in implementing their programs. Based on the Copermittees current collaboration efforts, it is anticipated that future collaboration efforts will be successful.

Comment: The City of La Mesa agrees with the comments presented by the City of S.D., the principal Copermittee. (City of La Mesa)

Response: Comment noted.

Comment: Are the indian reservations exempt from these requirements (Barona, Sycuan, Pala, Campo, etc.)? (Anonymous Workshop 1)

Response: The State of California has not been designated by the U.S. EPA to regulate Indian Reservation lands under the NPDES program.

Comment: For a project, is the discharge point at the boundary or some point down stream or up stream? (Wesch, Gary)

Response: In most cases, the project boundary would be considered the discharge point for runoff coming from a project. If a project is sharing a structural treatment BMP with another project, the discharge point may be considered the outlet of the structural treatment BMP, provided the subject project has implemented adequate pollution prevention and source control BMPs on its site.

Comment: At what point does polluted runoff become a liability for a municipality- When it enters MS4, or when it leaves it? (Anonymous Workshop 1)

Response: The Copermittees are responsible for discharges both into and from their MS4. Copermittees cannot passively receive and discharge pollutants from third parties. As US EPA states, "The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts 'title' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties" (USEPA, 1999b).

Discharges of pollutants to the MS4 must therefore be controlled, and an important means for a municipality to achieve this is through the development and enforcement of municipal legal authority. USEPA states "A crucial requirement of the NPDES storm water regulation is that a municipality must demonstrate that it has adequate legal authority to control the contribution of pollutants in storm water discharged to its MS4. […] In order to have an effective municipal storm water management program, a municipality must have adequate legal authority to control the contribution of pollutants to the MS4. […]

'Control,' in this context, means not only to require disclosure of information, but also to limit, discourage, or terminate a storm water discharge to the MS4" (USEPA, 1992).

Since discharges which enter the MS4 are generally discharged unimpeded directly into receiving waters, the Copermittee's legal authority is to apply to both discharges into and from MS4s. Federal NPDES regulations clearly provide the SDRWQCB with the legal authority to require municipalities to control discharges from third parties into their MS4. 40 CFR 122.26(d)(2)(iv)(A - D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities. Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A - D) require municipalities to have legal authority to control various discharges to their MS4. This concept is further supported in the Preamble to the Phase II Final Rule NPDES storm water regulations, which states "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties" (USEPA, 1999b). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule findings for small municipalities are also applicable to larger municipalities such as the Copermittees. Finally, underlying the Federal NPDES storm water regulations is the Clean Water Act, which states in section 402(p)(3)(B)(ii) that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers."

The requirement for municipal storm water dischargers to have, and exercise, local governmental authority in order to comply with water quality control obligations is analogous to the requirement for Publicly Owned Treatment Works to have and exercise legal authority to require pretreatment of industrial wastes being discharged to their sewage collections systems (CWA 402(b)(8)).

Comment: How is Caltrans affected by this tentative order? (Anonymous Workshop 1)

Response: SDRWQCB does not anticipate conflicts arising between tentative Order 20001-001 and Order No. 99-06-DWQ, NPDES No. CAS000003, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the State of California, Department of Transportation (Caltrans). Order No. 99-06-DWQ applies to construction activities and maintenance from all Caltrans highways, properties, activities and facilities throughout the State and applies to Caltrans and/or their contractors. Tentative Order No. 2001-001 applies to discharges into municipal Separate Storm Sewer Systems. In the event that the requirements of Order No. 99-06-DWQ are in conflict with Tentative Order No. 2001-001 the SDRWQCB will conduct a thorough evaluation of individual conflicts and determine which requirement will prevail.

Comment: Are yard drains permissible in residential neighborhoods which connect to MS4? (Jim)

Response: The Tentative Order requires the Copermittees to prohibit all illicit discharges not composed entirely of storm water unless specifically addressed in Section B.2. However, runoff from residential yards (landscape irrigation, lawn watering) would only be prohibited by the Copermittee if the Copermittee determined it was a significant source of pollutants. Alternately, the Copermittee could implement or require the implementation of BMPs to reduce the pollutants in the non-storm water discharge to the MEP and report the information required in Section B.3.c.

Comment: How are you going to incorporate TMDL limits into the permit? (ie- diazinon for chollas creek) (Capretz, Nicole)

Response: Currently, there are no USEPA approved TMDLs for the San Diego Region, and therefore no limitations that can be explicitly included in the Tentative Order at this time. However, 40 CFR 122.44 (d)(vii)(B) requires that NPDES effluent limitations be consistent with any waste load allocation for the discharge prepared by the state (Regional Board) and approved by USEPA. In other words, once TMDL limits are established and approved by USEPA, NPDES permits must include effluent limitations that are consistent with the TMDL. Furthermore, USEPA's guidance for developing TMDLs in California includes a recommendation that the state (Regional Board) evaluate how waste load allocations will be translated into NPDES permits as part of the development of the TMDL implementation plan.

Comment: I understand you are hiring more staff..would you please explain how your role will be changing from regulatory to a more team and cooperative role to achieve water quality improvement outcome. (American Public Works Association)

Response: The SDRWQCB is currently hiring staff to fill vacancies from budget augmentations in several programs, including storm water. Staff assigned to work in oversight of storm water regulations will assist in the effective implementation of Order No. 2001-001. Increased staff will provide dischargers more resources to assist in achieving compliance with Order No. 2001-001. However, we do not anticipate a shifting the balance between compliance assurance and assistance.

Comment: Sediment should be redefined to exclude soils consist with natural soils and should also exclude all sediment that is directly deposited onto the coastline through improved drainage systems. (City of Solana Beach)

Response: Finding 7 of the Tentative Order states "[t]he most common categories of pollutants in urban runoff include […] sediment (due to anthropogenic activities) […]." By clarifying that it is sediment from "anthropogenic activities" which is the pollutant, the finding makes the distinction between natural sediment loading and sediment loading from anthropogenic activities such as construction. The Tentative Order does not seek to control sediment from natural erosion, but rather to control sediment from man-made sources. Sediment from man-made sources needs to be controlled for several reasons. The US EPA explains in the Phase II NPDES storm water regulations that storm water discharges generated from urban activities can cause an array of physical, chemical, and biological water quality impacts. Specifically, the biological, chemical and physical integrity of the waters may become severely compromised due to sediment loads in urban runoff. Increased fine sediment loads from construction sites can adversely affect aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within the streambed, and reducing intergravel dissolved oxygen by reducing the permeability of the bed material. Water quality impairment also results from urban runoff carrying sediment, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. Sediment transport and delivery by urban runoff is a primary pathway for introducing key pollutants, such as nutrients, metals, and organic compounds into aquatic systems (USEPA, 1999b). Due to this capability for sediment in urban runoff to carry significant pollutant loads, sediment from anthropogenic activities is considered a pollutant which must be addressed.

Comment: There is no need to delay issuance of this permit for financial, implementation, or compliance issues. (Escondido Creek Conservancy)

Response: Comment noted.

Comment: Unregulated urban run-off is having a detrimental effect on Agua Hedionda Lagoon. Attempts made by this organization to address it through the normal channels have been unsuccessful. (University of California Natural Reserve System)

Response: Comment noted.

Comment: I'd like to urge the adoption of, or maybe the allowance for a public utility district or public utility to handle these storm water management facilities. Any kind of structural facility -- let me caveat this by saying I've worked in other regions for a number of years, namely in (inaudible) Bay region where we've had a system in place for 20 to 30 years doing this type of thing, and their structural major BMPs are controlled by the public agencies. And I wasn't involved in the very beginning of the process, but I don't know if they had found that out by accident or if they just locked into it from the beginning. But to allow or to require the individual owners, individual homeowners associations and individual entities scattered throughout the county to maintain and operate these storm water BMPs, you're not going to get the result that you want, I don't think. You're going to get a hodgepodge, a myriad of different levels of compliance. It's probably better to be managed by the co-permittees or a public utility to do that. (Project Design Consultants)

Response: How maintenance of BMPs is conducted is at the discretion of the Copermittees. This could include the Copermittees forming a public utility district to perform BMP maintenance.

Comment: Please, stay the course, stop any further delays, and make us all comply with what is good for all of us, not just for a few who want to make a buck. It's unfortunate that most of the co-permittees who were here this morning are not here to hear the other side of the story, and they probably believe themselves that they are it. But they're the ones who are responsible for our miseries at this time, the loss of quality of life, whether it is traffic, higher cost of electricity, shortages, inability to meet the requirements of our sewage systems, and a lot more of other pollution. I would like to say that it's because of you that I think the region will be forced to think another way around. You will be the catalyst to make all the co-permittees work together and improve our community finally. So please keep the course. (Ymzon, Ray)

Response: Comment noted.

Comments on Multiple Sections

Comment: The SDRWQCB does not have the legal authority to specify conditions of approval for the Copermittees' permits (in section F.1.b). Such conditions are most appropriately determined by the Copermittees. Inclusion of minimum conditions of approval in the Tentative Order also violates California Water Code section 13360. (County of San Diego, Procopio, Cory, Hargreaves & Savitch)

Response: Regional board has authority under Porter-Cologne to require municipalities to exercise local planning and permitting authority in a manner that will reduce discharges of pollutants in MS4 to MEP in a manner consistent with state and regional water quality control plans and policies. Discharges of pollutants from development and other activities pursuant to municipalities' planning and subject to local permitting constitute a significant source of pollutants discharged to MS4. It is practicable for municipalities to exercise their authority over development projects and other regulated activities in a manner that will implement best management practices developed for industrial and construction activities pursuant to regulation under statewide waste discharge requirements (and such additional conditions as may be reasonably necessary under the circumstances affecting discharges of pollutants to MS4 within each municipality).

Comment: As opposed to having specific flow criteria for new development in the Tentative Order, it is recommended that the Copermittees be required to address their control measures for streambed erosion on a drainage basin basis as part of their Urban Runoff Management Plans, due to the complex nature of stream bed erosion. The permit should merely require the Co-permittees to protect natural channels and minimize stream erosion to the maximum extent practicable. (APWA, City of San Diego, County of San Diego, San Diego Copermittees, Carlsbad, Sempra Energy, La Mesa, El Cajon)

Response: The Tentative Order's requirement that "Post-development runoff which is greater in peak rate or velocity than pre-development runoff from the same site is prohibited" was designed to protect downstream areas from erosion caused by increased flows resulting from development. However, the blanket prohibition, as proposed, could result in the application of the requirement at relatively small sites, which pose an insignificant threat of downstream erosion due to their limited impervious surfaces. Application of the prohibition at all sites could also pose significant implementation difficulties for the Copermittees.

For these reasons, the requirement that post-development peak flow rates not exceed predevelopment rates for all development sites has been removed. Instead, the requirement shall only apply to new development and significant redevelopment falling under the SUSMP priority development project categories. The SUSMP priority development project categories are comprehensive in their application to significant new development and redevelopment projects. The categories ensure that most new development and redevelopment will be subject to SUSMPs. Therefore, the requirement that post-development peak flow rates not exceed predevelopment rates will still apply to most development projects. Only smaller projects not falling under the SUSMP requirements will be exempted.

As part of their model and local SUSMPs, the Copermittees will be required to maintain predevelopment peak flow rates and velocities coming from new development as necessary to prevent increased downstream erosion where the potential for downstream erosion exists. This requirement allows the Copermittees discretion in the methods to be developed and implemented to control post-development peak flow rates and downstream erosion. Furthermore, the Copermittees can develop and implement different methods to be applied in different watersheds or different areas of a watershed, provided that the different methods are effective in adequately reducing post-development peak flow rates to control erosion. The Copermittees' model and local SUSMPs must include a description of how predevelopment peak flow rates will be maintained to control erosion in downstream areas.

There is extensive guidance for the Copermittees to draw from in developing criteria to address post-development peak flow rates for the control of downstream erosion. For example, the State of Washington has developed the following criteria regarding post-development peak flow rates: "Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50 percent of the pre-developed condition of the 2-year, 24-hour design storm while maintaining the pre-developed condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms." Regarding control of post-development flow durations, the State of Washington has developed the following criteria: "Stormwater discharges to streams shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50% of the 2 year peak flow up to the full 50 year peak flow" (Washington State Department of Ecology, 1999). The State of Maryland has developed the following criteria to addressed increased peak flow rates resulting from development: "To protect channels from erosion, 24 hour extended detention of the one-year, 24 hour storm event shall be provided. […] The rationale for this criterion is that runoff will be stored and released in such a gradual manner that critical erosive velocities during bankfull and near-bankfull events will seldom be exceeded in downstream channels" (Maryland Department of the Environment, 1999).

It should be noted that this approach, of allowing the Copermittees to develop peak flow rate criteria to control downstream erosion, is consistent with the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

See changes in permit sections A.4, F.1.a.9, F.1.b.1.g, F.1.b.2.b.i, and F.1.b.2.j.

Comment: Many requirements of the Tentative Order may require Copermittees to amend their municipal codes and increase criminal and/or civil penalties. If the civil penalties chargeable by the Regional Board exceed those authorized by our municipal code, the City could be responsible for any "shortfall" or the Regional Board might not deem the City's efforts to implement the various practices, programs and plans, as having been made "in good faith." Our authority to charge civil penalties is limited by the Government Code, and our authority to charge criminal penalties, and the total amount of any such fines, is likewise limited by the Penal Code. Additionally, the courts do not automatically impose the criminal penalties set forth in our municipal code. (Imperial Beach, El Cajon)

Response: Comment noted.

Comment: The prohibition of post-development peak flow rates exceeding pre-development peak flow rates may exacerbate flooding if implemented in lower watersheds. (Walker, El Cajon)

Response: The Tentative Order's requirement that "Post-development runoff which is greater in peak rate or velocity than pre-development runoff from the same site is prohibited" was designed to protect downstream areas from erosion caused by increased flows resulting from development. However, the blanket prohibition, as proposed, could result in increased flooding if implemented in lower watersheds, due to the potential for flow control devices in lower watersheds to release their peak discharges in correspondence with peak flows instream.

The blanket prohibition has therefore been removed from the Tentative Order. Instead, the requirement shall only apply to new development and significant redevelopment falling under the SUSMP priority development project categories. As part of their model and local SUSMPs, the Copermittees will be required to maintain predevelopment peak flow rates and velocities coming from new development as necessary to prevent increased downstream erosion where the potential for downstream erosion exists. This requirement allows the Copermittees discretion in the methods to be developed and implemented to control post-development peak flow rates and downstream erosion. Furthermore, the Copermittees can develop and implement different methods to be applied in different watersheds or different areas of a watershed (such as lower watersheds), provided that the different methods are effective in adequately reducing post-development peak flow rates to control erosion. The Copermittees' model and local SUSMPs must include a description of how predevelopment peak flow rates will be maintained to control erosion in downstream areas.

See changes in permit sections A.4, F.1.a.9, F.1.b.1.g, F.1.b.2.b.i, and F.1.b.2.j.

Comment: The Tentative Order exceeds SDRWQCB authority by requiring the Copermittees to regulate peak flows from development.

SDRWQCB relies upon PUD No. 1 v. Washington Department of Ecology (1994) 511 U.S. 700 to support its position that volume/flow control is proper. (See Fact Sheet, p. 21.) This reliance is misplaced. At issue in PUD No. 1 was a hydroelectric dam and a condition imposed upon a discharge permit that required a minimum level of discharges, i.e., that water discharges be increased. The case stressed the presence of evidence in the record as to the importance of the continual flow of water on the ecosystem surrounding the dam. The opinion also repeatedly stressed that the flowage concerns at issue are the "effects of dams and other diversions . . . "(E.g., PUD No. 1, 511 U.S. at p. 1913.) (County of San Diego, BIASD)

Response: The SDRWQCB has the legal authority to regulate flows from new development. The SWRCB has upheld this legal authority in adopting its Order WQ 2000-11. The Final LARWQCB SUSMP, upheld by SWRCB Order WQ 2000-11, states "Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion."

This legal authority to regulate flows from new development is further explained in the Draft Fact Sheet/Technical Report for the Tentative Order. The Fact Sheet/Technical Report states:

Federal NPDES regulation 40 CFR 122.44(d)(1) requires municipal storm water permits to include any requirements necessary to "[a]cheive water quality standards established under section 303 of the CWA, including State narrative criteria for water quality." The term "water quality standards" in this context refers to a water body's beneficial uses and the water quality objectives necessary to protect those beneficial uses. The negative impact of urban runoff flow on the beneficial uses of receiving waters has been widely documented. Increases in flows from impervious surfaces associated with urbanization can result in (1) increases in the number of bankfull events and increased peak flow rates; (2) sedimentation and increased sediment transport; (3) frequent flooding; (4) stream bed scouring and habitat degradation; (5) shoreline erosion and stream bank widening; (6) decreased baseflow; (7) loss of fish populations and loss of sensitive aquatic species; (8) aesthetic degradation; and (9) changes in stream morphology (USEPA, 1999a). USEPA finds that the level of imperviousness resulting from urbanization is strongly correlated with the water quality impairment of nearby receiving waters (USEPA, 1999b). USEPA further attributes much of this water quality impairment to changes in flow conditions from urbanization, stating "[I]n many cases, the impacts on receiving streams due to high storm water flow rates or volumes can be more significant than those attributable to the contaminants found in storm water discharges" (USEPA, 1999a). Therefore, in order to protect the beneficial uses and water quality objectives of waters receiving urban runoff flows (as required by 40 CFR 122.44(d)(1)), the SDRWQCB has under certain circumstances placed limits on urban runoff flows in the tentative permit.

In addition, the authority of states to regulate flow in order to protect water quality standards has been addressed by the U.S. Supreme Court in PUD No. 1 v. Washington Department of Ecology, 511 U.S. 700 (1994). In this case the U.S. Supreme Court found that the Clean Water Act applies to water quantity as well as water quality, stating "[p]etitioners also assert more generally that the Clean Water Act is only concerned with water 'quality' and does not allow the regulation of water 'quantity.' This is an artificial distinction. In many cases, water quantity is closely related to water quality." The U.S. Supreme court goes on to refer to the Clean Water Act's definition of pollution ("the man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water" 33 U.S.C. 1362(19)) and states "[t]his broad conception of pollution – one which expressly evinces Congress' concern with the physical and biological integrity of water – refutes petitioners' assertion that the Act draws a sharp distinction between the regulation of water 'quantity' and water 'quality'." In this context, the U.S. Supreme Court held that the state's regulation of flow was "a limitation necessary to enforce the designated use of the River as a fish habitat." Finally, it was held that the state's regulation of flow was "a proper application of the state and federal antidegradation regulations, as it ensures than an 'existing instream water use' will be 'maintained and protected.' 40 CFR 131.12(a)(1) (1992)."

Comment: What design storm shall be used to determine the pre-development peak rate or velocity that may not be exceeded with new development or significant redevelopment? (Chula Vista, Walker, Project Design Consultants, SDCAA)

Response: Designation of the design storm which shall be used has been left to the discretion of the Copermittees. A blanket requirement to control a particular design storm may not be appropriate for all areas, such as lower watersheds. Therefore, development of criteria for the control of post-development peak flow rates shall be conducted by the Copermittees as part of the model and local SUSMPs.

As part of their model and local SUSMPs, the Copermittees will be required to maintain predevelopment peak flow rates and velocities coming from new development as necessary to prevent increased downstream erosion where the potential for downstream erosion exists. This requirement allows the

Copermittees discretion in the methods to be developed and implemented to control post-development peak flow rates and downstream erosion. Furthermore, the Copermittees can develop and implement different methods to be applied in different watersheds or different areas of a watershed, provided that the different methods are effective in adequately reducing post-development peak flow rates to control erosion. The Copermittees' model and local SUSMPs must include a description of how predevelopment peak flow rates will be maintained to control erosion in downstream areas.

There is extensive guidance for the Copermittees to draw from in developing criteria to address post-development peak flow rates for the control of downstream erosion. For example, the State of Washington has developed the following criteria regarding post-development peak flow rates: "Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50 percent of the pre-developed condition of the 2-year, 24-hour design storm while maintaining the pre-developed condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms." Regarding control of post-development flow durations, the State of Washington has developed the following criteria: "Stormwater discharges to streams shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50% of the 2 year peak flow up to the full 50 year peak flow" (Washington State Department of Ecology, 1999). The State of Maryland has developed the following criteria to addressed increased peak flow rates resulting from development: "To protect channels from erosion, 24 hour extended detention of the one-year, 24 hour storm event shall be provided. […] The rationale for this criterion is that runoff will be stored and released in such a gradual manner that critical erosive velocities during bankfull and near-bankfull events will seldom be exceeded in downstream channels" (Maryland Department of the Environment, 1999).

It should be noted that this approach, of allowing the Copermittees to develop peak flow rate criteria to control downstream erosion, is consistent with the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

See changes in permit sections A.4, F.1.a.9, F.1.b.1.g, F.1.b.2.b.i, and F.1.b.2.j.

Comment: Rather than hold pollutant discharges from new development to pre-development levels, the permit should hold discharges to natural levels. (Surfrider Foundation)

Response: The holding of post-development pollutant discharges to predevelopment or natural levels may not always be necessary for the protection of receiving water quality. There may be circumstances where a slight increase in pollutant concentrations from newly developed area may not contribute to an exceedance of water quality standards. For example, if a discharge's pollutant concentration from a newly developed area is increased but still well below the water quality objective for the 303(d) listed receiving water, the discharge will most likely not contribute to the exceedance of the water quality objective. The TMDL process frequently allows for such a situation, when "safety factors" for new development are included in waste load allocations.

The TMDL process is a more appropriate process for determining such allocations that the Tentative Order. It is a formal process which allows for extensive stakeholder involvement and public participation. It also addresses discharges from all sources, both existing and new.

For these reasons, the Tentative Order has been modified. The Tentative Order will still prohibit "post-development runoff containing pollutant loads which cause or contribute to an exceedance of receiving water quality objectives." Also, the potential for new development to cause or contribute to the 303(d) listing of a receiving water will need to be addressed in the Copermittees' planning processes. However, the requirement that post-development pollutant concentrations not exceed predevelopment pollutant concentrations will be removed. This issue will be addressed during the pending TMDL processes.

Comment: Holding discharges of pollutants from new development to pre-development levels is problematic because pre-development levels will not be known for a parcel and obtaining the information will cause project delays. How will pre-development levels be determined? (Sempra, SANDAG, Oceanside, Wesch)

Response: The blanket requirement that "Discharges of post-development runoff into a Clean Water Act section 303(d) water body containing any pollutant (for which the water body is already impaired) in levels exceeding predevelopment levels (for those same pollutants) is prohibited" has been removed from the Tentative Order. Therefore, this issue has been resolved.

Comment: The SDRWQCB should not require the Copermittees to address urban runoff flows "into" their MS4s because it does not have the appropriate legal authority. SDRWQCB does not have legal authority to apply performance standards (MEP or water quality standards) to individual project sites in Copermittee jurisdictions. Such requirements go beyond the requirements of the Clean Water Act.

Further, the County has no authority to enforce the California Water Code, and therefore has no legal authority to prohibit discharges by third parties based on the water quality impacts of those discharges.

The Order violates the separation of powers doctrine by legislating beyond the RWQCB's administrative power. California's governmental structure grants the right to make state laws only to the State's Senate and Assembly. (Cal. Const., Art. IV, § 1, Art. V, § 1; (City of San Jose v. State of California (1996) 45 Cal.App.4th 1802, 1810.) As a creature of statute, the RWQCB possesses only that power conferred by the Porter-Cologne Act to regulate water quality and the discharge of wastes affecting water quality. (See Water Code §§ 13225, 13260, 13263; 13263.3 13377, 20th Century Ins. v. Quakenbush (1998) 64 Cal.App.4th 135, 141.)

Moreover, the RWQCB need not rely on the Copermittees to prevent stormwater discharges that adversely affect water quality. The Clean Water Act specifically authorizes EPA and the States to require permits of "[a] discharge for which [EPA] or the State determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants." The RWQCB is therefore free to require permits of any stormwater discharger that it believes contributes to a violation of water-quality standards. (Sempra, City of San Diego, BIASC, Orange County, Procopio, Cory, Hargreaves & Savitch, California Storm Water Quality Task Force, County of San Diego)

Response: The requirement for control of discharges into the MS4 is currently required of the Copermittees in Order No. 90-42. Section IX. of Order No. 90-42 states "The permittees shall develop and implement BMPs to reduce/control/eliminate pollutants in discharges to and from stormwater

conveyance systems in their areas of jurisdiction to the maximum extent practicable." Given the impact to receiving waters in the San Diego Region caused by urban runoff, as well as projections for increased urban growth in the region, it is not warranted to eliminate this requirement.

USEPA supports the concept that Copermittees cannot passively receive and discharge pollutants from third parties. As US EPA states, "The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts 'title' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties" (USEPA, 1999b).

Discharges of pollutants to the MS4 must therefore be controlled, and an important means for a municipality to achieve this is through the development and enforcement of municipal legal authority. USEPA states "A crucial requirement of the NPDES storm water regulation is that a municipality must demonstrate that it has adequate legal authority to control the contribution of pollutants in storm water discharged to its MS4. […] In order to have an effective municipal storm water management program, a municipality must have adequate legal authority to control the contribution of pollutants to the MS4. […] 'Control,' in this context, means not only to require disclosure of information, but also to limit, discourage, or terminate a storm water discharge to the MS4" (USEPA, 1992).

Since discharges which enter the MS4 are generally discharged unimpeded directly into receiving waters, the Copermittee's legal authority is to apply to both discharges into and from MS4s. Federal NPDES regulations clearly provide the SDRWQCB with the legal authority to require municipalities to control discharges from third parties into their MS4. 40 CFR 122.26(d)(2)(iv)(A - D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities. Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A - D) also require municipalities to have legal authority to control various discharges to their MS4. This concept is further supported in the Preamble to the Phase II Final Rule NPDES storm water regulations, which states "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties" (USEPA, 1999b). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule findings for small municipalities are also applicable to larger municipalities such as the Copermittees. Finally, underlying the Federal NPDES storm water regulations is the Clean Water Act, which states in section 402(p)(3)(B)(ii) that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers."

It is important to note the SWRCB also supports control of discharges into MS4s. The SWRCB recently upheld the LARWQCB SUSMP requirements in Order WQ 2000-11. These requirements place significant restrictions on discharges from third parties into MS4s. In fact, the SUSMP provisions included in the Tentative Order, as upheld by the SWRCB, represent the most stringent and specific requirements in the Tentative Order regarding the control of discharges into the MS4.

Finally, the requirement for municipal storm water dischargers to have, and exercise, local governmental authority in order to comply with water quality control obligations is analogous to the requirement for Publicly Owned Treatment Works to have and exercise legal authority to require pretreatment of industrial wastes being discharged to their sewage collections systems (CWA 402(b)(8)).

Comment: A regional approach to BMP implementation should be allowed by the permit, as opposed to the permit's site-by-site focus. Due to economies of scale, regional approaches are more cost effective.

Regional BMPs can enhance wetland and riparian habitats. By not allowing regional approaches, the Tentative Order goes against SWRCB Order WQ 2000-11, the Clean Water Act, the California Water Code (section 13360), and practices in the State of Florida, which all support regional approaches. (La Mesa, Sempra Energy, Carlsbad, SANDAG, Nolte, BIASC, County of San Diego, Coalition for Practical Regulation, BIASD, Escondido, Chula Vista, San Diego Co-permittees, Rancho Mission Viejo Company, APWA Committee, Project Design Consultants, Associated General Contractors of America)

Response: Implementation of BMPs on a site by site basis provides many benefits. By its very definition, new development presents opportunities for on-site BMPs to be designed into the development as an integral component, at low cost, and with a greater likelihood for protecting water quality downstream over the life of the development. Treatment costs for municipal storm water generally increase with distance from the source. Regional "end of pipe" treatment also results in the loss of cost reducing opportunities for water quality improvements en route. Rather than increasing costs, small collection strategies, located at the point where runoff initially meets the ground, repeated consistently over entire projects, will usually yield the greatest water quality improvements for the least cost (BASMAA, 1999).

Furthermore, regional BMP approaches (such as end of pipe diversions) can send the wrong message to dischargers and the public, which can then cause setbacks in progress which has already been made. Instead of the idea that "business as usual" is acceptable since regional BMPs will "take care of everything" downstream, the message that SUSMPs and numeric sizing criteria should send is that behavior and site design must change in order for water quality to improve.

Additionally, popular short-term regional solutions, such as end of pipe diversions into sanitary sewers, are effective only for dry weather flows. The sanitary sewerage collection systems found in the San Diego region were not designed to handle the increased loads from dry weather flows, let alone flows from even minor storm runoff events. Likewise, the existing coastal Publicly Owned Treatment Works (POTWs) are not sized to treat wet weather flows, have almost no capacity for expansion, and will not be able to treat storm water flows.

However, while onsite BMPs provide many benefits, there may be cases where offsite structural BMPs, implemented on a "neighborhood" or "sub-watershed" basis, may be more feasible. This is particularly the case for existing development, where opportunities for innovative site design do not exist. To allow more flexibility in BMP implementation, the Tentative Order SUSMP requirements regarding structural treatment BMPs will be changed to allow BMPs to be shared by multiple new development projects on a "neighborhood" or "sub-watershed" level. The SWRCB supports this approach in Order WQ 2000-11, which states "We do note that there could be further cost savings for developers if the permittees develop a regional solution to the problem." It should be noted, however, that shared BMPs will be required to be implemented upstream from any receiving water supporting beneficial uses. The receiving waters (such as urban streams) of the region cannot be used to transport potentially contaminated urban runoff to "regional" treatment facilities.

See change at permit sections F.1.b.2.c and F.1.b.2.b.xiii.

Comment: More stringent requirements for discharges to 303(d) listed do not account for causes of the impairment. (City of Chula Vista)

Response: The more stringent BMP requirements for discharges tributary to 303(d) listed water bodies refers specifically to activities that may be a source of those pollutants for which the water body is listed. Not all activities in the watershed tributary to a 303(d) listed water body generate pollutants impairing the waterbody. Activities that do not generate pollutants for which a 303(d) listed water body is listed would not be subject to the more stringent BMP requirements.

Comment: The requirements mandated by the Tentative Order for all storm water conveyance systems tributary to San Diego Bay do not appear to be based upon the MEP criteria, but take an overly broad approach to pollution prevention. Findings 9 and 10 (page 3) refers to storm water runoff's potential contribution to the impairment of designated beneficial uses and the need to "…attain water quality objectives necessary to support designated beneficial uses". However, the Tentative Order fails to relate the pollutants to be removed by the required BMPs to the impairment of designated beneficial uses. (City of Chula Vista)

Response: It is the Copermittees' responsibility to require the implementation of BMPs that meet MEP for all discharges from their MS4s. Discharges for which BMPs meeting MEP have been implemented are less likely to cause exceedances of water quality objectives or the impairment of beneficial uses of the receiving waters. With respect to more stringent BMP requirements in watersheds tributary to 303(d) listed impaired water bodies (e.g. San Diego Bay), the more stringent requirements refer to those pollutants for which the water body is listed as impaired and those activities that might generate those pollutants.

Comment: The required BMPs listed in the Tentative Order are not consistent with the "Comprehensive Management Plan for San Diego Bay." (City of Chula Vista)

Response: There is no requirement for the minimum BMPs required to be consistent with the "Comprehensive Management Plan for San Diego Bay."

Comment: Which BMPs are the most cost effective and how should they be implemented? (City of Chula Vista)

Response: It is the Copermittees' responsibility to determine the cost effectiveness of various BMPs and how they should be implemented. Compliance with the Tentative Order is based on the use of BMPs to reduce pollutants in urban runoff to the MEP. Manner of compliance with respect to specific BMP selection is legally and properly the responsibility of the Copermittees.

Comment: How will BMPs differ for high, medium, and low threats to water quality? (City of Chula Vista)

Response: The Copermittees have the responsibility and discretion to select BMPs that they conclude will best address high, medium, or low threats to water quality to reduce pollutants in discharges to the MEP. The differences in BMPs will largely depend on the potential threats, the conditions under which

the threats exist or may exist, and the cost effectiveness of various BMPs available to the Copermittees that reduce pollutants to the MEP.

Comment: The Tentative Order imposes significant new prohibitions and conditions on the release of stormwater that are not found in Order 90-42. (County of San Diego)

Response: Comment noted.

Comment: The RWQCB has failed to comply with the requirements of the Clean Water Act or State law in formulating the subject permit.

1. [Reserved]

2. The Tentative Order Exceeds the Authority Under the Regulations to Regulate Discharges "From" MS4s.

An additional example of the Regional Board exceeding its authority under state or federal law is illustrated by its attempt to impose various requirements and regulations on the County for discharges to and from municipal separate storm sewer systems ("MS4s") of which they are neither owners nor operators. The regulations to the Clean Water Act specifically provide that "Copermittees need only comply with permit conditions relating to discharges from the municipal separate sewer source for which they are operators." (40 CFR § 122.26(a)(3)(vi).) Because the Tentative Order seeks to impose upon the County numerous conditions relating to discharges from MS4s in which the County is not operator of the MS4, the Regional Board has exceeded its authority under the Clean Water Act and State Law. (40 CFR § 122.26(a)(3)(vi).)

3. The Tentative Permit Improperly Seeks to Require the Copermittees To Immediately Eliminate Illicit Connections.

In addition, the Regional Board through the Tentative Order, seeks to require the County to "prohibit and eliminate illicit connections to the MS4." (Tentative Order, p. 11, D.1.C.) "Each Copermittee shall eliminate all detected illicit discharges, discharge sources, and connections immediately." (Tentative Order, p. 35, § (F).5.d.) Yet, regulations to the Clean Water Act only authorize the State to require the removal of "illicit discharges," (see 40 CFR § 122.26(d)(2)(iv)(B)), and there is no authority anywhere in the Clean Water Act or State law which enables the State to impose upon the County the obligation to inspect and to force the removal and termination of "illicit connections," i.e., to initiate legal proceedings to obtain a mandatory injunction requiring the immediate removal of all such illicit connections.

4. [Reserved]

5. The Tentative Order Unlawfully Seeks to Transfer Oversight Responsibility of Other NPDES Permits to the Copermittees.

The Regional Board has further exceeded any authority it asserts it has under the Clean Water Act and State Law by attempting to shift to the Copermittees, the State Board's responsibility to administer and enforce the Clean Water Act's provisions governing industrial and construction activities (Tentative Order, p. 12, § C.1.h.) Clearly, the obligation to regulate industrial and construction activities falls on the shoulders of the State Board and, according to the Regional Board, in turn on the Regional Board. There is no authority anywhere under the Clean Water Act or State Law that would allow this Regional Board to in effect "pass the buck" and transfer this responsibility onto municipalities. That this obligation is not to be passed on to municipal permittees is made clear by the regulations themselves and the express exemption from the definition of "illicit discharges," of discharges otherwise authorized by a separate NPDES permit. (See, 40 CFR § 122.26(b)(2)): "Illicit discharges means any discharge to a municipal

separate storm sewer that is not composed entirely of storm water except discharges pursuant to an NPDES permit. . . .")
Pursuant to the regulations, a Copermittee need only monitor and control pollutants in storm water from such "industrial facilities" when the permittee determines such discharges "are contributing a substantial pollutant loading to the municipal storm sewer system." (40 CFR § 122.26(2)(iv)(C).) Without such a determination by the Copermittee, neither the State Board nor the regional boards can require the regulation of such facilities by any Copermittee.
Further evidence that the Copermittees have no authority over permitted industrial activities and sites, are additional regulations addressing the municipalities program for detecting and removing illicit discharges to the MS4. 40 CFR section 122.26(2)(iv)(B) requires the development of a management program to remove such illicit discharge to the MS4, "(or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer." (See 40 CFR § 122.26(iv)(B).) Accordingly, a Copermittee has no authority to regulate and control an already permitted discharge into the MS4.
In sum, there is no authority under any portion of the Clean Water Act or under any provision of the Porter-Cologne Act, that authorizes the Regional Board or any other agency to impose upon the Copermittees the obligation to regulate, inspect, and enforce the requirements of the Clean Water Act dealing with industrial and construction NPDES permits. (County of San Diego)

Response: 2. The Tentative Order does not require the Copermittees to regulate discharges from MS4s they do not own, unless such discharges are entering their MS4. The Federal NPDES regulations are clear on this responsibility of the Copermittees. Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(D) provides that "[The Copermittee must demonstrate that it can control] through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system."

Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

3. Illicit discharges to the MS4 are prohibited and must be eliminated, as required by the federal NPDES regulations. Illicit connections carry illicit discharges. In order to prevent illicit discharges, illicit connections must be eliminated. Therefore, the elimination of illicit connections is required in the Tentative Order.

The SDRWQCB has the authority to require the elimination of illicit connections under CWA section 402(p)(3)(B)(iii) and CWC section 13377.

5. The Tentative Order does not transfer oversight of the General Industrial and Construction Permits to the Copermittees. The Copermittees are not responsible for enforcing or overseeing the General Statewide Industrial or Construction Permits. The SDRWQCB will oversee and enforce the General Statewide Industrial and Construction Permits. The Copermittees are however, responsible for enforcing their ordinances that implement the Tentative Order, including the prohibitions against illicit discharges.

USEPA supports this approach, clearly placing responsibility for the control of discharges from construction and industrial sites with municipalities. The USEPA notes in the preamble to the Storm Water Regulations that municipalities are in the best place to enforce compliance with storm water discharge requirements:

"Because storm water from industrial facilities may be a major contributor of pollutants to MS4s, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program…The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal."

As noted in the Fact Sheet/Technical Report, the USEPA felt it so important to control the discharge of pollutants from construction and industry that it established a double system of regulation over construction and industrial sites. Two parallel regulatory systems were established with the same common objective of keeping pollutants from construction and industrial sites out of the MS4. A structure was created where local governments must enforce their local ordinances and permits as required under their municipal storm water permits, while the SDRWQCB (state) must enforce its statewide general construction and industrial storm water permits. The two regulatory systems were designed to complement and support each other in the shared goal of minimizing pollutant discharges in runoff from construction and industrial sites.

Regarding construction sites, USEPA also places enforcement responsibility on municipalities, requiring small municipalities to develop and implement "[a]n ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance […]" (40 CFR 122.34(b)(4)(ii)(A)). In its guidance for the Phase II regulations, US EPA goes on to support increased municipality responsibility, stating "Even though all construction sites that disturb more than one acre are covered nationally by an NPDES storm water permit, the construction site runoff control minimum measure for the small MS4 program is needed to induce more localized site regulation and enforcement efforts, and to enable operators of regulated small MS4s to more effectively control construction site discharges into their MS4s." While these above citations refer to small municipalities under Phase II of the NPDES program, USEPA recommendations to small municipalities are applicable to larger municipalities such as the Copermittees, due to the typically more serious water quality concerns attributed to such larger municipalities.

The language of the Tentative Order has been revised to more carefully describe the requirements of the Tentative Order with regard to the dual regulation of construction and industrial sites as discussed above.

With the recent addition of resources and staff from budget augmentations in several programs, including storm water, the SDRWQCB expects to "vigorously administer and enforce" the General Statewide Industrial and Construction permits as requested by one commentor. The language of Finding 24 of the Tentative Order has been revised to remove all discussion of what constitutes "good faith" in enforcing local legal authority. Furthermore, the Tentative Order does not "reward" Copermittees that enforce its storm water ordinances that implement the Tentative Order. Rather, the Section F.2.g.2 offers the Copermittees the discretion to voluntarily use the requirements of the General Construction Permit to implement and enforce its own storm water ordinances. Nor does Section F.2.h "write" the Copermittees Stormwater Ordinances or even specify what types of penalties and fines must be included. Section F.2.h only requires that the Copermittees enforce their ordinances and is not an infringement on the Copermittees legislative authority or its police powers. The SDRWQCB will enforce the General

Statewide Construction Permit; the Copermittees are required to enforce their own storm water ordinances.

Comment: The Order purports to regulate discharges that the RWQCB has no authority to regulate by means of an Order to Copermittees

Finding 2 (p.1) of this Order correctly states:

The discharge of urban runoff from an MS4 is a "discharge of pollutants from a point source [Copermittee MS4s]" into waters of the United States as defined in the Clean Water Act.

The Order does not reflect the limitations that this places on the general applicability of this Order. The purpose of the Order is to regulate the quality of runoff discharged from Copermittee MS4s . The RWQCB also may require Copermittees to use their planning process, and prohibitions on illegal discharges, to affect discharges to their MS4s. However, discharges that never enter or leave these systems cannot be regulated through an Order issued to Copermittees. As such, this Order may not be used to regulate, or to require Copermittees to regulate, any of the following:

a.Discharges by third parties directly into groundwater,
b.Discharges by third parties directly into surface water , and
c.Discharges either directly into, or from a Copermittee MS4 into, any area which is not a water of the state (including "Environmentally Sensitive Areas").

The RWQCB also cannot use its focused and limited NPDES / WDR permitting authority as general authority to regulate non-point source pollution within Copermittee jurisdictions. This is simply not the purpose of this municipal stormwater point source discharge permitting system, and goes well beyond any authorities explicitly or implicitly granted by it. The County requests deletion of all provisions of the Order that conflict with the above limitations.

Under the CWC, this applies equally to waters of the state.

And with limitations, the policies and practices affecting the quality of the water entering the MS4.

As discussed in comment FF, the County disagrees with staff's conclusion that urban streams are MS4 components (Finding 8). (County of San Diego)

Response: The Tentative Order does not attempt to require Copermittees to regulate discharges from third parties directly to groundwater, surface water, or environmentally sensitive areas.

The Tentative Order requires the implementation of structural treatment BMPs, of which infiltration to groundwater is one option. Where the Copermittees choose to allow infiltration/redirection of flows which would otherwise enter their MS4s, restrictions are appropriate. The Copermittees cannot choose to redirect flows away from their MS4s and claim no responsibility for the potential impacts of such actions. In addition, the SWRCB upheld in Order WQ 2000-11 the infiltration restrictions included in the LARWQCB SUSMP, on which the infiltration restrictions in the Tentative Order are based.

Regarding discharges to surface water, discharges of storm water that are not within a municipality's jurisdiction or that are not tributary to a municipality's MS4 may be subject to other water quality control

requirements, but do not impose upon the municipality any regulatory obligation under these requirements. However, it is incorrect to assert that a municipality should not be responsible under the requirements for discharges to natural drainages that are used as part of the municipality's MS4, regardless of the "ownership" of such a natural drainage or stream. The determination of whether or not a particular natural drainage or urban stream channel is or is not part of the municipality's MS4 depends on the particular circumstances of the channel and the municipality's urban runoff management practices. If municipalities rely on natural drainage channels or urban streams to collect and convey urban runoff and storm water to or from an MS4, they should be recognized as components of the municipality's MS4; the municipality would be required to reduce pollutant discharges therein to the maximum extent practicable. Application of requirements for discharges of storm water in MS4s to natural drainages and urban streams does not "transform" such drainages and streams to MS4s; however, it does reflect the fact that the Regional Board recognizes the water quality consequences of municipalities' reliance on such drainages and streams for the management of storm water and urban runoff, and the environmental impact upon such drainages and streams as a consequence of the increased flows therein associated with urban development and land use under the planning and regulatory authority of municipalities.

Nevertheless, there may be discharges from activities and projects within municipalities that are not tributary to the municipality's MS4 and do not subject the municipality to liability for compliance with these requirements, e.g., a discharge of storm water or landscape irrigation runoff from an existing individual residential property directly to waters of the state that are not part of, or tributary to, the municipality's MS4. (Such discharges may, however, be subject to direct regulation by the regional board under individual waste discharge requirements if the discharge consists of or contains waste that could affect the quality of the waters of the state if it is not already covered by statewide requirements for industrial or construction activities.) Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

Finally, language in the Tentative Order pertaining to discharges to environmentally sensitive areas has been modified. Requirements for such discharges only apply to environmentally sensitive areas containing receiving waters, where the discharge has entered or is entering the Copermittee's MS4.

Comment: The Order imposes liability on the county for stormwater that is beyond the County's jurisdiction.

The Order purports to impose liability on the County for all stormwater discharges within its jurisdiction by (1) pronouncing that natural streams not owned by the County are a part of the County's municipal separate storm sewer system, and (2) by pronouncing that "title" to all stormwater in the County passes to the County when that stormwater is "accepted" into a conveyance system. As a result, the County will face liability for stormwater discharges emanating from state and federal properties, Indian lands, school districts, state roads and freeways, private industry, residences and County properties.

The RWQCB cannot transform streams into MS4s, and cannot assign the County regulatory responsibility and potential liability for natural drainages it does not own or operate. Moreover, the possible involvement of the San Diego County Flood Control District in the "operation" of these streams does not confer jurisdiction over the County. The Flood Control District is a separate legal entity from the County.

The RWQCB also cannot simultaneously regulate streams as waters of the state and as MS4s. Separate and inconsistent regulatory authorities and requirements apply to waters of the state and to MS4s. Finally, the state has no authority under federal or state law to determine who has "title" to stormwater. See comment "O2." (County of San Diego)

Response: A municipality's responsibility for discharges of storm water and urban runoff in its MS4 must be coextensive with the municipality's jurisdiction to regulate such discharges. Discharges of storm water that are not within a municipality's jurisdiction or that are not tributary to a municipality's MS4 may be subject to other water quality control requirements, but may not impose upon the municipality any regulatory obligation under these requirements. However, the commentor is incorrect to assert that a municipality should not be responsible under the requirements for discharges to natural drainages that are used as part of the municipality's MS4, regardless of the "ownership" of such a natural drainage or stream. The determination of whether or not a particular natural drainage or urban stream channel is or is not part of the municipality's MS4 depends on the particular circumstances of the channel and the municipality's urban runoff management practices. If municipalities rely on natural drainage channels or urban streams to collect and convey urban runoff and storm water to or from an MS4, they should be recognized as components of the municipality's MS4; the municipality would be required to reduce pollutant discharges therein to the maximum extent practicable. Application of requirements for discharges of storm water in MS4s to natural drainages and urban streams does not "transform" such drainages and streams to MS4s; however, it does reflect the fact that the Regional Board recognizes the water quality consequences of municipalities' reliance on such drainages and streams for the management of storm water and urban runoff, and the environmental impact upon such drainages and streams as a consequence of the increased flows therein associated with urban development and land use under the planning and regulatory authority of municipalities.

Nevertheless, there may be discharges from activities and projects within municipalities that are not tributary to the municipality's MS4 and do not subject the municipality to liability for compliance with these requirements, e.g., a discharge of storm water or landscape irrigation runoff from an existing individual residential property directly to waters of the state that are not part of, or tributary to, the municipality's MS4. (Such discharges may, however, be subject to direct regulation by the regional board under individual waste discharge requirements if the discharge consists of or contains waste that could affect the quality of the waters of the state and if it is not already covered by statewide requirements for industrial or construction activities.) Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

Terminology in Finding 15 based on "ownership" of and "title" to pollutants or flows may be confusing, and has been modified to articulate the fact that there must be a nexus between municipal jurisdiction and responsibility for pollutant reduction under the requirements. See change at permit Finding 15.

Comment: A Combination of BMPs (prevention, source and treatment) is recommended. But what role does cost-effectiveness play in the decision to implement a range of BMPs? (County of San Diego)

Response: At the level of BMP implementation, the Copermittees have the discretion to determine and optimize the cost effectiveness of a combination of BMPs that meet MEP.

Comment: Cities are generally prohibited from trespassing on private property, and it is questionable as to whether cities have the legal authority to implement the inspection and monitoring programs; cities generally have to obtain court orders to inspect private property, which is an expensive and cumbersome process. (Coalition for Practical Regulation)

Response: The Clean Water Act (CWA) and the implementing regulations found at 40 CFR 122.26 must be interpreted in a manner to carry out the purpose of the CWA. The U.S. EPA's guidance on this issue makes it clear that the CWA and the federal regulations seek to impose an inspection responsibility on the Copermittees. There is an express requirement for Copermittees to demonstrate or obtain the authority to conduct inspections at 40 CFR 122.26(d)(2)(i)(F). To the extent that cities do not presently possess authority to inspect, they will obtain such authority in compliance with this regulation.

Generally, the Copermittees should presently possess authority to enforce and ensure compliance with their various permits, such as for construction and business. The Copermittees should be able to rely on that authority to gain access to private property in the majority of cases to assure compliance with the storm water permit requirements. In the much smaller number of cases, where the inspectors are unable to gain consensual entry to premises, they may have no right of entry without a warrant.

Comment: The IEA recommends language be added to allow for future advances in technology. Such language might be "or equivalent alternative" after the word BMP. (Industrial Environmental Association)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any measure that constitutes an "equivalent alternative" would already fall under this broad definition, making the inclusion of the term unnecessary.

Comment: Municipal Wastewater Systems are likely to become Recipients of MS4 Flows. Several sections of the proposed permit require the removal or diversion of flows from the MS4 system Examples are Finding 32., which states that they should be removed from the MS4 system, Sections B.2. that prohibits from entering an MS4 any of the following:
c. Uncontaminated groundwater infiltration.
d. Uncontaminated pumped ground water;
f. Springs;

k. Water line flushing;
I. Landscape irrigation;
m. Discharges horn potable water sources other than water main breaks;
n. Dechlorinated swimming pool discharges.
Sections B4, D.b. (2) to (9), and F. 11 (2) also identify flows that would likely be discharged to the sanitary sewer system.
Consequently, there is the potential for substantial increases of flows into sanitary sewer systems, and for substantial increases in pollutant loads that the downstream treatment systems would need to treat. There are cost factors for additional facilities and the operations and maintenance thereof that would affect the contributing Copermittee. it is understood that the document under discussion is a permit document, however such a permit will require substantial investments in facilities and the maintenance and operation of them.
Recommendations: (a) Provide guidance that the sanitary sewer system may not be the most appropriate means for treating or conveying the flows and loads being regulated. (b) Coordinate this program with either State or Federal finding programs to provide the resources necessary to meet the objectives. (Padre Dam Municipal Water District)

Response: The requirements in Tentative Order 2001-01 that some flows or wastes in the MS4 should be diverted or removed does not necessarily mean that they should be removed or diverted into a sanitary sewer. Finding 32, noted in the comments, finds that wastes and pollutants that deposit and accumulate in the MS4 system will be discharged from those structures into receiving waters. The finding states only that such accumulated wastes must be characterized and lawfully disposed. It does not require, or even recommend, that they be discharged into a sanitary sewer. Section B.2, noted in the comment, refers to non-storm water discharges that are prohibited only if the Copermittee determines that they are a significant source of pollutants to waters of the United States. Section B.2 of the Tentative Order does not require such discharges to be diverted or removed into a sanitary sewer. The Copermittees have the flexibility and discretion to determine the manner in which they comply with the requirements of Section B.2 of the Tentative Order.

Comment: Some terminology used throughout the document such as "significant source of pollution" is vague and subject to interpretation. Where possible vague terms should be defined or avoided, creating a document that is clear in scope and intent. (SANDAG)

Response: The terminology used throughout the Tentative Order was selected to provide the Copermittees with flexibility and discretion to implement the Order in a manner that they determine to be the most effective while providing specific minimum standards and criteria. In some instances, the language is intended to allow the Copermittees to draft the programs, plans, prioritizations, etc in their Jurisdictional Urban Runoff Management (JURMP) Documents and Annual Reports, which are subject to SDRWQCB review and comment. In other instances, the language is purposefully broad to provide for the inclusion of a wide range of conditions, requirements, etc. In both situations, the specific language the commentor requests will be developed in the Copermittees JURMP Documents and Annual Reports.

Comment: The Permit should also place special emphasis on protected bodies of water that are "at risk of becoming degraded". (San Diego Audubon Society)

Response: The Tentative Order requirements are already so broad and far reaching that a special emphasis on protected bodies of water that are at "risk of becoming degraded" would be redundant. Arguably, nearly every water body in the San Diego Region could fit that description. The Copermittees, however, have the discretion to consider extending additional water quality protection measures to water bodies that are not presently listed as impaired under the 303(d) list.

Comment: The language concerning Conditions of Approval and Storm Water Mitigation Plans is vague. These sections should be reworded to require long-term maintenance of all post-construction BMPs in perpetuity and to establish a system of controls that assures that maintenance is performed. (Kristar)

Response: Details regarding the long term maintenance of post-construction BMPs is left to the discretion of the Copermittees, to provide them flexibility in developing and implementing their programs. The Copermittees model and local SUSMPs should address how long term BMP maintenance will be ensured.

More detailed requirements included in the LARWQCB SUSMP regarding BMP maintenance can serve as guidance to the Copermittees. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private of public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural of Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Comment: The permit does not address the problem of disposal of the collected contaminants and exposed materials such as sediment and debris from BMPs. (Kristar)

Response: Disposal of debris from BMPs is the responsibility and is at the discretion of the Copermittees.

Comment: The permit's focus on pollution prevention, source reduction and site specific measures is cost-effective, appropriate and much needed. (Environmental Health Coalition)

Response: Comment noted.

Comment: Amend F.2.g. pg.23, F.3.a.(7) pg.27, F.3.b(6) pg.29, and F.3.c.(4) pg.31 to require unannounced inspections. (Environmental Health Coalition)

Response: While unannounced inspections can be effective and are encouraged, the nature of inspections is left to the Copermittees. It is possible that in some cases unannounced inspections may be infeasible for legal reasons.

Comment: Numerous bold headings could be rewritten to be more informative (Findings 2,3,4,5,6 and 9). (City of San Juan Capistrano)

Response: The bold headings are meant to simply serve as a title thought for the entire findings. The SDRWQCB intended for the informative content to be in the explanatory remarks which follow the headings.

Comment: Insufficient Quantitative Data Exists to Support the Tentative Order.
Municipal MS4 permits are issued based on permit applications which require the inclusion of information concerning "source identification," "discharge characterization," and "characterization data." (40 CFR §§ 122.26(d)(1)(iii), (iv), and 122.26(d)(2)(ii) and (iii).) In fact, the primary purpose of the application process is to develop quantitative data on the types and sources of the pollutants in the effected receiving waters, and to thereafter develop various management programs based on the quantitative data developed. (40 CFR § 122.26(d)(2)(iv).)

In the instant case, the Regional Board has exceeded its authority under the Clean Water Act in attempting to issue the subject permit, as the Regional Board has failed to customize and particularize the terms of the permit to account for such "source identification," "discharge characterization," and "characterization data," as required by the Clean Water Act, before formulating the permit in question. (40 CFR § 122.26(d)(1)(ii).) In issuing a permit that is not based on the development of "quantitative data," and the information on the particular types and sources of pollutant in the subject receiving waters, the Regional Board is acting contrary to the policies and procedures of the Clean Water Act. An example of the lack of data development in formulating the provisions of the Tentative Order is illustrated by the rest of the Order itself. Specifically, Subsection D.1.b. requires the Copermittees to prohibit "discharges of wash

water from the cleaning or hosing of impervious surfaces in . . . residential areas including . . . driveways, patios . . . and outdoor eating or drinking areas, etc." Thus, the Tentative Order would require that the Copermittees adopt ordinances to prevent individual homeowners from cleaning patios, washing their windows or cleaning their pets. Yet, there is no quantitative data or other data to support such a restrictive requirement and draconian provision. (County of San Diego)

Response: The requirements of the Tentative Order are supported by source identification, discharge characterization, and characterization data. Copermittee monitoring reports, Copermittee annual reports, USEPA guidance, and SWRCB guidance are a few of the resources used to identify sources. In addition, the Copermittee monitoring reports, Copermittee annual reports, USEPA studies, and SWRCB studies provided discharge characterization data on the Copermittees' discharges. Information regarding source identification, discharge characterization, and characterization data are included in the draft Fact Sheet/Technical Report.

With regards to the prohibition of wash water, this type of discharge is clearly prohibited in the Clean Water Act at section 404(p)(3)(B)(iii), which states that municipal storm water permits shall "prohibit non-storm water discharges into the storm sewers." This requirement can be considered analogous to the speed limit. It is not enforced in all instances always; however, the Copermittees must have the legal authority to address problem situations. Washing of patios and outdoor eating areas can certainly impact receiving waters with pollutants such as oil and grease and coliform bacteria.

Comment: "Title" and thus Liability From Non-Copermittee Illicit Discharges Cannot Be Transferred to the Copermittees. The Tentative Order improperly seeks to transfer the responsibility for all private party illicit discharges, to the County and other Copermittees, without any authority to do so under the Clean Water Act or State law, by transferring title of an illicit discharges that enters the MS4 from a third party on to the Copermittees. In the instant proceeding, the Regional Board is presumably seeking to issue a "permit" to the Copermittees to allow discharges "from municipal storm sewers." (33 USC § 1342(p)(3)(B).) In issuing a permit to allow discharges from a municipal storm sewer, the authorizing agency, in this case the State Board, may require controls to reduce the discharge of pollutants to the "maximum extent practicable" including management practices, control techniques and system, design, engineering methods, and other provisions as the administrator or the State determines appropriate for the control of such pollutants. (Id.) However, under the Act, the State Board is limited in its ability to regulate Copermittees to controls that reduce the discharge of pollutants to the maximum extent possible "from municipal storm sewers."
The authorizing language under the Act does not authorize the State Board, or any other agency, to regulate discharges "to" the municipal storm sewer system, with the sole exception of imposing an obligation on Copermittees to "effectively prohibit non-storm water discharges into the storm sewers" (33 USC § 1342(p)(3)(b)(ii), which the County has already accomplished through prohibiting direct point source discharges of non-storm water to its MS4 system. Imposing any obligation on the permittees to take title to illicit discharges "to" its MS4 and thus assume liability for the same, when the permittee has otherwise complied with the terms of the Act, is not supported by the Act or State Law. (County of San Diego)

Response: The language in Finding 15 referring to "title" for storm water discharges into MS4s comes from the Preamble to the Phase II storm water regulations. While the Tentative Order holds the Copermittees responsible for discharges into their MS4s (as discussed in more detail elsewhere), it acknowledges that this responsibility does not constitute "title" for such discharges. Therefore, the language of Finding 15 will be modified for clarification.

See change at permit Finding 15.

Comment: The SDRWQCB is not authorized to issue municipal storm water permits in California. (County of San Diego)

Response: State regulations are not prerequisite for issuance of WDRs implementing federal CWA/NPDES regulations governing storm water. RWQCB is authorized by 13263/13377 to issue requirements for all discharges of waste that could affect the quality of water of the state, including those involving discharge of pollutants from point source to waters of the U.S. within each region. Water Code 13263/13377 together with state and regional Water Quality Control Plans and federal NPDES regulations provide sufficient guidance for RWQCB's to issue WDRs for individual municipalities or for all municipalities within a larger jurisdiction (i.e., County). While the SWRCB regulations do not specify either procedures or substantive requirements applicable only to discharges of storm water or urban runoff in MS4s, they do incorporate the applicable NPDES regulations, including those directly affecting storm water discharges (AOCFR 122.26).

Statewide consistency in the regulation of storm water discharges municipal S4s is desirable, requirements must also be tailored to the climatic, hydrologic and jurisdictional characteristics of each region. Informal coordination between regional boards and the state board as well as guidance published by USEPA ensures basic consistency between the MS4 requirements developed by each region. In addition, where the SWRCB has considered past actions by regional boards with regards to storm water discharges and has articulated principles governing such actions (as it did for receiving water limitations [citation]). Regional boards conform to their subsequent actions to such SWRCB precedents. Development of statewide precedents pursuant to the SWRCB's authority to under take administrative review of actions of the regional boards pursuant to WC 13320 does not require notification of proposed rulemaking under the Cal. APA (Gov't C. 11340). In fact all persons known to be interested in matters under review by the SWRCB are notified of such proceedings; in addition, notice of such proceedings are distributed very broadly in the SWRCBs Workshop and meeting notification process. The SWRCB solicits and considers comments from interested persons in its review of regional board actions [citations 23CCR 2205 et.seq.] Nonetheless, each region must also address the level of compliance with previous requirements achieved by municipalities with each region and within counties with each region. Accordingly, requirements in one region may be substantially more detailed than in another region in order to clarify the obligations and responsibilities of municipalities responsible for MS4s.

Comment: The Order exceeds RWQCB authority by requiring cooperation among Copermittees without the Copermittees' consent.

40 CFR Section 122.26(a)(3)(iii) provides that municipalities may either participate in a permit application with Copermittees, or may submit a distinct permit application for their separate storm sewers. 40 CFR. Section 122.26(a)(3)(vi) provides that Copermittees "need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators." 40 CFR Section 122.26(b)(1) defines "Copermittee" to mean "a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator." 40 CFR Section 122.26(d) provides that operators may submit "a jurisdiction-wide or system-wide permit application."

40 CFR Section 122.26(d)(2)(iv) provides that separate proposed management programs may be submitted by each coapplicant.

These regulations clearly do not allow the state to order Copermittees to cooperate—the decision to cooperate, and the manner and extent of that cooperation, must be based on Copermittee decisions.

The 20 Copermittees in San Diego did submit a joint application for the renewal of Order 90-42—early in 1994. The renewal they contemplated was far different than the renewal the RWQCB has proposed. Copermittees retain their rights in these circumstances, under 40 CFR Section 122.26(d)(2)(iv), to decline to be directed to coordinate in areas that exceed their consent. They retain their right to submit separate proposed management programs.

The Order would deny these rights by mandating new areas and new levels of Copermittee cooperation. For example, the Order purports to dictate that land use planning be done regionally in the future, even though State law makes land use planning a local prerogative. The Order is highly prescriptive in requiring Copermittee coordination and joint funding of a regional water quality monitoring effort. The Order would require that jurisdictional stormwater management programs be essentially subsumed into watershed programs during the life of the permit. The role of the lead Copermittee would also be expanded, and the RWQCB asserts the right to designate and impose additional obligations on the lead Copermittee. Finally, the Order requires "interagency agreements" among the Copermittees to control the contribution of pollutants from one portion of a shared MS4 to another. All of this is contrary to the right that federal law provides each municipality to act separately.

The County strongly believes that Copermittee cooperation is the best means available to achieve strong stormwater programs in San Diego. However, cooperation must be entirely a Copermittee choice; the RWQCB has no authority to dictate the scope or terms of this cooperation. (County of San Diego)

Response: The Federal NPDES regulations are clear in their requirements for coordination between the Copermittees.

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) provides that the Copermittee shall develop and implement a proposed management program which "shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. […] Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. […] Proposed management programs shall describe priorities for implementing controls."

Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(D) provides that "[The Copermittee must demonstrate that it can control] through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system."

Furthermore, Copermittee coordination is a necessity, due to the interrelated nature of storm water management. Storm water runoff does not follow municipality boundaries, and often travels through many municipalities while flowing towards receiving waters. Municipalities' actions towards storm water can therefore have a cumulative impact upon shared receiving waters.

In addition, the Copermittees currently coordinate under Order No. 90-42. Pending watershed efforts, which most Copermittees support strongly, will also require coordination in the future. Non-point source programs will also make coordination a necessity.

For these reasons, the SDRWQCB has included coordination requirements in the Tentative Order.

Comment: The Order violates the U.S. Constitution and exceeds the RWQCB's authority under state law by commandeering local government

The Order exceeds the RWQCB's authority under state and federal law because it orders or "commandeers" the County by requiring it to enact ordinances, modify its General Plan and implement a very specific stormwater management program. But the federal government cannot order States to pass laws, or otherwise take control of the State governing apparatus. In two cases, the U.S. Supreme Court has held that the federal government cannot "commandeer" state governments. (New York v. United States, 505 U.S. 144 (1992); Printz v. United States, 138 L.Ed.2d 914 (1997).) In general, the federal government can enact and apply laws of general applicability (e.g., all wastewater discharges must obtain NPDES permits), and can pressure States to act by offering or withholding grants.

These constitutional principles apply to the commandeering of local as well as State governments. Neither the State Board nor any regional board has the authority to infringe on or to direct the use of the Copermittees' police powers under the California Constitution, or to intrude upon their local land use authority or other traditional areas of local regulation.

The California Constitution provides counties and cities with "plenary authority" to govern local land uses and enact zoning regulations. (Candid Enterprises, Inc. v. Grossmont Union High School Dist. (1985) 39 Cal.3d 878, 885; Cal. Const., art. XI, § 7; see also, e.g., Euclid v. Ambler Realty Company (1926) 272 U.S. 365.) In this regard, state law reserves in counties and cities the "maximum degree of control over zoning matters." (Govt. Code, § 65800; Birkenfield v. City of Berkely (1976) 17 Cal.3d 129, 140.) Unless preempted by the state legislature, counties and cities retain full autonomy over local land use controls. (IT Corp. v. Solano County Board of Supervisors (1991) 1 Cal. 4th 81, 89-101.) The Porter-Cologne Water Quality Control Act's provisions, however, do not "occupy" the fields of water quality regulation or local land uses so as to displace local governments' primary land use regulation authority. (Id.; Water Code, §§ 13000-13002; see Baldwin v. County of Tehama (1994) 31 Cal.App.4th 166, 176.) The Order exceeds the RWQCB's authority by unlawfully forcing the County to exercise its own sovereign police power of land use regulation. (County of San Diego)

Response: The requirements of the Tentative Order implement the Federal NPDES regulations. These regulations require the Copermittees to enact ordinances to address particular situational discharges. The regulations also require General Plans to include urban runoff considerations (40 CFR 122.26(d)(2)(iv)(A)(2). The Tentative Order has been modified to provide the Copermittees discretion in how they include such considerations in their General Plans. Therefore, the Tentative Order does not commandeer local government.

Comment: The Order should be withdrawn

The Order should be withdrawn to allow consultations with Copermittees. A revised Order should be released for an extended public comment period following those consultations.

It is common practice for RWQCB staff to work with dischargers on terms for the renewal of significant NPDES permits prior to release of a proposed permit for comment. These consultations help to ensure that the assumptions underlying an Order are correct, that the meaning of the language in the Order is clear, that concerns about costs and feasibility have been understood and considered, that alternatives have been considered, and that legal issues have been identified and discussed.

Consultations are also necessary for this Order. The Order is much more complex in its prescriptions than a typical permit. RWQCB staff also have less understanding of local government functions, processes and permits than they do of industrial dischargers. The Order raises political, governance, and public resource issues that RWQCB staff are not accustomed to addressing.

Finally, cooperation and coordination among government agencies and entities is essential if better stormwater programs are to be promptly and effectively implemented in San Diego. (County of San Diego)

Response: SDRWQCB has followed state and federal guidelines for the required public input to reissue a NPDES permit. In some cases the SDRWQCB has exceeded in comment period time and public workshops the required allowance for public input. SDRWQCB believes that the regulatory basis of this permit has been known to all interested parties for a period of over ten years. The Tentative Order is the result of the cumulative input and cooperation of these events.

Comment: Staff has not worked with Co-permittees to ensure the program is cost effective and realistic to implement and the lease intrusive upon the lives of citizens and the business community.. (City of Carlsbad)

Response: Comment noted.

Comment: The City of Escondido participated in the development of the letter transmitted to the Board by the Copermittees providing comments on the Tentative Order 2001 and is supportive of letter transmitted by the Storm Water Quality Task Force. We continue to believe each of the issues raised in each of those letters has merit and should be addressed by the Board. (City of Escondido)

Response: Comment noted. Responses to comments included in the above referenced letters are found elsewhere in this document.

Comment: We would like a glossary of terms or phrases to ensure uniform understanding of the permit phrase such as, ". . . prohibit the discharge of pollutants and non-storm water in MS4" (para. 22), and ". . . use of BMP to reduce pollutants in site runoff. . ." (para.22). (City of Imperial Beach)

Response: The Tentative Order and the Fact Sheet/Technical Report provide a glossary and extensive discussion of terms and phrases used in Tentative Order. With respect to the phrases in the comment, the

commentor can refer to Section VII of the Fact Sheet/Technical Report for a full discussion of prohibitions and the use of BMPs to reduce pollutants in discharges.

Comment: While it is agreed that the process of public' participation in a manner that builds consensus across the wide spectrum of interest groups, how the City accomplishes this should not be a matter of the URMP. It should be sufficient to direct the Copermittees to involve the public. (City of Imperial Beach)

Response: As discussed in the Fact Sheet/Technical Report, the Federal NPDES regulations 40 CFR 122.26(d)(2)(iv) require each Copermittee to develop and implement an urban runoff management program. The SDRWQCB must assess the urban runoff management program to ensure that it is adequate to prohibit non-storm water discharges and reduce pollutant discharges to and from the MS4 to the maximum extent practicable, including the requirement for incorporating public participation. In order for the SDRWQCB to assess the urban runoff management program, each Copermittee must submit to the SDRWQCB a description of their program. The description must detail all activities the Copermittee is undertaking to implement the requirements of each component of the Jurisdictional URMP section of Order No. 2001-01.

The SDRWQCB has discretion to require Submittal of Jurisdictional URMP Document and Annual Report items F.6, H. 1.a.(8)(a), and J.2.f. in Order No. 2001-01 under the broad and specific legal authority cited in Fact Sheet/Technical Report.

Comment: Criteria for establishing the thresholds for medium and low threat to water quality are not provided in the Order. Recommend SDRWQCB provides the criteria for a medium and a low threat sites. These criteria definitions are needed in order to provide uniformity across the region and consistency with the SDRWQCB's intent. (City of Imperial Beach)

Response: Criteria for establishing the thresholds for medium and low threat to water quality sites are left to the discretion of the Copermittees. The Copermittees may wish to collaborate to provide uniformity across the region.

Comment: Page 35 of 50 - paragraph F.6., Page 39 of 50 -paragraph H. 1.a.(8)(a) and Page 42 of 50 - paragraph J.21 - Requires Copermittees to include a public participation mechanism in the Jurisdictional URMP. This component is to describe how public participation will be included in the implementation of the Jurisdictional and Watershed URMP.

SDRWQCB staff supports this requirement by citing 64 FR 68755 "[E]arly and frequent public involvement can shorten implementation schedules and broaden public support for a program." While it is agreed that the process of public participation in a manner that builds consensus across the wide spectrum of interest groups, how the City accomplishes this should not be a matter of the URMP. It should be sufficient to direct the Copermittees to involve the public. It should not be a matter that requires SDRWQCB oversight. Recommend the requirement that the URMP include the process of public participation be excluded. (City of Imperial Beach)

Response: The federal NPDES regulations clearly require the Copermittees to include public participation in the development of their urban runoff management programs. 40 CFR 122.26(d)(2)(iv) requires management programs to "include a comprehensive planning process which involves public participation […]". Therefore, the Tentative Order requires public participation on the part of the Copermittees. How public participation is implemented is left to the discretion of the Copermittees in the Tentative Order.

Comment: Examples of some unnecessary and burdensome requirements are:

Municipalities must submit, each year, a fiscal analysis evaluating the expenditures needed to implement the various programs and proving they have adequate resources to meet these expenditures.

The implementation of numerous Best Management Practices (BMPs), required for industrial, commercial, municipal, and residential activities without regard to water quality benefits, or justification of any prior violation of water quality objectives.

The list of illicit discharges, which the permittees must prohibit and control is too extensive, including discharges which may not be storm water pollutants, thus exposing the permittees to unjustified penalties for violations. (City of La Mesa)

Response: A role of the Permittees under the Tentative Order is to achieve pollutant reduction to the MEP. A role of the Regional Board under the Tentative Order is to assess compliance of the Permittees in reducing pollution to the MEP. The SDRWQCB believes that the above mentioned permit terms are crucial and necessary for the Regional Board to gain the information necessary to assess whether MEP has been met.

A fiscal analysis is required by the Federal NPDES regulations at 40 CFR 122.26(d)(2)(vi).

In a permit without numeric effluent limits, BMPs are required.

The Clean Water Act prohibits non-storm water discharges at section 402(p)(3)(B)(ii).

Comment: Smart Growth Principles v. RWQB Policies: RWQCB policies expressed in T.O. 2001-01 enumerate several policies and practices which clearly express a preference for land use policies which favor development which provide for significant areas of permeable vegetative areas for on-site storm water management. Accepted regional growth projections that show that even existing local land use plans may not have sufficient area with urban land uses designated to accommodate these projected growth. With the RWQCB's policies on urban storm water management, the obvious conclusion would be that land use plans would need to utilize extremely lower residential densities to promote additional on-site permeable areas. In other words, we should be promoting urban sprawl land use patterns. (City of La Mesa)

Response: The Tentative Order does not require infiltration where it is infeasible. While the SDRWQCB supports minimization of impervious surfaces to foster natural infiltration, it is not required. For example, infiltration is only one category of BMP out of many which are available to meet SUSMP

requirements. If site restrictions exist, the develop can forgo infiltration and use filtration BMPs instead. Infiltration BMPs can frequently be constructed underground to conserve space. Therefore, the Tentative Order does not require reductions in development densities.

Comment: Regional Board staff should use the Regional Hazardous Waste Management Plans database and methodologies developed by SANDAG agencies to address the hazardous waste discharges to the storm drains. (City of La Mesa)

Response: Since the Copermittees are responsible for prohibiting illicit discharges into their MS4s per the Clean Water Act (section 402(p)(3)(B)(ii)), it is recommended that they utilize the Regional Hazardous Waste Management Plan and corresponding database in their efforts to seek and eliminate illicit discharges.

Comment: As a small community in the County of San Diego, the City of Lemon Grove supports the collective comments proposed by the Co-permittees. (City of Lemon Grove)

Response: Comment noted. Responses to comments included in the above referenced letter are found elsewhere in this document.

Comment: The Tentative Order is also likely to discourage or prevent the use of reclaimed water where such use (e.g., for irrigation) could result in runoff of non-stormwater. Because no consideration has been given to these factors, the Order must be withdrawn until these factors have been considered. The Order must then be adjusted as appropriate to reflect these factors. (County of San Diego)

Response: The Tentative Order does not regulate the use of reclaimed water. However, in circumstances in which reclaimed water is used for lawn watering or landscape irrigation, the discharge of reclaimed water from these uses to the MS4 would be prohibited by the Copermittee only if the Copermittee determined that it was a significant source of pollutants. As stated in Section B.2 of the Tentative Order, the Copermittees may implement or require the implementation of BMPs to reduce pollutants in the discharge of non storm water to the MEP rather than prohibit the discharge of landscaping or lawn water runoff.

Comment: The Metro Commission supports the re-issuance of the Municipal Storm Water Permit to improve the water quality of the region's receiving waters. (Metro Commission)

Response: Comment noted.

Comment: The permit, as written, contains many detailed, specific, and conflicting requirements that would make it impossible to comply with its requirements without diverting storm water flows into the existing sanitary sewer system as a treatment means. (Metro Commission)

Response: The Tentative Order requires the treatment and reduction of pollutants in urban runoff to maximum extent practicable through the implementation of BMPs. Diversion of urban runoff to the sanitary sewer is not required under Tentative Order 2001-01.

Comment: The Tentative Order will encourage the disposal of urban runoffs into the sanitary sewer system and therefore require increases in collection and treatment facility capacities. This diversion will also cause more sewage spills due to increases in flow and blockage causing material. (Metro Commission)

Response: A number of BMP alternatives exist for the Copermittees to choose from that will reduce pollutants in urban runoff discharges to maximum extent practicable. Diversion to the sanitary sewer is only one of the options the Copermittees can address in their Jurisdictional and Watershed Urban Runoff Management Programs.

Comment: The administrative financial burden to the Copermittees should be simplified by having the permit apply to neighboring cities watershed approach. (City of Encinitas)

Response: The Tentative Order requires both a Jurisdictional and a Watershed Urban Runoff Management Program (URMP). The Watershed URMP, which is an extension of the Jurisdictional URMP rather than a separate program, is intended to be a neighboring cities watershed approach that will encourage the Copermittees to collaborate and share cost effective measures to manage urban runoff.

Comment: Can the tentative order allow the cities to prioritize categories for BMP implementation rather than prescribe that all land uses have high priority sites? (City of Escondido)

Response: Yes. Per the Federal NPDES regulations, the Copermittees must control pollutants from construction, municipal, commercial, residential, and industrial land uses. BMPs must be implemented for all of these land uses. Since BMPs must be implemented for each land use, prioritization of sites falling under each land use category is an effective means for focusing efforts. In some cases, the SDRWQCB has identified high priority areas and activities based on USEPA guidance and experience with enforcement. However, it is the Copermittees' discretion which BMPs are implemented for the various prioritized sites.

Comment: The Port supports the collaborative efforts for the 303(d)-TMDL process and the Bay Protection Toxic Cleanup Program. (Port of San Diego)

Response: Comment noted.

Comment: Sections F.2.h., F.5.e., Attachment C - Enforcement - What will be the RWQCB's enforcement policies? (City of Coronado)

Response: Enforcement actions available to the State and Regional Boards are established in the Porter Cologne Water Quality Control Act. The State Board has also established enforcement Guidance to Implement the Water Quality Enforcement Policy. These documents are available for review on the State Water Resources Control Board's web site located at www.swrcb.ca.gov or can be obtained at the SDRWQCB office.

Comment: Sections B.2., F. I.b.(2)(e), F.2.e., F.3.a.(3), F.3.c.(2), F.3.d.(2) - How do we determine what our pollutants are and how do we prioritize these if data is "noisy" and changes with every sampling? (City of Coronado)

Response: To provide maximum flexibility, SDRWQCB has in the above referenced permit sections identified activities that are of concern. The Copermittees may then determine what pollutants are of concern and a method for prioritizing these pollutants based on their knowledge of receiving waters and discharges. However, in some cases, SDRWQCB has specifically explained what pollutants are of concern or what activities require oversight for the given land use. Refer to the following permit sections as they describe the process the Copermittees should take to determine what pollutants are of concern.

If data for discharges is noisy, other assessments can be used. For example, pollutants for which nearby 303(d) waters are impaired can be considered pollutants of concern. In addition, some studies have linked particular pollutants with a particular land uses (Washington, 1999).

Comment: Sections F.21, F.3.a.(4), F.3.b.(4), F.3.c.(3), F.3.d.(3) - What action will the RWQCB take against an agency that defines BMPs to be used based on the priority of the development and then that BMP fails? (City of Coronado)

Response: Failure of BMPs, whether because of an inadequate design, poor construction, or lack of proper maintenance, that result in the discharge of runoff containing pollutants that have not been reduced to the MEP, would be a violation of the waste discharge requirements prescribed in tentative Order No. 2001-01. Any violation of waste discharge requirements prescribed in an NPDES permit may subject dischargers to enforcement action in accordance with Chapter 5, Enforcement and Implementation of the California Water Code. Enforcement actions are progressive and can range from the issuance of lower level actions such as staff enforcement letters to formal enforcement actions established in with Porter Cologne Water Quality Control Act, such as cleanup and abatement orders which require proof of corrective action and/or abatement of deleterious water quality impacts. Ultimately, failure to implement adequate BMPs subject dischargers to monetary civil liability which can range up to $25,000 per day of violation.

Comment: The RWQCB issued its initial flow specifications without any prior environmental analysis, consultation with resource agencies, or public comment. Staff then proposed a radically different requirement based on a workshop comment, again with no analysis or consultation. There can

be no presumption that the Board had it right the first time, or that staff have got it right the second time. (County of San Diego)

Response: The Tentative Order's requirement that "Post-development runoff which is greater in peak rate or velocity than pre-development runoff from the same site is prohibited" was designed to protect downstream areas from erosion caused by increased flows resulting from development. However, the blanket prohibition, as proposed, could result in the application of the requirement at relatively small sites, which pose an insignificant threat of downstream erosion due to their limited impervious surfaces. Application of the prohibition at all sites could also pose significant implementation difficulties for the Copermittees.

For these reasons, the requirement that post-development peak flow rates not exceed predevelopment rates for all development sites has been removed from the Tentative Order. Instead, the requirement shall only apply to new development and significant redevelopment falling under the SUSMP priority development project categories. The SUSMP priority development project categories are comprehensive in their application to significant new development and redevelopment projects. The categories ensure that most new development and redevelopment will be subject to SUSMPs. Therefore, the requirement that post-development peak flow rates not exceed predevelopment rates will still apply to most development projects. Only smaller projects not falling under the SUSMP requirements will be exempted.

As part of their model and local SUSMPs, the Copermittees will be required to maintain predevelopment peak flow rates and velocities coming from new development as necessary to prevent increased downstream erosion where the potential for downstream erosion exists. This requirement allows the Copermittees discretion in the methods to be developed and implemented to control post-development peak flow rates and downstream erosion. Furthermore, the Copermittees can develop and implement different methods to be applied in different watersheds or different areas of a watershed, provided that the different methods are effective in adequately reducing post-development peak flow rates to control erosion. The Copermittees' model and local SUSMPs must include a description of how predevelopment peak flow rates will be maintained to control erosion in downstream areas.

There is extensive guidance for the Copermittees to draw from in developing criteria to address post-development peak flow rates for the control of downstream erosion. For example, the State of Washington has developed the following criteria regarding post-development peak flow rates: "Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50 percent of the pre-developed condition of the 2-year, 24-hour design storm while maintaining the pre-developed condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms." Regarding control of post-development flow durations, the State of Washington has developed the following criteria: "Stormwater discharges to streams shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50% of the 2 year peak flow up to the full 50 year peak flow" (Washington State Department of Ecology, 1999). The State of Maryland has developed the following criteria to addressed increased peak flow rates resulting from development: "To protect channels from erosion, 24 hour extended detention of the one-year, 24 hour storm event shall be provided. […] The rationale for this criterion is that runoff will be stored and released in such a gradual manner that critical erosive velocities during bankfull and near-bankfull events will seldom be exceeded in downstream channels" (Maryland Department of the Environment, 1999).

It should be noted that this approach, of allowing the Copermittees to develop peak flow rate criteria to control downstream erosion, is consistent with the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

See changes in permit sections A.4, F.1.a.9, F.1.b.1.g, F.1.b.2.b.i, and F.1.b.2.j.

Comments on Specific Sections

Section: Finding **Subsection: 1**

Comment: Amend Finding 1 pg.1 to include all Federal agencies including Navy, and the Department of Defense as Copermittee. The Department of Defense installations, and the property and projects under Navy ownership are among the largest potential sources of polluted urban runoff in the San Diego region. The Navy controls 181,000 acres of San Diego county and operates areas equivalent to small cities and large industries within its operations. In addition, the U. S. Navy should be listed in the appropriate watershed areas as a watershed Copermittee. (Sierra Club, Environmental Health Coalition, Surfrider Foundation, San Diego Audobon Society)

Response: The SDRWQCB intends to include the Navy in municipal storm water permits in the near future. However, in order to prevent any further delays in the adoption of the Tentative Order, this issue will be considered after adoption.

Section: Finding **Subsection: 1**

Comment: RWQCB should consider issuance of individual stormwater permits in the future. As Copermittee programs develop and additional knowledge of individual watersheds is obtained, there will likely result a need for more detailed runoff limitations and monitoring for each jurisdiction. (Surfrider Foundation)

Response: The Tentative Order is already an "individual" permit. Under the NPDES storm water municipal program, the permittees must submit an application which includes a proposed management plan as well as monitoring data. From this application, the Tentative Order is structured. SDRWQCB found the application to be inadequate to serve as the foundation for a permit reissuance and added additional requirements.

Section: Finding **Subsection: 2**

Comment: The Order includes a finding (No. 2 at page 1) that "urban runoff is a 'waste'..." as defined in California Water Code, section 13050(d). This finding sets the tone for the entire Order. The County disagrees with this finding, and it questions the approach to stormwater management that staff has proposed based on this finding. The County questions the finding because of the actual language of section 13050(d). More importantly, however, the County is concerned that any program founded on the attitude that stormwater is a "waste," will lead to the waste of stormwater. The section defines water as

including waste substances associated with human habitation, animals, producing, manufacturing or processing. It does not transform the water that may or may not contain such substances into "waste." Additionally, the Order and technical report have no factual basis to support this Finding. While staff may be able to demonstrate that runoff from a given site contains waste, there is no evidentiary or legal justification for categorically designating - across the board - any and all runoff from urbanized area as an "other waste substance." (County of San Diego, BIASC, BIASD, Orange County, San Juan Capistrano)

Response: The definition of waste included in Porter-Cologne is very broad. Waste includes "any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation […]" To the extent that urban runoff commonly contains pollutants, and frequently contains them at toxic levels (per the Copermittees' monitoring efforts), it certainly falls under the definition of "any and all other waste substances […] associated with human habitation." That the USEPA chooses to issue NPDES permits for the discharge of urban runoff is telling, in that these permits are typically issued for discharges from industry and wastewater facilities. In fact, NPDES permits issued by the State of California, including the Tentative Order, are generally called "Waste Discharge Requirements."

Section: Finding Subsection: 3

Comment: Sediment is not a pollutant in and of itself. Sediment does not move into the food chain and is not harmful if eaten by humans or fish. Sediment, if constantly discharged into some natural water bodies in excess of the water body's ability to discharge the sediment, can be a problem. These should be treated on a case-by-case basis rather than stating sediment is bad and cannot be in your MS4 system. We strongly recommend that this paragraph be revised to define sediment as not including native soils that are consistent in volume and size with naturally occurring erosion. One time loading in excess of the normal loading should be allowed as these mimic how nature provides sediment to our beaches. Most of the naturally occurring sand comes from episodic events such as landslides and heavy rain seasons. (City of Solana Beach)

Response: The Tentative Order does not seek to control sediment from natural erosion, but rather to control sediment from man-made sources. Sediment from man-made (anthropogenic) sources needs to be controlled for several reasons. The US EPA explains in the Phase II NPDES storm water regulations that storm water discharges generated from urban activities can cause an array of physical, chemical, and biological water quality impacts. Specifically, the biological, chemical and physical integrity of the waters may become severely compromised due to sediment loads in urban runoff. One time loadings from construction sites can be harmful because of the fine nature of the sediment. USEPA states "A primary concern at most construction sites is the erosion and transport processes related to fine sediment […]" (USEPA, 1999b). Increased fine sediment loads from construction sites can adversely affect aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within the streambed, and reducing intergravel dissolved oxygen by reducing the permeability of the bed material. Furthermore, one time sediment loadings from construction can be "the equivalent of many decades of natural or even agricultural erosion" (USEPA, 1999b).

Water quality impairment also results from urban runoff carrying sediment, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. Sediment transport and delivery by urban runoff is a primary pathway for introducing key pollutants, such as nutrients, metals, and organic compounds into aquatic systems (USEPA, 1999b).

Due to this capability for runoff from urban development to carry increased sediment loads, as well as the sediment's capability to carry significant pollutant loads, sediment from anthropogenic activities is considered a pollutant which must be addressed.

In order to clarify that the Tentative Order does not seek to reduce natural erosion, Finding 3 will be changed to clarify that it is sediment due to anthropogenic activities which is considered a pollutant.

See change at permit section Finding 3.

Section: Findings Subsection: 3

Comment: Finding no. 3 is over generalized and not supported by the evidence in the record. Although much urban runoff is harmful to our receiving waters, not all urban runoff is harmful.

The RWQCB has failed:

1. To identify the pollutants of concern from particular developments, the sources of those pollutants and the impact such pollutants would have on our receiving waters.

2. To develop or require the development of the quantitative data necessary to develop an appropriate series of management programs and the terms of a permit to address the pollutants of concern and the sources of those pollutants.

3. To develop sufficient evidence to determine the impact of requiring soil infiltration and natural vegetation filtration and otherwise the reduction of impervious surfaces on our groundwater quality, and thus appears to be determining that our surface water quality is more important than our groundwater quality, without adequately considering the impacts on our groundwater quality and developing sufficient information on the pollutants of concern and the impacts of those pollutants on both our surface water quality and our groundwater quality. (County of San Diego)

Response: The US EPA supports this finding, stating in its 1996 National Water Quality Inventory that urban runoff/discharges from storm sewers are a major source of water quality impairment nationwide. The 1996 Inventory also found urban runoff to be the leading cause of ocean impairment for those ocean miles surveyed. In addition, the Region's Clean Water Act section 303(d) list (see Attachment 2), which identifies water bodies with impaired beneficial uses within the region, also indicates that the impacts of urban runoff on receiving waters are significant. Many of the impaired water bodies on the 303(d) list are impaired by constituents which have been found at high levels within urban runoff by the regional storm water monitoring program. Examples of constituents frequently responsible for beneficial use impairment include total and fecal coliform, heavy metals, and sediment; these constituents have been found at high levels in urban runoff both regionally and nationwide.

Section: Findings Subsection: 3

Comment: Remove the word "strong" in phrase "strong direct correlation" (City of San Diego)

Response: Sufficient reports exist in the literature exist to justify the use of the phrase "strong direct correlation." Among these are Karr and Chu (1999), Pitt (1995), Riley (1998), and NURP.

Section: Finding **Subsection: 4**

Comment: Urbanization reduces sediment loading by reducing the areas available for erosion and reducing and controlling landslides. (City of Solana Beach)

Response: We do not concur with this statement. The process of urbanization can dramatically increase sediment loading during the construction phase. Increases in sediment loading during this phase can have long term effects. USEPA finds that studies have shown that "the equivalent of many decades of natural or even agricultural erosion may take place during a single year from areas cleared for construction" (USEPA, 1999b).

Section: Findings **Subsection: 4**

Comment: The City questions to Finding No. 4, as it implies that the City has failed to take any measures to control the volume, velocity, or pollutant load of urban run-off. (City of San Diego)

Response: Finding 4 was not intended to be interpreted as stating that the Copermittees have failed to take any measures to control the volume, velocity, or pollution load of urban runoff. Nonetheless, despite many measures implemented by the Copermittees, beneficial uses of receiving waters are being impaired, receiving water quality objectives are frequently exceeded, and there exists a heightened level of concern in the public for the deteriorating water quality resulting in large part from urban runoff. Despite many measures taken to date, urban development does result in an increased pollutant load, volume, and velocity of urban runoff.

Section: Findings **Subsection: 4**

Comment: The last sentence of the first paragraph should be revised to state, "the natural purification characteristics of the land are diminished". In general in a suburban environment 40% or more of the land remains vegetated so all purification is not lost. (City of Carlsbad)

Response: The sentence refers "pavement and concrete," both of which refer to unvegetated ground cover. The language will not be changed.

Section: Findings **Subsection: 5**

Comment: No studies supporting Finding no. 5 are actually cited. There has been no consideration given to other important competing concerns, including the need for low and moderate income housing, the importance of other future development projects, and the need for impervious surfaces in connection with such developments. Finally, there has been no consideration given to the importance of having impervious surfaces, including protecting our groundwater, providing a means of safe transportation, and avoiding subsidence and erosion problems. (County of San Diego)

Response: There are no less than five studies cited to support this finding in the Staff Report. See Page 37, Finding Five of the Staff Report. The Findings section of the Tentative Order is intended to outline (in general terms) the basis for the requirements that follow - not to provide a literature review.

Section: Findings **Subsection: 5**

Comment: Finding 5 on page 2 - The first sentence referring to increased volume and velocity of runoff greatly increasing downstream erosion in natural channels should be eliminated. The statement is inconsistent with the remainder of the finding and represents a gross generality and not reflective of the complex relationship between developed land characteristics, runoff and soil erosion. When all other factors remain constant, increased volume and velocity of runoff will increase downstream erosion; however, such circumstance rarely occurs. Increased downstream erosion is easily offset by reduced erosion upstream due to channelization of flows, construction of basins and check dams, installation of landscaping and the general decrease in erodable surface area brought about by development. I believe there is a substantial body of evidence, which supports the fact that overall siltation transport, is reduced, and not increased, once land is developed. (City of Carlsbad)

Response: Finding 5 is accurate. USEPA finds that in many cases the impacts on receiving waters due to changes in hydrology can be more significant than those attributable to the contaminants found in storm water discharges (USEPA, 1999a). Research exhibits that downstream erosion follows urbanization. Stream adjustments resulting from urbanization include increased stream cross-sectional area to accommodate higher flows and significant downcutting of the stream channel (WEF/ASCE, 1998). Research models developed in the Pacific Northwest suggest that a threshold for urban stream stability exists at approximately 10% imperviousness of a watershed (WEF/ASCE, 1998). As the commentor notes, these impacts can be reduced through the implementation of basins, landscaping, etc. These practices are the types of BMPs the Tentative Order requires. While development may eventually reduce the amount of sediment reaching a stream, research exhibits that it also results in significant changes in stream hydrology such as downstream erosion.

Section: Finding **Subsection: 6**

Comment: Sediment does not close beaches. Without sediment there are no sand beaches to worry about. We strongly recommend that sediment be redefined to exclude soils consist with the natural soils. (City of Solana Beach)

Response: Finding 6 refers to pollutants in urban runoff which can be a threat to human health, such as pathogens and toxics. Finding 6 makes no reference to sediment.

Section: Findings **Subsection: 6**

Comment: No evidence supportsFinding no. 6. The County agrees that there is a water quality problem created by pollutants in urban runoff, but the pollutants of concern and the sources of those pollutants should be identified with supporting studies. (County of San Diego)

Response: Whether or not it always or ever causes human health problems, urban runoff does pose a human health threat. This finding is supported by a landmark study conducted by the Santa Monica Bay Restoration Project. The study found that there was an increased occurrence of illness in people that swam in proximity to a flowing storm drain outlet.

In addition to the human health risk urban runoff poses from bodily contact, urban runoff also has the potential to adversely impact human health through bioaccumulation/biomagnification of urban runoff pollutants in the food chain. Pollutants such as heavy metals and pesticides, which are commonly found in urban runoff, have been found to bioaccummulate and biomagnify in long-lived organisms at the higher trophic levels. Since many aquatic species are utilized for human consumption, toxic substances accumulated in species' tissues can pose a significant threat to public health.

The US EPA supports this finding when it states "As runoff flows over areas altered by development, it picks up harmful sediment and chemicals such as oil and grease, pesticides, heavy metals, and nutrients (e.g., nitrogen and phosphorus). These pollutants often become suspended in runoff and are carried to receiving waters, such as lakes, ponds, and streams. Once deposited, these pollutants can enter the food chain through small aquatic life, eventually entering the tissues of fish and humans."

Section: Findings Subsection: 7

Comment: Tentative Order should discuss the concerned pollutants, as well as the sources of those pollutants, and the means in which to reduce the discharge of pollutants from such sources to the "maximum extent practicable". (County of San Diego)

Response: Comment noted. The Tentative Order addresses pollutants of concern and requires discharges of pollutants to be reduced to the "maximum extent practicable."

Section: Findings Subsection: 8

Comment: In Section 8, at page 3, the Tentative Order suggests that the Regional Board, under the Tentative Order, will treat all MS4s as receiving waters for purposes of water quality standards and enforcement. Indeed, the text suggests that man-made MS4s — even closed ones — will be treated as natural streams and receiving waters. Please provide a reference for the legal authority that allows the Regional Board to define man-made MS4s as receiving waters for purposes of water quality, since it is unclear that the water within man-made MS4s are technically waters of the State. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The Tentative Order does not state that all MS4s are receiving waters; nor does it attempt to. Rather, it states that in some cases, where an urban stream is used to convey urban runoff, that urban stream is considered to be part of the Copermittee's MS4.

A municipality's responsibility for discharges of runoff from developments they have authorized depends upon the following two conditions: (1) The discharging development must be within the municipality's jurisdiction; and (2) the runoff must be channeled into the municipality's MS4.

If a municipality uses an urban stream to convey runoff from a development that it has authorized, then that urban stream is part of its MS4. This is because the regional board recognizes the water quality consequences of the municipality's reliance on the stream for management of runoff and the environmental impact on the creek as a consequence of the increased flow resulting from the development that the municipality authorized.

Many urban streams which are used to convey runoff from development within a municipality's jurisdiction are part of the municipality's MS4, but not every urban stream used in this way is part of the MS4. A factual determination must be made on a case by case basis. The key difference is whether or not the runoff is collected and channelized by the municipality, or if it just sheet flows off the property into a stream. We recognize the distinction between a housing development in a rural area where the runoff sheet flows off the properties directly into a creek (here the creek is not an MS4) verses when the runoff is channeled by the municipality and then discharged to the creek (here the creek is part of the MS4).

Section: Finding Subsection: 8

Comment: When an urban stream has been designated part of a flood control system, it may reasonable to consider it a component of an MS4. Other streams should only be considered receiving waters. Urban streams should be deleted from the definition of MS4s.

Although the City shares the Regional Board's concern regarding proper management of urban streams, the City does not have the authority to manage or control urban streams that it does not own or for which it is not otherwise legally responsible. This is consistent with the federal regulations which define an MS4, in part, as a storm water conveyance system owned by a public body. See 40 CFR § 122.26(b)(8). Thus, the City believes it is incorrect for Finding No. 5 to state that "urban streams are part of the municipalities MS4." Only urban streams owned by, or under the control of, the City are part of the City's MS4. (San Juan Capistrano, City of San Diego, County of San Diego, Solana Beach)

Response: A municipality's responsibility for discharges of storm water and urban runoff in its MS4 must be coextensive with the municipality's jurisdiction to regulate such discharges. Discharges of storm water that are not within a municipality's jurisdiction or that are not tributary to a municipality's MS4 may be subject to other water quality control requirements, but may not impose upon the municipality any regulatory obligation under these requirements. However, the commentor is incorrect to assert that a municipality should not be responsible under the requirements for discharges to natural drainages that are used as part of the municipality's MS4, regardless of the "ownership" of such a natural drainage or stream. The determination of whether or not a particular natural drainage or urban stream channel is or is not part of the municipality's MS4 depends on the particular circumstances of the channel and the municipality's urban runoff management practices. If municipalities rely on natural drainage channels or urban streams to collect and convey urban runoff and storm water to or from an MS4, they should be recognized as components of the municipality's MS4; the municipality would be required to reduce pollutant discharges therein to the maximum extent practicable. Application of requirements for discharges of storm water in MS4s to natural drainages and urban streams does not "transform" such drainages and streams to MS4s;

however, it does reflect the fact that the Regional Board recognizes the water quality consequences of municipalities' reliance on such drainages and streams for the management of storm water and urban runoff, and the environmental impact upon such drainages and streams as a consequence of the increased flows therein associated with urban development and land use under the planning and regulatory authority of municipalities.

Section: Findings Subsection: 9

Comment: Finding No. 9 is an over-generalization, does not identify the pollutants of concern and the sources of those pollutants, and indicates that all discharges of pollutants and increase flows "from MS4s" are to be prohibited. This Finding is inconsistent with the Clean Water Act. Furthermore, the impact of the discharges of pollutants from MS4s to receiving water quality objectives, specifically including to 303(d) listed water bodies, is not an area to be addressed through regulation under this Tentative Order. Rather, total maximum daily load requirements will need to be properly evaluated and determined in accordance with other provisions of the Clean Water Act. The RWQCB has no authority to do so here. Further, as discussed in connection with Finding 13, the RWQCB has no authority to impose water quality standards or numeric limitations on the Copermittees. (See Defenders of Wildlife v. Browner, 191 F.3d 1159 (9th Cir. 1999.) (County of San Diego)

Response: The 303(d) list includes information about the source of impairment of receiving waters. For an overwhelming number of impaired receiving waters, non-point discharges are identified as a source. Most of the watersheds for these impaired water bodies are urban. Therefore, it can be inferred that urban runoff causes or contributes to these impairments.

There should be no doubt that such problems are indeed frequently urban runoff related. For instance, a common conveyance for a sewage spill to reach a beach is through the municipal storm water system. Also, exceedances of standards at some of our Region's beaches have unquestionably resulted from pollutants conveyed by the storm water drainage system (SDRWQCB CAO 97-69 and CDO 98-74). In addition, urban runoff is increasingly being targeted as the cause of beach closures and postings in other areas of the San Diego region and Southern California. Urban runoff has been identified as a principal contributor to fecal coliform contamination in Orange County's Aliso Creek, a creek which often causes beach postings when flowing into the ocean (SDRWQCB CAO 99-211).

It is necessary to address exceedances of water quality standards in the Tentative Order since it has been found that discharges from MS4s cause or contribute to exceedances of water quality standards. By including them in the Tentative Order, the Tentative Order can be used to ensure that these conditions do not persist. The SDRWQCB has legal authority to require these standards under 40 CFR 122.44(d)(1)(i), which requires NPDES permits to include limitations to "control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

Section: Findings Subsection: 10

Comment: Finding No. 10
The City questions the characterization that, to "be most effective," URMPs must contain both structural and nonstructural BMPs. The City suggests that the last sentence of Finding No. 10 should state, instead,

that "URMPs should consider both structural and non-structural BMPs and require implementation of structural or non-structural BMPs, as appropriate." (City of San Diego)

Response: BMPs contain such broad categories of management practices as public education and code enforcement. Although these practices are intrinsic to an URMP, they are not by themselves going to be effective in all cases. Therefore, the broad terms of an urban area-wide runoff management plan must contain structural and non-structural BMPs. However, SDRWQCB recognizes that, from site to site, the municipality should consider both structural and non-structural BMPs and require implementation of structural or non-structural BMPs, as appropriate.

Section: Findings Subsection: 10

Comment: Since the Regional staff will not approve the Copermittees' Standard Urban Storm Water Mitigation Plans (SUSMPs) which implements the JURMP with respect to new development and significant redevelopment, Regional staff, therefore, will not be approving the Copermittees' selected list of BMP's either and apparently will not go so far as to even suggest levels of effectiveness that shall be expected of any particular structural BMP. How do the Copermittees establish and impose minimum water quality objectives that MEP is supposed to meet through installation and operation of structural BMP's during development? (City of Chula Vista)

Response: The SDRWQCB Basin Plan, the State Water Resources Control Board Ocean Plan, and the US EPA California Toxics Rule specify water quality objectives that apply to San Diego region receiving waters into which MS4s discharge. Through their Jurisdictional Urban Runoff Management Program Documents and Annual Reports, the Copermittees propose minimum BMPs necessary to meet pollution reduction in their urban runoff discharges to the MEP. The Copermittees' compliance with receiving water quality objectives will be evaluated in part through the monitoring and annual reports submitted to the SDRWQCB. In any case, the burden is on the Copermittee to demonstrate compliance with the Tentative Order.

Section: Findings Subsection: 10

Comment: Finding No. 10
Regional Board staff has failed to provide any legal or evidentiary support to justify the regulation of discharges "into" an MS4, and further, has failed to provide the appropriate legal authority and the sufficient evidence and findings to support the broad application of the URMPs program, as set forth in the Tentative Order. (County of San Diego)

Response: In the Pollution Prevention Act of 1990, Congress established a national policy that emphasizes pollution prevention over control and treatment. California Water Code section 13263.3(a) also supports pollution prevention, stating "The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to support the federal goal of zero discharge of pollutants into navigable waters." Finally, the Basin Plan also supports this finding by stating that "[T]o eliminate pollutants in storm water, one can either clean it up by removing pollutants or prevent it from becoming polluted in the first place. Because

of the overwhelming volume of storm water and the enormous costs associated with pollutant removal, pollution prevention is the only approach that makes sense."

Section: Findings Subsection: 10

Comment: The term "maximum extent practicable" (or "MEP") is not defined, nor is it clear that MEP means the same thing when applied to discharges into an MS4 as it does when applied to discharges from an MS4. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: MEP is defined in Attachment D of the Tentative Order. The definition applies to discharges both into and from the MS4.

Section: Findings Subsection: 10,12

Comment: The discussion of Finding No. 12 contradicts Finding No. 10. If pollution prevention measures are truly effective as the "first line of defense", then the effectiveness of structural BMPs, or any removal methodology for that matter, would be rendered more or less marginally effective. Is it really the intent of the Regional Board that MEP means implementation of enormously costly structural BMP's in order to achieve what may be a marginal improvement? (City of Chula Vista)

Response: Finding 12 does not conflict with Finding 10. Finding 12 states that "Pollution prevention…should be used in conjunction with source control and treatment control BMPs." The effectiveness of structural treatment BMPs can be enhanced with effective "pre-treatment" through source control and require less frequent and expensive maintenance. Effective pollution prevention provides the Copermittees with more options in the selection of BMPs that meet MEP and that can achieve more than "marginal improvement."

Section: Findings Subsection: 11

Comment: The discussion of Finding No. 11 (in the Fact Sheet/Technical Report) gives the effectiveness ranges of undefined types of structural BMPs, but makes no mention of the fact that the effectiveness of structural BMPs is also highly dependent on the scale of the BMP and its location within the watershed (relative to the source of the pollution). Before we can require compliance with specific onsite measures we must have some confidence that a minimum level of effectiveness can be demonstrated. (City of Chula Vista)

Response: The effectiveness ranges for BMPs discussed in the Fact Sheet/Technical Report can be assumed to be representative of the effectiveness of the BMPs in a wide range of conditions. The effectiveness ranges provided are a summary of over 20 years of data from many studies (USEPA, 1999a). The breadth of the summary indicates that its results can be relied on with a reasonable amount of assurance, provided the BMPs are sized and designed correctly. To ensure that BMPs are sized correctly, the Tentative Order includes numeric sizing criteria requirements. The Tentative Order also requires that structural treatment BMPs be "designed to maximize their pollutant removal capabilities" (section F.1.b.2.a.xii). Numerous guidance manuals on BMP design exist, such as by the State of

Washington, the State of Maryland, and the City of Sacramento (see the References section of these responses for more information). By requiring that BMPs be sized and designed correctly, the Tentative Order ensures that a structural treatment BMPs will achieve a minimum level of effectiveness.

Section: Findings Subsection: 11

Comment: Finding No. 11 provides in part that "Treatment control (or structural) BMPs remove pollutants from urban runoff." In its discussion of this finding in the Technical Report, the Regional Board asserts that data on structural BMPs "indicates that structural BMPs can be effective in reducing pollutants in urban runoff discharges." Thus, while the County does not dispute the fact that structural BMPs can be effective in reducing pollutants in urban runoff discharges, it does dispute the general contention that treatment control or structural BMPs always remove pollutants from urban runoff, and further disputes any finding that suggests that structural or treatment control BMPs are necessary and/or are effective for removing the subject "pollutants of concern." Whether any given treatment control BMP is appropriate and effective depends on the "pollutants of concern" which need to be identified before any treatment control BMP is forced on the project. Moreover, the requirement of any structural or treatment control BMPs must be imposed only after an appropriate cost/benefit analysis has been conducted and appropriate costs have been considered (including the impact of such BMPs on other policies of the State, such as the need for low/moderate income housing projects). (County of San Diego)

Response: The statement in Finding 11 that "Treatment control (or structural) BMPs remove pollutants from urban runoff" is correct. Based on data provided by USEPA, it is reasonable to conclude properly designed and sized BMPs are effective in removing pollutants. In its "Preliminary Data Summary of Urban Storm Water Best Management Practices," USEPA summarizes over 20 years of data on structural treatment BMP effectiveness (USEPA, 1999a). The summary concludes that for each category of structural treatment BMP assessed, that pollutants were removed to varying degrees of success. While various structural treatment BMPs were found to be more effective than others, none of the BMPs were found to be totally ineffective in reducing all pollutants.

Regarding the necessity of structural treatment BMPs, the SWRCB has found in Order WQ 2000-11 that structural treatment BMPs are necessary at SUSMP priority project development categories. The SUSMP provisions are the only part of the Tentative Order where structural treatment BMPs are specifically required. While structural treatment BMPs will most likely be necessary in areas outside of the new development SUSMP categories, the Tentative Order does not dictate their use.

The commentor is correct is asserting that pollutants of concern must be identified before implementation of a particular structural treatment BMPs. This why as part of the model and local SUSMPs, the Copermittees are required to develop a procedure for pollutant of concern identification (section F.1.b.2.e). Once pollutants of concern have been identified, then structural treatment BMPs are to be assessed for their effectiveness in removing those pollutants of concern.

Regarding the cost of implementing structural treatment BMPs at SUSMP priority development projects, the SDRWQCB and LARWQCB have demonstrated in past SUSMP documents that the cost of construction of structural treatment BMPs generally constitutes less than 1% of total project cost. Regarding costs of structural treatment BMPs, the SWRCB states in Order WQ 2000-11 "The Regional Board found that the cost to include BMPs that will meet the mitigation criteria will be one to two percent of the total development cost. This amount appears reasonable, especially in light of the amount of impervious surface already in Los Angeles County and the impacts on impaired water bodies."

Section: Findings Subsection: 12

Comment: The permit is supposed to regulate discharges "from" MS4s. There is no authority for the RWQCB to impose the Copermittees to regulate all business and personal practices of its community. (County of San Diego)

Response: In the Pollution Prevention Act of 1990, Congress established a national policy that emphasizes pollution prevention over control and treatment. California Water Code section 13263.3(a) also supports pollution prevention, stating "The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to support the federal goal of zero discharge of pollutants into navigable waters." Finally, the Basin Plan also supports this finding by stating that "[T]o eliminate pollutants in storm water, one can either clean it up by removing pollutants or prevent it from becoming polluted in the first place. Because of the overwhelming volume of storm water and the enormous costs associated with pollutant removal, pollution prevention is the only approach that makes sense."

Section: Finding Subsection: 13

Comment: Due to the time required to fully develop the BMP for attainment of receiving water limitations, is it likely that the opportunity to achieve source reduction in new developments will be missed? In the Eastern Territory of Chula Vista fully 75% of area is in SPA level review or better. Meaning the specific plans, policies, land plans and conditions are being developed at this very moment. (City of Chula Vista)

Response: It is the responsibility of the Copermittees to regulate the discharge of urban runoff from their MS4s to reduce pollutants to the MEP and to prevent an exceedance of receiving water quality objectives as a result of their urban runoff discharges. This requirement has been in force since the adoption of Order 90-42 in 1990. The City of Chula Vista, as cited in the example, is required to ensure that sufficient BMPs are implemented in both the new and existing developments to reduce pollutants to the MEP and to ensure that discharges from their MS4 do not cause or contribute to an exceedance of receiving water quality objectives. To the extent that implementation of some BMPs may not ensure attainment of receiving water quality objectives under all circumstances, an iterative process of BMP development, implementation, monitoring, and assessment is necessary and required to assure that an Urban Runoff Management Program is sufficiently comprehensive and effective to achieve compliance with receiving water quality objectives.

Section: Finding Subsection: 13

Comment: Finding No. 13 concerning receiving water limitations inappropriately provides that "compliance with receiving water limits based on applicable water quality objectives is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality objectives and the creation of conditions of pollution." In spite of the term "necessary," the Staff does not cite a single piece of evidence, study or analysis that supports the "necessity" for water quality standards in an MS4 permit. In fact, the Fact Technical Report merely makes a legal argument to attempt to support its position of "necessity," and no factual evidence or other evidence exists to support such a finding. Further, the Regional Board's authority to make such a finding is expressly refuted by the Ninth Circuit's decision in Defenders of Wildlife v. Browner 191 F.3d 1159 (9th Cir. 1999), wherein the Ninth Circuits expressly held that the language of the Clean Water Act does not provide the authority to impose numeric limitations in Municipal NPDES Permits. Thus, the Regional Board's citation of Defenders of Wildlife v. Browner as support for its position that it has such authority here, is in error as the Ninth Circuit specifically found that the Clean Water Act did not provide such authority, and that such authority if it existed, must exist under State law. Here, under California law, and specifically California Water Code Section 13377, the Administrator or State Board may only adopt more stringent requirements as provided for under the Clean Water Act, where there is a showing that more stringent requirements are "necessary to implement water quality control plans, or for the protection of the beneficial uses, or to prevent nuisance." There is no evidence anywhere in this record to support such a showing of "necessity," and thus there is no authority to impose water quality standards on the Copermittees.

The Clean Water Act is very clear that permits for discharges “from” municipal storm sewers are to require controls “to reduce the discharge of pollutants to the maximum extent practicable.” The attempt to impose any numeric effluent limits or water quality standards is an attempt to overlay a separate and more restrictive standard on the Copermittees. Any such more stringent standard is not supported by State law, as there has been no finding, or evidence to support such a finding, of “necessity” as required by the Porter-Cologne Act.

In Defenders of Wildlife v. Browner (9th Cir. 1999),191 F3d 1159 the federal appellate court with jurisdiction over California contrasted this language with provisions of the Clean Water Act that applied to industrial dischargers, and held that EPA was not obliged to require in an EPA-issued permit that municipal discharges strictly comply with state water quality standards. In dicta, this Court also advised that EPA “has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants.”

Again, State law is also relevant here. As noted, State Water Code section 13372 requires that State law be construed to prevent “any inconsistency” with respect to required NPDES permits. This should mean that the State must apply the State Water Code and the State water quality standards in the same way that federal law and federal water quality standards apply. It would be inconsistent with the fundamental principles of the Clean Water Act to assert that State water quality standards apply to municipal stormwater dischargers in the same manner as to industrial discharges. Congress made a distinction between these kinds of discharges, in the Clean Water Act, and the Ninth Circuit affirmed that distinction in Defenders of Wildlife. Water Code section 13372 requires the State to do likewise.

The dicta in Defenders of Wildlife does not authorize the regional water boards to require municipal stormwater discharges to meet state water quality standards in every case. At most, that dicta contemplates (as it clearly states) that this requirement could be imposed after a determination that this kind of requirement was “necessary to control pollutants.”

There is no determination or Finding of this kind supporting the Order. Instead, with complete circularity, Finding 13 states that compliance with receiving water limits based on water quality objectives is necessary to ensure that municipal stormwater discharges do not contribute to violations of water quality objectives. This is a legally insufficient Finding to support the water quality based requirements the Order seeks to impose.

Adding new Finding language to a final Order would not cure this legal defect, because there is no reference in the Technical Report to evidence that could support the required Finding. Absent compelling evidence, it would be arbitrary for the RWQCB to find that application of the Clean Water Act's MEP standard by the Copermittees would not adequately control pollutants.

The County believes the dicta in this case erroneously interprets what section 402(p)(3)(B) authorizes. This section need not and should not be read to authorize application of water quality prohibitions to municipal stormwater discharges; that would be a strained interpretation that is not consistent with the basic statutory scheme Congress created for municipal stormwater. Instead, the phrases "reduce the discharge of pollutants" at the beginning of the section, and "control of such pollutants" at the end of the section should be read as meaning the same thing. The authorization to do more in section 402(p)(3)(B) would then merely authorize expansion of the specific list of MEP techniques inclusions included as examples in the section. See comment "O" above. (County of San Diego)

Response: The impacts urban runoff causes to receiving waters within our region makes the necessity for the inclusion of water quality standards in the Tentative Order clear. Findings 3, 4, 5, 6, and 9, as well as their corresponding discussions in the draft Fact Sheet/Technical Report, all discuss the impacts of urban runoff to the region's receiving waters. Urban runoff is a leading cause of water quality impairment in the San Diego Region. To prevent urban runoff from continuing to be a leading cause of receiving water impairment, water quality standards are necessary in the Tentative Order. Compliance with water quality standards provides the necessary tool to ensure that water quality standards are achieved when implementation of BMPs to MEP are unsuccessful. The Copermittees efforts to date to implement BMPs to the MEP have not been sufficient to adequately protect receiving waters. The inclusion of requirements for compliance with water quality standards in the Tentative Order corrects this deficiency.

The issue of whether storm water discharges from MS4s must meet water quality standards has been intensely debated for the past five years. The argument arises because Clean Water Act section 402(p) fails to clearly state that municipal dischargers of storm water must meet water quality standards. On the issue of industrial discharges of storm water, the statute clearly indicates that industrial dischargers must meet both (1) the technology-based standard of "best available technology economically achievable (BAT)" and (2) applicable water quality standards. On the issue of municipal discharges however, the statute states that municipal dischargers must meet (1) the technology-based standard of "maximum extent practicable (MEP)" and (2) "such other provisions that the Administrator or the State determines appropriate for the control of such pollutants." The statute fails, however, to specifically state that municipal dischargers must meet water quality standards.

As a result, the municipal storm water dischargers have argued that they do not have to meet water quality standards; and that they only are required to meet the MEP standard. Environmental interest groups maintain that not only do MS4 discharges have to meet water quality standards, but that MS4 permits must also comply with numeric effluent limitations for the purpose of meeting water quality standards. On the issue of water quality standards, the US EPA, the SWRCB, and the SDRWQCB have consistently maintained that MS4s must indeed comply with water quality standards. On the issue of whether water quality standards must be met by numeric effluent limits, the US EPA, the SWRCB (in Orders WQ 91-03

and WQ 91-04), and the SDRWQCB have maintained that MS4 permits can, at this time, contain narrative requirements for the implementation of BMPs in place of numeric effluent limits.

SWRCB rationale: In addition to relying on US EPA's legal opinion concluding that MS4s must meet MEP and water quality standards, the SWRCB also relied on the Clean Water Act's explicit authority for States to require "such other provisions that the Administrator or the State determines appropriate for the control of such pollutants" in addition to the technology-based standard of MEP. To further support its conclusions that MS4 permit dischargers must meet water quality standards, the SWRCB relied on provisions of the California Water Code that specify that all waste discharge requirements must implement applicable Basin Plans and take into consideration the appropriate water quality objectives for the protection of beneficial uses.

The SWRCB first formally concluded that permits for MS4s must contain effluent limitations based on water quality standards in Order WQ 91-03. In that Order, the SWRCB also concluded that it was appropriate for Regional Boards to achieve this result by requiring best management practices, rather than by inserting numeric effluent limitations into MS4 permits. In Order WQ 98-01, the SWRCB prescribed specific precedent setting Receiving Water Limitations language to be included in all future MS4 permits. This language specifically requires that MS4 dischargers meet water quality standards and allows for the use of narrative BMPs (increasing in stringency and implemented in an iterative process) as the mechanism by which water quality standards can be met.

In Order WQ 99-05, the SWRCB modified its receiving water limitations language found in Order WQ 98-01 to meet specific objections by the US EPA (the modifications resulted in stricter compliance with water quality standards). SWRCB Order WQ 99-05 states "In Order WQ 98-01, the State Water Resources Control Board (State Water Board) ordered that certain receiving water limitation language be included in future municipal storm water permits. Following inclusion of that language in permits issued by the San Francisco Bay and San Diego Regional Water Quality Control Boards (Regional Water Boards) for Vallejo and Riverside respectively, the United States Environmental Protection Agency (EPA) objected to the permits. The EPA objection was based on the receiving water limitation language. The EPA has now issued those permits itself and has included receiving water limitation language it deems appropriate.

"In light of EPA's objection to the receiving water limitation language in Order WQ 98-01 and its adoption of alternative language, the State Water Board is revising its instructions regarding receiving water limitation language for municipal storm water permits. It is hereby ordered that Order WQ 98-01 will be amended to remove the receiving water limitation language contained therein and to substitute the EPA language. Based on the reasons stated here, and as a precedent decision, the following receiving water limitation language [which is found in Receiving Water Limitations item C. of Order No. 2001-01] shall be included in future municipal storm water permits."

In a late 1999 case involving MS4 permits issued by US EPA to several Arizona cities (Defenders of Wildlife v. Browner, 1999, 197 F. 3d 1035), the United States Court of Appeals for the Ninth Circuit upheld US EPA's requirement for MS4 dischargers to meet water quality standards, but it did so on the basis of US EPA's discretion rather than on the basis of strict compliance with the Clean Water Act. In other words, while holding that the Clean Water Act does not require all MS4 discharges to comply strictly with state water quality standards, the Court also held that US EPA has the authority to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants. On the question of whether MS4 permits must contain numeric effluent limitations, the court upheld US EPA's use of iterative BMPs in place of numeric effluent limits.

SWRCB's final position: On October 14, 1999, the SWRCB issued a legal opinion on the federal appellate decision and provided advice to the Regional Boards on how to proceed in the future. In the memorandum, the SWRCB concludes that the recent Ninth Circuit opinion upholds the discretion of US EPA and the State to (continue to) issue permits to MS4s that require compliance with water quality standards through iterative BMPs. Moreover, the memorandum states that "[…] because most MS4 discharges enter impaired water bodies, there is a real need for permits to include stringent requirements to protect those water bodies. As total maximum daily loads (TMDLs) are developed, it is likely that MS4s will have to participate in pollutant load reductions, and the MS4 permits are the most effective vehicles for those reductions." In summary, the SWRCB concludes that the Regional Boards should continue to include the Receiving Water Limitations language established in SWRCB Order WQ 99-05 in all future permits.

Accordingly, the SDRWQCB has required in the Tentative Order that discharges from MS4s meet receiving water quality objectives.

Section: Finding Subsection: 13

Comment: Is the Copermittees' ability to impose water quality limits on new development restricted by not having numeric effluent limits in effect? Finding No. 13 is a two-edged sword for the Copermittees. On the one hand they are not, for the time being, held to numeric limits for discharges from MS4s and may utilize iterative "narrative BMPs" in their place as necessary to achieve the receiving water quality standard in effect. But a lack of numeric limits applied to what comes out of the pipe generally translates into a restriction on what may be required of new developments to control what goes into the pipe. (City of Chula Vista)

Response: The Copermittees are responsible for discharges that may cause or contribute to exceedances of receiving water quality objectives or that may constitute a threat to human or environmental health. The Copermittees are not, however, required under Tentative Order 2001-01 to impose water quality limits on new development. Tentative Order 2001-01 requires the Copermittees to implement programs and BMPs that reduce pollutants to the MEP. The Tentative Order does require that these BMPs meet numeric sizing criteria, but not numeric water quality limits, for some categories of new development and significant redevelopment. The selection of BMPs and other means to achieve MEP are the responsibility of the Copermittee and do not require water quality limits on effluent from new development. However, the Tentative Order would not prevent a Copermittee from establishing additional limits that are more protective of water quality and beneficial uses or different kinds of limits (such as numeric limits). As provided for in California Water Code § 13002, cities and counties may establish water quality protection requirements that go beyond the requirements of the SDRWQCB or SWRCB.

Section: Findings Subsection: 13

Comment: Receiving Water Limitations. In section 13, at page 3, the Tentative Order provides as follows: "Compliance with receiving water limits based on applicable water quality objectives is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality objectives and the creation of conditions of pollution." This statement implies that MS4s are not receiving waters, but instead are conveyances that discharge into receiving waters. This is arguably inconsistent with section 8, discussed above, which states that an urban stream is both an MS4 and a receiving water. Please explain this discrepancy. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: A municipality's responsibility for discharges of runoff from developments they have authorized depends upon the following two conditions: (1) The discharging development must be within the municipality's jurisdiction; and (2) the runoff must be channeled into the municipality's MS4.

If a municipality uses an urban stream to convey runoff from a development that it has authorized, then that urban stream is part of its MS4. This is because the regional board recognizes the water quality consequences of the municipality's reliance on the stream for management of runoff and the environmental impact on the creek as a consequence of the increased flow resulting from the development that the municipality authorized.

Many urban streams which are used to convey runoff from development within a municipality's jurisdiction are part of the municipality's MS4, but not every urban stream used in this way is part of the MS4. A factual determination must be made on a case by case basis. The key difference is whether or not the runoff is collected and channelized by the municipality, or if it just sheet flows off the property into a stream. We recognize the distinction between a housing development in a rural area where the runoff sheet flows off the properties directly into a creek (here the creek is not an MS4) verses when the runoff is channeled by the municipality and then discharged to the creek (here the creek is part of the MS4).

Section: Finding **Subsection: 14**

Comment: Good faith efforts at development, implementation, monitoring and assessment of BMP's that are later determined to be ineffective should not result in more restrictive requirements or fines, otherwise these unsuccessful attempts may lead to cover ups and the progress to develop better BMP's from lessons learned will not occur. (SANDAG)

Response: We generally concur with this statement. However, escalating enforcement to include the imposition of monetary penalties may occur when dischargers continue to implement ineffective BMPs, knowingly or willfully cover up unsuccessful BMPs, and/or fail to develop better BMPs from lessons learned. Further, inadequate BMPs that result in severe water quality impacts may also anticipate the imposition of monetary penalties and/or referred to the District Attorney for determination of whether criminal action should be pursued. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities may be subject to fines or imprisonment for knowing, reckless or willful conduct that constitutes a serious threat to the environment

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Section: Findings **Subsection: 14**

Comment: Finding No. 14 provides that an iterative process of BMP development, implementation, monitoring and assessment is necessary to assure that an Urban Runoff Management Plan is sufficiently comprehensive and effective to achieve compliance with the receiving water quality objectives. Any requirement for an iterative BMP process must be justified by the Clean Water Act's standard of "maximum extent practicable" and there is no evidence cited in the record, nor any support in the Clean Water Act or the Porter-Cologne Act to support a finding that an iterative process of BMP is "necessary"

to assure that an Urban Runoff Management Plan is sufficiently comprehensive and effective. (County of San Diego)

Response: Finding 14's reference to an iterative process of BMP implementation applies to section C. of the Tentative Order. In section C., an iterative process of BMP implementation is required if exceedances of water quality standards persist, even after implementation of the Copermittees' urban runoff management programs. The language included in section C is consistent with the precedential SWRCB Order WQ 99-05.

Section: Finding Subsection: 15

Comment: Care should be taken to avoid alienation of the community, since community involvement and cooperation will be necessary to the success of the program. They may be the biggest assets to the clean water effort, and it is crucial that this process be handled sensitively with sufficient community outreach. (SANDAG)

Response: The SDRWQCB believes that individual citizen behavior does have a tremendous impact on the quality of waters in the Region. Public involvement, education, outreach, participation, and a sensitivity to the public's role are all crucial to protecting the environment. However, the SDRWQCB also believes that in all cases where an individual citizen refuses to take responsibility for his behavior, enforcement is a deterrent which must be considered.

Section: Finding Subsection: 15

Comment: Finding No. 15 is incorrect. It is based on a statement in the Final Rule for the Phase II regulations designed to encourage the Phase II communities to be more proactive than the regulations require. As the staff recognizes on page 46 of the Fact Sheet/Technical Report, if a municipality does not prohibit non-storm water discharges, it must accept responsibility for the water quality consequences of its decision. In other words, the municipality is responsible for the quality of discharges from its MS4. The staff goes on to say that, "For these reasons, each Co-permittee must prohibit and/or control discharges from third parties to its MS4." This is an extrapolation of existing law. A municipality is responsible for the quality of the discharges from its storm drain system, with the methods of achieving compliance up to the municipality. The proposed approach may lead to appeals and possibly litigation. (City of San Juan Capistrano)

Response: The Clean Water Act is clear that Copermittees must prohibit non-storm water discharges into its MS4. It states at section 403(p)(3)(B)(iii) that Copermittees shall “prohibit non-storm water discharges into the storm sewers.”

The requirement for control of discharges into the MS4 is also currently required of the Copermittees in Order No. 90-42. Section IX. of Order No. 90-42 states “The permittees shall develop and implement BMPs to reduce/control/eliminate pollutants in discharges to and from stormwater conveyance systems in their areas of jurisdiction to the maximum extent practicable.” Given the impact to receiving waters in the San Diego Region caused by urban runoff, as well as projections for increased urban growth in the region, it is not warranted to eliminate this requirement.

USEPA supports the concept that Copermittees cannot passively receive and discharge pollutants from third parties. As US EPA states, "The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts 'title' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties" (USEPA, 1999b).

Discharges of pollutants to the MS4 must therefore be controlled, and an important means for a municipality to achieve this is through the development and enforcement of municipal legal authority. USEPA states "A crucial requirement of the NPDES storm water regulation is that a municipality must demonstrate that it has adequate legal authority to control the contribution of pollutants in storm water discharged to its MS4. […] In order to have an effective municipal storm water management program, a municipality must have adequate legal authority to control the contribution of pollutants to the MS4. […] 'Control,' in this context, means not only to require disclosure of information, but also to limit, discourage, or terminate a storm water discharge to the MS4" (USEPA, 1992).

Since discharges which enter the MS4 are generally discharged unimpeded directly into receiving waters, the Copermittee's legal authority is to apply to both discharges into and from MS4s. Federal NPDES regulations clearly provide the SDRWQCB with the legal authority to require municipalities to control discharges from third parties into their MS4. 40 CFR 122.26(d)(2)(iv)(A - D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities. Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A - D) also require municipalities to have legal authority to control various discharges to their MS4. This concept is further supported in the Preamble to the Phase II Final Rule NPDES storm water regulations, which states "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties" (USEPA, 1999b). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule findings for small municipalities are also applicable to larger municipalities such as the Copermittees. Again, underlying the Federal NPDES storm water regulations is the Clean Water Act, which states in section 402(p)(3)(B)(ii) that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers."

It is important to note the SWRCB also supports control of discharges into MS4s. The SWRCB recently upheld the LARWQCB SUSMP requirements in Order WQ 2000-11. These requirements place significant restrictions on discharges from third parties into MS4s. In fact, the SUSMP provisions included in the Tentative Order, as upheld by the SWRCB, represent the most stringent and specific requirements in the Tentative Order regarding the control of discharges into the MS4.

Finally, the requirement for municipal storm water dischargers to have, and exercise, local governmental authority in order to comply with water quality control obligations is analogous to the requirement for Publicly Owned Treatment Works to have and exercise legal authority to require pretreatment of industrial wastes being discharged to their sewage collections systems (CWA 402(b)(8)).

Section: Findings Subsection: 15

Comment: We are not aware of any legal authority allowing the Regional Board to regulate discharges into an MS4. We are aware only of the Regional Board's legal right to regulate discharges from an MS4 into a receiving water for which beneficial uses have been assigned. Please provide a statutory or case law reference granting the Regional Board authority to control and regulate discharges into MS4s. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The requirement for control of discharges into the MS4 is currently required of the Copermittees in Order No. 90-42. Section IX. of Order No. 90-42 states "The permittees shall develop and implement BMPs to reduce/control/eliminate pollutants in discharges to and from stormwater conveyance systems in their areas of jurisdiction to the maximum extent practicable." Given the impact to receiving waters in the San Diego Region caused by urban runoff, as well as projections for increased urban growth in the region, it is not warranted to eliminate this requirement.

USEPA supports the concept that Copermittees cannot passively receive and discharge pollutants from third parties. As US EPA states, "The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts 'title' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties" (USEPA, 1999b).

Discharges of pollutants to the MS4 must therefore be controlled, and an important means for a municipality to achieve this is through the development and enforcement of municipal legal authority. USEPA states "A crucial requirement of the NPDES storm water regulation is that a municipality must demonstrate that it has adequate legal authority to control the contribution of pollutants in storm water discharged to its MS4. […] In order to have an effective municipal storm water management program, a municipality must have adequate legal authority to control the contribution of pollutants to the MS4. […] 'Control,' in this context, means not only to require disclosure of information, but also to limit, discourage, or terminate a storm water discharge to the MS4" (USEPA, 1992).

Since discharges which enter the MS4 are generally discharged unimpeded directly into receiving waters, the Copermittee's legal authority is to apply to both discharges into and from MS4s. Federal NPDES regulations clearly provide the SDRWQCB with the legal authority to require municipalities to control discharges from third parties into their MS4. 40 CFR 122.26(d)(2)(iv)(A - D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities. Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A - D) also require municipalities to have legal authority to control various discharges to their MS4. This concept is further supported in the Preamble to the Phase II Final Rule NPDES storm water regulations, which states "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties" (USEPA, 1999b). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule findings for small municipalities are also applicable to larger municipalities such as the Copermittees. Finally, underlying the Federal NPDES storm water regulations is the Clean Water Act, which states in section 402(p)(3)(B)(ii) that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers."

It is important to note the SWRCB also supports control of discharges into MS4s. The SWRCB recently upheld the LARWQCB SUSMP requirements in Order WQ 2000-11. These requirements place significant restrictions on discharges from third parties into MS4s. In fact, the SUSMP provisions included in the Tentative Order, as upheld by the SWRCB, represent the most stringent and specific requirements in the Tentative Order regarding the control of discharges into the MS4.

Finally, the requirement for municipal storm water dischargers to have, and exercise, local governmental authority in order to comply with water quality control obligations is analogous to the requirement for Publicly Owned Treatment Works to have and exercise legal authority to require pretreatment of industrial wastes being discharged to their sewage collections systems (CWA 402(b)(8)).

Section: Findings Subsection: 15

Comment: The Copermittees should not be responsible for illicit discharges from third parties. There is no authority under any provision of the Clean Water Act, the Porter-Cologne Act, or any regulations thereunder, to suggest the concept that a municipality, or any other party (other than the discharger) must accept responsibility for its unlawful actions. Under the Regional Board's theory, the State Legislature would be responsible for every burglary committed in the State merely because the State Legislature made it a crime for one to commit the act of "burglary." The Clean Water Act allows discharges to a municipal storm sewer system, so long as the municipality has obtained a permit under the Clean Water Act which requires controls "to reduce the discharge of pollutants to the maximum extent practicable . . . ." Where such a permit has been obtained, so long as the municipality is in compliance with the terms of the permit, it is in compliance with the requirements of the Clean Water Act. The fact that some third party has violated the provisions of the County's code or some other Copermittee's ordinance, cannot, under any circumstances, automatically result in a violation by the municipality of the Clean Water Act where the municipality is otherwise in compliance with the terms of the NPDES permit. (County of San Diego)

Response: Clean Water Act Section 402(p) specifically requires the operators of MS4s to prohibit non-storm water into their MS4s. A measure to determine if the operator has effectively prohibited such discharges is for the regulatory authority to determine if such discharges are occurring. In such cases where they are occurring, the operator must be held responsible.

Section: Findings Subsection: 15

Comment: Finding No. 15. The City questions the language in Finding No. 15, which states that the City "essentially takes 'title' for" discharges into MS4s. This finding should state only that the City should take reasonable steps to identify and eliminate illicit discharges by third parties. (City of San Diego)

Response: The language "title" comes from the Preamble to the Phase II storm water regulations. While the intent of using this term was to exhibit the Copermittees responsibility for the discharges, it may be confusing. For this reason, any language referring to "title" will be removed.

See change at permit Finding 15.

Section: Finding Subsection: 16

Comment: Copermittees do not profit from land development. Co-Permittees are required by law to allow economic uses of the land. Co-Permittees have some control over what is built but cannot prevent anything from being built. In addition hundreds of independent fiscal impact studies iIlustrate that the service costs to cities of new residential, industrial and office development far exceed all of the combined revenues cities receive from these developments (City of Chula Vista, City of Carlsbad, City of Solana Beach, Coalition for Practical Regulation, County of San Diego)

Response: While the Copermittees may not "profit" from land development according to the common definition and use of the word, the Copermittees do realize, or intend to realize, net benefits that are not

exclusively financial from the residential, commercial, industrial, and other activities proposed by private parties that they authorize within their jurisdiction. Because the Copermittees have the land use authority to regulate these activities, which can be a source of pollutants and runoff that impair receiving waters, so the Copermittees must also exercise their legal authority to ensure that the resulting increased pollutant loads and flows do not further degrade receiving waters. Nonetheless, the Finding will be revised to use the words "realize benefits" in place of "profit."

Section: Finding Subsection: 16

Comment: Finding No. 16 would result in a similar consequence that would supercede the power of local government. The new permit is proposing that the Regional Board adopt a finding to justify telling local governments specifically how they must use their land use authority. Our elected City Council has that responsibility pursuant to the Government Code. (City of San Juan Capistrano)

Response: California Water Code (CWC) section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Therefore the SDRWQCB has the authority to require specified programs to be implemented by the municipalities in order to carry out CWA requirements. Furthermore, a program involving land use is specifically addressed at 40 CFR 122.26(d)(2)(iv)(A)(2), "[a] description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment." The tentative order solely requires Copermittees to exercise their planning power in a manner that takes into account potential water quality impacts and furthermore, for Copermittees to facilitate the smooth implementation of applicable provisions of the CWA.

Section: Findings Subsection: 16, 17, 18

Comment: What, if any effective control can the City exercise over pollution generation in much of the new development, after it is built out since there is a limit to what controls municipalities can enforce on property owners. (City of Chula Vista)

Response: The Copermittees are required to develop and implement a program to develop, implement, and evaluate the effectiveness of BMPs to reduce pollutants to the MEP and ensure that discharges of urban runoff to do cause or contribute to an exceedance of water quality objectives. The Copermittees are required to adopt and enforce sufficient legal authority and demonstrate sufficient financial resources to achieve permit compliance. The manner in which the Copermittees accomplish this is largely up to them.

Section: Findings Subsection: 17

Comment: Finding 17 is arbitrary and capricious and is not supported by the evidence. In Finding 17, Copermittees are held responsible for the short and long term water quality consequences of their land use planning, construction, and existing development decisions. On the contrary, the only "responsibility" under the Clean Water Act on the Copermittees is to comply with the terms of the NPDES permit, which is to be issued so long as sufficient controls are in place to reduce the discharge of pollutants to the maximum extent practicable from their MS4s. (County of San Diego)

Response: The Federal Regulations clearly require municipalities to address urban runoff during each stage of development. Regarding BMP implementation during each stage of urban development, US EPA recommends that Copermittees ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for noncompliance with design, construction or operation and maintenance.

Section: Finding Subsection: 18

Comment: Add: When a Copermittee incorporates policies and principles designed to safeguard water resources and protect public health into its General Plan. (State Department of Health Services)

Response: This issue has been addressed in the revised Tentative Order in Finding 36.

Section: Findings Subsection: 18

Comment: Finding No. 18 provides that land use planning and zoning is where urban development is conceived providing the greatest and most cost effective opportunity to protect water quality. The finding further provides that the incorporation of policies and principles to protect water resources in a Copermittee's general plan is a far reaching step towards the preservation of local water resources for future generations. As discussed elsewhere in the County's General and Specific comments, the provisions of the Tentative Order imposing on the Copermittees an obligation to modify their General Plans and to further adopt ordinances and laws in an attempt to preserve “local water resources for future generations,” is an improper attempt by the Regional Board to legislate and to act outside of any authority provided under the Clean Water Act or State law. It is also an attempt to "pass the buck" of protecting the waters of the State of California from the State and Regional Boards onto the individual Copermittees. It is, moreover, a clear attempt to impose an “unfunded mandate” on the Copermittees in violation of the California Constitution. (County of San Diego)

Response: The SDRWQCB has the legal authority to require the Copermittees' General Plans to include considerations of the water quality impacts caused by urban runoff. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(2) provides that Copermittees are to develop and implement a proposed management program which is to include “A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.”

USEPA states that the Copermittee "must thoroughly describe how the municipality's comprehensive plan is compatible with the storm water regulations" (USEPA, 1992). To achieve this, the Copermittee shall incorporate water quality and watershed protection principles and policies into its General Plan (or equivalent plan). USEPA supports addressing urban runoff problems in General Plans (or equivalent plans) when it states "Runoff problems can be addressed efficiently with sound planning procedures. Master Plans, Comprehensive Plans, and zoning ordinances can promote improved water quality by guiding the growth of a community away from sensitive areas and by restricting certain types of growth (industrial, for example) to areas that can support it without compromising water quality" (USEPA, 2000).

While the SDRWQCB has the legal authority to require the Copermittees' General Plans to include considerations of the water quality impacts caused by urban runoff, the Tentative Order has been modified to provide the Copermittees with more discretion regarding the General Plans' contents. The Tentative Order will only include examples of the types of principles and policies which should be in a General Plan, instead of specific requirements. In addition, the Copermittees will be allowed to develop their own work plan and time schedule for any changes to their General Plans they find necessary. See change at permit section F.1.a.

Section: Findings Subsection: 19

Comment: Finding 19 on page 4 - Suggest changing the first sentence to "Unregulated construction activities can be a significant cause of receiving water impairment". Eliminate the second sentence because 1) it is extraneous to the finding and 2) it incorrectly implies that river impairment is caused by siltation from construction activities. River impairment from siltation has a far greater set of causative factors than mere construction activities (ie clear cut logging operations, improper agricultural practices, poor land and water management practices, overdredging of rivers etc). revise the third sentence to read "Sediment runoff rates from unregulated construction sites can greatly exceed natural " Within Carlsbad and many other jurisdictions where good erosion control methods are utilized, siltation downstream from the development is generally lower than predevelopment conditions. (City of Carlsbad)

Response: The Preamble to the Phase II storm water regulations include a comprehensive summary of studies documenting the impact of construction sites on receiving waters. The Preamble does not make a distinction between regulated and unregulated sites. While impairment due to siltation is not solely caused by construction sites, they are a key contributor. Though siltation may be reduced over the long-term after development, this finding refers to construction. As noted above, the impacts of construction on receiving waters has been widely documented.

Section: Finding Subsection: 19

Comment: Construction sites do not greatly exceed natural erosion rates, unless construction is continuous in the watershed. In nature, erosion is episodic, occurring during heavy rains when large landslides occur. If construction in the watershed is also episodic, as it is in our built-out community, than construction impacts are similar or less than what might have occurred if urbanization had not taken place. (City of Solana Beach)

Response: Erosion rates from construction sites have great potential to exceed natural erosion rates. In the Preamble to the Phase II NPDES storm water regulations, USEPA is very clear on potential for significant erosion from construction sites. The Preamble cites many studies exhibiting the negative impacts to receiving waters caused by erosion from construction sties. One study cited in the Preamble states "the equivalent of many decades of natural or even agricultural erosion may take place during a single year from areas cleared for construction" (USEPA, 1999b).

Section: Findings **Subsection: 19**

Comment: Finding No. 20 provides that "the Copermittees' wet weather monitoring results collected over the past decade, as well as volumes of other references in the literature today confirm substantial pollutant loads to receiving waters in runoff from existing urban development." The Regional Board further concludes that "Implementation of jurisdictional and watershed URMPs, which include extensive controls on existing development, can reduce pollutant loadings over the long term." The so called "volumes of other references" referred to in the finding are not cited anywhere in the finding itself or in the Regional Board's discussion of the finding in the Technical Report. Further, the effectiveness of any given URMP will depend on the development in question and the selected BMPs. (County of San Diego)

Response: For a comprehensive summary of studies documenting the impacts of urban runoff on receiving waters, see the Preamble to the Phase II NPDES storm water regulations (USEPA, 1999b).

Regarding the effectiveness of urban runoff management programs, it is true that BMP implementation is critical. That is why the Tentative Order includes extensive requirements for BMP implementation, while providing the Copermittees flexibility in choosing which particular BMPs to implement.

Section: Findings **Subsection: 19**

Comment: Re Finding 19: The State Board is attempting to abandon their responsibilities to regulate, inspect, and enforce the provisions of the CWA by transferring such responsibilities to the Copermittees via unfunded mandates. (County of San Diego)

Response: The CWA describes a process of dual authority in which regulated industrial and construction activity should be regulated by both the permitting authority and MS4 operator. This finding simply clarifies that dual regulation relationship. In no way does the Tentative Order represent an attempt of the SWRCB or SDRWQCB to abandon their responsibilities to regulate certain categories of industrial and construction sites. These categories are clearly defined in CWA section 402.

Section: Finding **Subsection: 20**

Comment: To assist in stormwater program funding Copermittees should charge fees for connection to MS4s similar to connection fees charged for use of the sanitary sewer system. (Surfrider Foundation)

Response: Comment noted.

Section: Findings Subsection: 21

Comment: Finding No. 21 provides that "because the urbanization process is a direct and leading cause of water quality degradation in this Region, fundamental changes to existing policies and practices about urban development are needed if the beneficial uses of San Diego's natural water resources are to be protected." The Regional Board then seeks to support this finding by referring to the Region's 303(d) list, which it claims shows that the impacts of urban runoff are significant. The finding is inappropriate as it is the responsibility of the State Board, not the Copermittees, to implement water quality practices and procedures as needed to protect the beneficial uses of San Diego's natural water resources. Again, the Regional Board seeks to transfer its obligations on to the Copermittees, and to impose an unfunded mandate on Copermittees. There is no legal or other evidentiary support for such a finding. (County of San Diego)

Response: The 303(d) list includes information about the source of impairment. For an overwhelming number of impaired receiving waters, non-point discharges are identified as a source. Most of the watersheds for these impaired water bodies are urban. Therefore, it can be inferred that urban runoff causes or contributes to these impairments.

Such problems are indeed frequently urban runoff related. For instance, a common conveyance for a sewage spill to reach a beach is through the municipal storm water system. Also, exceedances of standards at some of our Region's beaches have unquestionably resulted from pollutants conveyed by the storm water drainage system (SDRWQCB CAO 97-69 and CDO 98-74). In addition, urban runoff is increasingly being targeted as the cause of beach closures and postings in other areas of the San Diego region and Southern California. Urban runoff has been identified as a principal contributor to fecal coliform contamination in Orange County's Aliso Creek, a creek which often causes beach postings when flowing into the ocean (SDRWQCB CAO 99-211).

Since discharges from MS4s are not allowed to cause or contribute to an exceedance of water quality standards, the Copermittees are responsible for the discharges from their MS4s under such conditions.

Section: Findings Subsection: 22

Comment: Finding No. 22
The City questions whether the City has authority to prohibit the discharge of storm water into its MS4s where such discharge is authorized under a general industrial or construction storm water permit. If there is need for more stringent control, the Regional Board, themselves, should include such requirements in general construction and industrial storm water permits. However, to the extent the City is required to inspect, monitor, and generally oversee permitted industrial and construction sites, the City needs to enter an agreement with the Regional Board that clearly spells out each party's role and shared responsibilities concerning storm water discharges at permitted industrial and construction sites. For example, such an agreement should include a requirement that the Regional Board notify the City of its inspections of certain industrial sites, so the City does not repeat inspections already performed by the Regional Board. See Tentative Order, Section F.3.b(6) (provides that the City is not required to inspect certain industrial sites already inspected by the Regional Board). In addition, such an agreement should specify whether monitoring at an industrial facility under the Tentative Order is in addition to, in place of, or supplements

such industrial facility's monitoring program under the general industrial storm water permit, and whether group monitoring is permitted. (City of San Diego)

Response: It seems likely that the coordination of inspection efforts described in this comment would be beneficial. SDRWQCB looks forward to creating such relationships with municipalities. However, in response to the statement that municipalities may not have "the authority to prohibit the discharge of storm water into its MS4s where such discharge is authorized under a general industrial or construction storm water permit," SDRWQCB disagrees. Such authority should already exist under the municipal responsibility to review plans, grant permits, and enforce ordinances within its jurisdiction. Also, as provided for in California Water Code § 13002, cities and counties may establish water quality protection requirements that go beyond the industrial or construction storm water permits or other requirements of the SDRWQCB or SWRCB.

Section: Finding **Subsection: 23**

Comment: Second sentence add: EDUCATION- ……..how to accomplish their jobs while protecting water quality and public health, and their specific roles…. (State Department of Health Services)

Response: This issue has been addressed in the revised Tentative Order in Finding 36.

Section: Findings **Subsection: 24**

Comment: Finding 24 implies that the Regional Board will not seek enforcement against the City if it can be established that the City has 'demonstrated a good faith effort to educate and enforce its local ordinance. No definition of "good faith effort" is found in the Tentative Order and will open the cities to speculation and litigation from the environmental community. If it is intended that the establishment and implementation of the requisite ordinances, best management practices ("BMPs"), jurisdictional urban runoff management program ("Jurisdictional URMP"), and standard urban storm water mitigation plan ("SUSMP"), are examples of good faith, it should be stated somewhere in the document. The Finding does not have legal or factual support. (La Mesa, County of San Diego, Coalition for Practical Regulation, Procopio, Cory, Hargreaves, & Savitch, L.L.P., El Cajon)

Response: Finding 24 has been revised in the Tentative Order to remove all discussion of what constitutes "good faith" enforcement of local legal authority.

Section: Finding **Subsection: 24**

Comment: The IEA strongly urges the RWQCB to set enforcement guidelines in all areas of the permit to
ensure fair and equitable enforcement. (Industrial Environmental Association)

Response: Sections C, F.2.h, F.3.b.7, and Attachment C of the revised Tentative Order contains enforcement guidelines for the Copermittees to consider. The establishment of enforcement guidelines at the jurisdictional level, however, is the discretion and responsibility of the Copermittees.

Section: Findings Subsection: 24

Comment: The City and State permits should be consolidated with fees and enforcement authority passed through to Co-permittees. (City of Carlsbad)

Response: The Tentative Order does not require the Copermittees to enforce the General Construction and Industrial Permits. Where the Tentative Order refers to the General Permits, it does not require enforcement of the permits, but rather allows for the Copermittees to use them as tools in enforcing their own local permits. For example, it is useful for the Copermittee to require coverage under the General Industrial Permit, in that it will help the Copermittee ensure that the site is in compliance with local permits. However, in using such information, the Copermittee is not enforcing the General Permit. Instead, the Copermittee would be using the information as a tool for enforcement of its local permits. Since the Tentative Order does not require the Copermittees to enforce the General Permits, and since the Copermittees have their own responsibility for oversight of construction and industrial sites, passing State fees to the Copermittees is not warranted.

Section: Findings Subsection: 26

Comment: Finding 26 and Section C of the Tentative Order could result in violations of Receiving Water Limitations for toxicity and trigger $3,000 per violation. Is this the SDRWQCB's interpretation and intent? (La Mesa, Oceanside)

Response: The presence of toxicity in urban runoff discharged from MS4s that causes or contributes to an exceedance of receiving water quality objectives or constitutes a threat to human or environmental health is a violation of Order 90-42 and the Tentative Order.

We assume the reference to $3000 per violation is based on the provisions for Mandatory Minimum Penalties (MMPs) recently incorporated into the California Water Code. The MMPs apply to violations of effluent limitations. Section C establishes receiving water limitations, to which the MMPs do not apply.

Section: Findings Subsection: 26

Comment: The toxicity requirement cited in Finding 26 is neither legal nor attainable; this is a drinking water standard. The finding and the discussion that follows in the Technical Report are utilized to support the implementation of water quality standards or numeric effluent limitations. The Regional Board has no legal authority to impose numeric limitations on the Copermittees, nor to force the Copermittees to comply with water quality standards. The CALTRANS Statewide Permit does not contain this language and it should be removed from the Tentative Order. This is a more appropriate requirement for The Basin Plan as a Total Maximum Daily Loads allowable. The Basin Plans may need to be re-written. The finding and the discussion that follows in the Technical Report are utilized to support the implementation of water quality standards or numeric effluent limitations. As discussed above in other portions of these comments, the Regional Board has no legal authority to impose numeric limitations on the Copermittees, nor to force the Copermittees to comply with water quality standards. Rather, as set forth in Defenders of Wildlife v. Browner, supra, such an attempt would amount to the

imposition of standards stricter than those provided for under the Clean Water Act, which can only be supported after there has been a finding of "necessity" by the Regional Board in accordance with California Water Code Section 13377. No such finding of necessity has been made, nor would such a finding be supported by the evidence. (SANDAG, County of San Diego)

Response: The Toxicity requirement is derived from the Ocean Plan and is not a drinking water standard. The Copermittees have the responsibility to ensure that the discharge from their MS4s does not cause or contribute to exceedances of receiving water quality objectives nor constitutes a threat to human or environmental health. Toxicity is a measurement of the impact of MS4 discharges to human and environmental health.

Section: Findings Subsection: 27

Comment: As set forth under the CWA, the focus of the Tentative Order should be on controlling discharges from MS4s "to the maximum extent practicable". (County of San Diego)

Response: The first statement made in Finding 27 must be coupled with the following statement that reads, "This Order is not meant to control background or naturally occurring pollutants and flows." The statement to which this comment refers just helps clarify that the SDRWQCB will not hold the Permittees responsible for natural background levels.

Section: Findings Subsection: 28

Comment: The "Watershed Management Areas (WMAs)" table in Finding No. 28 (i.e., Table 2) is inconsistent with the similar "Copermittees by Watershed" table in Section J of the Tentative Order (i.e., Table 4). The information regarding what Table 2 terms the Mission Bay WMA differs from that contained in Table 4 for the same area.
We also suggest making the format of Tables 2 and 4 the same, because the current differences in formatting and content of these two tables lead to unnecessary confusion (e.g., Table 2 lists Penasquitos under the heading "Hydrologic Unit(s)," while Table 4 lists it under the heading "Watershed Urban Runoff Management Program" and lists Miramar Reservoir, HA (906.10) and Poway HA (906.20) under the heading entitled "Hydrologic Unit or Area"). (City of San Diego)

Response: Table 2 and 4 differ in minor ways for specific reasons. Table 2 comes directly out of the SDRWQCB report "Watershed Management Approach," January 2000. It is a basic table used by the SDRWQCB for watershed concerns such as impairments. However, Table 2 is not entirely useful for the development of watershed urban runoff management programs by the Copermittees. For this purpose, Table 4 was developed. The primary difference between the two tables is that the Mission Bay and Los Penasquitos watersheds are separated in Table 4. This separation is appropriate for Copermittee watershed management, since the two watersheds have different primary issues. For the development of Watershed Urban Runoff Management Programs, Table 4 should be used.

Section: Findings Subsection: 28

Comment: Table 2 of the Findings (No. 28) and Table 4 of section J. Watershed Urban Runoff Management Program lists Cajon as being in the San Diego Bay Watershed. All of the City of Cajon Drains to the San Diego River. (City of El Cajon)

Response: The error has been corrected in the Final Draft of the Tentative Order.

Section: Finding **Subsection: 28**

Comment: The 303(d) list for the San Diego region is lacking, and more studies should be performed to determine additional impairments. (Surfrider Foundation)

Response: Comment noted.

Section: Finding **Subsection: 28**

Comment: What information was used to list the San Luis Rey River as being impaired by coliform and nutrients? (City of Oceanside)

Response: The San Luis Rey River is not known to be impaired for coliforms or nutrients and is not listed on the 303(d) list. However, a portion of the coastline, designated Pacific Ocean, San Luis Rey Hydrologic Unit (HU) is considered impaired for coliforms. This coliform impairment was determined based on numerous beach closure days posted by the County of San Diego.

Section: Finding **Subsection: 28**

Comment: The permit should name all listed water bodies and their impairments. (Surfrider Foundation)

Response: Table 2 under Finding No. 28 in the permit includes a list of the surface water bodies and their corresponding 303(d) pollutant(s) of concern and/or impairment. In addition, Attachment 2 of the Fact Sheet also includes the 303(d) list for the San Diego Region.

Section: Finding **Subsection: 28**

Comment: Copermittees should be encouraged to identify threatened receiving waters to be considered for listing. (Surfrider Foundation)

Response: The Regional Board uses the process required by USEPA for identifying waterbodies that should be listed on the 303(d) list. Part of the process involves the Regional Board's solicitation of dischargers, stakeholders, etc. to identify waterbodies that are threatened or impaired and should be considered for 303(d) listing. Furthermore, in the permit under Section J. Watershed Urban Runoff Management Program, part 2.b., Copermittees are required to assess water quality of all receiving waters in the watershed based upon existing water quality data and annual watershed water quality monitoring.

This information will be provided in the URMP's annual reports to the Regional Board and would also be considered when identifying waterbodies for 303(d) listing. Therefore, the Copermittees are encouraged both through the permit, and through the listing process, to identify threatened receiving waters to be considered for 303(d) listing.

Section: Findings Subsection: 30

Comment: The City believes it will be difficult to develop a watershed planning component at a multi-jurisdictional level. Although run-off does not recognize political boundaries, such boundaries nevertheless exist. Regional Board coordination and funding are needed to facilitate the development of a multi-jurisdictional approach to watershed planning. (City of San Diego)

Response: The SDRWQCB will not be providing funding for the multi-jurisdictional approach as the requirement falls within the purview of the NPDES Program created by the Clean Water Act. The State of California has simply been delegated to administer this federally mandated program. However, the SDRWQCB plans to participate in watershed planning. This participation will in no way include a coordination role. Such a duty is better conducted by a local stakeholder.

Section: Findings Subsection: 30

Comment: The discussion of Finding 30 in the Technical Report inappropriately expands the application of the finding to require the identification, assessment and prioritization of "natural, social and other resources in the watersheds" and to "develop plans and regulations to guide growth and protect resources." Neither the Clean Water Act nor the Porter-Cologne Act, authorize either the State Board or the Regional Board, to regulate other resources in our environment (including endangered species, critical habitat, or coastal access), except to the extent that such would be necessary to protect the quality of our State's waters, but not vise versa. (County of San Diego)

Response: The Basin Plan identifies many beneficial uses which the SDRWQCB is responsible to protect. Multiple types of habitat, navigation, aquaculture, recreation, municipal service supply are among the many uses identified. The mission of the SDRWQCB is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. Good water quality is only one of the many uses which fall under the term "water resources."

Section: Finding Subsection: 30, 31

Comment: Finding No. 30: LAND USE PLANNING ON A WATERSHED SCALE and Finding No. 31: INTERGOVERNMENTAL COORDINATION
These findings will obviously require the close coordination of the various Copermittees. (SANDAG)

Response: Comment noted.

Section: Findings Subsection: 31

Comment: There is no authority under State or federal law that would allow the Regional Board to compel agreements between respective Copermittees. By definition, any "agreement" cannot be "compelled" and the Regional Board does not have any authority to compel agreements between Copermittees. Although agreements to assist in implementing programs "on a watershed and regional basis in the most cost effective manner" is a prudent course of action, unfortunately, the Tentative Order does not permit the implementation of the SUSMPs on a "regional basis." In fact, the Technical Report expressly states Staff is opposed to compliance with any SUSMP requirement using a "regional" approach, in spite of the fact that the State Board has already determined that "regional facilities" may be the most cost effective means in which to comply with SUSMP requirements, and in spite of the requirements of State law encouraging regional planning. (See Cal. Water Code § 13225(i).) (County of San Diego)

Response: The Federal NPDES regulations are clear that intergovernmental coordination between Copermittees can be required. They specifically prescribe coordination in two places. Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(D) provides that "[The Copermittee must demonstrate that it can control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system." Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) provides that the Copermittee shall develop and implement a proposed management program which "shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. […] Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. […] Proposed management programs shall describe priorities for implementing controls."

Regarding the asserted conflict between intergovernmental coordination and SUSMPs, no conflict exists. First, the SUSMP provisions require development of a countywide model SUSMP. Second, the SUSMPs have been modified to allow for neighborhood or sub-watershed level structural BMP implementation.

Section: Findings Subsection: 31

Comment: Permit Section Pg. 7, Item 31: Governmental Coordination
The permit mentions that coordination with other watershed stakeholders, especially Caltrans and the Department of Defense, is critical. The staff and the Regional Water Quality Control Board (RWQCB) need to pursue State and Federal Legislation to mandate these other agencies to also cooperate with co-permittees. (City of Poway)

Response: Coordination with agencies such as Caltrans and the Department of Defense is critical and is addressed by the SDRWQCB in Finding 31. The Tentative Order does not require such coordination. Language in the Tentative Order regarding such coordination In Section D.1.g has been modified to clarify this.

Section: Findings Subsection: 32

Comment: The removal; characterization, and disposal of pollutants from MS4 (Municipal Separate Storm Sewer System) drainage structures will end up in the sewer system. (Metro Commission)

Response: The requirements in Tentative Order 2001-01 that some flows or wastes in the MS4 should be diverted or removed does not necessarily mean that they should be removed or diverted into a sanitary sewer. Finding 32, noted in the comments, finds that wastes and pollutants that deposit and accumulate in the MS4 system will be discharged from those structures into receiving waters. The finding states only that such accumulated wastes must be characterized and lawfully disposed. It does not require, or even recommend, that they be discharged into a sanitary sewer. Section B.2, noted in the comment, refers to non-storm water discharges that are prohibited only if the Copermittee determines that they are a significant source of pollutants to waters of the United States. Section B.2 of the Tentative Order does not require such discharges to be diverted or removed into a sanitary sewer. The Copermittees have the flexibility and discretion to determine the manner in which they comply with the requirements of Section B.2 of the Tentative Order.

Section: Findings Subsection: 33

Comment: Finding No. 33
As currently written, Finding No. 33 states that "Urban runoff is a significant contributor to the creation and persistence of Toxic Hot Spots in San Diego Bay." We believe it would be more accurate to state, at most, that urban runoff appears to be a potential contributor to Toxic Hot Spots – any broader statement is premature. As the Regional Board is aware, the City, in conjunction with the Port of San Diego and the U.S. Navy, are in the process of voluntarily conducting source identification work related to this issue. However, because this work is not yet completed, we believe there does not yet exist sufficient evidence or other documentation to support the broad language currently contained in Finding No. 33. (City of San Diego)

Response: The SWRCB's "Chemistry, Toxicity and Benthic Community Conditions in Sediments of the San Diego Bay Region" report supports Finding 33 (SWRCB, 1996). Regarding the Chollas Creek Toxic Hot Spot it states "Chollas Creek empties into the Bay near this site, carrying with it runoff from a large urban area. This creek is believed to carry high concentrations of PAHs into the Bay (McCain et al., 1992) and is the likely source of high chlordane levels at the site." Regarding the Downtown Piers Toxic Hot Spot, it states "Perhaps the most obvious explanation for these data [which found toxicity] would be the presence of a large storm drain and numerous smaller storm drains, which empty into the Bay near this station."

Section: Findings Subsection: 33

Comment: Finding No. 33 refers to California Water Code Section 13395 and provides that said section "requires regional boards to reevaluate waste discharge requirements ("WDR's") associated with toxic hot spots." The finding further refers to the consolidated toxic hot spot clean up program adopted by the State Water Resources Control Board in June of 1999. This finding is inappropriate in the subject Tentative Order, as Section 13395 specifically requires a reevaluation of waste discharge requirements for discharges who "have discharged all or part of the pollutants which have caused the toxic hot spot." Said

section further exempts the revision of a waste discharge requirement, if the toxic hot spot "resulted from practices no longer being conducted by the discharger or permitted under the existing waste discharge requirements, or that the discharger's contribution to the creation or maintenance of the toxic hot spot is not significant." Section 13395 is plainly directed at the actions of the person creating the "discharge" and would only apply to the requirements of the subject Tentative Order to the extent of discharges actually caused by the Copermittees. The finding incorrectly relies upon 13395 to support an expansion of the Tentative Order to toxic hot spot issues not otherwise authorized by Section 13395. (County of San Diego)

Response: The SWRCB's "Chemistry, Toxicity and Benthic Community Conditions in Sediments of the San Diego Bay Region" report supports Finding 33 (SWRCB, 1996). Regarding the Chollas Creek Toxic Hot Spot it states "Chollas Creek empties into the Bay near this site, carrying with it runoff from a large urban area. This creek is believed to carry high concentrations of PAHs into the Bay (McCain et al., 1992) and is the likely source of high chlordane levels at the site." Regarding the Downtown Piers Toxic Hot Spot, it states "Perhaps the most obvious explanation for these data [which found toxicity] would be the presence of a large storm drain and numerous smaller storm drains, which empty into the Bay near this station."

Section: Findings Subsection: 34

Comment: There is insufficient study and a lack of evidence to support the numeric sizing criteria set forth in the Tentative Order itself and its one size fits all application, and there is no finding, evidence, or other support for the general application of the exact same numerical sizing criteria to each and every one of the ten development categories identified in the Order. Finally, the numeric sizing criteria plainly violates Water Code Section 13360 and the prohibitions thereunder. (County of San Diego)

Response: Evidence in support of numeric sizing criteria is included in the "Staff Report for Standard Urban Storm Water Mitigation Plans and Numerical Sizing Criteria for Best Management Practices" and "Supplemental Information for Public Workshop on Numeric Sizing Criteria for Post-Construction BMPs for New and Re-Development," as referenced in the draft Fact Sheet/Technical Report. Application of SUSMPs and numeric sizing to the ten SUSMP priority development project categories is addressed elsewhere. Finally, the SWRCB found in Order WQ 2000-11 that SUSMPs and numeric sizing criteria constituted MEP and did not violate California Water Code section 13360.

Section: Finding Subsection: 34

Comment: Finding No 34: CHANGING THE STORM WATER MANAGEMENT APPROACH
The approach of filtering storm water by "...allowing it to flow slowly over permeable vegetative surfaces..." may not work well in the San Diego region because of the impermeable soil types that are predominant in this region, therefore this should not become a requirement, rather a recommendation. It may work in some areas of the region and may be a good solution, but if it is required without a determination of the soil types, vector control problems may be generated. Rats, roaches and mosquitoes tend to breed in areas where it is damp or where water is allowed to pond. (SANDAG)

Response: SDRWQCB recognizes that the region has an abundance of low permeability soil conditions. However, through the process of evapotranspiration, vegetative matter can abate nuisance waters that bare soil cannot. Also important to note is that infiltration is not the only option discussed in the finding. Filtration is also suggested.

Section: Findings **Subsection: 34**

Comment: Finding 34 on page 7 - Revise the finding to reduce the reliance upon "restoring and preserving the natural hydraulic cycle" through the use of over simplified structural controls like reducing post development runoff rates to predevelopment levels. Overemphasis of this simplified approach can potentially result in an effect opposite from what is intended. Even well designed facilities based upon "natural system" concepts can have significant negative environmental consequences. Poorly designed solutions can potentially have disastrous consequences. The City of Carlsbad and other coastal cities are characterized by hilly terrain subject to the very real potential of landslides and slippage. Directing runoff water into the geologic formations beneath land developments can result in catastrophic landslide events. Carlsbad is currently plagued with water seepage and springs that occur post development and which create a significant nuisance for the City and its residents. The construction of mandatory filtration basins could significantly increase the occurrence of these springs. Additionally, in some areas there is the potential for subsurface water to flow through soils containing -natural minerals which when leached out can result in runoff more deleterious than the pollutants in urban runoff. This document should instead focus on establishing clear goal based criteria designed to reduce pollutant loading rather than directing the agencies towards structural solutions based upon simple and potentially faulty assumptions. (City of Carlsbad)

Response: While the Tentative Order encourages infiltration, it is never required where it may be infeasible. Furthermore, the Tentative Order does not encourage accelerated infiltration rates; rather, it only encourages preserving natural infiltration rates. Finally, the Copermittees are provided discretion for the oversight of any infiltration BMPs. They can therefore ensure that natural infiltration does not cause significant negative environmental consequences.

Section: Findings **Subsection: 34**

Comment: In many cases, the “permeable vegetated surfaces” will have to be recreated or developed from scratch, since much of the watershed is now covered with hardscape. This will require significant funding that currently does not exist in many municipal budgets. Please provide information regarding how the Regional Board will assist Copermittees in creating the permeable, vegetated filters contemplated in the Tentative Order. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The SDRWQCB will not be providing funding for the Co-Permittees to implement their programs.

Section: Finding **Subsection: 35**

Comment: Sweetwater Authority questions the soundness of the statement that, "...the risks typically associated with the infiltration of runoff (especially from residential land use areas) are not significant."

CWA requirements that may be addressed by pervious surfaces and infiltration may not resolve issues associated with drinking water supplies, based on SDWA requirements. (Sweetwater Authority)

Response: The SDRWQCB acknowledges the potential risk from infiltration of storm water. The Tentative Order includes requirements for the protection of groundwater in section F.1.b.2.i. These requirements are based on USEPA guidance, as developed by the USEPA Risk Reduction Engineering Laboratory. Implementation of such requirements should greatly reduce the risk of groundwater contamination resulting from storm water infiltration. Clearly, proper management of storm water infiltration is needed. For this reason, Finding 35 will state that the risk of groundwater contamination from storm water infiltration can only be reduced to insignificant levels if proper management is implemented.

Section: Finding **Subsection: 35**

Comment: We urge that the permit include specific requirements of the jurisdictions and the developers that long term operation, maintenance, and monitoring, and access be assured in perpetuity. (San Diego Audubon Society)

Response: Section F.1.b.2.b.x of the Tentative Order requires proof of a mechanism to ensure ongoing long-term BMP maintenance. A mechanism for long-term BMP maintenance would inherently include provisions for inspections/monitoring of the maintenance of the BMP. For example, the LARWQCB SUSMP includes consideration of inspections/monitoring of BMP maintenance. The LARWQCB SUSMP can serve as guidance to the Copermittees regarding BMP maintenance. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private of public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural of Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other

appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Section: Findings Subsection: 35

Comment: Finding No. 35 involves infiltration of potential groundwater contamination and the management of the risks associated with infiltration, including requiring maintenance of drainage features in perpetuity. First, again as discussed elsewhere in these comments, it is the State Board and the Regional Board's obligation to protect the waters of the State of California and that obligation cannot be transferred onto the Copermittees. Second, a sufficient study has not been conducted for the Regional Board to conclude that the infiltration of urban runoff and the risks created through groundwater quality are superseded by the need to improve our surface water quality. In effect, there is insufficient evidence to support the application of a numerical sizing criteria, the objective of which is to discharge the pollutants of concern into our soil and into our groundwater, before they enter into the MS4 system, so as to avoid impacts on our surface water quality. Insufficient analysis has been conducted by the Regional Board to determine the impact of the numerical sizing criteria on the quality of our groundwater. In addition, the Regional Board's reference and reliance upon guidance from the State of Washington and the State of Maryland ignore those states (as well as the State of Florida's) reliance upon regional approaches, which Staff in this case has specifically disclaimed the benefits of, and their application in this permit. The Regional Board's refusal to consider "regional approaches" is also directly contrary to the express findings of the State Board in Order No. WQ 2000-11, and the provisions of California Water Code Section 13225(i).) (State Board Order No. WQ 2000-11, p. 21; Water Code § 13225(i).) (County of San Diego)

Response: The Tentative Order requires the implementation of structural treatment BMPs, of which infiltration is one option. Where the Copermittees choose to allow infiltration/redirection of flows which would otherwise enter their MS4s, restrictions are appropriate. The Copermittees cannot choose to redirect flows away from their MS4s and claim no responsibility for the potential impacts of such actions. In addition, the SWRCB upheld in Order WQ 2000-11 the infiltration restrictions included in the LARWQCB SUSMP, on which the infiltration restrictions in the Tentative Order are based.

Again, the Tentative Order does not require infiltration. It is merely one type of BMP out of many from which the Copermittees can choose. The Tentative Order includes infiltration restrictions in the event that infiltration is the chosen option for BMPs. The infiltration restrictions in the Tentative Order are based on a risk assessment conducted by USEPA's Risk Reduction Laboratory (USEPA, 1994). The sole purpose of the infiltration restrictions is to reduce the risk of groundwater contamination.

Regarding "regional approaches" the Tentative Order has been revised to allow for the implementation of neighborhood or sub-watershed level BMPs.

Section: Findings Subsection: 39

Comment: The public comment period and the hearing should be continued for at least ninety (90) days in order to give the Copermittees, and all interested Stakeholders, sufficient time to review and comment on such important issues. (County of San Diego)

Response: Sufficient time was given for interested parties to review the Tentative Order. Sufficient opportunity was given for all interested parties to voice their concerns and submit written comments.

Section: A Subsection:

Comment: The Permit must include numeric effluent limits. The Permit's omission of water quality-based effluent limits for numerous impairing pollutants is inconsistent with federal permitting regulations. If the State has failed to develop and implement numeric water quality criteria for a toxic pollutant, the regulations still require a numeric effluent limit to be established "Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options: [including using 'calculated numeric water quality criteria' and 'EPA water quality criteria']." 40 C.F.R. § 122.44(d)(1)(vi). (San Diego Baykeeper, Surfers Tired of Pollution, Surfrider Foundation, Environmental Health Coalition, San Diego Audobon Society)

Response: Typical NPDES permits are based on the concept of employing full-scale treatment of an effluent to remove pollutants at the end of the pipe (i.e., just before being discharged into receiving waters). Accordingly, typical NPDES permits contain numeric effluent limits which are arithmetically derived from receiving water quality objectives for each pollutant of concern in the effluent. However, municipal storm water permits are not typical NPDES permits because they are not based on the concept of full-scale treatment of polluted storm water. Full scale end of pipe treatment for storm water is not considered economically and technologically feasible at this time. Therefore municipal storm water permits do not contain numeric effluent limits, but rather are based on the concept that pollutants can be effectively reduced in storm water to the maximum extent practicable by the application of a wide range of best management practices (BMPs).

USEPA has issued guidance on the issue of numeric effluent limits in municipal NPDES storm water permits. It states "In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for National Pollutant Discharge Elimination System (NPDES) storm water permits, the Environmental Protection Agency (EPA) is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

"The interim permitting Approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards" (USEPA, 1996).

The Tentative Order follows this interim permitting approach.

Section: A Subsection:

Comment: The Permit should include in the Discharge Prohibition section that "The Permittee shall modify [their storm water management plan] to comply with waste load allocations developed and

approved pursuant to the process for the designation of Total Maximum Daily Loads for impaired water-bodies." (San Diego Baykeeper)

Response: 40 CFR 122.44 (d)(vii)(B) requires that NPDES permit effluent limitations be consistent with any waste load allocation for the discharge that are prepared by the state (Regional Board) and approved by USEPA. Once TMDL limits are established and approved by USEPA, NPDES permits will be required to include effluent limitations that are consistent with the TMDL allocations, so the concept of the proposed language is already required by federal regulation. In addition, a finding will be added to the permit to reference TMDLs and their relationship to the permit. This finding will be similar to the proposed language.

Section: A Subsection:

Comment: The title of the section "Prohibitions - Discharges" should be revised to read "Prohibitions Stormwater Discharges" (Sempra Energy)

Response: Section A of the Tentative Order can apply to both storm water and non-storm water discharges. Therefore, its title will not be changed.

Section: A Subsection:

Comment: The proposed Permit fails to include mass limits in the permit, and is thus inconsistent with 40 C.F.R. Section 122.45(f). Mass limits based on current performance should be applied for all pollutants referenced in the permit that are also listed on the 303(d) list for the permits' receiving waters. (San Diego Baykeeper)

Response: The inclusion of mass limits for pollutants in the Tentative Order is not required. 40 CFR 122.45(f) refers to requirements for pollutants for which numerical effluent limits have been calculated. Since numerical effluent limits have not been applied in the Tentative Order, as is allowed in 40 CFR 122.44(k), calculation of mass limits is not necessary or required.

Section: A Subsection:

Comment: A list of specific Water Quality Objectives for each pollutant should be compiled and included as an attachment to the permit. (San Diego Baykeeper)

Response: SDRWQCB publishes Water Quality Objectives for this region in the Water Quality Control Plan. This Basin Plan serves as the foundation for which every decision, permit, enforcement, and action is taken by the SDRWQCB. All Permittees are required to be knowledgeable on the terms and conditions set in the Basin Plan (including specific Water Quality Objectives). Therefore, the Tentative Order will not be amended to include an additional listing as doing so would be redundant.

Section: A Subsection:

Comment: The current definition of Water Quality Objectives included in Attachment D (Glossary) is not sufficiently specific to ensure violations are prohibited and should include those contained in the San Diego Basin Plan, the California Ocean Plan, the California Toxics Rule, the National Toxics Rule, and other state or federally approved surface water quality plans used by the Regional Board to regulate all discharges, including storm water discharges. (San Diego Baykeeper)

Response: The definition of water Quality Objectives in Attachment D (Glossary) has been revised to refer to the broad legal authority cited in the Fact Sheet/Technical Report (Section VII Directives Discussion Underlying Broad Legal Authority for Order No. 2001-01) and to contain the following:

As stated in the Porter-Cologne Requirements for discharge (CWC 13263),
"(Waste discharge) requirements shall implement any relevant water quality control plans that have been adopted , and shall take into consideration the beneficial uses to be protected, the water objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241."

Section: A Subsection: A.1

Comment: The phrase, "...or threaten to cause" is used in various places throughout the document. This phrase is very broad and subjective. This phrase should be removed. (SANDAG)

Response: Prohibition A.1, including the term "threatening to cause" is taken directly from the Basin Plan and therefore will not be changed.

Section: A Subsection: A.1

Comment: The definition of the term nuisance as defined in CWC § 13050 should be researched. This may be a similar concern to the phrase "threaten to cause". It is our understanding that Caltrans had the term nuisance removed from their permit. (SANDAG)

Response: Prohibition A.1, including the term "nuisance," is a Basin Plan Prohibition, and therefore will remain in the Tentative Order.

Section: A Subsection: A.2

Comment: Page 4 of 50 - paragraph 22. - Pursuant to this Order, local permits, plans, and ordinances must (a) prohibit the discharge of pollutants and non-storm water into the MS4; and (b) require the routine use of BMPs to reduce pollutants in site runoff.

These statements are or appear to be contradictory. Subparagraph (a) prohibits discharge of pollutants and non-storm water. Subparagraph (b) requires BMPs to reduce pollutants. What are the subtleties that distinguish when pollutant discharge is prohibited verses when the requirement is to reduce pollutants? Is the intent that subparagraph (a) is relative to non-storm water runoff; and subparagraph (b) is relative to

storm water runoff? Additionally, confusion exists within subparagraph (a) in that, the statement "discharge of pollutants and non-storm water" is prohibited could be interpreted to mean that discharge of pollutants and discharge of non-storm water are interdependent (i.e. must have both conditions to be prohibited) or independent (i.e. need only one condition to be prohibited). Finally in subparagraph (b) the pollutant reduction is relative to "site runoff." EPA defines storm water runoff as Urban Runoff; and runoff as precipitation, snow melt, or irrigation water. But there is no definition of site runoff. Recommend paragraph 22 be embellished to more clearly describe the intent of the section relative to the issues raised above. (City of Imperial Beach)

Response: The language in Finding 22 regarding prohibitions refers to Prohibitions section A and B in the Tentative Order. Prohibition A refers to the prohibition of discharges of pollutants which may cause conditions of pollution. Prohibition B refers to the prohibition of non-storm water. References to reducing pollutants to MEP are applicable when discharges of pollutants are not causing conditions which warrant prohibition.

Section: A Subsection: A.2, A.3

Comment: The City suggests that this Prohibition be deferred until the City is required to implement these and other relevant provisions of the Tentative Order. (City of San Diego)

Response: Prohibitions A.2 and A.3 are essentially in effect at present. Order No. 90-42 (section IX) requires the Copermittees to implement BMPs to reduce the discharge of pollutants into and from their MS4s to the maximum extent practicable. The Basin Plan prohibits discharges in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance. Since these requirements are, for practical purposes, already in effect and enforceable, there is no compelling reason to defer their effective dates in the Tentative Order.

Section: A Subsection: A.3

Comment: At page 8 of the Tentative Order, Prohibition A.3 provides that "[d]ischarges into and from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited." This prohibition provides little in the way of helpful guidance to Copermittees. First, "MEP" must be defined in the Order, so that Copermittees have a clear and convenient reference. Second, the Order should describe the criteria by which the Regional Board will determine whether discharges into and from MS4s have been reduced to MEP standards. Third, the Order should identify which party — the Copermittee or the Regional Board — has the burden of establishing that discharges have or have not been reduced to MEP. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: First, MEP has been defined in the Tentative Order. See Attachment D Glossary, Page D-3. Second, see the final portion for clarification of the criteria for which the Regional Board will determine if MEP has been met. Third, this portion also clarifies that the Regional and State Boards have the final responsibility of assessing whether MEP has been met. Please see excerpt from the Tentative Order below:

MEP is the acronym for Maximum Extent Practicable. MEP is the technology-based standard established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water (MS4s) must

meet. Technology-based standards establish the level of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices (BMPs). MEP generally emphasizes pollution prevention and source control BMPs primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional line of defense). MEP considers economics and is generally, but not necessarily, less stringent than BAT. A definition for MEP is not provided either in the statute or in the regulations. Instead the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their Urban Runoff Management Plan. Their total collective and individual activities conducted pursuant to the Urban Runoff Management Plan becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for sanitary sewer maintenance). In the absence of a proposal acceptable to the SDRWQCB, the SDRWQCB defines MEP.

In a memo dated February 11, 1993, entitled "Definition of Maximum Extent Practicable," Elizabeth Jennings, Senior Staff Counsel, SWRCB addressed the achievement of the MEP standard as follows:

"To achieve the MEP standard, municipalities must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the cost would be prohibitive. In selecting BMPs to achieve the MEP standard, the following factors may be useful to consider:

a.Effectiveness: Will the BMPs address a pollutant (or pollutant source) of concern?
b.Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?
c.Public Acceptance: Does the BMP have public support?
d.Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?
e.Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc?

The final determination regarding whether a municipality has reduced pollutants to the maximum extent practicable can only be made by the Regional or State Water Boards, and not by the municipal discharger. If a municipality reviews a lengthy menu of BMPs and chooses to select only a few of the least expensive, it is likely that MEP has not been met. On the other hand, if a municipal discharger employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit derived, it would have met the standard. Where a choice may be made between two BMPs that should provide generally comparable effectiveness, the discharger may choose the least expensive alternative and exclude the more expensive BMP. However, it would not be acceptable either to reject all BMPs that would address a pollutant source, or to pick a BMP based solely on cost which would be clearly less effective. In selecting BMPs the municipality must make a serious attempt to comply and practical solutions may not be lightly rejected. In any case, the burden would be on the municipal discharger to show compliance with its permit. After selecting a menu of BMPs, it is the responsibility of the discharger to ensure that all BMPs are implemented."

Section: A **Subsection: A.3**

Comment: Add: A.4. Water wasting and excessive water runoff is prohibited. (State Department of Health Services)

Response: The terms "water wasting and excessive water runoff" are too broad and subjective for the Copermittees to comply with and for the SDRWQCB to enforce adequately. Moreover, many of the Copermittees have already implemented measures to encourage water conservation. Regional Board does not recommend adding this language as a prohibition to Section A.4 of the Tentative Order.

Section: A Subsection: A.4

Comment: Clarify Section A4. Page 8. This prohibition appears to subject all new construction and redevelopment projects to SUSMP requirements, whereas, Section F.I.b(2), limits the applicability of SUSMPs to specific "Priority Development Project Categories" (Sections F. 1.b(2)(a)(i)-(x)). Therefore, the above language in this prohibition needs to be clarified that it is only applicable to the specific Priority Development Project Categories. (Sempra Energy)

Response: The language in Prohibition A.4 regarding peak flow rates and velocities has been removed. Requirements for the control peak flow rates and velocities will apply only to new development and significant redevelopment falling under the SUSMP categories.

Section: A Subsection: A.4

Comment: In areas altered from impervious to pervious, are storm water "volumes" regulated? (Anonymous Workshop 1)

Response: The Tentative Order does not require that increased storm water runoff volumes resulting from development be addressed, due to the difficulty in reducing such volumes. Impervious surfaces create increased storm water runoff volumes by preventing or reducing infiltration. Reduction in these resulting storm water runoff volumes by constructing infiltration devices is not always feasible, particularly due to soil conditions in many areas of the region, or due to limited space . Due to these limitations, reduction of storm water runoff volumes resulting from development is not required by the Tentative Order, but rather is strongly encouraged. Minimization of impervious surfaces is encouraged throughout the Tentative Order, while minimization of directly connected impervious areas is required in the SUSMP provisions. The Tentative Order also supports preserving and restoring the natural hydrologic cycle. Furthermore, in developing methods to control downstream erosion resulting from the development of SUSMP priority development projects, the Copermittees are required to consider means for reducing storm water runoff volumes. These can include infiltration and minimization of directly connected impervious areas, as noted above, as well as structural BMPs, such as cisterns.

Section: A Subsection: A.4

Comment: Section A.4: “Site” should be defined. (City of Chula Vista)

Response: Language in Prohibition A.4 which refers to peak flow rates and discharges to 303(d) listed water bodies has been removed. Therefore, the term "site" no longer is included in Prohibition A.4.

Section: A **Subsection: A.4**

Comment: The Tentative Order does not define the terms “New Development” and “Significant Redevelopment” so it is difficult to ascertain which projects fall within Prohibition A.4. For example, does “New Development” include projects that have approved tract maps but have not yet begun construction? And at what point does a redevelopment project become “significant” for purposes of this Order? (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Prohibition A.4 refers to all new development and redevelopment. It should be noted, however, that specific BMPs to be implemented for all new development and redevelopment is left to the discretion of the Copermittees. For very small or insignificant new development and redevelopment projects, the Copermittees may identify BMPs such as education measures as being sufficient. In addition, for clarification it should be noted that language in Prohibition A.4 which refers to peak flow rates and discharges to 303(d) listed water bodies has been removed. See change at permit section A.4.

Section: A **Subsection: A.4**

Comment: Is consideration given to redevelopment that does not exceed the pollution levels of existing development being replaced? (City of Chula Vista)

Response: Language in Prohibition A.4 which refers to predevelopment pollutant levels has been removed.

Section: A **Subsection: A.4**

Comment: A.4 Footnote 1 page 8 should be clarified or deleted because the wording is too vague and there should be an emphasis on actual impacts and not just flow rates and velocities. (Environmental Health Coalition)

Response: The footnote to Prohibition A.4 was included in the Proposed Changes document (Attachment 9 of the Executive Officer Summary Report for the December 13, 2000 Public Hearing). It referred to situations where detention in lower watersheds can increase the potential for flooding, by releasing detained flows which coincide with the timing of peak flood flows from upper watersheds.

Since the language of Prohibition A.4 has been removed from the Tentative Order, the footnote no longer applies.

Section: A **Subsection: A.4**

Comment: If the objective of the SUSMP is met if new development does not contribute to exceedance of receiving water quality objectives why impose the MEP rule on new development or redevelopment? Clarify. (City of Chula Vista)

Response: Copermittees must (1) reduce pollutants loads in post-development runoff to the maximum extent practicable and (2) ensure that post-development runoff does not cause or contribute to an exceedance of water quality standards. They cannot do one to the exclusion of the other. While post-development runoff in many situations may not be causing or contributing to an exceedance of water quality standards, significant increases in pollutant loads in post-development runoff may still degrade the quality of receiving waters, even if water quality standards are not exceeded. This is against antidegradation policy. For this reason, pollutants loads in post-development runoff must also be reduced to the maximum extent practicable.

Section: A Subsection: A.4

Comment: The proposed approach disregards the quality of runoff from new development. It is entirely possible that the runoff from new development will comply with water quality objectives but be higher than background levels in non-developed lands. (County of Orange Public Facilities & Resources Dep)

Response: The holding of post-development pollutant discharges to predevelopment or natural levels may not always be necessary for the protection of receiving water quality. There may be circumstances where a slight increase in pollutant concentrations from newly developed area may not contribute to an exceedance of water quality standards. For example, if a discharge's pollutant concentration from a newly developed area is increased but still well below the water quality objective for the 303(d) listed receiving water, the discharge will most likely not contribute to the exceedance of the water quality objective. The TMDL process frequently allows for such a situation, when "safety factors" for new development are included in waste load allocations.

The TMDL process is a more appropriate process for determining such allocations than the Tentative Order. It is a formal process which allows for extensive stakeholder involvement and public participation. It also addresses discharges from all sources, both existing and new.

For these reasons, the Tentative Order has been modified. The Tentative Order will still prohibit "post-development runoff containing pollutant loads which cause or contribute to an exceedance of receiving water quality objectives." Also, the potential for new development to cause or contribute to the 303(d) listing of a receiving water will need to be addressed in the Copermittees' planning processes. However, the requirement that post-development pollutant concentrations not exceed predevelopment pollutant concentrations will be removed. This issue will be addressed during the pending TMDL processes.

Section: A Subsection: A.4

Comment: Additionally, this prohibition should be redrafted so that it is clear that it applies only to specific Priority Development Project Categories. (Sempra Energy)

Response: Prohibition A.4 applies to all new development and redevelopment. However, language relating to peak flow rates and discharges to 303(d) listed water bodies has been removed.

Section: A Subsection: A.4

Comment: Section A.4.: "Post-development runoff which is greater in peak rate or velocity than pre-development runoff from the same site is prohibited." It is generally accepted that an undeveloped site, once developed, will have a higher peak rate runoff, additionally, because the runoff will in most cases be controlled, the velocity of that runoff will increase. It is more important to require that this increased rate or velocity cannot cause pollution. (City of Coronado)

Response: The language regarding peak flow rates and velocities in Prohibition A.4 has been removed from the Tentative Order. Control of peak flow rates and velocities shall instead apply only to SUSMP priority development projects. However, the control of peak flow rate and velocity increases from development is important. USEPA states: "In many cases the impacts on receiving waters due to changes in hydrology can be more significant than those attributable to the contaminants found in storm water discharges" (USEPA, 1999a). Therefore, the Tentative Order includes controls on both flows and pollutant discharges.

Section: A Subsection: A.5

Comment: Some of the prohibitions appear inappropriate.

For example, the prohibited discharges from vessels listed in paragraphs 15-18 are not relevant to the Tentative Order. This should be specified in Prohibition No. A.5. (i.e., that only relevant Basin Plan Prohibitions apply) or, alternatively, inappropriate prohibitions should be deleted from Attachment A. (City of San Diego)

Response: California Water Code Section 13243 provides that a Regional Board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste, or certain types of waste is not permitted. The discharge prohibitions in Attachment A are applicable to any person, as defined by Section 13050(c) of the California Water Code, who is a citizen, domiciliary, or political agency or entity of California whose activities in California could affect the quality of waters of the state within the boundaries of the San Diego Region.

It is true that only those Basin Plan prohibitions that might pertain to discharges to or from a storm water conveyance system are relevant to the tentative Order. Some Basin Plan prohibitions may not be applicable to discharges to or from the storm water conveyance system of one or more Copermittees. However, it is neither prudent or necessary to delete a Basin Plan prohibition from Table A based on assumption that it would never be applicable. Doing so could weaken the permit if there were an unanticipated or unusual situation to which one of the deleted prohibitions might apply. In any case, there is no harm in having Attachment A include all the Basin Plan prohibitions, including those which may seem unlikely to apply to discharges to or from a storm water conveyance system.

Section: B Subsection: B.4

Comment: All fire activities such as washing and training should be exempted from storm water permit because:
1. Discharges from fire service activities are typically clean.
2. Many fire agencies have no funds to pay for water filter devices.
3. BMPs might hinder or interfere with important fire suppression drills, potentially leading to safety concerns due to inadequate training
4. Fire service discharges are minimal, and therefore have limited impact.
5. There are no commercial facilities to wash fire trucks. Therefore, the practical and efficient way for the user to discharge this water into the sanitary sewer system. (San Diego County Fire Chiefs' Association, Vista Fire Department, Ramona Fire Department, City of Escondido, City of Oceanside, Borrego Springs Fire Protection District, Procopio, Cory, Hargreaves, & Savitch, L.L.P., State Department of Forestry and Fire Protection, Fire Districts Association of California, Intermountain Volunteer Fire & Rescue Department, San Diego Lifeguard Service, Rancho Santa Fe Fire Protection District, Metro Commission)

Response: The SDRWQCB agrees that all fire service activities are important to the protection of life and property. It is possible that extensive BMP implementation could potentially impair fire service readiness in some cases. For these reasons, section B.4 of the Tentative Order will be changed. In order to allow the discharge of non-emergency fire fighting flows to be addressed in a manner which is feasible for the fire service, section B.4 will require the Copermittees to develop and implement a program to reduce pollutants in non-fire fighting flows identified by the Copermittees to be significant sources of pollutants. This will provide the Copermittees and the fire service with the means to develop a program which will not adversely affect fire service activities or require diversion of wash water, etc to the sanitary sewer.

Section: B Subsection: B.1

Comment: Prohibition No. B.1., which requires the City to “effectively prohibit all types of non-storm water discharges,” is unrealistic. The City cannot prohibit discharges of which it is not aware. (City of San Diego)

Response: Prohibition B.1 comes directly from the Clean Water Act (section 402(p)(3)(B)(ii)). There are no exemptions provided in the Clean Water Act for unknown discharges. Although eliminating discharges which are not known to occur may be difficult, there is nothing to prevent prohibition of discharges - known and unknown. Prohibit is defined as "to forbid by authority." Copermittee ordinances can effectively prohibit all non-storm water discharges, regardless of whether or not they have been identified.

Section: B Subsection: B.2

Comment: Prohibition B.2, set forth on page 9 of the Tentative Order, lists 17 categories (a through q) of non-storm water that may be discharged into and from an MS4, unless the Copermittee determines that

such categories of discharge are a "significant source of pollution to waters of the United States." The term "significant" is not defined qualitatively or quantitatively in the Order, so one is left to presume that "significance" will be defined not by the Regional Board but by the Copermittees themselves. By what authority and through what mechanism will the Regional Board overturn a Copermittee's determination that a given discharge category is not a "significant" source of pollution? How will the Regional Board address discharge categories that, when viewed from a single Copermittee's perspective, are individually insignificant, but when viewed from a watershed perspective are cumulatively significant? (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: As per the Federal NPDES regulations, the determination of significance is left to the Copermittees' discretion. However, if it is determined that the discharges are individually or cumulatively causing or contributing to an exceedance of water quality standards, the SDRWCB may require implementation of BMPs for such discharges, per section C of the Tentative Order.

Section: B Subsection: B.2

Comment: Is there a method for determining which of the categories listed in this section are not significant sources of pollution? Please define significant. (SANDAG)

Response: As per the Federal NPDES regulations, determination of significance is left to the discretion of the Copermittees.

Section: B Subsection: B.2

Comment: In some hydrologic areas, the tap water from MWD may contains TDS at the level higher than the Basin Plan TDS water quality objectives for surface waters. Would TDS be considered a pollutant? Would mineral removal be required as a BMP to achieve MEP for tap water discharges? (City of Oceanside)

Response: Under the current Basin Plan, TDS levels in excess of defined water quality objectives could be considered a pollutant. In a recent decision, the SDRWQCB voted to uphold TDS water quality objectives in a ground water basin to prevent the degradation of water quality and the loss of beneficial uses.

Section: B Subsection: B.2

Comment: We urge that these categories be prohibited at levels well below those at which they each become significant. The paragraph might be improved to change the word "significant" to "potentially significant" or perhaps "observable". (San Diego Audubon Society)

Response: This requirement, and the term "significant," are based directly on the Federal NPDES regulations (40 CFR 122.26(d)(2)(iv)(B)(1). In order to be consistent with the Federal NPDES regulations, no change will be made.

Section: B **Subsection: B.2**

Comment: Strict adherence to these permit requirements will create a significantly greater risk to the environment than that posed by activities currently regulated by the RWQCB. The mandated requirement to unnaturally increase infiltration everywhere development occurs will create discharges from rising ground water, springs, crawl space pumps and footing drains. (City of Carlsbad)

Response: Nowhere does the Tentative Order mandate the unnatural acceleration of infiltration. The Tentative Order promotes the use of infiltration to offset losses of infiltration due to the creation of impervious surfaces due to development. This type of infiltration restore natural infiltration rates, as opposed exceeding natural infiltration rates.

Section: B **Subsection: B.2**

Comment: Will car dealers washing cars be allowed to continue draining to MS4?
How are cities to stop wash water from service stations from discharging to MS4? (Jim)

Response: The discharge of wash water from car dealerships and service stations into the MS4 constitutes an illicit discharge which is prohibited under the existing Order 90-42 and Tentative Order 2001-01. The Copermittees are required to address such activities under Sections F.3.c and F.5 of the Tentative Order.

Section: B **Subsection: B.2**

Comment: Is runoff from commercial parking lots which drain to MS4 prohibited? (Jim)

Response: Runoff from commercial parking lots that drain to MS4s are not prohibited, but pollutants in such non-storm water runoff must be reduced to the MEP.

Section: B **Subsection: B.2.c**

Comment: Contaminated groundwater is not allowed to be infiltrated or pumped into the MS4. Therefore, the only efficient means to dispose or treat contaminant underground water is to discharge it into the sanitary sewer system. (Metro Commission)

Response: Under the requirements of Section B.2 of the Tentative Order, after determining that groundwater in an area is a significant source of pollutants, the Copermittee is required to implement or require the implementation of BMPs that will reduce the pollutants to the MEP and include that information in a report to the SDRWQCB. Diversion to the sanitary sewer is only one option available to the Copermittees among a number of possible alternatives.

Section: B Subsection: B.2.j

Comment: Are manufactured or mitigation habitats or wetlands included in the discharge category: "Flows from riparian habitats and wetlands are prohibited only if the Copermittee identifies them as a significant source of pollution"(see section B. Prohibitions 2 j)?
What operational programs would be required to allow such wetlands or habitat to be considered a non-prohibited discharge? (City of Chula Vista)

Response: Properly designed, operated, and maintained artificial habitats or wetlands constructed for purposes of urban runoff treatment are not included in the discharge category "Flows from riparian habitats and wetlands are prohibited only if the Copermittee identifies them as a significant source of pollution" because, by definition, these are BMPs created by the Copermittees to treat urban runoff containing pollutants.

Section: B Subsection: B.2.n

Comment: In section B.2.n., include non-dechlorinated swimming pool discharges in the list to be complete. (Padre Dam Municipal Water District)

Response: The list of discharges included in Prohibition B.2 is taken directly from the Federal NPDES regulations (40 CFR 122.26(d)(2)(iv)(B)(1)). Dechlorinated swimming pool discharges are included in the list because they are generally not a significant source of pollutants. However, non-dechlorinated swimming pool discharges are not included in the list because they can be a significant source of pollutants, due to the presence of chlorine. For this reason, the list will not be changed.

Section: B Subsection: B.2.p

Comment: Individual residential car washing need not be prohibited under B 2 p because the prohibition against hosing of impervious surfaces in residential area will prohibit individual residential car washing. (City of Chula Vista)

Response: Section D.1.b.5 requires the Copermittees to prohibit the discharge of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial, and residential areas. This prohibition does not require the Copermittees to prohibit these activities, only the discharge of the wash water to the MS4.

Section: B Subsection: B.3

Comment: It is not clear what constitutes a significant source of pollutants. It will be difficult for an agency to categorically determine which category will have a significant source of pollutant. Each category will be source dependent. It will be difficult to know which BMP is to be implemented before a discharge is anticipated. (City of La Mesa)

Response: The Copermittees are required to make the determination of what constitutes a significant source of pollutants with respect to the pollutants concerned, potential impact to receiving waters of the discharge of the pollutants, and the affect of the discharge of such pollutants on their compliance with Tentative Order 2001-01. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) places determination of what constitutes a significant source of pollutants on the Copermittees. Implementation of BMPs is the responsibility of the Copermittees. If necessary, the Copermittees can contact the SDRWQCB for guidance.

Section: B **Subsection: B.3**

Comment: What constitutes a significant source of pollutants? (City of Chula Vista)

Response: The Copermittees are required to make the determination of what constitutes a significant source of pollutants with respect to the pollutants concerned, potential impact to receiving waters of the discharge of the pollutants, and the effect of the discharge of such pollutants on their compliance with Tentative Order 2001-01. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) places determination of what constitutes a significant source of pollutants on the Copermittees.

Section: B **Subsection: B.3**

Comment: Can the tentative order require the Regional Board to approve BMPs submitted by the Copermittees? (Port of San Diego)

Response: It is not the SDRWQCB role to approve/disapprove submittals. However, upon review of BMPs the Copermittee will be notified if the submittal is not sufficient.

Section: B **Subsection: B.3**

Comment: Request the SDRWQCB include the definition of "significant source of pollutants" in measurable terms. (City of Imperial Beach)

Response: The Copermittees are required to make the determination of what constitutes a significant source of pollutants with respect to the pollutants concerned, potential impact to receiving waters of the discharge of the pollutants, and the affect of the discharge of such pollutants on their compliance with Tentative Order 2001-01. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) places determination of what constitutes a significant source of pollutants on the Copermittees.

Section: B **Subsection: B.3**

Comment: Prohibition No. B.3. appears to be unnecessary, as it merely repeats what already is required pursuant to Section C of the Tentative Order. In addition, the 180 day deadline is impractical, as

the identification of non-storm water discharges and implementation of BMPs for the identified non-storm water discharges is a continuous process. (City of San Diego)

Response: Prohibition B.3 does not repeat the requirements of section C. Prohibition B.3 refers to "de minimis" non-storm water discharges only which have been found to be significant sources of pollutants. Section C of the Tentative Order refers to any discharge which causes or contributes to an exceedance of receiving water quality objectives.

In order to be consistent with extensions of the implementation deadline for the Jurisdictional Urban Runoff Management Programs, a similar extension has been provided here. See change at permit section B.3.c.

Section: B Subsection: B.3.c

Comment: Why are the Copermittees required to identify BMPs for non-storm water discharges that are not a significant source of pollutants or are not categorically prohibited? (Anonymous Workshop 2)

Response: If a non-prohibited non-storm water discharge listed in Section B.2 of the Tentative Order is determined by the Copermittee to not be a significant source of pollutants, no prohibition or BMPs are required under Tentative Order 2001-01.

Section: B Subsection: B.3.c.1

Comment: Page 9 of 50 B.3.c. (1) – How are the Copermittees to know which categories of non-storm water discharge will have a discharge and whether or not the discharge will be prohibited or not? (City of Chula Vista)

Response: The categories of discharges of non-storm water discharges listed in B.2 need only be prohibited from entering an MS4 if such categories of discharges are identified by the Copermittee as a significant source of pollutants. It is the Copermittees' responsibility to identify these discharges and determine whether they constitute a significant source of pollutants. For non-storm water discharges that are determined by the Copermittee to be a significant source of pollutants, it is the Copermittees responsibility to select and implement a BMP or other course of action to prevent the discharge of the non-storm water discharge in question. This has been a requirement under Order No. 90-42 (Section VIII. B) since July 1990.

Section: B Subsection: B.3.c.2

Comment: Page 9 of 50 B.3.c. (2) – How are the Copermittees to know which BMP is to be implemented before a discharge is anticipated (City of Chula Vista)

Response: The categories of discharges of non-storm water discharges cited in the comment (air conditioning condensation, lawn watering, [dechlorinated] swimming pool discharges, etc....) need only be prohibited from entering an MS4 if such categories of discharges are identified by the Copermittee as a

significant source of pollutants. It is the Copermittees' responsibility to identify these discharges and determine whether they constitute a significant source of pollutants. For non-storm water discharges that are determined by the Copermittee to be a significant source of pollutants, it is the Copermittees responsibility to select and implement a BMP or other course of action to prevent the discharge of the non-storm water discharge in question. This has been a requirement under Order No. 90-42 (Section VIII. B) since July 1990.

Section: B Subsection: B.4

Comment: The definition of fire-fighting flows included in the permit should be "flows necessitated by an emergency from the time of unit response until the unit is back in full service and ready for the next call." (Fire Districts Association of California)

Response: The SDRWQCB agrees that all fire service activities are important to the protection of life and property. It is possible that extensive BMP implementation could potentially impair fire service readiness in some cases. For these reasons, section B.4 of the Tentative Order will be changed. In order to allow for the discharge of non-emergency fire fighting flows to be addressed in a manner which is feasible for the fire service, section B.4 will require the Copermittees to develop and implement a program to reduce pollutants in non-fire fighting flows identified by the Copermittees to be significant sources of pollutants. This will provide the Copermittees and the fire service with the means to develop a program which will not adversely affect fire service activities. The Copermittees can work with the fire service to define fire fighting flows and non-fire fighting flows.

Section: B Subsection: B.4

Comment: Add: B.5. Vector Control: The application of pesticides and herbicides for public health protection by the local vector control agency are not prohibited. (State Department of Health Services)

Response: No provision of the Tentative Order prohibits vector control agencies from applying pesticides and herbicides for vector control purposes. However, in some cases, compliance with BMPs developed by the Copermittees may restrict or prevent such applications in order to mitigate collateral pollution associated with such applications. As discussed in Finding 36 of the revised Tentative Order, local vector control agencies are encouraged to work closely with the Copermittees in whose jurisdictions applications of pesticides or herbicides may be necessary for vector control. Sufficient provisions exist in the Jurisdictional Urban Runoff Management Program to allow collaborative development of vector control measures and BMPs that achieve meaningful vector control and compliance with Tentative Order.

Section: B Subsection: B.4

Comment: The Board should not exempt non-emergency fire fighting activities from runoff mitigation requirements and prohibitions. Non-emergency activities are not subject to the time pressures which exempt emergency flows. (Environmental Health Coalition)

Response: Comment noted.

Section: B **Subsection: B.4**

Comment: On page 9, paragraph B.4, the text exempts emergency fire fighting flows saying they do not require BMPs and need not be prohibited. We urge that this exemption be changed to say that BMPs shall be employed, except in cases where their implementation would impact effectiveness, safety, and property. (San Diego Audubon Society)

Response: Non-practice fire fighting situations are emergencies. Loss of life and property are real concerns. There are also safety concerns regarding fire fighters. Implementation of BMPs in these situations might inadvertently compromise safety or effectiveness. For these reasons, BMP implementation during emergency fire fighting activities are not required.

Section: B **Subsection: B.5**

Comment: On page 10 of 50 under B.5. The last sentence mentions discharges containing pollutants which cannot be reduced to MEP through BMPs shall be prohibited. What standard do you apply to determine MEP? Are there numeric standards? (City of Oceanside)

Response: MEP is defined in Attachment D of the Tentative Order.

Section: B **Subsection: B.5**

Comment: Prohibition B.5 also states that "[n]on-prohibited discharges listed in B.2 above which contain pollutants which cannot be reduced to the maximum extent practicable by the implementation of BMPs shall be prohibited on a categorical or case by case basis." This sentence in non-sensical. If a Copermittee applies all feasible BMPs to reduce pollutants from a certain category of discharge, it is our understanding that the MEP standard has been met, in which case the discharge would be allowed. If the MEP standards demand something over and above all feasible BMPs — which would be absurd — please identify what additional measures would be required to meet the standard. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The intent of Prohibition B.5 is to require the prohibition of the discharges listed in Prohibition B.2, if those discharges contain pollutants which cannot be reduced to insignificant levels. This requirement is found at 40 CFR 122.26(d)(2)(iv)(B)(1). The language of this requirement has been changed to clarify this intent. See change at permit section B.5.

Section: C **Subsection:**

Comment: The Permit should include measurable benchmarks in storm water permits so that success or failure can be evaluated during the permit period and ensure that corrections can be made. (San Diego Baykeeper)

Response: The Tentative Order contains measurable benchmarks in the requirements for the Copermittees to develop and implement a Jurisdictional and Watershed Urban Runoff Management Program. Some examples include successful implementation of program elements and the results of the Dry Weather Monitoring and Receiving Water Monitoring Programs. The JURMP and WURMP both require an annual assessment of the program effectiveness with respect to both program implementation and water quality monitoring results.

Section: C Subsection: C.1

Comment: Reporting of discharges causing or contributing to cause an exceedance is an important element to the successful implementation of this permit. It is critical that Copermittees are confident that good faith effort implementation and subsequent reporting of errant discharges are not viewed in a punitive nature. Section C of the Tentative Order does not address whether compliance with the prescribed procedure "immunizes" the Copermittee from future enforcement actions (NOVs, CAOs, CDOs, ACLs) should the exceedances continue after the revised URMP is implemented. The Tentative Order suggests that this may in fact be the case, since section C.3 indicates that the Regional Board will continue to have enforcement powers only "while the Copermittee prepares and implements the above report." This is a critical issue that must be clarified in the Order. (Procopio, Cory, Hargreaves, & Savitch, L.L.P., SANDAG)

Response: As noted in Section C.3, at no time is a discharger whose discharge causes or contributes to an exceedance of receiving water quality objectives or that constitutes a threat to human or environmental health "immunized" from future enforcement actions by virtue of complying with standard NPDES Permitting BMP implementation and reporting requirements. Nonetheless, cooperative, responsible actions on the part of the discharger in attempt to comply with the Order are recognized as critical to resolving violations and protecting the beneficial uses of receiving waters.

Section: C Subsection: C.2

Comment: The Copermittees should be required in the Tentative Order to ensure that all proposed project-level storm water management programs, BMPs, or Storm Water Pollution Prevention Plans are available for review and comment by the public as part of the reconfigured environmental review process before they are approved for implementation. Furthermore, all comments need to be considered by the SDRWQCB prior to its approval of the report of exceedances of Receiving Water Limitations. (Sempra Energy, Surfrider Foundation)

Response: The public has the right to comment on all discretionary activities considered by the Copermittees. Storm Water Pollution Prevention Plans (SWPPPs) on file with the SDRWQCB are available for public review and comment. Unless requested, dischargers are not required to submit

SWPPPs to the SDRWQCB, but are required to have them on-site, up to date, and ready for review at any time during business hours.

Section: C **Subsection: C.2**

Comment: Add C.2.b.: Upon determination by the facility operator, local vector control agency or SDRWQCB that a BMP is breeding vectors, the facility operator shall promptly notify and thereafter submit a report to the SDRWQCB that describes the vector control measures and/or maintenance that will be done to correct the problem. (State Department of Health Services)

Response: While the SDRWQCB's authority to require submission of technical and monitoring reports is broad enough to require municipalities to monitor and report any alteration in the environment associated with water quality control measures; it would be more appropriate for the Copermittees to develop vector monitoring and management in collaboration with vector control agencies rather than to require municipalities to report any such collateral effects of storm water management to the SDRWQCB. Regional Board staff do not recommend the proposed language be added to Section C.2.b of the Tentative Order.

Section: C **Subsection: C.2**

Comment: Mere implementation of BMPs proposed in an approved Jurisdictional URMP will not preclude liability and possible third-party enforcement actions under the Clean Water Act if receiving water limitations are not strictly met.

Any additional time period granted by the RWQCB for modifications to the URMP will not act as a stay of enforcement action. (Surfrider Foundation)

Response: Comment noted.

Section: D **Subsection:**

Comment: The permit should include language that promotes the use of low tech controls such as vegetated filter traps. (Environmental Health Coalition)

Response: Section D of the Tentative Order refers only to the requirement for each Copermittee to establish, maintain and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. As discussed in Finding 11, the Copermittees have the discretion to the use of low tech controls such as vegetated filter traps in the implementation of the Jurisdictional Urban Runoff Management Programs.

Section: D **Subsection: D.1**

Comment: Parts of Section D.1.b appear to be in conflict with Section B.2 because it does not incorporate the non-storm water discharge categories that can be approved discharges pursuant to Section B (see Section B.2.(a-q). The list of "illicit discharges" should be deleted, as it is overly prescriptive and dictates the manner in which the City is required to comply with the general objectives of the Tentative Order. In order to avoid confusion with other provisions of the Tentative Order, the introductory clause of section D.1.b. be modified, as follows: "Prohibit all identified illicit discharges not otherwise allowed pursuant to section B.2." (City of San Diego, Sempra Energy, SANDAG)

Response: The list of illicit discharges was incorporated in the Tentative Order in part to satisfy repeated requests from the Copermittees and other commentors on previous drafts of the Tentative Order for more specificity and detail in the Tentative Order. The language of the introductory clause of section D.1.b. has been modified as suggested: "Prohibit all identified illicit discharges not otherwise allowed pursuant to section B.2."

Section: D Subsection: D.1

Comment: The enforcement obligations imposed on Copermittees by this section of the Tentative Order create additional problems. First, it is not clear that the Regional Board can delegate its enforcement duties to the Copermittees, since the Clean Water Act and California Water Code designate the State, and no one else, as the entity responsible for enforcing water quality standards. There is no provision for delegating enforcement to the holders of municipal storm water permits. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Section D.1 does not delegate the enforcement duties of the SDRWQCB to the Copermittees. This section requires to Copermittees to develop legal authority to control discharges to its MS4, as required by the Clean Water Act and the Federal NPDES regulations. Section D.1.a requires the Copermittees to control the discharges of pollutants from construction and industrial sites which are discharged to the MS4. This requirement is taken directly from the Federal NPDES regulations at 40 CFR 122.26(d)(2)(i)(A). This requirement does not require the Copermittees to enforce the General Industrial and Construction Permits, but rather requires the Copermittees to enforce their own ordinances and permits at construction and industrial sites, as required by the Federal NPDES regulations at 40 CFR 122.26(d)(2)(iv)(C)(1) and 40 CFR 122.26(d)(2)(iv)(D)(3).

Sections D.1.b - D.1.i include standard requirements for the Copermittees to obtain legal authority, as required under Federal NPdES regulations 40 CFR 122.26(d)(2)(i)(B - F).

Where section D.1.g refers to interagency agreements with other owners of the MS4, such as Caltrans and the Department of Defense, the language in this section has been modified. Rather than require interagency agreements with such agencies, the Tentative Order will encourage such agreements. See change at section D.1.g.

Section: D Subsection: D.1

Comment: Copermittees will enforce their legal authority to control discharges into and from their MS4s. (Surfrider Foundation)

Response: Comment noted.

Section: D Subsection: D.1

Comment: We are unaware of any statute or case decision giving the Regional Board authority to dictate to municipalities the form and content of their ordinances, statutes, permits and/or contracts, to do so violates California Water Code section 13360. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: California Water Code (CWC) section 13360 generally prohibits the Regional Boards from specifying the manner of compliance with state waste discharge requirements. However, CWC section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Since tentative Order No. 2001-01 is written to implement CWA requirements, it does not violate section 13360 for the SDRWQCB to require the municipalities to demonstrate that they have adequate legal authority to implement the tentative order's requirements. The legal authority requirements can be found at 40 CFR (Code of Federal Regulations) 122.26(d)(2)(i). This section states that Copermittees must demonstrate that they have adequate legal authority to: "(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal storm sewer; (C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; (E) Require compliance with conditions in ordinances, permits, contracts or orders; and (F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer."

Section: D Subsection: D.1.a

Comment: The Tentative Order should require an ordinance requiring that the design and construction of all proposed structural BMPS shall be coordinated with the local Mosquito or Vector Control Agency or State Department of Health Service. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: D Subsection: D.1.b.6

Comment: D.1.b.(6). page 1; "Discharges of run off from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials. " should be revised to read "Discharges of stormwater from

storage areas that is contaminated by chemicals, fuels, grease, oil, or other hazardous materials. " (Sempra Energy)

Response: The language prohibiting illicit discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials will be retained in Section D.1.b.6 of the Tentative Order. Storage areas for chemicals, fuels, grease, oil, or hazardous materials can be the site of spills or deposition from the materials stored there. Illicit discharges from these sites are likely to convey pollutants into the MS4. MS4 discharges attributable to illicit discharges and connections from industrial sites or hazardous materials storage sites can be a significant source of pollutant loading to receiving waters. The NURP study concluded that the quality of urban runoff can be adversely impacted by illicit discharges and connections (US EPA, 1983). Furthermore, US EPA states that illicit discharges and connections result in "untreated discharges that contribute high levels of pollutants, including heavy metals, toxics, oil and grease, solvents, nutrients, viruses, and bacteria to receiving waterbodies. Pollutant levels from these illicit discharges have been shown in EPA studies to be high enough to significantly degrade receiving water quality and threaten aquatic wildlife and human health" (2000).

For these reasons, CWA section 402(p)(3)(B)(ii) requires each Copermittee to prohibit non-storm water discharges into its MS4. The detection and elimination of illicit discharges and connections is also clearly identified in the federal regulations as a high priority (40 CFR 122.26(d)(2)(iv)(B) and 122.26(d)(2)(iv)(B)(1)). As guidance for detecting and eliminating illicit discharges and connections, the US EPA suggests "The proposed management program must include a description of inspection procedures, orders, ordinances, and other legal authorities necessary to prevent illicit discharges to the MS4" (1992). Furthermore, the Water Quality Control Plan for the San Diego Basin Waste Discharge Prohibition 8 states "Any discharge to a storm water conveyance system that is not entirely composed of 'storm water' is prohibited unless authorized by the Regional Board."

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.5.d in Order No. 2001-01 under the broad and specific legal authority cited above.

Section: D Subsection: D.1.g

Comment: The order illegally requires the County to enter into agreements with third party dischargers such as Caltrans or the Department of Defense. The RWQCB has no authority to direct Copermittees to enter into "interagency agreements" of any kind with Copermittees or third parties. "Ordering" the County to make contracts cannot compel third parties to be reasonable. Moreover, even if all third parties were motivated and reasonable, entering into these agreements would be a daunting task. In addition to Caltrans and the Department of Defense, other "owners of the MS4" (as MS4 is defined by the Order) could include school districts, flood control authorities, Indian nations, any owner of property through which a stream flows, and any developer or homeowner's association with privately owned utility infrastructure. (County of San Diego, Procopio, Cory, Hargreaves, & Savitch)

Response: The intent of section D.1.g was for the Copermittees to form interagency agreements among themselves, while other interagency agreements were to be encouraged. In order to clarify this intent, the Tentative Order will be modified.

See change at permit section D.1.g.

Section: D **Subsection: D.1.g**

Comment: Section D.l.g. - How will the RWQCB enforce Tentative Order 2001-001 if it conflicts with Caltrans' NPDES permit? (City of Coronado)

Response: We do not anticipate conflicts arising between Tentative Order 2001-001 and Order No. 99-06-DWQ, NPDES No. CAS000003, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the State of California, Department of Transportation (Caltrans). Order No. 99-06-DWQ applies to construction activities and maintenance from all Caltrans highways, properties, activities and facilities throughout the State and applies to Caltrans and/or their contractors. Tentative Order No. 2001-001 applies to discharges into Municipal Separate Storm Sewer Systems. In the event that the requirements of Order No. 99-06-DWQ are in conflict with Tentative Order No. 2001-001 the SDRWQCB will conduct a thorough evaluation of individual conflicts and determine which requirement will prevail.

Section: D **Subsection: D.1.g**

Comment: Since required interagency agreements may not be consummated with agencies not subject to state or federal law (e.g. Native American Tribes and Mexico) language should be included that states that such agreements should be pursued. (Environmental Health Coalition)

Response: Where section D.1.g refers to interagency agreements with other owners of the MS4, such as Caltrans and the Department of Defense, the language in this section has been modified. Rather than require interagency agreements with such agencies, the Tentative Order will encourage such agreements.

See change at section D.1.g.

Section: D **Subsection: D.1.g**

Comment: Page 11 of 50 D.1.g. – What kind of interagency agreements is required among the Copermittees and other owners that share the same Municipal Separate Storm Sewer System (MS4)? (City of Chula Vista)

Response: Tentative Order 2001-01 requires that the Copermittees "control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Copermittees (and other owners of the MS4 such as Caltrans or Department of Defense)." The nature and terms of the agreements are the responsibility of the Copermittees as operators of the MS4s to determine.

The Copermittees of a shared MS4 must demonstrate that together they can control the contribution of pollutants over the whole shared MS4. To this effect, the US EPA states “When two or more municipalities submit a joint application, each coapplicant must demonstrate that it individually possesses adequate legal authority over the entire municipal system it operates and owns. A coapplicant need not fulfill every component of legal authority specified in the regulations, as long as the combined legal

authority of all coapplicants satisfies the regulatory criteria for every segment of the MS4 (including authority over all sources that discharge to the MS4). […] Coapplicants also may use interjurisdictional agreements to show legal authority and to ensure planning, coordination, and the sharing of the resource burden of permit compliance" (1992).

Section: D Subsection: D.1.h

Comment: City must adopt and implement legal authority to enforce the requirements of the Tentative Order. (City of Chula Vista)

Response: The Copermittees' ability to determine compliance and noncompliance with permit conditions is critical to control pollutant discharges to and from MS4s. Determination of compliance and noncompliance allows for significant sources of pollutants to be identified and addressed, thereby minimizing the discharge of pollutants from the MS4 and the resulting receiving water quality degradation. For this reason each Copermittee must have legal authority to carry out the inspections, surveillance, and monitoring necessary to assess compliance. Regarding compliance determination, US EPA states "municipalities should provide documentation of their authority to enter, sample, inspect, review, and copy records, etc., as well as demonstrate their authority to require regular reports" (1992). The SDRWQCB has discretion to require Legal Authority item D.1.g in Order No. 2001-01 under the broad legal authority cited above.

Section: D Subsection: D.1.h

Comment: Section D.1.h, set forth on page 12 of the Tentative Order, requires that Copermittees pass ordinances giving them the power to "enter, sample, inspect, review and copy records, and require regular reports from industrial facilities discharging into its MS4, including construction sites . . ." Such ordinances, if adopted by a Copermittee, would be ripe for constitutional challenge by the regulated community. It is by no means clear that municipalities could impart to themselves the search and seizure powers prescribed in the above-quoted language. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Local governments, like state and federal governments, are precluded from unreasonable searches for and seizure of evidence, and, absent extraordinarily exigent circumstances, must obtain warrants before inspecting private property to enforce local ordinances. Nevertheless, it is common governmental practice to require persons who must obtain governmental authorization for their activities, or whose activities are subject to governmental regulation, to consent to reasonable inspection by the regulatory officials of the government. Thus, persons who discharge waste that could affect the quality of the waters of the state are required as a condition of their waste discharge requirements to allow inspection and sampling by the Regional Board. Similarly, local governments regulate development, construction, and industrial and commercial uses of property within their jurisdiction. Commercial food service establishments are subject to inspection by local health officials as a routine matter and construction sites are visited by building inspectors. Municipalities are required by federal NPDES regulations to have or develop legal authority to implement regulatory programs needed to reduce the discharge of pollutants to MS4, including the authority to inspect sources of pollutants that are discharged to MS4. Given the routine nature of local governmental inspections to enforce local health and building ordinances, it is not unreasonable to expect municipalities to provide authority for such inspections as

may be necessary to reduce pollutants in MS4 by the consent of persons subject to the municipalities' regulatory authority.

Section: D Subsection: D.1.h

Comment: Copermittees should be encouraged to develop effective systems of record keeping to track chronic violators of local discharge prohibitions. All enforcement records must be made available to the public upon request. (Surfrider Foundation)

Response: SDRWQCB encourages the public disclosure of such information. However, in order to provide the greatest amount of flexibility to the Permittees, the Tentative Order will not specifically require any procedure for making such information available to the public. It should be noted that such information is provided to the SDRWQCB in Annual Reports, which are available for public review.

Section: D Subsection: D.1.i

Comment: Add: Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s, without creation of mosquito and disease vectors. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: D Subsection: D.2

Comment: The Regional Board has no legal right to demand a statement certifying that the Copermittee "has adequate legal authority to implement and enforce" each of the requirements of the Order as described in section D.2. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The SDRWQCB is justified in requiring the Copermittees to submit a certified statement of adequate legal authority. California Water Code section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Tentative Order No. 2001-01 is written to implement CWA requirements, therefore the SDRWQCB can require the municipalities to demonstrate that they have adequate legal authority to implement the tentative order's requirements. The legal authority requirements can be found at 40 CFR (Code of Federal Regulations) 122.26(d)(2)(i). This section states that Copermittees must demonstrate that they "can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to: (A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal storm sewer; (C) Control through ordinance, order or similar means the discharge to a

municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; (E) Require compliance with conditions in ordinances, permits, contracts or orders; and (F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer."

Section: D Subsection: D.2

Comment: Legal authority certification, Section D.2, should be made consistent with 40 CFR 122.26(d)(2)(1). (Port of San Diego)

Response: Section D.2 of the revised Tentative Order is consistent with 40 CFR 122.26(d)(2)(1). Section D.2 requires each Copermittees' chief legal counsel certify and submit to the SDRWQCB a statement that the Copermittee has adequate legal authority to implement and enforce each of the requirements of the 40 CFR 122.26 (d)(2)(I)(A-F) and the Tentative Order. This is not a certification of the Jurisdictional Urban Runoff Management Program itself.

Section: E Subsection: E

Comment: Clarify which BMPs are approved by the SDRWQCB and under what field conditions are they to be used? Are the Copermittees expected to develop implementation manuals for "unproven" BMPs that will work in the San Diego region, or will SDRWQCB provide reference to existing approved sources? (City of Chula Vista)

Response: In order to provide the Copermittees with flexibility and discretion, under Tentative Order the Copermittees will specify which BMPs they will implement or require to be implemented to reduce pollutants in urban runoff discharges to the MEP. A list and description of these minimum BMPs and how they shall be implemented shall be described in the appropriate sections of the Jurisdictional Urban Runoff Management Program (JURMP) Documents and Annual Reports, subject to review and comment by the SDRWQCB. The SDRWQCB does not "approve" BMPs, but will review and provide comment on each JURMP Document and Annual Report. The Copermittees are not expected to develop implementation manuals for unproven BMPs unless they decide such an activity is necessary to meet MEP.

Section: E Subsection: E

Comment: why does the order require the Copermittee to ensure that the pollutants in the runoff is reduced to the MEP standard but requires construction and industrial permitted dischargers to meet BAT/BCT standards. Does that mean the municipality have to provide additional treatment to discharges from construction and industrial permitted sites? (City of Oceanside)

Response: Pollutant discharges in storm water to and from MS4s are held to applicable technology based standards. Storm water discharges to the MS4 from industrial and construction activities owned by the Copermittee, which fall under the general statewide industrial and construction storm water permits,

must meet the BAT/BCT performance standard per permit requirements. This BAT/BCT performance standard is required in CWA section 301(b)(2), and is further described in CWA sections 304(b)(2-4).

Pollutant discharges in storm water to and from the MS4 for all other urban land use activities, including industrial and construction activities not covered under the Statewide General Industrial and Construction Permits, must be reduced to the maximum extent practicable. CWA section 402(p)(3)(B)(iii) and Federal NPDES regulation 40 CFR 122.26 (d)(2)(iv) require pollutant discharges in urban runoff discharged from MS4s to be reduced to the maximum extent practicable.

Since discharges which enter the MS4 are generally discharged unimpeded directly into receiving waters, the maximum extent practicable standard is to apply to both discharges into and from MS4s. Federal NPDES regulations clearly provide the SDRWQCB with the legal authority to require municipalities to control discharges from third parties into their MS4. 40 CFR 122.26(d)(2)(iv)(A - D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities to the maximum extent practicable. Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A - D) require municipalities to have legal authority to control various discharges to their MS4. This concept is further supported in the Preamble to the Phase II Final Rule NPDES storm water regulations, which states "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties" (US EPA, 1999). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule findings for small municipalities are also applicable to larger municipalities such as the Copermittees. Finally, underlying the Federal NPDES storm water regulations is the Clean Water Act, which states in section 402(p)(3)(B)(ii) that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers."

The requirement for municipal storm water dischargers to have, and exercise, local governmental authority in order to comply with water quality control obligations is analogous to the requirement for Publicly Owned Treatment Works to have and exercise legal authority to require pretreatment of industrial wastes being discharged to their sewage collections systems (CWA 402(b)(8)).

The SDRWQCB has discretion to require Technology Based Standards item E. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F Subsection:

Comment: Implementation of the Jurisdictional URMP will take longer than the time allowed in the permit. (Procopio, Cory, Hargreaves, & Savitch, County of San Diego, Carlsbad)

Response: The implementation schedule for the Jurisdiction Urban Runoff Management Program, excluding Section F.1, has been extended in the revised Tentative Order from 180 days to 365 days.

Section: F Subsection:

Comment: In Section F, add suggestions for information sharing among Copermittees such as, a jointly managed website, establishment of information-exchange programs and coordinated educational efforts. (Environmental Health Coalition)

Response: The Copermittees are encouraged in the Tentative Order to collaborate in the development and implementation of their Urban Runoff Management Programs. The manner in which the Copermittees share or exchange information is left to their discretion in order to provide flexibility in implementing the requirements of the Tentative Order.

Section: F **Subsection:**

Comment: Jurisdictional URMP (Section F.). Section F, found at page 13 of the Tentative Order, describes generally the Jurisdictional URMP that is required under the Order. Please describe what guidance and assistance the Regional Board will be providing to Copermittees as they attempt to develop their URMPs. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Since the adoption of Order 90-42, the SDRWQCB staff has worked with the Permittees to provide guidance and assistance in the form of correspondence, written comments on proposed management measures, attendance at watershed stakeholder group meetings, and significant meeting time with Copermittees. The SDRWQCB is currently hiring staff to fill vacancies from budget augmentations in several programs, including storm water. Staff assigned to work in storm water will assist in the effective implementation of Order No. 2001-001 as previously under Order 90-42. Increased staff will provide dischargers more resources to assist in achieving compliance with Order No. 2001-001. However, we do not anticipate a significant shift in the balance between compliance assurance (enforcement) and assistance.

Section: F.1 **Subsection:**

Comment: Copermittees should be encouraged to develop and implement impervious surface cover limits (expressed as % of development) for new development and include such standards in their substantive planning documents. (Surfrider Foundation, San Diego Baykeeper)

Response: The Tentative Order requires that Copermittees consider the level of imperviousness within their jurisdictions and watersheds. For example, Finding 5 discusses the impacts to receiving water quality resulting from increases in imperviousness. Sections F.1.a.1, F.1.b.1.b, and F.1.b.2.b.v all require the Copermittees to address increased imperviousness in their planning processes. Through these requirements, the concept of impervious surface cover limits is encouraged. While the SDRWQCB encourages impervious surface cover limits, the Tentative Order has been written to provide the Copermittees with discretion in how they address increases in impervious surfaces.

Section: F.1 **Subsection:**

Comment: Not enough time is allotted for the revision of the General Plan Amendments as required in the Jurisdictional Urban Runoff Management Plan. Allow co-permittees to submit workplans for revision of General Plans. Need more time. (City of San Diego, County of San Diego, Chula Vista)

Response: In order to provide the Copermittees with flexibility in amending their General Plans, they will be allowed to submit a workplan, including time schedule, for their General Plan amendments. The workplan will be due with the Jurisdictional Urban Runoff Management Program document.

See change at permit section F.1.a.

Section: F.1 Subsection:

Comment: It's time that we raise the bar in the way that we deal with storm water. It's not changed in 100
years: gutter, pipe, culvert, channel. We have the intellect and creativity and financial resources to solve the problem. It's important that we accept the challenge, and I would like to add to that, this argument is not dissimilar from that prior to -- by the building industry prior to the implementation of the Americans with Disabilities Act, ADA. The sky was falling. It was going to cost hundreds of thousands of jobs. (Tuchscher Development Enterprises)

Response: Comment noted.

Section: F.1 Subsection:

Comment: Reference economics, our project-specific analysis and projects that we've actually planned have
proven that to implement best management practices, they're actually less expensive by about 30 percent. Concrete is very, very expensive. There is a maintenance cost. Vegetated infiltration basins, biofilter systems do cost money to maintain on a semi-annual basis, or an annual basis. But there are vehicles available to put in place -- financial vehicles that can allow for that maintenance to happen in the form of landscape maintenance districts, community facilities districts, or property owner associations. What we need to do is move from a purely mechanical hardware system of dealing with storm water to a hardware and software system, and that includes some of those maintenance elements. What we found is that when you do that, you end up with a financial wash. (Tuchscher Development Enterprises)

Response: Comment noted.

Section: F.1 Subsection:

Comment: The Order attempts to grant to the Regional Board comprehensive land use planning authority when the authority currently resides exclusively in the municipalities. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The Tentative Order does not attempt to provide the SDRWQCB with land use authority. The Tentative Order does not restrict the location or type of development. This authority resides with the

Copermittees. The Tentative Order merely requires that developments within the Copermittees' jurisdictions consider water quality, and implement measures as necessary to achieve receiving water quality standards.

Section: F.1 Subsection:

Comment: In the area of zoning and building codes, currently in most all jurisdictions in dealing with storm water management, the codes cause the developer to build in a way that -- the city has or jurisdiction has standards, and those usually include gutters, pipe, culvert, and channel, concrete structures. Current codes do not allow developers to do the right thing without taking on additional discretionary political risk. What developers need really is predictability, and developers currently cannot afford to challenge staff or propose change in code or deviation from city or county standards that requires further discretionary political approval. The storm water management permit that you are considering will bring new regulations and cause new codes to change and allow, frankly, the right thing to be done for those of us that wish to do it. (Tuchscher Development Enterprises)

Response: Comment noted.

Section: F.1 Subsection:

Comment: One last area, land area. San Diego as far back as the Nolan Plan in 1908 decided from its general plan standpoint to preserve canyons, valleys, drainage basins and build on hilltops and mesas. What's interesting about that is when you compare it to the European model, all of those towns were built in the valleys, the canyons and not on the hilltops. We did that for a number of reasons, but, importantly, it was an environmental orientation. And our current planning efforts and the way that our planning has evolved still does that. What that means is that suburban projects usually have 30 to 70 percent open space and, frankly, plenty of room to put in place the infiltration basins and the BMPs that are being looked at now. Urban development is a different challenge, but the technology exists. To deal with this matter, in fact, Supervisor Roberts who testified earlier this morning in a previous life was an architect and designed a premiere example of a commercial application of BMPs in Davis, California, one of the few jurisdictions in California that allow those types of things to occur. It was about 20 years ago, but he was a leader in this effort. And the ballpark district downtown uses BMPs and, quite frankly, simply because they can. It's possible and economically viable. (Tuchscher Development Enterprises)

Response: Comment noted.

Section: F.1 Subsection: F.1

Comment: F.1.a.(4) "Limit disturbances of natural water bodies and natural drainage systems caused by development including roads, highways, and bridges."

F.1.a.(5) "Prior to making land use decisions, utilize methods available to estimate increases in pollutant loads and flows resulting from projected future development. Require incorporation of structural and non-structural BMPs to mitigate the projected increases in pollutant loads and flows."

F.1.a.(6) "Avoid development of areas that are particularly susceptible to erosion and sediment loss; or establish development guidance that identifies these areas and protects them from erosion and sediment loss."

F.1.a.(7) "Reduce pollutants associated with vehicles and increasing traffic from development. Coordinate local traffic management efforts with the San Diego County Congestion Management Plan."

F.1.a.(8) "Implement the San Diego Association of Governments (SANDAG's) recommendations as found in the Water Quality Element of its Regional Growth Management Strategy."

13. All of the above is inappropriate content for a GP, especially given that it is another agency's document, and this is no legal or practical basis to include the same in a GP. This requirement would give SANDAG a greater role in land use planning than is provided by state law. (County of San Diego)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1

Comment: F.1. "Land Use Planning for New Development and Redevelopment Program"

1. Inadequacy of legal authorities cited. The Technical Report states ("Broad Legal Authority," p. 87) that the RWQCB possesses the authority to prescribe the conditions of section F.1. under the following broad legal authorities: Clean Water Act ("CWA") sections 402(p)(3)(B)(ii-iii), California Water Code ("CWC") section 13377, and Federal EPA NPDES regulations at 40 CFR § 122.26(d)(2)(i)(B,C,E, and F) and 40 CFR § 122.26(d)(2)(iv). The County disagrees with staff's contention that the sections cited above provide the blanket authority claimed by staff to prescribe the detailed programs in section F.1. A discussion of the County's position on the relevancy of these authorities is provided in section O of the County's comments.

Under Broad Legal Authority (page 87), the Technical Report states that "40 CFR 122.26(d)(2)(iv)(A)(2) generally applies to all directives under Jurisdictional Urban Runoff Management Program item F.1." This section reads as follows: "122.26(d)(2)(iv)(A)(2). [The applicant must include a] description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plans shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed."

The County agrees that 40 CFR § 122.26(d)(2)(iv)(A)(2) generally applies to section F.1., but it disagrees that the regulation provides any authority for the specific details of this section. 40 CFR § 122.26(d)(2)(iv)(A)(2) generally discusses a program to reduce discharges of pollutants from Copermittee MS4s. While it is arguably not possible to effectively reduce such discharges without addressing the facilities that discharge to our MS4, this section in no way establishes even limited authority for the RWQCB to prescribe any conditions of the programs that Copermittees may establish to do so.

Moreover, that the Tentative Order may only regulate discharges "from" MS4s is clear from the language of the CWA itself, "Permits for Discharges from Municipal Storm Sewers." (3 U.S.C. § 1342(p)(3)B).) (County of San Diego)

Response: The SDRWQCB has authority to regulate discharges of waste that could affect the quality of the waters of the state by the issuance and enforcement of waste discharge requirements that will ensure attainment of water quality consistent with the water quality objectives established in the basin plan. While the SDRWQCB should not interfere in land use planning by local governments, it may properly require municipalities to consider the water quality consequences of land use decisions involving development projects and construction, and to exercise local government authority to ensure that the consequences of land use and planning decisions will not cause or contribute to the threat of pollution in waters of the state associated with discharges of pollutants in MS4. Failure to exercise local authority over land use, development, construction, and other sources of pollutants in the MS4 will subject municipalities to liability for failure to reduce pollutants in the MS4 to MEP.

Section: F.1 Subsection: F.1

Comment: Inadequacy of the Fact Sheet / Technical Report (Technical Report) The Technical Report (pp. 86-103) fails to provide adequate justification for, and analysis and explanation of, most of the significant new programs and activities proposed in section F.1. Examples of significant issues not addressed include but are not limited to:

Requirements applicable to all development projects. Section F.1. imposes significant new requirements on all development projects, and arguably sets the same high standard of compliance for single family homes that it does for each of the "high priority" SUSMP categories. No explanation or evidence of any kind is provided for application of the exact same one-size-fits-all standard. (County of San Diego)

Response: Section F.1 of the Tentative Order has been modified. Requirements applicable to all development projects have been modified to ensure applicability. See change at permit section F.1.

Section: F.1 Subsection: F.1.a

Comment: The General Plan should be used for general planning and not for site specific planning. It is not appropriate to assume pollutant source controls and treatment are needed for each specific project. They may be needed on an individual site to meet water quality requirements, but that decision should be made at the detailed plan review stage, not as a general plan requirement. (Building Industry Association of Southern CA)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1.a

Comment: At F.1.a, the Tentative Order requires that Copermittees revise their respective General Plans so that land use decisions will be made in a manner consistent with water quality objectives. Again, however, the Regional Board has no authority to direct municipalities on matters of land use planning; and it certainly cannot dictate how and when and in what way a municipality revises its General Plan. Further, the Government Code, not the Water Code, regulates General Plan amendments and may preclude the very kinds of revisions demanded by the Tentative Order. (For example, the Government Code requires that the land use and circulation elements of a General Plan be coordinated, which often means that new roads must be constructed to serve new development. This will almost guarantee an increase in impervious surfaces, which the Order tries to prohibit.) (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The SDRWQCB has the legal authority to require the Copermittees' General Plans to include considerations of the water quality impacts caused by urban runoff. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(2) provides that Copermittees develop and implement a proposed management program which is to include "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed."

USEPA states that the Copermittee "must thoroughly describe how the municipality's comprehensive plan is compatible with the storm water regulations" (USEPA, 1992). To achieve this, the Copermittee shall incorporate water quality and watershed protection principles and policies into its General Plan (or equivalent plan). USEPA supports addressing urban runoff problems in General Plans (or equivalent plans) when it states "Runoff problems can be addressed efficiently with sound planning procedures. Master Plans, Comprehensive Plans, and zoning ordinances can promote improved water quality by guiding the growth of a community away from sensitive areas and by restricting certain types of growth (industrial, for example) to areas that can support it without compromising water quality" (USEPA, 2000).

While the SDRWQCB has the legal authority to require the Copermittees' General Plans to include considerations of the water quality impacts caused by urban runoff, the Tentative Order has been modified to provide the Copermittees with more discretion regarding the General Plans' contents. The Tentative Order has been revised to include examples of the types of principles and policies which should be in a General Plan, instead of specific requirements. In addition, the Copermittees will be allowed to develop their own work plan and time schedule for any changes to their General Plans they find necessary. See change at permit section F.1.a.

Section: F.1 Subsection: F.1.a

Comment: Page 13, Section F.1.a Revise General Plan -Please clarify language to ensure that in addition to General Plan Revisions, the co-permittees, where applicable, should be required to amend the Local Coastal Programs to include nonpoint source management measures for controlling and reducing stormwater and non-stormwater runoff. (Surfers Tired of Pollution)

Response: While the SDRWQCB agrees that it may be beneficial to include urban runoff considerations in Local Coastal Programs, this issue is at the discretion of the Copermittees.

Section: F.1 **Subsection: F.1.a**

Comment: Page 14, after F. 1. a. (5), add:
(6) Ensure that all structural BMPS are designed in a manner that will prevent breeding of mosquitoes. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.1 **Subsection: F.1.a**

Comment: Copermittees should be encouraged to make water quality protection a priority as compared to other non-environmental and non-public health related goals noted in planning documents. (Surfrider Foundation)

Response: The Tentative Order encourages the consideration of water quality in planing documents. The Tentative Order requires water quality and watershed protection principles and policies be included in the Copermittees' General Plans. The Copermittees are also required to modify development project approval processes to account for water quality.

Section: F.1 **Subsection: F.1.a**

Comment: It is contrary to state law, and the SDRWQCB lacks the legal authority, for the Tentative Order to specify what the Copermittees must include in their General Plan. Except where expressly provided by statute, the preparation of a General Plan ("GP") is a local matter. (Gov. Code sections 65300.7, 65300.9). The SDRWQCB may not dictate GP provisions, principles, or policies. State law provides that the inclusion of provisions in a GP concerning "prevention and control of the pollution of streams and other waters" is optional. The RWQCB cannot contradict the Government Code by making such provisions mandatory. At most, the Tentative Order should provide examples of certain objectives or categories of measures, but allow the Copermittees the necessary flexibility to determine what shall be included in their General Plans for purposes of complying with Tentative Order. Because the General Plan provision specifies in detail the manner in which the Copermittees must comply with the general objectives of the Tentative Order, it is inconsistent with Cal. Water Code § 13360(a). (County of San Diego, City of San Diego, La Mesa)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1.a.1

Comment: How is the term "minimized" evaluated and enforced? (City of Carlsbad)

Response: The Regional Board may review at any time the proactive actions taken by the Copermittee to decrease to the least possible amount (e.g. minimize) impacts from storm water runoff to any given receiving water by new development and redevelopment. The Regional Board may at any time review revisions to the Copermittee's General Plan, Project approval process, and Environmental Review Process including their CEQA checklist to determine if the conditions require project proponents to decrease to the least possible amount impervious land coverage, slow runoff, and where feasible maximize opportunities for infiltration of rainwater into soil. The Regional Board may review at any time a Copermittee's Standard Urban Storm Water Mitigation Plan (SUSMP) to determine if it includes source control BMPs and pollution prevention measures to reduce to the lease possible amount pollutants of concern from reaching receiving water bodies and directly connected impervious areas. The Regional Board may review at any time the construction component of its Jurisdictional Urban Runoff Management Plan to determine if the approval process for local grading and construction permits include conditions which require project proponents to reduce to the least possible amount: 1) areas that are cleared and graded to only the portion of a site that is necessary for construction, and 2) the exposure time of disturbed soil areas. The Regional Board may review at any time the Copermittee's educational program for its 1) Planning and Development Review Staffs and Inspectors, and 2) Construction, Building, and Grading Staffs and Inspectors to determine if they understand how impacts to receiving water quality resulting from development and construction (respectively) can be reduced to the least possible amount through implementation of various source control and structural BMPs.

The Regional Board will enforce these requirements through its review of the required plans mentioned above and inspection of sites with violations of the requirement to reduce to the least possible amount (e.g. minimize) impacts to receiving waters from storm water runoff.

Section: F.1 Subsection: F.1.a.2

Comment: The use of detention basins and infiltration should be encouraged only if cost effective and feasible. (City of Poway)

Response: Tentative Order section F.1.a.2 refers to BMP implementation at new development sites during the planning phase. Implementation of BMPs for new development during the planning phase is the most cost effective approach. USEPA states: "Many studies indicate that prior planning and design for the minimization of pollutants in post-construction storm water discharges is the most cost-effective approach to storm water quality management" (USEPA, 2000). In addition, the SDRWQCB has calculated that implementation of structural treatment BMPs which meet numeric sizing criteria constitutes less than 1% of total project costs. The SWRCB has found that such costs are reasonable (SWRCB, 2000a). Therefore, the requirement for BMP implementation in F.1.a.2 is appropriate.

Section: F.1 Subsection: F.1.a.2

Comment: F.1.a.(2) The requirements of this section are unsubstantiated. This should be deleted entirely or moved to the Technical Report as suggested guidance, as it is not supported by the findings, and as there is no evidence in the record to support its inclusion. (County of San Diego)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1.a.3

Comment: F.1.a.(3) "Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones. Encourage land acquisition of such areas."

12. The County supports the inclusion of this section only as suggested guidance. The RWQCB is a water quality regulatory agency and has only the authority specifically provided in state law. The RWQCB may not dictate habitat-related GP requirements to the County or dictate that land acquisitions be a preferred strategy for pursuing any goal. However, the County has a longstanding commitment to land acquisition, to protect habitat, and will continue those policies. (County of San Diego)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1.a.3

Comment: Encourage land acquisition by who and how is this determined? (City of Carlsbad)

Response: Encouragement of land acquisition can be a significant means for protecting water quality. For example, acquisition of land adjacent to a receiving water can be a preventive measure which ensures that future pollutants sources will not be created on the land. This tactic is frequently used by water agencies to protect the water quality of drinking water reservoirs. Environmental and other interest groups also frequently use this method to preserve receiving waters. Municipalities may also be interested in protecting their riparian corridors and wetlands.

Section: F.1 Subsection: F.1.a.4

Comment: F.1. (a) (4) The statement to limit disturbance of natural water bodies could be used by third parties
as an arbitrary justification to prevent project development. Other environmental processes already address the issue of wetland impacts and mitigation. (SANDAG)

Response: Limiting disturbance of natural water bodies does not constitute prevention of project development.

Section: F.1 Subsection: F.1.a.5

Comment: Section F.1.a (5): What level of mitigation is required? (City of Chula Vista)

Response: The Copermittees have the responsibility of determining anticipated pollutant loading and planning BMP implementation that will minimize pollutant discharge in urban runoff to the MEP.

Section: F.1 Subsection: F.1.a.6

Comment: 15. F.1. (a) (6) The San Diego region has a significant presence of soil that is erosive. The purpose of this permit is to allow development in the region by utilizing Best Available Technology to eliminate adverse impacts to the waters of the U.S. This element could be used by third parties as justification to prevent project development. (SANDAG)

Response: Section F.1.a.6 comes directly from SANDAG's Water Quality Element - Regional Growth Management Strategy. It in no way requires the prevention of project development; instead, it says that development of such highly erodable areas should be avoided and/or that guidance should be developed to prevent erosion of such areas.

Section: F.1 Subsection: F.1.a.7

Comment: Section F.1.a.7 "Reduce pollutants associated with vehicles" is a requirement best handled by a system similar to the smog test where a vehicle would be tested for leaks on an biannual basis. It is unfair to hold cities responsible for pollutant sources that they cannot control. Street sweeping is the BMP of choice for maintaining streets but it is ineffective for oils. This problem should be handled at the state level through inspections instead of requiring cities to install expensive filters throughout their system. (City of Oceanside)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff. The revised Section F.1.a.7 contains examples which the Copermittees may implement at their discretion.

Specifically, the Copermittees shall under Section F.1.a.7 may include in their General Plan, measures that "Reduce pollutants associated with vehicles and increasing traffic resulting from development." Vehicles are the source of numerous pollutants apart from smog or apparent leaks. With respect to Finding 16 and Section F.1.a.7, requiring the design and construction of parking and traffic facilities in such a way as to reduce the discharge in urban runoff of pollutants deposited from vehicles is a reasonable and necessary requirement of Copermitteesunder their land-use permitting authority. While this problem can and is to some degree addressed at the state level through inspections and vehicle registration requirements, the Copermittees have the discretion to also address this source of pollutants in their Jurisdictional Urban Runoff Management Programs.

Section: F.1 Subsection: F.1.a.7

Comment: Reduce pollutants associated with vehicles … This clause is overly broad, vague, open to interpretation, and generally beyond the authority of the RWQCB. It should be removed. (Industrial Environmental Association)

Response: SDRWQCB believes that the sentence clearly states the objective. The objective is to protect water quality from the pollutant deposition caused by the combustion of fossil fuels. Where water quality is affected, the issue is most certainly within the authority of the SDRWQCB.

Section: F.1 Subsection: F.1.a.8

Comment: Implement the SANDAG recommendations as found in the Water Quality Element of its Regional Growth Management Strategy. This Strategy was not part of the original permit, nor was a copy incorporated in the permit. Comments cannot be made as to how it relates to the permit. This section should be deleted until such time as the plan can be provided and appropriate comment period set. (Industrial Environmental Association)

Response: SANDAG's Water Quality Element of its Regional Growth Management Strategy has been and is available from SANDAG and the SDRWQCB.

Section: F.1 Subsection: F.1.a.9

Comment: F.I.(a)(9) This element has been stated before within this document in various locations, A.4.
Prohibitions-Discharges, for example. There is no need to repeat the same text. (SANDAG)

Response: Certain requirements are repeated in the Tentative Order to ensure that impacts from urban runoff are considered during various stages of the municipalities' planning processes.

Section: F.1 Subsection: F.1.a.9

Comment: F. 1.a.(9) page 14 "For new development and significant redevelopment only: ... This section needs to be revised to clarify that it applies solely to specific Priority Development Project Categories. (Sempra Energy)

Response: The Tentative Order has been changed to allow the Copermittees discretion in determining the contents of their General Plans with regards to urban runoff.

Section: F.1 Subsection: F.1.a.9

Comment: Drainage law in California has developed from a number of court cases. The results generally have been an "upstream" property owner has a right to reasonably develop his property and the

"downstream" owner has an obligation to receive the increased runoff. Section F.1.a.9 appears to change what case law has developed. Is this the intent and can this be done? (Bras, Charles)

Response: The language in section F.1.a.9 of the Tentative Order regarding peak flow rates and velocities has been removed. Control of peak flow rates and velocities shall instead apply only to SUSMP priority development projects. The requirements regarding the control of peak flow rates and velocities do not infringe on a property owners' rights to develop. Nor do they infringe on property owners' alleged right to discharge greater volumes of water from a development than were discharged prior to development. Rather they ensure that a property owner's development does not result in increases in peak flow rates which may cause or contribute to an excursion above receiving water quality standards (such as impairment of beneficial uses). Control of peak flow rate increases resulting from development is necessary; as USEPA states "In may cases the impacts on receiving waters due to changes in hydrology can be more significant than those attributable to the contaminants found in storm water runoff" (USEPA, 1999a). Furthermore, the SWRCB has found in Order WQ 2000-11 that control of peak flow rate increases resulting from SUSMP priority development projects is appropriate.

Section: F.1 Subsection: F.1.b

Comment: A process to prioritize development projects and subsequent control strategies has not been followed by the RWQCB and is not provided to the Copermittees. Section F.1.b. requires that all development projects be required to implement all of the minimum BMPs listed in section F.1.b.(1). While the County agrees that all categories of projects should initially be evaluated in determining program priorities and requirements, we also believe that to effectively manage our water quality programs, by law, we must be allowed the flexibility to determine which types of projects we will address and how we will do so.

Section F.1. still restricts the ability of Copermittees to prioritize their control strategies in two important ways. First, it sets essentially the same standards for all sites in section F.1.b.(1) that it requires for “high priority” SUSMP sites in section F.1.b.(2) by mandating (1) pollution prevention, and (2) source control BMPs, and (3) run-off rate control and detention/treatment BMPs and by establishing identical performance standards in all instances. Second, the definitions of SUSMP categories are so broad and inclusive that most sites would be included anyway. The only significant difference appears to be in the size of the paper trail that will be generated. (County of San Diego, Sempra)

Response: The requirements of F.1.b.1 have undergone changes which make them applicable to all development projects. The requirements for pollution prevention BMPs have been removed. The requirements for peak flow rate control and discharges to 303(d) water bodies have also been removed. In addition, the requirement for buffer zones has been adapted to allow for other buffer methods, such as trees, noise reductions, etc. By making these changes, the requirements of section F.1.b.1 are basic requirements which should be met by all development projects.

See changes at permit section F.1.b.1.

Section: F.1 Subsection: F.1.b

Comment: The SDRWQCB has inadequate legal authority in CFR section 122.26(d)(2)(iv)(A)(2) to require the site-specific and universal application of the requirements of section F.1.b. on all development sites. (County of San Diego)

Response: Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(2) provides that Copermittees develop and implement a proposed management program which is to include "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed."

USEPA places high priority on the inclusion of development permit requirements in planning process, stating "Proposed storm water management programs should include planning procedures for both during and after construction to implement control measures to ensure that pollution is reduced to the maximum extent practicable in areas of new development and redevelopment. Design criteria and performance standards may be used to assist in meeting this objective" (USEPA, 1992). The US EPA further finds that "The municipality should consider storm water controls and structural controls in planning, zoning, and site or subdivision plan approval" (USEPA, 1992). In addition, US EPA states each Copermittee should "have an ordinance or other regulatory mechanism requiring the implementation of post-construction runoff controls […]" (USEPA, 2000). Furthermore, in its Phase II Final Rule, US EPA requires small municipalities to "Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects […]" (USEPA, 1999b). In light of USEPA's focus on planning requirements, the Tentative Order contains requirements for project approval.

This increased detail is also necessary due to the continued degradation of the region's receiving waters caused by urban runoff. The "1998-1999 City of San Diego and Co-Permittee NPDES Stormwater Monitoring Program Report" indicates that the typical urban runoff coming from residential, commercial, industrial, and roadway land uses frequently contains such pollutants as Total Phosphorus, Nitrate + Nitrite Nitrogen, Total Suspended Solids, Lead, Copper, and Zinc at concentrations which exceed USEPA benchmark values for storm water (City of San Diego, 1999). Construction sites are also a significant concern due to the impairment caused by sediment of such valuable water resources within the region as Agua Hedionda Lagoon, Buena Vista Lagoon, San Elijo Lagoon, and Los Penasquitos Lagoon. Increased detail in the planning process is further supported by USEPA's "Interim Permitting Approach" which supports expansion of permit requirements where necessary to attain water quality standards (USEPA, 1996).

It should be noted that the project requirements in section F.1.b.1 have been modified to make them applicable to all projects. They have been broadened or flexibility has been added to provide discretion to the Copermittees.

See change at permit section F.1.b.1.

Section: F.1 Subsection: F.1.b.1.d

Comment: The SDRWQCB does not have the legal authority to require the Copermittees to verify evidence of coverage under the statewide General Construction Permit. (County of San Diego)

Response: Under federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C), the Copermittees must address urban runoff from industry. One effective means to do this is to ensure coverage under the General Industrial Permit. USEPA supports the Copermittees using the General Industrial Permit requirements as a tool to help enforce their own ordinances and responsibilities when it states "Municipalities are urged to evaluate pollution prevention plans and discharge monitoring data collected by the industrial facility [as required under the General Industrial Permit] to ensure that the facility is in compliance with its NPDES storm water permit. Site inspections should include (1) an evaluation of the pollution prevention plan and any other pertinent documents, and (2) an onsite visual inspection of the facility to evaluate the potential for discharges of contaminated storm water from the site and to assess the effectiveness of the pollution prevention plan" (USEPA,1992). The Tentative Order requires verification of coverage under the General Industrial Permit because it is a useful tool to help ensure industrial sites are aware of their obligations to implement BMPs. It should be noted that the SDRWQCB is not requiring the municipality to enforce the General Industrial Permit, but rather to take advantage of the resources it provides.

The SDRWQCB has legal authority to include this requirement in the Tentative Order under Clean Water Act section 402(p)(3)(B)(iii) and California Water Code section 13377.

Section: F.1 Subsection: F.1.b.2

Comment: The SUSMP section of the Tentative Order should conform with SWRCB Order WQ 2000-11. (IEA)

Response: The SUSMP section of the Tentative Order does conform with SWRCB Order WQ 2000-11. The Tentative Order includes the same priority development project categories as outlined in SWRCB Order WQ 2000-11, with the following modifications/additions:

1. The parking lot size criteria was changed from 25 or more parking spaces to 15 or more parking spaces. This change was based on a comment from the Port of San Diego during the April 13, 2000 SDRWQCB SUSMP Public Workshop. The comment noted that the other parking lot size criteria of 5,000 square feet actually corresponded more closely with the size of 15 parking spaces, rather than 25 parking spaces. In order to make the two parking lot size criteria as similar as possible, the criteria for 25 parking spaces was reduced to 15 parking spaces.

2. The single-family hillside residence category was changed to "All hillside development greater than 5,000 square feet." This change was made to reflect the urban runoff concerns generated by hillside development. The primary concern regarding hillside development is the potential for on-site and downstream erosion resulting from changes in the flow regime caused by the development. While pollutants from hillside development (including single-family residences) can be significant, increases or changes in flow conditions provide the greatest potential for impacts to beneficial uses. Therefore, the type of development on a hillside is not at issue as much as the size of the development and the resulting changes in the on-site and downstream flow regime. For this reason, rather than focus on the type of hillside development, the SDRWQCB SUSMP requirements focus on size. The size (5,000 square feet)

was chosen based on SWRCB guidance in Order WQ 2000-11, which uses a size threshold of 5,000 square feet for significant redevelopment.

3. Retail gasoline outlets were added as a SUSMP priority development project category. Regarding retail gasoline outlets as a priority category, the SWRCB states in the December 26, 2000 memo that Order WQ 2000-11 "allows broader discretion by the Regional Water Boards to decide whether to include additional types of development in future SUSMPs. These areas for potential future inclusion in the SUSMPs include retail gasoline outlets […]." The Draft Fact Sheet/Technical Report for Tentative Order No. 2000-01 discusses the rationale for retail gasoline outlets to be designated a priority development project category.

4. Streets, roads, highways, and freeways were added as a SUSMP priority development project category. This is due to their potential to be a significant contributor of pollutants in urban runoff. A Federal Highway Administration "Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report" (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff. Streets, roads, highways, and freeways also consist of extensive impervious surfaces, which alter flow regimes and increase potential for downstream erosion.

5. Projects within, directly adjacent to, or discharging directly to Environmentally Sensitive Areas (ESAs) were added as a SUSMP priority development project category. While the SWRCB withdrew Environmentally Sensitive Areas as a priority development project category from the LARWCB SUSMP, Order WQ 2000-11 provides discretion to Regional Boards in adding Environmentally Sensitive Areas in future permits. The primary reason the SWRCB withdrew ESAs as a LARWQCB SUSMP category was because the ESAs were in conflict with other language within the LARWQCB permit. This is not the case for the SDRWQCB Tentative Order. Furthermore, the SWRCB stated that a size threshold should be placed on the ESA category. The SDRWQCB has provided such a threshold in the Tentative Order, and has held three public workshops and participated in SUSMP stakeholder group meetings where no other size threshold has been formally suggested.

The Tentative Order also applies to both discretionary and non-discretionary projects. While the SWRCB did not include non-discretionary projects in the LARWQCB SUSMP in Order WQ 2000-11, the SWRCB upheld the discretion of Regional Boards to include non-discretionary projects in future permit SUSMPs. The SWRCB indicates the inclusion of non-discretionary projects in SUSMPs should be strongly considered when it states in Order WQ 2000-11 that "the limitation of the SUSMPs to discretionary projects may not be sufficiently broad for an effective storm water control program […]."

The Tentative Order further conforms with Order WQ 2000-11 by requiring pollution prevention, source control, and structural treatment BMPs. The functions these BMPs are required to perform in the Tentative Order mirror those required by the LARWQCB SUSMP (and upheld by the SWRCB). The SDRWQCB added the following functional requirements for implemented BMPs:

1. Minimize directly connected impervious areas. This requirement was added due to the strong correlation between imperviousness and receiving water impacts (as discussed in Finding 5). By minimizing the connections between impervious surfaces, the potential impacts resulting from imperviousness are reduced.

2. BMPS shall be designed to maximize their pollutant removal capabilities. This requirement was added to ensure that BMPs are designed correctly.

3. BMPs shall be implemented as close to pollutant sources as possible and prior to runoff discharges into the MS4 or other receiving waters.

4. BMPs shall ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the maximum extent practicable. This is a basic requirement of the Tentative Order (see Prohibitions A.2 and A.3, and their corresponding discussions in the Fact Sheet/Technical Report) and is included here to reiterate the importance new development site design in protecting receiving waters.

5. BMPs shall ensure that post-development runoff into a Clean Water Act section 303(d) water body containing any pollutant (for which the water body is already impaired) does not contain those same pollutants in levels exceeding pre-development levels.

The Tentative Order also conforms with SWRCB Order 2000-11 regarding numeric sizing criteria for structural treatment BMPs. The methods proposed for calculating the size of volume-based structural treatment BMPs are the same as those upheld by the SWRCB. The Tentative Order also includes additional numeric sizing criteria for flow-based BMPs. These criteria for flow-based BMPs provide clarity to the Tentative Order, in that they account for the fact that volume-based BMPs are limited by the volume of water they can treat, while flow-based BMPs are limited by the flow rate of runoff they can treat. The methods used to calculate the numeric sizing criteria for flow-based BMPs are equivalent to those upheld by the SWRCB in Order WQ 2000-11.

The Tentative Order allows for equivalent numeric sizing criteria to be developed by the Copermittees. This provision was included in the Tentative Order to allow the Copermittees some flexibility in the methods used to calculate the numeric sizing criteria. While SWRCB Order WQ 2000-11 does not address such a provision, limited flexibility of SUSMP requirements does not contradict the Order.

The Tentative Order also includes provisions for the development of procedures to identify pollutants of concern and implement SUSMPs. These provisions were included to provide some consistency in SUSMP requirements throughout the County. Again, while SWRCB Order WQ 2000-11 does not address such a provision, provisions for consistency of SUSMP requirements does not contradict the Order.

The Tentative Order also includes an exemption from meeting the numeric sizing criteria requirement. This exemption conforms with the LARWQCB SUSMP, which was upheld by SWRCB Order WQ 2000-11. The LARWQCB SUSMP states "Restaurants, where the land area for development or redevelopment is less than 5,000 square feet, are excluded from the numerical structural or treatment control BMP design standard requirement only."

The Tentative Order also conforms with SWRCB Order WQ 2000-11 regarding the waiver process for SUSMPs. The SWRCB upheld a SUSMP waiver process in Order WQ 2000-11. The SWRCB also supports the concept of a waiver fund, as required by the Tentative Order, when it states "[t]he concept of a mitigation fund or 'bank' is a positive idea for obtaining regional solutions to storm water runoff." However, Order WQ 2000-11 proceeds to list several issues which must be resolved regarding a waiver fund. These issues are listed in the Tentative Order, and the Copermittees are provided one year to develop a waiver fund which addresses the issues, with an additional minimum of six months to implement the waiver fund.

Finally, the Tentative Order conforms with SWRCB Order WQ 2000-11 regarding infiltration and groundwater protection. Order WQ 2000-11 upheld the LARWQCB SUSMP's provisions regarding

infiltration. The LARWQCB SUSMP cites limitations and guidance for infiltration practices included in "Potential Groundwater Contamination from Intentional and Non-Intentional Stormwater Infiltration," Report No. EPA-600-R-94-051 (USEPA, 1994). It also includes limitations on infiltration based on provisions implemented in the States of Washington and Maryland. The limitations on infiltration included in the Tentative Order SUSMP requirements are from these same three sources.

Section: F.1 **Subsection: F.1.b.2**

Comment: Supports the draft permit and urges its adoption. (San Diego Audubon Society, San Diego State University Pacific Estuarine Lab, Environmental Health Coalition, Port of San Diego, City of Lemon Grove)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2**

Comment: The SUSMP requirements are overly prescriptive, deny the Copermittees the opportunity to develop flexible and cost-effective programs, and are in violation of California Water Code 13360(a). For example, the Copermittees should be allowed to designate SUSMP Priority Categories of Development. (City of San Diego, County of San Diego)

Response: The level of detail in the SUSMP requirements has been upheld by the SWRCB. The SDRWQCB has incorporated SWRCB guidance into the SUSMP requirements wherever possible. In addition, Clean Water Act section 402(p)(3)(B)(iii) gives USEPA and States considerable discretion on establishing provisions for implementation in storm water programs, stating "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of pollutants." Further, interim USEPA policy guidelines on BMPs for storm water programs explains that the permitting authority can require more specific conditions or limitations where water quality standards are not being met and adequate information exists (61 CFR 43761).

Section: F.1 **Subsection: F.1.b.2**

Comment: Non-discretionary projects should not be subject to SUSMPs, since it will lead to SUSMPs being applied to insignificant projects which will not impact water quality. (County of San Diego)

Response: It is necessary for SUSMPs to apply to both discretionary and non-discretionary projects in order to adequately reduce pollutants in urban runoff discharges resulting from new development. Non-discretionary projects constitute a significant portion of new development projects. Their status as "non-discretionary projects" does not ensure that they will not generate pollutants or increase flows in their

post-construction or "use" phase. The SWRCB supports this in Order WQ 2000-11 when it states "the limitation of the SUSMPs to discretionary projects may not be sufficiently broad for an effective storm water control program […]." Furthermore, the inclusion of non-discretionary projects under the SUSMP requirements will not lead to SUSMP requirements being applied to insignificant projects. Only non-discretionary projects which fall under the SUSMP Priority Development Project Categories will be subject to the SUSMP requirements. Urban runoff from projects falling under these categories have been determined to pose significant threats to receiving water quality by the SDRWQCB, SWRCB, and LARWQCB. Regarding non-discretionary projects, the SWRCB has stated in its December 26, 2000 memo from Craig M. Wilson to the Regional Board Executive Officers that its Order WQ 2000-11 "allows broader discretion by the Regional Boards to decide whether to include additional types of development in future SUSMPs. These areas for potential future inclusion in SUSMPs include […] ministerial projects […]."

Section: F.1 **Subsection: F.1.b.2**

Comment: The Tentative Order should not require SUSMPs. (La Mesa)

Response: Pursuant to the Clean Water Act and Federal NPDES regulations, municipal storm water permits must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including controls which address pollutant discharges resulting from new development and significant redevelopment. In a precedential decision (Order WQ 2000-11) the SWRCB found that the SUSMP provisions constitute MEP for addressing pollutant discharges resulting from new development and significant redevelopment.

Section: F.1 **Subsection: F.1.b.2**

Comment: The Copermittees cannot apply SUSMP or other Tentative Order requirements on projects which have already received approval, such as those which have undergone CEQA or have approved tentative maps. Such an added burden is either unenforceable or will expose the City to liability "taking" of the property without just compensation.

Government Code section 65961 may restrict our ability to impose certain conditions on these projects. That section prohibits the County for a five-year period following the recordation of a subdivision map from requiring conditions to the issuance of any building permit for single or multiple family residential units which the County could have lawfully imposed as a condition of the previously approved tentative or parcel map. Section 65961(a) does include exceptions for conditions required in order to protect the public health or safety or to comply with state or federal law, but the Order is not a state law. (City of San Diego, County of San Diego, La Mesa, Imperial Beach, Wesch, Hammann, Anonymous, Chula Vista, Carlsbad, El Cajon, McKenna & Cuneo)

Response: The tentative order is not intended to compel Copermittees to retroactively negate or otherwise displace previous lawful determinations concerning SUSMP requirements. The tentative order will impact development and redevelopment projects that have not been previously designed and approved for construction. Copermittees will have the responsibility to discern if the project proponent

claims that lawful prior approvals exist for their project. See paragraph (F.1.b.2.) that provides for an 18 month period of time after the adoption of the tentative order to facilitate Copermittee transition to the SUSMP requirements.

See change at permit section F.1.b.2.

Section: F.1 Subsection: F.1.b.2.a

Comment: Replacement of structures should not be considered significant redevelopment under SUSMPs unless the replacement results in an increase of 5,000 square feet of impervious surfaces or more. (Sempra Energy, County of San Diego)

Response: Replacement of structures is not considered significant redevelopment unless the replacement results in an increase of 5,000 square feet of impervious surfaces or more. In the Tentative Order, significant redevelopment is clearly defined "as the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site." Following this definition of significant redevelopment is a list of examples of significant redevelopment, which includes "replacement of a structure." None of the listed examples, including "replacement of a structure," constitute significant redevelopment unless they result in an increase of at least 5,000 square feet of impervious surface. The definition of significant redevelopment in the Tentative Order is identical to that included in SWRCB Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a

Comment: New airfields and expansions of existing airfields (municipal, private) should be added as a SUSMP Priority Project Category. (Sierra Club, EHC, San Diego Baykeeper)

Response: While private airfields would generally fall under the priority category “Commercial developments greater than 100,000 square feet,” due to the size of their impervious surfaces and the number of sources (planes and other vehicles) present at the private airfields, they will be included in the list of applicable commercial developments for clarification. Municipal airfields should be addressed as high priority municipal areas under the Copermittees’ Municipal Existing Development Components of their Jurisdictional Urban Runoff Management Programs.

See change at permit section F.1.b.2.a.iii.

Section: F.1 Subsection: F.1.b.2.a

Comment: An adequate rationale for the selection of the SUSMP Priority Development Project Categories has not been provided. An adequate analysis of existing development projects, their potential threat to water quality (both individually and collectively), and the feasibility of implementing these or

other proposed controls is needed to provide a nexus between the priority categories and their potential water quality impact. (County of San Diego)

Response: The SUSMP priority development project categories have been dictated by the SWRCB in its precedential decision in Order wq 2000-11. A December 26, 2000 SWRCB memo from Craig M. Wilson to the Regional Board Executive Officers states that Order WQ 2000-11 "determined that SUSMPs appropriately applied to the following categories of development: single-family hillside residences, 100,000 square foot commercial developments, automotive repair shops, restaurants, home subdivisions with 10 to 99 housing units, home subdivisions with 100 or more housing units, and parking lots with 5, 000 square feet or more or with 25 or more parking spaces and potentially exposed to storm water runoff."

The SDRWQCB has expanded on this SWRCB guidance in a few instances. The instances are as follows:

1. The parking lot size criteria was changed from 25 or more parking spaces to 15 or more parking spaces. This change was based on a comment from the Port of San Diego during the April 13, 2000 SDRWQCB SUSMP Public Workshop. The comment noted that the other parking lot size criteria of 5,000 square feet actually corresponded more closely with the size of 15 parking spaces, rather than 25 parking spaces. In order to make the two parking lot size criteria as similar as possible, the criteria for 25 parking spaces was reduced to 15 parking spaces.

2. The single-family hillside residence category was changed to "All hillside development greater than 5,000 square feet." This change was made to reflect the urban runoff concerns generated by hillside development. The primary concern regarding hillside development is the potential for erosion resulting from changes in the flow regime caused by the development. While pollutants from hillside development (including single-family residences) can be significant, increases or changes in flow conditions provide the greatest potential for impacts to beneficial uses. Therefore, the type of development on a hillside is not at issue as much as the size of the development and the resulting changes in the flow regime. For this reason, rather than focus on the type of hillside development, the SDRWQCB SUSMP requirements focus on size. The size (5,000 square feet) was chosen based on SWRCB guidance in Order WQ 2000-11, which uses a size threshold of 5,000 square feet for significant redevelopment.

3. Retail gasoline outlets were added as a SUSMP priority development project category. Regarding retail gasoline outlets as a priority category, the SWRCB states in the December 26, 2000 memo that Order WQ 2000-11 "allows broader discretion by the Regional Water Boards to decide whether to include additional types of development in future SUSMPs. These areas for potential future inclusion in the SUSMPs include retail gasoline outlets […]." The Draft Fact Sheet/Technical Report for Tentative Order No. 2000-01 discusses the rationale for retail gasoline outlets to be designated a priority development project category.

4. Streets, roads, highways, and freeways were added as a SUSMP priority development project category. This is due to their potential to be a significant contributor of pollutants in urban runoff. A Federal Highway Administration "Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report" (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff. Streets, roads, highways, and freeways also consist of extensive impervious surfaces, which alter flow regimes and increase potential for downstream erosion.

5. Projects within, directly adjacent to, or discharging directly to Environmentally Sensitive Areas (ESAs) were added as a SUSMP priority development project category. While the SWRCB withdrew Environmentally Sensitive Areas as a priority development project category from the LARWCB SUSMP, Order WQ 2000-11 provides discretion to Regional Boards in adding Environmentally Sensitive Areas in future permits. The primary reason the SWRCB withdrew ESAs as a LARWQCB SUSMP category was because the ESAs were in conflict with other language within the LARWQCB permit. This is not the case for the SDRWQCB Tentative Order. Furthermore, the SWRCB stated that a size threshold should be placed on the ESA category. The SDRWQCB has provided such a threshold in the Tentative Order, and has held three public workshops and participated in SUSMP stakeholder group meetings where no other size threshold has been formally suggested.

Section: F.1 Subsection: F.1.b.2.a.i

Comment: The two SUSMP Priority Project Categories covering home subdivisions should be merged into one category for home subdivisions larger than 10 housing units. (Carlsbad, SANDAG)

Response: The two SUSMP priority project development categories covering home subdivisions are kept distinct to allow for different sets of pollution prevention and source control BMPs to be identified and applied at the two different categories. While different pollution prevention and source control BMPs can be applied for the two categories, it should be noted that the structural treatment BMP numeric sizing criteria requirement for the two categories is the same. The two distinct priority project development categories were upheld by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a.iii

Comment: The SUSMPs should apply to automotive dealerships. (McKenna & Cuneo)

Response: While automotive dealerships would generally fall under the SUSMP priority category "Commercial developments greater than 100,000 square feet," due to the size of their impervious surfaces and the number of sources (autos) present at the dealerships, they will be included in the list of applicable commercial developments for clarification.

See change at permit section F.1.b.2.a.iii.

Section: F.1 Subsection: F.1.b.2.a.v

Comment: What is the rationale for the restaurant size criteria? The Copermittees should be allowed to determine the size threshold for restaurants to be subject to SUSMP requirements. (La Mesa, McKenna & Cuneo)

Response: The size threshold for restaurants to be subject to SUSMP requirements has essentially been determined by the SWRCB. The LARWQCB SUSMP provisions, which the SWRCB upheld in a precedential decision in Order WQ 2000-11, includes the statement "[r]estaurants, where the land area for

development or redevelopment is less than 5,000 square feet, are excluded from the numerical structural or treatment control BMP design standard only." The size threshold for restaurants included in the Tentative Order matches this statement. Restaurants smaller than 5, 000 square feet are excluded from the numeric sizing criteria requirement to prevent small restaurants with BMP siting restrictions and minimal exposure to urban runoff from being subject to numeric sizing criteria.

Section: F.1 Subsection: F.1.b.2.a.vi

Comment: The hillside development SUSMP priority project category should not be included in the Tentative Order because it is not a significant source of pollutants after construction. (County of San Diego, BIASC)

Response: The hillside development SUSMP priority project category is necessary due to the high potential for erosion caused by hillside development. The primary concern regarding hillside development is the potential for erosion both on-site and downstream resulting from changes in the flow regime caused by the development, as discussed in Finding 4. This on-site and downstream erosion can be a significant source of pollutants after construction. Therefore, post-construction structural treatment BMPs are still needed to catch as well as prevent this accelerated on-site and downstream erosion.

The SWRCB supports post-construction structural treatment BMPs for hillside development in Order WQ 2000-11, which includes single-family hillside residences as a SUSMP priority project category. The SDRWQCB has expanded this category to include all hillside development greater than 5,000 square feet since the type of development on a hillside is not at issue as much as the size of the development and the resulting changes in the flow regime. While pollutants from hillside development can be significant, increases or changes in flow conditions provide the greatest potential for impacts to beneficial uses. For this reason, rather than focus on the type of hillside development, the SDRWQCB SUSMP requirements focus on size. The size (5,000 square feet) was chosen based on SWRCB guidance in Order WQ 2000-11, which uses a size threshold of 5,000 square feet for significant redevelopment.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: The SDRWQCB should include all San Diego County area Reserves, Preserves, Outstanding National Resources Waters, State National Resources Waters, Wildlife Refuges, and the South San Diego Bay National Wildlife Refuge as designated Environmentally Sensitive Areas. (EHC, San Diego Baykeeper, Port of San Diego)

Response: The list of Environmentally Sensitive Areas included in the Tentative Order was developed during SDRWQCB public workshops and City of San Diego stakeholder group meetings on SUSMPs. The SDRWQCB has left the identification and addition of Environmentally Sensitive Areas beyond those listed in the Tentative Order to the discretion of the Copermittees, since the Copermittees are most familiar with the natural resources within their jurisdictions. The Tentative Order's list of Environmentally Sensitive Areas includes "any other equivalent environmentally sensitive areas which have been identified by the Copermittees" to allow for additional designations of Environmentally Sensitive Areas by the Copermittees. Since most Copermittees have already identified Environmentally

Sensitive Areas within their jurisdictions, it is expected that Environmentally Sensitive Areas similar or identical to those listed in the comment will be included in the Copermittees' SUSMP programs.

Section: F.1 **Subsection: F.1.b.2.a.vii**

Comment: Environmentally Sensitive Areas (ESAs) should not be a SUSMP category for the following reasons:
1. The SDRWQCB does not have legal authority to create ESAs.
2. ESAs are already heavily regulated.
3. The Tentative Order does not provide for or require any nexus between the potential harm created to the "ESA" by urban runoff.
4. There is no support for the development threshold. (County of San Diego, BIASC, BIASD)

Response: The categorization of "all development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area" as a SUSMP priority development project category is a necessary layer of protection for these valuable resources. Each designated environmentally sensitive area (ESA) is either a valuable receiving water resource which should be protected from the impacts of urban runoff, or a degraded receiving water resource which should be protected from additional impacts. The geographic location of a development project can impact an ecologically fragile area. A sensitive habitat has a much lower capacity to withstand pollutants shocks than might be acceptable in the general circumstance, and so deserves attention. In essence, a project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant (LARWQCB, 2000). 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" (USEPA, 1999a).

The potential for new urban runoff discharges from new development and redevelopment to impact receiving waters within environmentally sensitive areas is clear. Urban runoff has been found to be a leading cause of water quality impairment in the San Diego Region and nationwide. Untreated pollutants in urban runoff, indiscriminate of dry or wet weather conditions, routinely find their way to our creeks, lagoons, bays, and ocean as easily from over watering of residential lawns as from rainstorms. San Diego area urban runoff is commonly contaminated with pesticides, fertilizers, animal droppings, trash, food wastes, automotive byproducts, and many other toxic substances which are generated by our urban environment. Water that flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas carries these untreated pollutants through storm drain networks directly to the receiving waters of the region.

The United States Environmental Protection Agency (USEPA) recognizes urban wet weather flows as the number one source of estuarine pollution in coastal communities (USEPA, 1999b). This trend is reflected locally by the 1998-1999 City of San Diego and Co-Permittee NPDES Stormwater Monitoring Program Report, which names urban runoff as one of the most significant contributors of pollution to our waterways and coastal areas. Furthermore, this document reports that monitoring efforts indicate that instream concentrations of pathogen indicators (fecal coliform and streptococcus) and heavy metals (such as cadmium, copper, lead, and zinc) exceed state and federal water quality criteria. Storm water within the region has also been found to contain the pesticides diazinon and chlorpyrifos (Dursban) at levels that can cause chronic or acute toxicity. As this evidence suggests, San Diego's urban runoff is frequently

contaminated; application of SUSMP provisions to new development and redevelopment within or near environmentally sensitive areas will help protect these areas from its impacts.

In requiring that new development and redevelopment within or near environmentally sensitive areas meet SUSMP provisions, the SDRWQCB has not created ESAs. It has simply identified water bodies that have previously been determined to be sensitive to discharges of waste (Areas of Special Biological Significance, 303(d) listed waterbodies, etc.) and required that appropriate BMPs be implemented at development sites which are located near these areas. ESAs at a level which is appropriate for the protection of such a valuable or degraded resource. It is important to note that the intent of identifying ESAs as a SUSMP was to protect receiving waters within the ESA. In order to clarify this intent, the Tentative Order will be revised to indicate that only developments which discharge to a receiving water within an ESA have the potential to be subject to the SUSMP provisions.

While some ESAs may be heavily regulated, it is not clear that this regulation pertains to development directly adjacent or directly discharging to ESAs. Nor is it clear that this regulation always relates to water quality. The SUSMP provisions for ESAs are meant to complement regulatory activities of other agencies, and fill in any gaps with regards to urban runoff and water quality.

The development threshold of 2,500 square feet for projects near ESAs to be subject to SUSMPs is based on CEQA development thresholds relating to projects in ESAs. CEQA exempts from its requirements projects located in environmentally sensitive areas if additions to existing structures are less than 2,500 square feet (19 CCR 15301).

Section: F.1 **Subsection: F.1.b.2.a.vii**

Comment: Please clarify the definition of "discharging directly to". The terms "predominantly" and "not commingled with" are contradictory. (Imperial Beach, Chula Vista)

Response: The appearance of the terms “predominantly” and “not commingled with” in the definition of “discharging directly to” appears to be contradictory. Therefore, the term “predominantly” will be deleted from the Tentative Order.

See change in permit section F.1.b.2.a.vii.

Section: F.1 **Subsection: F.1.b.2.a.vii**

Comment: By including Environmentally Sensitive Areas as a priority category under SUSMPs, the SDRWQCB is attempting to regulate matters outside of water quality, thereby exceeding its legal authority. (County of San Diego)

Response: The intent of the SUSMP Environmentally Sensitive Area priority development project category is to protect receiving waters within Environmentally Sensitive Areas. The Tentative Order will be changed to clarify that Environmentally Sensitive Areas must contain receiving waters which are receiving the subject discharges.

See change in permit section F.1.b.2.a.vii.

Section: F.1 **Subsection: F.1.b.2.a.viii**

Comment: Why was the criteria for the number of parking spaces required to trigger SUSMP requirements reduced to 15 parking spaces, when the LA SUSMP criteria was 25 parking spaces? (County of San Diego, BIASD, BIASC)

Response: The parking lot size criteria was changed from 25 or more parking spaces to 15 or more parking spaces. This change was based on a comment from the Port of San Diego during the April 13, 2000 SDRWQCB SUSMP Public Workshop. The comment noted that the other parking lot size criteria of 5,000 square feet actually corresponded more closely with the size of 15 parking spaces, rather than 25 parking spaces. In order to make the two parking lot size criteria as similar as possible, the criteria for 25 parking spaces was reduced to 15 parking spaces.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: The Copermittees should not be required to control runoff from streets, roads, highways, and freeways which they do not have authority over. (County of San Diego)

Response: The Tentative Order does not require the Copermittees to control runoff from freeways, etc. over which they do not have jurisdiction, provided that discharges from such sources do not enter their MS4s. Municipalities cannot arrogate to themselves the authority to regulate discharges from facilities or activities beyond their jurisdiction, e.g., discharges from state and federal facilities including highways and Indian reservations directly to waters of the state that are not part or tributary to the municipality's MS4. Municipalities are required, however, to have or develop legal authority to regulate storm water discharges and urban runoff within their jurisdictions, including discharges that may be subject to concurrent regulation by the state and federal governments. In addition, where municipalities control access to MS4 infrastructure for the accommodation of discharges from entities within their physical jurisdiction (including school districts, state and federal facilities, construction sites and industrial facilities) municipalities must exercise such control in a manner consistent with their obligation under the Regional Board's requirements to reduce pollutants in their MS4 to the maximum extent practicable.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: Due to its late addition as a SUSMP category, the Roads, Streets, Highways, and Freeways priority project category should be either deleted from the permit or the RWQCB should extend the

written review period to allow for more adequate discussion prior to permit adoption. (County of San Diego, La Mesa)

Response: Streets, roads, highways, and freeways were added as a SUSMP priority development project category due to their potential to be a significant contributor of pollutants in urban runoff. A Federal Highway Administration "Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report" (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff. Streets, roads, highways, and freeways also consist of extensive impervious surfaces, which alter flow regimes and increase potential for downstream erosion.

Streets, roads, highways, and freeways were addressed in Tentative Order No. 2001-01. The written comment period for the Tentative Order was approximately 50 days, while the oral comment period was approximately 63 days. The SDRWQCB also held three public workshops on the Tentative Order. The SDRWQCB has provided sufficient time and opportunity for comment and discussion on this SUSMP priority project development category.

Section: F.1 **Subsection: F.1.b.2.a.x**

Comment: Retail Gasoline Outlets should be a SUSMP priority development category subject to numeric sizing criteria. At a minimum, if Retail Gasoline Outlets are not held to meeting the numeric sizing criteria, they should be required to implement a separate, stringent and specific set of BMPs. (EHC)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2.a.x**

Comment: RGOs should not be a SUSMP priority category. (County of San Diego, WSPA, Alliance for Water Quality)

Response: A WSPA sponsored study, "Results of a Retail Gasoline Outlet and Commercial Parking Lot Stormwater Runoff Study ", concludes that pollutant concentrations from RGO runoff are similar to concentrations from commercial parking lots, restaurants and other urban developments that are properly regulated under Federal and State storm water pollution laws. Therefore, discharges from RGOs should be given the same level of priority. The fact that significant discharges were found in the study indicates that the current source control measures are not working and structural controls are needed. Use of structural controls such as filtration or treatment inserts is also technically and economically feasible. In an EPA funded study of four inserts ("The Rouge River National Wet Weather Demonstration Project") it was concluded that, "these devices are applicable for use in gas stations … and they have a relatively low cost".

Section: F.1 Subsection: F.1.b

Comment: For the purposes of establishing vesting of a tentative map: Does "grading or construction activities" include mass grading or site clearing?

Further definition of the activities that would allow a priority project to escape SUSMP requirements is necessary, or is it strictly the Copermittees' call as to when a project is vested under current requirements? (City of Chula Vista)

Response: Grading or construction activities includes mass grading and site clearing. Projects approved after adoption of Tentative Order 2001-01 will be expected to meet SUSMP requirements if they are in a SUSMP category.

Section: F.1 Subsection: F.1.b

Comment: In addition, because F.1.b. appears to set conditions of approval for all development projects, not just priority projects, it appears that section F.1.b(1)(g) (which concerns no net increase in run-off, compliance with water quality standards, and pollutant discharges to CWA section 303(d) water bodies) is inappropriately included as a permit condition for all projects. In other provisions (e.g., Prohibition A.4. and section F.1.a(9)), this requirement is specifically limited to new development and significant redevelopment projects. Is it the Regional Board's intent that this requirement apply to all new development? Further, requiring such controls for all projects regardless of their size or threat to water quality inappropriately dictates the manner in which the City is required to comply with the general objectives of the Tentative Order, contrary to Cal. Water Code § 13360(a). (City of San Diego)

Response: Language in section F.1.b.1.g concerning no net increase in runoff and pollutant discharges to 303(d) water bodies has been removed and therefore does not apply to all development projects. However, language regarding compliance with water quality standards does apply to all development projects. Compliance with water quality standards is a basic requirement of the Tentative Order (see section A.2) regardless of the size of the site. Requiring compliance with water quality standards does not specify the means by which compliance must be achieved and therefore does not violate CWC § 13360(a).

Section: F.1 Subsection: F.1.b

Comment: F.1.b states that all development comply with the requirements of F.1.b.1. Presumably this applies to any project regardless of whether it is listed as a SUSMP category in F.1.b.2. Is this the RWQCB's intent? (County of San Diego)

Response: F.1.b.1 applies to all development projects irregardless of whether they are subject to SUSMPs.

Section: F.1 Subsection: F.1.b

Comment: The tentative order should provide guidance when waste discharge requirements are needed for a project. (Port of San Diego)

Response: In accordance with the Porter- Cologne Water Quality Control Act, any person proposing to discharge waste, other than to a sanitary sewer system, must file a report of waste discharge (application) to obtain waste discharge requirements at least 120 days prior to commencing the discharge. The Regional Board will review the application and determine if waste discharge requirements are needed or if the discharge complies with the criteria for a conditional waiver of waste discharge requirements as described in Table 4-4 of the Water Quality Control Plan San Diego Basin. Regional Board staff are not recommending the Tentative Order 2001-01 be modified to include guidance on when waste discharge requirements are needed.

Section: F.1 Subsection: F.1.b

Comment: A justification for imposing significant new requirements on all development projects has not been provided. In spite of the significance of these changes, the Technical Report offers no explanation or justification. Some factual justification must be provided along with supporting findings. (County of San Diego)

Response: The Staff Report adequately establishes a link between urban development and water quality degradation.

Section: F.1 Subsection: F.1.b

Comment: The requirement to "review each individual proposed project plan" could eliminate the ability of Copermittees to issue ministerial permits. The cost and time associated with administering discretionary permits can be significantly higher than for ministerial permits. The County's preliminary estimate is that 36 additional County staff would be needed. Costs of $2.7 million would be passed through to permit applicants. The County recommends that the RWQCB work with Copermittees to simplify section F.1. to an extent that allows them to retain their ability to establish local permit conditions that can be administered ministerially. (County of San Diego)

Response: The requirement is not intended to eliminate the ability of the Copermittees to issue ministerial permits. It is intended to ensure that each project incorporates water quality considerations. The Tentative Order has been changed to clarify this intent. See change at permit section F.1.b.

Section: F.1 Subsection: F.1.b.1

Comment: The Copermittees only have authority under CEQA and the Subdivision Map Act to impose requirements for improvements and mitigation measures that are found to be necessary and sufficient to reduce impacts to less than significant levels. (City of Chula Vista)

Response: Municipalities are responsible for actions that determine the volume and character of wastes and pollutants discharged in (or as) urban runoff to their MS4s and are required by the Clean Water Act and NPDES regulations to prevent discharges of non-storm water pollutants to their MS4s.

Storm water permits are issued to municipalities because of their land use authority. The ultimate responsibility for the pollutant discharges, increased runoff, and inevitable long-term water quality degradation that results from urbanization lies with local governments. This responsibility is based on the fact that it is the local governments that have authorized the urbanization (i.e., conversion of natural pervious ground cover to impervious urban surfaces) and the land uses that generate the pollutants and runoff. Furthermore, the MS4 through which the pollutants and increased flows are conveyed, and ultimately discharged into receiving waters, are owned and operated by the same local governments. In summary, the municipal Copermittees under Order No. 2001-01 are responsible for discharges into and out of their storm water conveyance systems because (1) they own and operate the MS4; and (2) they have the legal authority that authorizes the very development and land uses which generate the pollutants and increased flows in the first place.

Section: F.1 Subsection: F.1.b.1

Comment: Section F.1.b (1) - Page 14 - Conditions of Approval: This section requires that receiving water quality objectives are not violated throughout the life of the project." It will be impossible to enforce this section. (City of La Mesa)

Response: The purposes of conditions of approval which contain water quality requirements is to ensure that pollutant discharges from the development are reduced to the maximum extent practicable and do not cause or contribute to an exceedance of water quality objectives. Section F.1.b.1 does not require any enforcement; rather, it requires that conditions of approval be designed to ensure these two purposes.

Section: F.1 Subsection: F.1.b.1

Comment: How do Copermittees respond to changes in beneficial uses or changes in projects when implementing the tentative order? (McKenna & Cuneo, L.L.P.)

Response: Beneficial uses are designated by the SDRWQCB in a Water Quality Control Plan (Basin Plan). The Basin Plan is reviewed every three years and amendments can only take place after these reviews. Most development projects have a much shorter life span than three years. Given that, it is highly unlikely that a designated beneficial use will change.

Section: F.1 Subsection: F.1.b.1

Comment: Page 15, after F. 1.b.(1) (g), add:
(h) Require project proponent to submit plans and specifications for any proposed structural BMP to the Local Vector Control Agency or StateDepartment of Health Services for review and approval prior to construction. Where appropriate a "Mosquito Vector Prevention and Control Plan" may also be required". (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.1 Subsection: F.1.b.1

Comment: F.1.b (1) page 14 - This section requires "that receiving water quality objectives are not violated throughout the life of the project. This has no nexus to the issue of concern, will be impossible to enforce and of questionable legality. This portion of the sentence should be deleted. (City of Carlsbad)

Response: Requirements to ensure that pollutants in runoff from development are reduced to the maximum extent practicable and do not cause or contribute to an exceedance of water quality standards is in line with SWRCB guidance. The SWRCB upheld such requirements in SWRCB Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.1

Comment: SDBK and SDSF strongly support the proposed shift in project approval process. It is our belief that this shift should have occurred when the current stormwater permit was promulgated more than ten years ago. At the very least, planning stage consideration of runoff impacts should have begun following EPA guidance in 1992. Given the length of time since the notion was brought forward, and the overwhelming lack of compliance with the measure, contrary arguments by Copermittees citing costs and logistical difficulties should carry little or no weight. Now, consideration of runoff controls at the planning stage will appropriately defer Copermittee costs of permit compliance to project developers. The current paradigm of tax-payer subsidy for private development pollution must end. (Surfrider Foundation)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.1.a

Comment: Require project proponents to implement ...BMPs for all development projects. The IEA recommends language be added to allow for future advances in technology. Such language might be " equivalent alternative" after the word BMP. (Industrial Environmental Association)

Response: Advances in technology would still fall under the definition of BMP, as defined in Attachment D of the Tentative Order.

Section: F.1 Subsection: F.1.b.1.a

Comment: The pollution prevention requirements contained in section F.1.b.(1)(a) are not feasible to implement. The practical implications of requiring post-construction pollution prevention practices

through a land development / redevelopment program are fundamentally different than those of requiring source control and/or treatment control BMPs. While BMPs that will become a permanent post-construction feature can be addressed prior to construction (with some limitations), exercising control over the specific activities of future occupants or users is considerably less feasible and does not appear to have been adequately considered.

Section F.1.b.(1)(a) would require Copermittees to ensure that post-construction pollution prevention BMPs are implemented by the parties for all local permits, including any permit involving the construction or refurbishment of any residential property. Not only would this include the subdivisions subject to the section F.1.b.(2)(a)(i) – (ii) SUSMP requirements, but also all new single family residences, and in fact all local permits, including a permit to install a small retaining wall is residential landscaping. This implies that (1) pollution prevention plans, agreements, and/or contracts would be needed as a condition of occupancy, and/or (2) that the County would need to monitor the activities of these people to ensure compliance. Neither of these approaches could be effectively implemented in the real world. This section also contrasts sharply with permit section F.3.d. which encourages the use of pollution prevention methods in existing residential areas. This would establish a double standard that would be difficult, if not impossible, to enforce. It also raises doubts about whether Regional Board has fully considered the practical implications of implementing the section. For instance, how long would the requirement apply? Would it be applicable only for the first occupant? If the house is re-sold, would we then only be required to encourage pollution prevention BMPs of subsequent owners?

Section F.1.b.(1)(a) also requires that post-construction pollution prevention BMPs be implemented by the occupants of any new commercial or industrial facility that the County permits, regardless of whether the permit is discretionary or nondiscretionary. As before, how would we be expected to require and enforce this provision in seeking permits? It would virtually eliminate all ministerial permits. Has the RWQCB considered the potential staffing levels that would be necessary to develop a program to enforce this requirement? If so, why is this issue not addressed in the Technical Report?

Finally, the application of this section to streets, roads, highways, and freeways (F.1.b.(2)(a)(ix)) and parking lots (F.1.b.(2)(a)(viii)) presents significant concerns which have not been considered. How would post-construction pollution prevention be required for streets and roads? Would we be required to reduce or eliminate vehicles or the pollutants they generate? Would we be expected to require (or provide) tuneups or repairs for the vehicles that use our roads? Would we be expected to reduce the numbers of trips on local roads? How would we verify compliance? Additionally, would we be expected to apply these requirements to highways and freeways that we don't construct or maintain (e.g., Caltrans facilities already under a separate NPDES permit)? How would this requirement apply to parking lots? Would we be expected to restrict the number of vehicles using them? If so, where would they park? Further, has the Regional Board considered the fact that we do not have the authority to regulate Caltrans in this area? (County of San Diego)

Response: While the SDRWQCB supports consideration of pollution prevention BMPs during the planning process, it acknowledges that requiring pollution prevention BMPs in the project approval process may not always be possible. For this reason, the requirement for pollution prevention BMPs has been removed from section F.1.b.1.a. See change at permit section F.1.b.1.a. and Finding 12.

Section: F.1 Subsection: F.1.b.1.a

Comment: Recommend modifying the first sentence to: "The SUSMPs shall require structural treatment BMPs "or equivalent alternative" to be implemented at all priority development projects." (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that most "equivalent alternative" would already fall under this broad definition, making the inclusion of the term unnecessary.

Section: F.1 Subsection: F.1.b.1.b

Comment: F.1.b.(1)(b) "Require project proponents to implement site design / landscape characteristics where feasible which maximize infiltration, provide retention, slow runoff, and minimize impervious land coverage for all development projects." This condition should be amended to "recommend" or "encourage" the use of these principles where that is consistent with other environmental goals. Maximizing infiltration would have adverse impacts on wetlands and riparian habitats, and on groundwater. Accordingly, rather than mandatory prescriptions, this condition should be amended to account for situations in which infiltration would adversely affect the pertinent environmental condition. (County of San Diego)

Response: The provision only requires the described site design/landscape characteristics where it is feasible. If the Copermittee determines that such measures are infeasible at a given site, they need not require them. Therefore, relaxing this requirement to "recommendation" status is not warranted.

Section: F.1 Subsection: F.1.b.1.c

Comment: BUFFER ZONES FOR NATURAL WATER BODIES Paragraph F. l.b(l)(c) requires that a project proponent implement buffer zones for natural water bodies. This requirement needs to be more specific about what is meant by a buffer and by a natural'water body. We have heard a developer claiming that a wall at the edge of a wetland can be considered an adequate buffer. An adequate buffer needs to preserve the full functions and values of the water body. The buffer needs to be adequate to stop such impacts as inappropriate water flows, disturbances to wildlife, night lighting, intrusion by pets, and it should provide adequate high water refuge habitat, appropriate transition vegetation for foraging, roosting, and nesting, natural inputs of nutrients from bank vegetation, a diversity of vegetation to assure ecological viability, etc. This one line requirement must be expanded to allow it be effective. (San Diego Audubon Society)

Response: SDRWQCB encourages the Permittees to include the above mentioned criteria in their buffer zone management. It is expected that the natural buffer zone will be designed to protect water quality. However, the SDRWQCB will not make such provisions a requirement of the Tentative Order as doing so will deny the Permittees flexibility in their approach to natural buffer zones.

Section: F.1 Subsection: F.1.b.1.c

Comment: What is used to determine a "natural water body" and the "size and nature of a buffer?" (City of Carlsbad)

Response: A natural water body is any water body that supports beneficial uses. In an attempt to provide the Copermittees flexibility, the Tentative Order does not specify size natural buffer areas. It is expected that the Copermittees will set criteria for natural buffer zones for their benefits in protecting water quality. However, the Tentative Order does not make such provisions a requirement as doing so would deny the Copermittees flexibility in their approach to natural buffer zones.

Section: F.1 Subsection: F.1.b.1.c

Comment: This condition should be amended to "recommend" or "encourage" the inclusion of buffer zones. While the County agrees that the establishment of buffer zones is generally a valuable objective, it is not realistic to require it as a condition of approval for all projects. This condition cannot be implemented in all instances, and shouldn't equate to a prohibition on the development of properties where it cannot be implemented. (County of San Diego)

Response: While buffer zones for water bodies may not always be feasible, some sort of buffer is. For example, trees, noise constraints, lighting constraints, and access limitations can all provide buffering for natural water bodies where extreme limitations of space exist. For this reason, section F.1.b.1.c will be modified to allow for buffers in place of buffer zones where extreme limitations of space exist. See change at permit section F.1.b.1.c.

Section: F.1 Subsection: F.1.b.1.c

Comment: F.1.b.1.c.
Please clarify if a buffer zone would be necessary for a redevelopment project when the previous development had none and other F. 1. b. 1. conditions are met. (Port of San Diego)

Response: The Tentative Order does not specify to this level of detail what course of action the Copermittees should take. It is expected that the Copermittee will consider natural buffer zones whenever possible for their benefits in protecting water quality. However, Tentative Order does not make such provisions a requirement as doing so will deny the Copermittees flexibility in their approach to natural buffer zones.

Section: F.1 Subsection: F.1.b.1.e

Comment: Section F.1.b.1.e. conflicts with finding 22 which states that "the RWQCB is responsible for enforcing both statewide general permits and this Order within the San Diego region." (County of San Diego)

Response: Tentative Order section F.1.b.1.e. (development of SUSMPs [Standard Urban Storm Water Mitigation Plans]) does not conflict with Finding No. 22 of the same order. The requirement that Copermittees develop SUSMPs (a plan to reduce pollutants and runoff flows from all new development

and significant redevelopment projects) does not conflict with the SDRWQCB's role in regulating these activities under statewide general permits. Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. The tentative Order's required programs are consistent with the CWA because they reduce the discharge of pollutants to the maximum extent practicable (MEP). Furthermore, the CWA and federal regulations describe only minimal storm water program components. Although the tentative Order may describe portions of program components that are not specifically addressed in the federal requirements and regulations, the SDRWQCB has made express findings that these components are significant sources of storm water pollution. Since the CWA and federal regulations do not exclude sources that are significant pollutant contributors, it is appropriate to cover these sources in the tentative Order.

The federal regulations in 40 CFR 122.26 establish a dual system for regulation of industrial and construction site discharges through municipal storm water conveyance systems. Industries and construction sites are permitted under statewide general NPDES industrial or construction storm water permits. These permits require industries and construction sites to do the following: (1) to reduce pollutants to comply with best available technology (BAT) and best conventional technology (BCT) performance standards and (2) to not cause or contribute to violations of applicable water quality objectives. In addition, industries and construction sites are subject to regulation by municipalities through storm water ordinances developed according to municipal storm water permits issued by the state. Pursuant to Clean Water Act section 402(p)(3)(iii) municipalities are required to implement controls to reduce the discharge of pollutants from municipal storm water conveyance systems to the maximum extent practicable (MEP). Because storm water from industrial facilities may be a major contributor of pollutants to municipal storm water conveyance systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their urban runoff management program. (See Federal Register preamble, Volume 55, No. 222, November 16, 1990, page 48000.)

The US EPA intended that the municipalities and delegated states share the responsibility of regulating storm water discharges from industrial and construction site activities. The US EPA believed that this dual approach would result in the most effective regulation. Since municipalities are ultimately responsible for discharges from their municipal storm water conveyance systems, it is in their best interest to regulate what is discharged into their system.

Section: F.1 Subsection: F.1.b.1.e

Comment: F.1.b.(1)(e) "Require project proponent to ensure its grading or other construction activities meet the provisions specified in Section F.2. of this Order." This section is unnecessary since section F.2. already specifies the projects to which it applies. This language also presents a significant potential for conflicts between the two sections since both specify their own separate criteria for project inclusion. (County of San Diego)

Response: Section F.1.b.1.e reiterates the requirements of section F.2 in order to place emphasis on the importance of the construction phase as a source of pollutants. The earlier project proponents are notified of their construction responsibilities, the more prepared they will be when construction begins.

Since section F.1.b.1.e and section F.2 generally apply to all development projects and construction projects, conflicts should not occur.

Section: F.1 Subsection: F.1.b.1.f

Comment: Paragraph F.1.b.(1)f, page 15, requires that the proponent of a project insure long term maintenance of all post-construction BMPs in perpetuity. But, in many cases the project proponent will not be associated with the project after construction. We urge that the paragraph be augmented to also require subsequent owners and operators to ensure long-term maintenance. (San Diego Audubon Society)

Response: Many developers may not be associated with developments for the long term. Therefore it will be difficult for them to ensure long-term maintenance of post-construction BMPs. However, it is possible for developers to provide a mechanism which will ensure long term BMP maintenance. For these reasons, the Tentative Order will be changed from requiring developers to ensure long term BMP maintenance to requiring developers to provide a mechanism which will ensure long term BMP maintenance.

Language included in the LARWQCB SUSMP regarding BMP maintenance, as upheld by SWRCB Order WQ 2000-11, can serve as guidance to the Copermittees regarding mechanisms which will ensure long term BMP maintenance. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private of public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural of Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

See change in permit section F.1.b.1.f.

Section: F.1 Subsection: F.1.b.1.g

Comment: F.l.b.(l)(g) page 14; Clarify that these runoff requirements apply only to Priority Development Project Categories. (Sempra Energy)

Response: The language in section F.1.b.1.g regarding control of peak flow rates has been removed form the Tentative Order. Therefore this issue has been resolved.

Section: F.1 Subsection: F.1.b.1.g

Comment: Section F.1.b (1)(g): Does the requirement regarding post-development runoff apply to both direct and indirect discharges to a 303(d) water body? (City of Chula Vista)

Response: Yes, the requirement regarding post development runoff applies to all urban runoff discharges to a 303(d) listed water body.

Section: F.1 Subsection: F.1.b.1.g

Comment: The performance standards in section F.1.b.(1)(g) are not applicable to individual dischargers within Copermittee jurisdictions. These standards are applicable only to discharges from Copermittee MS4s. The RWQCB lacks the legal authority to apply these standards to third parties through Tentative Order No. 2001-01. 40 CFR § 122.26(d)(2)(iv)(A)(2) very clearly limits the MEP standard to discharges from MS4s. CWC section 13263(a) similarly establishes regional board authority to prescribe requirements "as to the nature of any proposed discharge" Again, the proposed discharge is from, not into, Copermittee MS4s. Requiring on a site-specific basis that developers (a) reduce pollutants to the MEP and (b) do not cause or contribute to exceedances of water quality objectives, both exceeds these authorities and violates CWC section 13360 by excluding from Copermittees other potential means of lawfully complying (including regional treatment plants if we so choose). Please note that nothing precludes Copermittees from requiring the same standards of individual dischargers that we must meet ourselves. It is simply beyond the authority of the RWQCB to compel Copermittees to do so. (County of San Diego)

Response: Requirements to ensure that pollutants in runoff from development are reduced to the maximum extent practicable and do not cause or contribute to an exceedance of water quality standards is in line with SWRCB guidance. The SWRCB upheld such requirements in SWRCB Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.b

Comment: It is inappropriate and the SDRWQCB lacks the legal authority to require the Copermittees to implement, or require implementation by third parties of, particular types of BMPs or BMP standards

(i.e., pollution prevention, source control, and treatment control BMPs). The SDRWQCB does not have the legal authority to require implementation of one category of BMPs (i.e., pollution prevention) at all sites, or the legal authority to require implementation of all categories of BMPs (i.e., pollution prevention, source control, and treatment control BMPs) at one site. These types of requirements violate California Water Code section 13360. Justification for this requirement is needed. Which type of BMPs are to be implemented should be at the discretion of the Copermittees. (City of San Diego, County of San Diego)

Response: The most prescriptive requirements in the Tentative Order regarding the types of BMPs to be implemented are included in the SUSMP provisions. In the SUSMP provisions, source control and structural treatment BMPs are required at all priority development projects. The requirements for pollution prevention BMPs during the planning phase have been removed from the Tentative Order. This prescriptive application of source control and structural treatment BMPs in the SUSMP provisions was found to be appropriate by the SWRCB in Order WQ 2000-11. The SUSMP provisions were also determined by the SWRCB to not be in violation of CWC section 13360. Since the SUSMP provisions were the most prescriptive in the Tentative Order, it can be inferred that other BMP requirements in the Tentative Order are also appropriate and in compliance with CWC section 13360.

In fact, for the Construction, Municipal, Industrial, Commercial, and Residential Components of the Jurisdictional Urban Runoff Management Program, which types of BMP are to be implemented is left largely to the Copermittees. The only type of BMP required by the Tentative Order for each of these types of land uses is pollution prevention BMPs. However, the Tentative Order does not require pollution prevention BMPs at each site falling under these land use categories, but rather only requires their use at sites as determined by the Copermittees. Clearly these requirements provide flexibility and do not specify which BMPs must be used at which sites.

Widespread use of pollution prevention BMPs is required because of the benefits they provide with little cost. By limiting the generation of pollutants by urban activities, less pollutants are available to be washed from urban areas, resulting in reduced pollutant loads in storm water discharges from these areas. In addition, there is no need to control or treat pollutants which are not initially generated. Furthermore, pollution prevention BMPs are generally more cost effective than removal of pollutants by treatment facilities or cleanup of contaminated media.

In the Pollution Prevention Act of 1990, Congress established a national policy that emphasizes pollution prevention over control and treatment. California Water Code section 13263.3(a) also supports pollution prevention, stating "The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to support the federal goal of zero discharge of pollutants into navigable waters." Finally, the Basin Plan also supports this finding by stating that "[T]o eliminate pollutants in storm water, one can either clean it up by removing pollutants or prevent it from becoming polluted in the first place. Because of the overwhelming volume of storm water and the enormous costs associated with pollutant removal, pollution prevention is the only approach that makes sense."

The SDRWQCB has legal authority to require implementation of particular types of BMPs under the Clean Water Act and California Water Code. The CWA requires in section 402(p)(3)(B)(iii) that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." California Water Code section 13377 provides that "Notwithstanding any other provision of this division, the state board or the regional boards shall, as

required or authorized by the Federal Water Pollution Control Act (Clean Water Act), as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with anymore stringent effluent standards or limitation necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."

Section: F.1 Subsection: F.1.b.2.b

Comment: Who will be responsible for maintaining BMPs? How will maintenance be monitored and enforced? There should be more detail regarding BMP maintenance to ensure that it is performed. (San Diego Audobon Society, Downstream Services, University of California Natural Reserve System)

Response: The party responsible for maintaining BMPs required under the SUSMP provisions is left to the discretion of the Copermittees. The monitoring and enforcement of BMP maintenance is also the responsibility of the Copermittees, with oversight from the SDRWQCB. The requirement in the Tentative Order that BMPs have proof of ongoing maintenance is the same basic requirement as that which was included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

More detailed requirements included in the LARWQCB SUSMP regarding BMP maintenance can serve as guidance to the Copermittees. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private of public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural of Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design

standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Section: F.1 **Subsection: F.1.b.2.b.i**

Comment: Section F.1.b.2.b.i. is redundant and should be deleted. (County of San Diego)

Response: Section F.1.b.2.b.i. is included to ensure that SUSMP implementation includes management of flows and their potential impacts.

Section: F.1 **Subsection: F.1.b.2.b.ii**

Comment: The requirement to conserve natural areas is beyond the SDRWQCB's legal authority and should therefore be left to the determination of the Copermittees, rather than required in the Tentative Order. (County of San Diego)

Response: The SWRCB has upheld that Regional Boards can require conservation of natural areas for the protection of water quality. The LARWCB SUSMP requirements, which were upheld by the SWRCB in Order WQ 2000-11, include the provision that all SUSMP priority project categories "conserve natural areas."

Section: F.1 **Subsection: F.1.b.2.c**

Comment: There should be a standardized formula by which developers or co-permittees must determine how the numeric sizing criteria translates into a runoff number (from a precipitation number) for a specific property.

If afforded the freedom to choose their own science, property owners might very well pick a model which underestimated the amount of runoff from their property, effectively relaxing the BMP requirements. At the very least, we encourage the Regional Board to establish an exclusive list of acceptable conversion models.

We request the Regional Board add the following language: "For determining the exact sizing requirements that numeric sizing criteria place on individual developments, the SUSMP shall require the use of one of the following models to convert precipitation to runoff volume or flow rate: [List Approved Models]. The SUSMP may include other conversion models subject to public review and Regional Board approval." (EHC)

Response: A formula by which developers or Copermittees must determine how numeric sizing criteria translates into a runoff volume or flow rate for a specific property is left to the discretion of the Copermittees. Such a formula should be included in the model and local SUSMPs, which will be

considered by the SDRWQCB in a public process. Guidance on such a formula can be obtained from other areas which have implemented similar programs, such as Los Angeles County, the State of Washington, and the State of Maryland. The SDRWQCB can aid the Copermittees in contacting applicable agencies and obtaining such documents.

Section: F.1 **Subsection: F.1.b.2.c**

Comment: Inclusion of numeric sizing criteria in the Tentative Order exceeds the SDRWQCB's legal authority and is not consistent with state and federal regulations. (County of San Diego, BIASD)

Response: Pursuant to the Clean Water Act and Federal NPDES regulations, municipal storm water permits must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including controls which address pollutant discharges resulting from new development and significant redevelopment. In a precedential decision (Order WQ 2000-11) the SWRCB found that the SUSMP provisions (including numeric sizing criteria) constitute MEP for addressing pollutant discharges resulting from new development and significant redevelopment. In a December 26, 2000 memo from Craig M. Wilson to the Regional Board Executive Officers, the SWRCB states that Order WQ 2000-11 "finds that the design standard [numeric sizing criteria] in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP."

Section: F.1 **Subsection: F.1.b.2.c**

Comment: The Tentative Order's numeric sizing criteria should be maintained as requiring treatment of the 24-hour 85th percentile storm event. (San Diego Audobon Society, Surfers Tired of Pollution)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2.c**

Comment: We support the use of numerically sized structural treatment controls to control the discharge of pollutants from areas of new development and significant redevelopment to the MEP. (County of San Diego)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2.c**

Comment: The 24-hour 80th percentile storm event, as proposed by APWA, should be the basis for numeric sizing criteria. Treatment of the 24-hour 80th percentile storm event is considered to meet the MEP standard for semi-arid regions, as noted by Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual and Report on Engineering Practice No. 87. (County of San Diego, APWA, ASCE, BIASD, BIASC, Lemon Grove, Imperial Beach, SDCAA, Nolte, IEA, Port of San Diego,SD Chapter of Consulting Engineers & Land Survey)

Response: The APWA proposal for determination of the amount of runoff to be treated under SUSMPs raises two issues: (1) The SUSMPs requirement for the treatment of the 85th percentile storm event should be reduced to the 80th percentile storm event; and (2) hourly rainfall data from Lindbergh Field should be applied to precipitation contour maps to determine the size of the storm which must be treated.

(1) First of all, reducing the requirement for the treatment of the 85th percentile storm event to the 80th percentile storm event is inappropriate for the San Diego Region. The sole reasoning provided by APWA for reducing the size of the design storm which must be captured is that the City of Denver has chosen to capture the 80th percentile storm event. It is doubtful that the City of Denver has a more than $1.2 billion tourism economy as closely tied to water quality as that of the San Diego Region (a SANDAG memo states that projections by the California Department of Boating and Waterways find nearly $1.2 billion in direct revenue and $1.2 billion in indirect revenue is pumped into the San Diego area economy each year by out-of-state visitors) (SANDAG, 1996).

Capture of the 80th percentile storm event is equivalent to capture of runoff form approximately 0.4 inch of rainfall in the City of San Diego, as calculated by APWA. This is a smaller amount of rainfall than must be treated in Austin, Virginia, Delaware, Maryland, New Jersey, Chicago, New Jersey, Florida, and the Puget Sound Basin. More importantly, the 80th percentile storm event is less than what has been determined to constitute MEP by the SWRCB in Order WQ 2000-11. The SWRCB states "The Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP" (SWRCB, 2000b). While Denver may arguably have a climate which is somewhat similar to San Diego's, certainly criteria developed by the SWRCB for the Los Angeles region are more applicable to San Diego than criteria used by Denver, Colorado.

In addition, capture of the 80th percentile storm event ignores the concept of diminishing returns. The 85th percentile storm event is representative of the point of diminishing returns for the San Diego Region. The 85th percentile storm event represents the BMP capacity beyond which, insignificant increases in runoff capture will occur, relative to additional costs. Even a cursory look at APWA's graphed data (Exhibit A of their proposal, which is item B of Attachment 13 of the Executive Officer Summary Report for the December 13, 2000 Public Hearing) shows that capture of a 0.4 inch storm is well below the "knee of the curve," or the point of diminishing returns.

(2) The APWA proposal also recommends a different method for calculation of the design storm event from that proposed in the Tentative Order. Where the Tentative Order proposes use of 24-hour rainfall data from several locations, the APWA proposal uses hourly rainfall from one location (Lindbergh Field). The Tentative Order proposes that each Copermittee use 24-hour rainfall data from its area to calculate its design size storm. While use of 24-hour rainfall data is not as rigorous as use of hourly rainfall data, 24-hour data is typically much more available, thereby allowing Copermittees to use local data to calculate the design storm to be used in their jurisdictions. In fact, a lengthy record of hourly rainfall data is only available in one place within San Diego County: Lindbergh Field. The APWA proposal uses this hourly rainfall data from Lindbergh Field and applies it to the entire county through the use of precipitation

contour (isopluvial) maps. While there may be potential inaccuracies in applying data from one site to the entire county, use of such precipitation contour maps is common practice.

In light of the increased rigorousness of using hourly data, as well as the common practice of using precipitation contour maps, the Tentative Order will be modified to allow for the 85th percentile storm event to be calculated by applying hourly rainfall data from Lindbergh Field to precipitation contour maps.

See change at permit section F.1.b.2.c.

Section: F.1 **Subsection: F.1.b.2.g**

Comment: All restaurants should be required to meet numeric sizing criteria requirements, irregardless of their size. (EHC, Surfrider Foundation)

Response: The size threshold for restaurants to be subject to SUSMP requirements has essentially been determined by the SWRCB. The LARWQCB SUSMP provisions, which the SWRCB upheld in a precedential decision in Order WQ 2000-11, includes the statement "[r]estaurants, where the land area for development or redevelopment is less than 5,000 square feet, are excluded from the numerical structural or treatment control BMP design standard only." The size threshold for restaurants included in the Tentative Order matches this statement.

Section: F.1 **Subsection: F.1.b.2.h**

Comment: We recommend that the Tentative Order provide clearer guidelines for the SUSMP waiver and its corresponding mitigation fund. (Port of San Diego)

Response: Waiver guidelines provided in the Tentative Order are based on those provided by the SWRCB in Order WQ 2000-11. The level of detail of the guidelines was reduced to provide flexibility and discretion to the Copermittees in developing the waiver and its corresponding fund. In the Tentative Order, the Copermittees are provided with one year to develop the waiver and its corresponding fund, with another six months provided for their implementation.

Section: F.1 **Subsection: F.1.b.2.i.**

Comment: Requirements for infiltration of urban runoff have the potential to adversely impact groundwater quality. The restrictions staff has placed on infiltration are poorly thought out and should be reconsidered, rather than force the Copermittees to solve the problem. (County of San Diego)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of

structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.

Comment: The SDRWQCB does not have legal authority to include restrictions on infiltration in the Tentative Order since the discharges neither originate in nor pass through the Copermittees' MS4s. Furthermore, for the Copermittees to regulate infiltration and protect ground water quality would be beyond the legal authority they possess or could likely obtain. (County of San Diego)

Response: The Tentative Order requires the implementation of structural treatment BMPs, of which infiltration is one option. Where the Copermittees choose to allow infiltration/redirection of flows which would otherwise enter their MS4s, restrictions are appropriate. The Copermittees cannot choose to redirect flows away from their MS4s and claim no responsibility for the potential impacts of such actions. In addition, the SWRCB upheld in Order WQ 2000-11 the infiltration restrictions included in the LARWQCB SUSMP, on which the infiltration restrictions in the Tentative Order are based.

Section: F.1 Subsection: F.1.b.2.i.

Comment: The Technical Report does not adequately address the infiltration provisions. (County of San Diego)

Response: The infiltration provisions are discussed in the draft Fact Sheet/Technical Report in the discussion for Finding 35 on page 59.

Section: F.1 Subsection: F.1.b.2.i.

Comment: Requirements of the Tentative Order which promote infiltration are inconsistent with the infiltration restrictions of F.1.b.2.i. (Imperial Beach, County of San Diego, Carlsbad, La Mesa)

Response: The requirements promoting infiltration are not inconsistent with the infiltration restrictions of section F.1.b.2.i. The infiltration restrictions included in section F.1.b.2.i. were intended to apply to structural infiltration BMPs only. During the public workshops for the Tentative Order, interested parties noted to the SDRWQCB that this intent was not clear. In order to clarify that the infiltration restrictions of section F.1.b.2.i. were only to apply to structural infiltration BMPs, the SDRWQCB developed new language in the December 13, 2000 Proposed Changes document (Attachment 9 of the Executive Officer Summary Report for the December 13, 2000 Public Hearing).

By making the infiltration restrictions of section F.1.b.2.i. apply to structural infiltration BMPs only, requirements which promote infiltration are consistent with the infiltration restrictions. Infiltration restrictions are necessary for structural infiltration BMPs due to the large volume of storm water they are designed to infiltrate in a small area. By concentrating infiltration into a small area, structural infiltration BMPs can concentrate any pollutants which may be in storm water. This can lead to relatively high levels of pollutants in the soil of such structural infiltration BMPs. Furthermore, by infiltrating large volumes of storm water, the structural infiltration BMPs can help transport these pollutants. The combined potential for the concentration and transport of pollutants in structural treatment BMPs can pose a risk to groundwater quality. Therefore, restrictions on the use of structural infiltration BMPs are needed. These restrictions are included in section F.1.b.2.i. of the Tentative Order.

The inclusion of these restrictions is not inconsistent with other parts of the Tentative Order which promote infiltration, however. Other sections of the Tentative Order which promote infiltration do so by promoting the preservation of natural infiltration conditions (see Finding 34, section F.1.a.1, and section F.1.b.1.b). Preservation of natural infiltration conditions does not focus infiltration in one area, but rather provides for infiltration throughout a project by natural means. Therefore, potential pollutants are not concentrated in any one area, and infiltration rates are not accelerated. Infiltration under such circumstances poses minimal risk of groundwater contamination, and infiltration restrictions are not typically warranted.

For these reasons, infiltration requirements within the Tentative Order are consistent. Restrictions on infiltration are only required for structural infiltration BMPs.

See change at permit section F.1.b.2.i.

Section: F.1 **Subsection: F.1.b.2.i.ii**

Comment: The requirements for infiltration BMPs will severely limit the use of this BMP. The requirement that all urban runoff must undergo pretreatment prior to infiltration totally disregards the runoff quality. Copermittees should be allowed to determine when and where pretreatment is required. (Orange County, County of San Diego, BIASC, Metro Commission)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on

USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.iii

Comment: The infiltration of dry weather flows should be allowed where appropriate. It would replenish groundwater. The Copermittees should be allowed to determine when dry weather flow infiltration restrictions are necessary. Furthermore, no rationale has been provided for the blanket exclusion of dry weather flows from infiltration devices. Given all of the other restrictions on dry weather flows, it is unlikely that infiltrated dry weather flows would impact groundwater quality. (BIASC, Orange County, County of San Diego, Port of San Diego, Chula Vista)

Response: Focusing infiltration of large volumes of dry weather flows in small areas has the potential to adversely impact groundwater quality. For this reason, restrictions have been placed on the infiltration of dry weather flows in section F.1.b.2.i.iii. These restrictions are to apply to structural infiltration BMPs only. These restrictions on dry weather flow infiltration are appropriate and are based directly on USEPA guidance. The restrictions are recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The guidance the SWRCB refers to in Order WQ 2000-11 includes USEPA's recommendation against the infiltration of dry weather flows.

However, the SDRWQCB acknowledges that dry weather flow infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.vi

Comment: Does the requirement for 10 feet of separation between infiltration BMPs and groundwater preclude coastal cities with low elevations from using infiltration as a structural BMP? (Imperial Beach, Carlsbad)

Response: Many coastal cities have high groundwater near the coast. However, groundwater resources near the coast often do not support beneficial uses. Where groundwater resources do not support beneficial uses, the minimum vertical distance between the base of any infiltration structural treatment BMP to the seasonal high groundwater mark may be reduced, provided that the water quality of the groundwater resources is maintained.

See change in permit section F.1.b.2.i.vi.

Section: F.1 Subsection: F.1.b.2.vii

Comment: Does "directly adjacent" in F.1.b.(2)(a)vii apply if the development in question is hydrologically disconnected from the sensitive area? (Chula Vista)

Response: Situations regarding the application of SUSMP provisions at this level of detail will be left to the discretion of the Copermittees.

Section: F.1 Subsection: F.1.b.2

Comment: Copermittees should be encouraged to implement interim measures to ensure smooth transition upon adoption of individual SUSMPs. (Surfrider Foundation)

Response: The Tentative Order encourages a smooth transition to local SUSMP implementation. The requirement for the collective development of a model SUSMP by the Copermittees in a public process will help ensure that stakeholders will be familiar with the pending local SUSMP requirements. The development of the model SUSMP will ease the transition to full SUSMP implementation.

Section: F.1 Subsection: F.1.b.2

Comment: Deadlines for implementation of SUSMP provisions contained in the Permit are substantially longer than other Permit requirements and will allow unacceptable levels of pollution from development in the interim. (San Diego Baykeeper)

Response: The deadlines for implementation of the Standard Urban Storm Water Mitigation Plans under Tentative Order 2001-01 are based on realistic and achievable time frames for the Copermittees to develop the SUSMP requirements, subject to SDRWQCB approval.

Section: F.1 Subsection: F.1.b.2

Comment: The permit should contain concrete, aggressive time frames in order to achieve the stated goals of the SUSMPs. As written, it is somewhat unclear what steps must be taken within the 365 day period for collective development of a model SUSMP. (Surfrider Foundation)

Response: The deadlines for implementation of the Standard Urban Storm Water Mitigation Plans under Tentative Order 2001-01 are based on realistic and achievable time frames for the Copermittees to develop and implement the SUSMP requirements, subject to SDRWQCB approval. The Copermittees are provided discretion during this time to develop the SUSMP following their jurisdictional procedures. The amount of time following submittal of the SUSMP to the SDRWQCB necessary for the public process and adoption by the SDRWQCB cannot be dictated in the Tentative Order.

Section: F.1 Subsection: F.1.b.2

Comment: The Treatment Control BMPs proposed to implement the SUSWMP frequently require significant changes to traditional building and development codes. Thus, the project proponent is faced with a dilemma. If the Copermittees do not revise their building and development codes and ordinances before the date that the Treatment Control BMPs in the SUSWMP become a requirement, compliance becomes much more expensive, if not impossible.

Proposal
The Regional Board shall use its enforcement authority to assure that Copermittees modify their building and development codes and ordinances to allow for the use of Treatment and Source Control BMPs before the enforcement of the SUSWMP; and
The Regional Board shall grant the Copermittees any reasonable additional time necessary to modify their building and development codes and ordinances if it is shown at a publicly noticed hearing to the satisfaction of the Regional Board, that such modifications require additional time in order to comply with other regulations including but not limited to CEQA. (McKenna & Cuneo, L.L.P.)

Response: The Tentative Order requires the Copermittees to modify the building and development codes and ordinances as necessary to comply with the Tentative Order. The Tentative Order states "Within 180 days of approval of the model SUSMP in the public process by the SDRWQCB, each Copermittee shall adopt its own local SUSMP, and amended ordinances consistent with the approved model SUSMP, and shall submit both (local SUSMP and amended ordinances) to the SDRWQCB." The Copermittees are provided 365 days to develop the model SUSMP and an additional 180 days for the local SUSMP. One and a half years should be sufficient to develop the necessary ordinances.

Section: F.1 Subsection: F.1.b.2

Comment: We strongly support the permits emphasis on using natural processes such as wetlands and vegetated filters for water treatment. We urge that the implementation of these natural processes also be designed to inherently restore the ground water recharge value that existed prior to the hardening of our watersheds, wherever it can be done without risk of contamination. (San Diego Audubon Society)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2

Comment: Modify the SUSMP provisions to allow Co-permittees to develop a regional SUSMP and determine the mitigation plan categories, BMPs, Numeric Sizing Criteria, Pollutants of Concern, and Implementation Process, over a three-year period. (San Diego Co-permittees)

Response: The SUSMP provisions, including priority development project categories, have been upheld by the SWRCB in a precedential decision in Order WQ 2000-11. These provisions allow for the Copermittees to develop and determine BMPs, pollutants of concern, and implementation processes. Flexibility in the calculation of numeric sizing criteria is also provided. Furthermore, the time frame for development and implementation of the SUSMP provisions is sufficient. The Copermittees are provided with at least a year and a half before SUSMPs must be implemented. Considering the rapid development within the region, extension of the implementation of SUSMPs to three years would result in construction of significant development without adequate post-construction BMPs, causing additional long-term impacts to the region's receiving waters.

Section: F.1 Subsection: F.1.b.2

Comment: We very much support the standard urban storm water mitigation plans and the numeric sizing criteria and the requirements for new streets and highways. We know these to be reasonable and achievable. (USEPA)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2

Comment: The City supports the development of a model SUSMP.

The Stakeholder group recommended that the soon to be issued Tentative Order provide flexibility and discretion by allowing the City and other Copermittees to implement the requirements of the SUSMP. (City of San Diego)

Response: The SUSMP requirements allow for the Copermittees to develop processes to determine pollutants of concern and selection of appropriate BMPs. Section F.1.b.2.e of the Tentative Order states "[a]s part of the model SUSMP, the Copermittees shall develop a procedure for pollutants of concern to be identified […]." Section F.1.b.2.b states "[t]he SUSMP shall include a list of recommended pollution prevention, source control, and structural treatment BMPs." Both of these sections of the Tentative Order allow the Copermittees discretion in developing these particular parts of the SUSMP program.

Section: F.1 Subsection: F.1.b.2

Comment: Upon adoption of local SUSMPs, requirements should apply to all uncompleted priority projects or phases of priority projects regardless of whether grading or construction activities have begun. (Surfrider Foundation)

Response: Requiring SUSMPs to apply to development projects which have already begun construction could require significant retrofitting of already constructed facilities. Costs for retrofitting may in some cases be prohibitive, as opposed to implementation of BMPs in the planning phase, when BMP implementation is most cost effective. While the SDRWQCB strongly supports retrofitting of BMPs in areas of existing development where water quality conditions warrant, potential retrofitting requirements which may result from applying SUSMPs to projects already under construction may not be cost-effective in all cases. For this reason, SUSMP requirements will be applied only to development projects which have not yet begun construction.

Section: F.1 Subsection: F.1.b.2.

Comment: Page 19, F. 1.b.(2) (i) vii., revise:
The soil through which infiltration is to occur shall have physical and chemical characteristics (such as appropriate cation exchange capacity, organic content, clay content, sand content, and infiltration rate) which are adequate for proper infiltration duration and treatment of urban runoff for the protection of groundwater for beneficial uses, and to prevent ponding of water in the infiltration basin for more that 72 hours. Soil characteristics and infiltration rates shall be confirmed through field testing. (State Department of Health Services)

Response: Requirements regarding infiltration durations are left to the discretion of the Copermittees.

Section: F.1 Subsection: F.1.b.2.a

Comment: Increase in gross floor area where the amount of impervious surface does not increase beyond the threshold (i.e., 5,000 square feet) should be excluded from SUSMP requirements. (Sempra Energy)

Response: An increase in gross floor area which does not result in an increase in impervious surfaces of 5,000 square feet is not subject to the SUSMP requirements. Significant redevelopment is defined in the Tentative Order as "the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site." The list of examples of significant redevelopment provided in the Tentative Order, including "increases in gross floor area," must only meet the SUSMP provisions if they increase impervious surfaces by 5,000 square feet or more.

Section: F.1 Subsection: F.1.b.2.a

Comment: DEFINING SIGNIFICANT REDEVELOPMENT: DRAFT PERMIT SECTION F.1.b.(2)(a)

Based upon the proposed definition above, the Urban Core is already 90% developed. Thus, most construction activity occurring in the Urban Core constitutes redevelopment. Therefore, the definition of "significant redevelopment" is critical to CCDC.

A. Background
SUSWMPs are applicable to development and "significant redevelopment." The definition of significant redevelopment is obviously of great concern to CCDC because it will determine which of its projects are subject to the SUSMP requirements and to what extent. The definition of significant redevelopment was very contentious at the State Board hearings on the Los Angeles SUSWMP plan. The LA RWQCB reworked their definition in response to that hearing in an attempt to clarify the intent. Their definition is as follows:

[Significant 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 run off 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.

This definition only further confuses the reader. What are the distinctions between replacement, creation, and addition? What is the difference, if any, between expansion and structural development? What is routine maintenance? What are land disturbing activities? What else is included in the definition of redevelopment?

The SD RWQCB touched on the definition of significant redevelopment in its Draft Responses to Comments Received at Numeric Sizing Criteria Public Workshop 11, held April 13, 2000. Workshop participants asked: "When a site is under redevelopment, will the whole site have to meet the numeric sizing criteria or only the part of the site, which is to be redeveloped?" The RWQCB Staff responded:

If the redevelopment involves improvements for fifty percent or more of the site, then the entire site area becomes subject to numeric sizing criteria. If less than fifty percent of the area is to be redeveloped, then only the area that is improved is subject to the criteria.

This guidance also leaves many questions unanswered. For example, what is an improvement? Do improvements include repair and expansion? What the SD RWQCB appears to be saying is that if more than 50% of the site remains untouched then only that modified area are subject to SUSWMPs. Whether the SD RWQCB intended any other distinctions concerning the type or scale or redevelopment remains unclear.

The Permit proposes yet another definition:
Significant 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. Where significant redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to SUSWMP

requirements, the numeric sizing criteria discussed in section F. 1.b. (2)(c) applies only to the addition, and not the entire development.

This definition does not appear to encompass the SDRWQCB Staff s entire concept of significant redevelopment given it uses the language includes, but is not limited to all of the items listed. This is difficult to understand because the proposed definition appears to include all construction, remodeling, and replacement of impervious surfaces or land disturbing activities - seemingly an all-encompassing list of reconstruction activities. Thus, for example, the addition of an enclosure for trash receptacles or a bus enclosure could, under this definition, impose SUSWMP requirements on all or some of the property.

B. Proposed Definition
We propose the following, more understandable definition:
"Significant Redevelopment" is:
1. The construction of a replacement structure that includes more
than 5000 square feet of impervious surface area;
2. The addition of more than 5000 square feet to an existing structure;
3. The repair of an impervious surface greater than 5000 square feet at an existing structure; or
4. Where the total square footage of the replacement, addition or repair exceeds 50% of the total impervious area of the completed redevelopment project, then storm water from the entire project must be considered for the purposes of storm water mitigation. Where the total square footage of the replacement, addition or repair is less than or equal to 50% of the total impervious area of the completed redevelopment project, only storm water from the replacement, addition or repair need be considered.

Discussion C.
This definition of "significant redevelopment" is more workable because it clearly defines the obligations of the Copermittees. It also makes technical and economic sense. Small additions at a project site will have little impact on water quality through the creation of additional impervious areas. Imposing the SUSWMP on projects less the 5,000 square feet will have significant cost implications. Further, the unintended consequence of requiring the SUSWMP for de minimis projects may well be to worsen water quality. No one is going to put up a ten-by-ten shed to house waste containers if they are then going to be faced with the added costs of capturing and treating the resulting storm water. (McKenna & Cuneo, L.L.P.)

Response: The definition for significant redevelopment in the Tentative Order is identical to that included in SWRCB Order WQ 2000-11. The Tentative Order states “Significant redevelopment is defined as the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site.” Following this definition of significant redevelopment is a list of examples of significant redevelopment, which includes "replacement of a structure." None of the listed examples, including "replacement of a structure," constitute significant redevelopment unless they result in an increase of at least 5,000 square feet of impervious surface.

Section: F.1 Subsection: F.1.b.2.a

Comment: Definition of "Significant Redevelopment". Section F.1.b(2)(a) of the Tentative Order, found at page 15, provides a definition of "significant redevelopment." If this definition is to be applied uniformly throughout the Order, it should be set forth at the very beginning of the Order, preferably when the term "significant redevelopment" is first used (i.e., Section A.4 at page 8). (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.a

Comment: Matters are further complicated by the discussion regarding Environmentally Sensitive Areas in section F.1.b(2)(a)vii., on page 16, which appears to include a different definition of significant redevelopment areas. This section provides as follows:

"Environmentally Sensitive Areas. All development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area, which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10% or more of its naturally occurring condition."

What happened to the 5,000 square foot threshold for "significant redevelopment"? Is that threshold reduced to 2,500 square feet in "Environmentally Sensitive Areas"? Please clarify. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The definition of what constitutes significant redevelopment when the redevelopment is occurring within, or directly adjacent to, or discharging directly to an environmentally sensitive area is included in section F.1.b.2.a.vii. This section states "Environmentally Sensitive Areas. All development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area, which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10% or more of its naturally occurring condition." The 2,500 square foot size threshold applies to redevelopment within or near environmentally sensitive areas. The 5,000 square foot size threshold applies to redevelopment elsewhere.

Section: F.1 Subsection: F.1.b.2.a

Comment: F.1.b.(2)(b)iv: BMP Requirements - "Significant redevelopment" includes road-widening projects. In many cases structural BMP's are not a reasonable requirement for lineal redevelopment. (SANDAG)

Response: BMPs are a reasonable requirement for roads. Caltrans, as part of a BMP Pilot Study, has installed many structural BMPs to treat runoff from freeways in Southern California. Furthermore, BMPs for roads are necessary due to the concentrations of pollutants in runoff from roads. A Federal Highway Administration “Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report” (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff. Streets, roads, highways, and freeways also consist of extensive impervious surfaces, which alter flow regimes and increase potential for downstream erosion.

Section: F.1 Subsection: F.1.b.2.a

Comment: The amount of land that may be temporarily disturbed during redevelopment activities, but not necessarily made more impervious, should not be included in the calculation to determine if the project exceeded 5,000 square feet and therefore is subject to SUSMP requirements. This language should be revised to clarify that this is not its intent. (Sempra Energy)

Response: Redevelopment is only considered significance redevelopment and subject to SUSMPs when it results in an increase in impervious surfaces of 5,000 square feet. This size limit for impervious surfaces is included in the significant redevelopment definition to prevent SUSMP provisions from applying to insignificant redevelopment projects which will not result in an impact to water quality. The definition of significant redevelopment included in the Tentative Order is identical to the definition developed by the SWRCB in its precedential Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a

Comment: This provision should be amended to mandate SUSMP compliance for entire facilities any time there is an increase in at least 10% of the impervious surfaces of a previously existing development. (Surfrider Foundation)

Response: The limited SUSMP applicability to partial redevelopment projects is included in the significant redevelopment definition to prevent SUSMP provisions from applying to large areas when only relatively minor redevelopment occurs. The definition of significant redevelopment included in the Tentative Order is identical to the definition developed by the SWRCB in its precedential Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a

Comment: Add redevelopment areas to significant redevelopment definition in F.l.b.(2)(a) pg.15 using the following language: ". . . SUSMP requirements shall apply to all new development and significant redevelopment projects falling under the priority project categories listed below and to all significant redevelopment in designated Redevelopment Areas. . .". (Environmental Health Coalition)

Response: Any redevelopment in "redevelopment areas" will be subject to SUSMP provisions (as required for significant redevelopment) if the redevelopment results in an increase in impervious surfaces of 5,000 square feet. Therefore, most redevelopment occurring in "redevelopment areas" will be subject to the SUSMP provisions. Applying SUSMP provisions to all redevelopment in "redevelopment areas" irregardless of size may result in the application of SUSMP provisions to insignificant redevelopment projects where meeting the SUSMP provisions may be unnecessary or infeasible. The significant redevelopment definition included in the Tentative Order is identical to that developed in the SWRCB's precedential Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a

Comment: Is it correct that a commercial development of 100,000 sq ft of impervious surface does not need an SUSMP if the building foot print is not increasing? (Vasquez, Ralph)

Response: The condition of the building footprint is not a trigger for SUSMP redevelopment requirements. SUSMP redevelopment requirements apply only if 5,000 square feet of impervious surface has been added. Of course, if the expansion of a building footprint results in a 5,000 square feet increase in impervious surface, SUSMP requirements would also apply. Any new commercial development in which the land area for development is larger than 100,000 square feet must meet the SUSMP requirements. Any redevelopment of a commercial development greater than 100,000 square feet must meet SUSMP requirements if the redevelopment results in an increase in impervious surfaces of 5,000 square feet.

Section: F.1 **Subsection: F.1.b.2.a**

Comment: How is "significant development" defined? (Anonymous Workshop 1)

Response: Significant redevelopment is defined in Tentative Order Section F.1.b.2.a.

Section: F.1 **Subsection: F.1.b.2.a**

Comment: Page 17, after F. 1.b.(2)(a) xv. add,

xvi. Be designed to prevent vector breeding. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.1 **Subsection: F.1.b.2.a**

Comment: We do not feel it is feasible to require structural treatment BMPs to be implemented at all the Permit listed priority development projects. These priority development projects were not selected based on any scientific basis, merely on the thought of which developments should be of higher priority than others. Structural treatment BMPs should be required on developments that will discharge pollutants of concern at levels that would negatively impact receiving water bodies. (Building Industry Association of Southern CA)

Response: The SUSMP priority development project categories have been dictated by the SWRCB in its precedential decision in Order wq 2000-11. A December 26, 2000 SWRCB memo from Craig M. Wilson to the Regional Board Executive Officers states that Order WQ 2000-11 "determined that SUSMPs appropriately applied to the following categories of development: single-family hillside residences, 100,000 square foot commercial developments, automotive repair shops, restaurants, home subdivisions with 10 to 99 housing units, home subdivisions with 100 or more housing units, and parking lots with 5, 000 square feet or more or with 25 or more parking spaces and potentially exposed to storm water runoff."

The SDRWQCB has expanded on this SWRCB guidance in a few instances. The instances are as follows:

1. The parking lot size criteria was changed from 25 or more parking spaces to 15 or more parking spaces. This change was based on a comment from the Port of San Diego during the April 13, 2000 SDRWQCB SUSMP Public Workshop. The comment noted that the other parking lot size criteria of 5,000 square feet actually corresponded more closely with the size of 15 parking spaces, rather than 25 parking spaces. In order to make the two parking lot size criteria as similar as possible, the criteria for 25 parking spaces was reduced to 15 parking spaces.

2. The single-family hillside residence category was changed to "All hillside development greater than 5,000 square feet." This change was made to reflect the urban runoff concerns generated by hillside development. The primary concern regarding hillside development is the potential for erosion resulting from changes in the flow regime caused by the development. While pollutants from hillside development (including single-family residences) can be significant, increases or changes in flow conditions provide the greatest potential for impacts to beneficial uses. Therefore, the type of development on a hillside is not at issue as much as the size of the development and the resulting changes in the flow regime. For this reason, rather than focus on the type of hillside development, the SDRWQCB SUSMP requirements focus on size. The size (5,000 square feet) was chosen based on SWRCB guidance in Order WQ 2000-11, which uses a size threshold of 5,000 square feet for significant redevelopment.

3. Retail gasoline outlets were added as a SUSMP priority development project category. Regarding retail gasoline outlets as a priority category, the SWRCB states in the December 26, 2000 memo that Order WQ 2000-11 "allows broader discretion by the Regional Water Boards to decide whether to include additional types of development in future SUSMPs. These areas for potential future inclusion in the SUSMPs include retail gasoline outlets […]." The Draft Fact Sheet/Technical Report for Tentative Order No. 2000-01 discusses the rationale for retail gasoline outlets to be designated a priority development project category. Also see responses to comments ( ).

4. Streets, roads, highways, and freeways were added as a SUSMP priority development project category. This is due to their potential to be a significant contributor of pollutants in urban runoff. A Federal Highway Administration "Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report" (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff. Streets, roads, highways, and freeways also consist of extensive impervious surfaces, which alter flow regimes and increase potential for downstream erosion.

Section: F.1 Subsection: F.1.b.2.a.iii

Comment: And does F.1.b. (2)(a) iii and F.1.b. (2)(a) viii apply to redevelopment projects also? (City of Chula Vista)

Response: Redevelopment of any site falling under the SUSMP priority development project categories which increases impervious surfaces by 5,000 square feet or more is subject to the SUSMP provisions.

Section: F.1 Subsection: F.1.b.2.a.iii

Comment: Are the SUSMP requirements applied to 100,000 sq ft gross floor area or total land area for a development? (Hamilton, Julie)

Response: The Tentative Order states "Commercial developments greater than 100,000 square feet. This category is defined as any development on private land that is not for heavy industrial or residential uses where the land area for development is greater than 100,000 square feet. The category includes, but is not limited to: hospitals; laboratories and other medical facilities; educational institutions; recreational facilities; commercial nurseries; multi-apartment buildings; car wash facilities; mini-malls and other business complexes; shopping malls; hotels; office buildings; public warehouses; and other light industrial facilities."

Section: F.1 Subsection: F.1.b.2.a.iii

Comment: The commercial developments must be considered priority projects under the SUSMP requirement. But, given the likelihood of cumulatively significant pollutant discharges from all types of commercial developments, the limitation of this category to developments greater than 100,000 square feet is unwarranted. Copermittees should assess impervious cover percentages by watershed, and where more than 10% of the natural filtration is lost, all commercial development of any size should have to adopt SUSMP urban runoff controls. (Surfrider Foundation)

Response: The 100,000 square feet size threshold for commercial development will result in most commercial development being subject to the SUSMP provisions. This size threshold is included in the commercial development definition to prevent SUSMP provisions from applying to small commercial projects which most likely will not result in a significant impact to water quality. The definition of commercial development included in the Tentative Order is identical to the definition upheld by the SWRCB in its precedential Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a.iii

Comment: Does the entire impervious area of a redevelopment project fall subject to numeric sizing requirements if impervious area is added that is over 50% of the existing developments impervious area? And does F.1.b. (2)(a) iii and F.1.b. (2)(a) viii apply to redevelopment projects also?

Redevelopment may correct pollution problems inherent in existing development, and it also may reduce the need for developing new lands for housing and commercial space. However, stringent requirements that tend to reduce the viability of redevelopment projects can work to restrict these benefits and should be carefully considered. (City of Chula Vista)

Response: The Tentative Order states "[w]here significant redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to SUSMP requirements, the numeric sizing criteria discussed in section F.1.b.(2)(c) applies only to the addition, and not to the entire development."

Section: F.1 Subsection: F.1.b.2.a.ix

Comment: The IEA recommends emergency provisions be included in the permit and language exempting firebreaks, unpaved public utility access roads, and temporary roads. (Industrial Environmental Association)

Response: The SUSMP requirements are intended to apply to long-term developments. The requirements are therefore limited to paved streets, roads, highways, and freeways. Streets, roads, highways, and freeways are defined in the Tentative Order as "any paved surface used for the transportation of automobiles, trucks, motorcycles, and other vehicles. To the extent that the above roads are not paved, they are not required to meet the SUSMP conditions.

Section: F.1 Subsection: F.1.b.2.a.ix

Comment: F. 1.b.(2)(a)(ix) page 16; Streets, roads, highways, and freeways.
The language (i.e., "...any paved surface...") is all-inclusive and would potentially require even short paved access roads and/or roads that are gated (and therefore have limited access and use) to be subject to SUSMP requirements. This section should be revised to exclude short access roads and gated roads that have limited access and use. (Sempra Energy)

Response: The intent of the "streets, roads, highways, and freeways" SUSMP priority development project category is address such transportation corridors which have the potential to impact receiving waters, either through the discharge of pollutants or resulting changes in peak flow rates. Therefore, short access roads and gated roads which receive limited use need not be covered under SUSMPs. For this reason, a size threshold of 5,000 square feet will be placed on the "streets, roads, highways, and freeways" SUSMP priority development project category. For perspective, this threshold would allow for a SUSMP exemption for a 20 foot wide access road which was less than 250 feet long. The 5,000 square foot threshold was chosen based on the 5,000 square foot threshold for parking lots. Both roads and parking lots generate similar pollutants due to their similar sources of pollutants: automobiles. The 5,000 square foot threshold for parking lots was upheld by the SWRQCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a.ix

Comment: Are road construction projects included in sizing criteria? (Anonymous Workshop 1)

Response: Numeric sizing criteria will apply to all new road construction projects, as well as road redevelopment projects which result in an increase in impervious surfaces of 5,000 square feet.

Section: F.1 Subsection: F.1.b.2.a.ix

Comment: Are streets and highways subject to the numeric sizing criteria? (Coalition for Practical Regulation)

Response: Yes; streets, roads, highways, and freeways are a priority development project category under the SUSMP provisions.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: This plan must vigorously address roads, streets, and highways for new and for existing development to be meaningful, systematic, fair, or effective. These elements are a major direct contributor to our water quality problems. (San Diego Audubon Society)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: Is the requirement for existing streets or new streets? (Coalition for Practical Regulation)

Response: The requirement applies to new streets as well as redevelopment of any existing streets which results in an increase in impervious surfaces of 5,000 square feet or more.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: The Regional Board should amend the Caltrans Storm water Permit to be consistent with the SUSMP requirements in the Municipal Storm water Permits since the Copermittees have no authority over Caltrans roads. (San Diego Baykeeper)

Response: Comment noted.

Section: F.1 **Subsection: F.1.b.2.a.ix**

Comment: Please clarify the intent of SUSMP with regard to new or existing sidewalk construction, curb and gutter construction, and minor roadway work. (Anonymous Workshop 1)

Response: Since sidewalks are not "used for the transportation of automobiles, trucks, motorcycles, and other vehicles," they are not subject to SUSMPs under the Street, Roads, Highways, and Freeways priority development project category. Addition of curb and gutter to an existing road is essentially redevelopment of the road. Therefore construction of curb and gutter on an existing road would be subject to SUSMP requirements if it met the significant redevelopment size criteria of adding 5,000 square feet of impervious surfaces. Other minor roadway work would also be subject to SUSMPs if it met the significant redevelopment size criteria.

Section: F.1 Subsection: F.1.b.2.a.ix

Comment: The Order, which departs from other regional NPDES permits by requiring that streets, roads, highways and freeways be regulated by SUSMP's, is vague and raises questions on what structural BMP's for streets will remove the pollutants of concern. (Coalition for Practical Regulation)

Response: Caltrans is currently conducting a BMP pilot study on the effectiveness of various BMPs for controlling pollutants in highway runoff. Preliminary results indicate many of the BMPs included in the study were effective in removing pollutants of concern from highway runoff (such as metals and total suspended solids). The Caltrans study can be consulted to determine which BMPs are most effective (Caltrans, 2000).

Section: F.1 Subsection: F.1.b.2.a.v

Comment: How is a restaurant regulated by the permit when the restaurant is less than 5,000 sq ft but shares a larger parking lot with other tenants? (Vasquez, Ralph)

Response: How to address detailed specific situations such as the one described above is left to the discretion of the Copermittees. The model and local SUSMPs to be developed by the Copermittees should include provisions to address such situations. One way to address the above situation would be to calculate the restaurant's area as the area of the restaurant combined with the area of the parking spaces allotted to the restaurant.

Section: F.1 Subsection: F.1.b.2.a.vi

Comment: The permit is too indefinite with regard to what constitutes "hillside development." To clarify the matter, the permit should either define "known erosive soil conditions, or point to an existing regulation (i.e. a specific Copermittee's existing hillside development ordinance) containing a more detailed and expansive description. In addition, the provision should be modified to include development where grading will occur on any parcel where the natural slope is 15% or greater or where plans include cut or fill slopes that are 30 feet high or greater. (Surfrider Foundation)

Response: Hillside development is defined in the Tentative Order as "any development which creates 5,000 square feet of impervious surface which is located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater." The identification of the location of erosive soil conditions is left to the discretion of the Copermittees, since they are most familiar with the soil conditions within their jurisdictions. The model and local SUSMPs to be developed by the Copermittees should identify areas or methods to identify areas with know erosive soil conditions within their jurisdictions. The definition of "hillside" included in the Tentative Order is identical to the definition included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: DEFINING ENVIRONMENTALLY SENSITIVE AREAS
The Municipal Permit requires that all development or redevelopment whose storm water discharges to an environmentally sensitive area " will be subject to the SUSWMP.

The Draft Permit defines "Environmentally Sensitive Areas" as-
Environmentally sensitive areas include but are not limited to all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994) and amendments); water bodies designated with the RARE beneficial use by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994) and amendments); areas designated as preserves or their equivalent under the Multi Species Conservation Program within the Cities and County of San Diego; and any other equivalent environmentally sensitive area which have been identified by the Copermittees. "Directly adjacent" means situated within 200 feet of the environmentally sensitive area. "Discharging directly to" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands.

By this definition, the SD RWQCB Staff resolves any remaining ambiguities. Everything is an environmentally sensitive area unless the Copermittee finds otherwise. Since it is unlikely that any Copermittee will wish to take on the expense or potential legal liability of determining that a property is not an environmentally sensitive area, it is likely under this definition that any construction or reconstruction project that adds 2500 square feet of impervious area or increases the impervious area by more than 10% will be required to capture and treat its storm water. Thus, a homeowner with a 2500 square foot house who adds a 200 square foot patio will be required to capture and treat her storm water before discharge. However, the real impact of this definition becomes apparent when read in connection with the property prioritization requirements of the Draft Permit.

We propose the following definitions:
Environmentally Sensitive Area 1. -"Environmentally Sensitive Area" means an area designated as an Area of Special Biological Significance by the State Water Resources Board, an area designated as a Significant Natural Area by the California Resources Agency or an area designated as an area of Ecological Significance by the County of San Diego.

"Directly adjacent to" means situated within 200 feet of the environmentally sensitive area provided however, that the Executive Officer shall prepare a map of the County clearly identifying those areas which are within 200 feet of environmentally sensitive areas for approval by the Regional Board prior to the implementation of the SUSWMP. The Regional Board shall review and approve the map only upon a noticed motion.

"Directly discharging to" means outflow from a drainage conveyance system that is composed entirely of flows from the subject property, development, subdivision or industrial facility, and not commingled with the flows from adjacent lands. (McKenna & Cuneo, L.L.P.)

Response: The definition of Environmentally Sensitive Area is clear. Four specific types of Environmentally Sensitive Areas are identified in the definition. The definition also allows each Copermittee to identify any other equivalent Environmentally Sensitive Area. The commentor suggests that the Tentative Order defines all lands as Environmentally Sensitive Areas unless the Copermittees find otherwise. This is not the case. Only the four types of Environmentally Sensitive Areas listed in the definition, as well as any Environmentally Sensitive Areas identified by the Copermittees, are specified in the Tentative Order.

It is important to note that the definition of Environmentally Sensitive Area included in the Tentative Order is the result of the LARWQCB appeal process. The definition was refined over several months. While the SWRCB chose not to include Environmentally Sensitive Areas in the LARWQCB SUSMP, it was due to inconsistencies in the LARWQCB permit, not lack of a clear definition. SWRCB Order WQ 2000-11 states "The Regional Water Board may choose to consider the issue further when it reissues the permit."

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: The definition for "directly adjacent to an environmentally area is unnecessarily limited. The provision should be expanded to include any proposed project within 1000 feet of a designated environmentally sensitive area. Further, "discharging directly" should be redefined to include any outflow from a drainage conveyance system that impacts the subject area, regardless of whether it is commingled with flows from adjacent lands. (Surfrider Foundation)

Response: The Environmentally Sensitive Area (ESA) priority development project category is meant to apply to projects which have the potential to cause a direct impact to an ESA. In other words, the inclusion of the ESA category in the Tentative Order is designed to provide additional protection of ESAs. For this reason, the ESA category is limited to projects which are "within or directly adjacent or discharging directly to" an ESA, where "discharging directly to" means flows that are "not commingled." For projects which are further away from an ESA, but still tributary to an ESA, the other Tentative Order provisions, including the other SUSMP priority development project categories, are expected to provide the necessary protection for the ESA from new development project impacts.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: PROTECTIONS FOR ENVIRONMENTALLY SENSITIVE AREAS Paragraph F.l.b.(2)(a)vii, on page 16 requires that projects be considered priority projects for implementation of SUSUMPs if they discharge directly into Environmentally Sensitive Areas. This is very appropriate. Unfortunately the last sentence appears to exempt cases in which the flow is commingled with flows from adjacent lands. We urge that this exemption be removed. A property should be considered a priority project if its outflow can potentially have a significant impact on a nearby Environmentally Sensitive Area. No exemptions should provided. (San Diego Audubon Society)

Response: The Environmentally Sensitive Area (ESA) priority development project category is meant to apply to projects which have the potential to cause a direct impact to an ESA. In other words, the inclusion of the ESA category in the Tentative Order is designed to provide additional protection of ESAs. For this reason, the ESA category is limited to projects which are "within or directly adjacent or discharging directly to" an ESA, where "discharging directly to" means flows that are "not commingled." For projects which are further away from an ESA, but still tributary to an ESA, the other Tentative Order provisions, including the other SUSMP priority development project categories, are expected to provide the necessary protection for the ESA from new development project impacts.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: Included among the categories of developments for which a SUSMP must be prepared are parking lots "5,000 square feet or more or with 15 or more parking spaces and potentially exposed to urban runoff." (See, section F.1.b(2)(a)viii, at page 16). Does this definition include parking garages that are underground or beneath residential structures? Does it include parking spaces that are above ground but covered? (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The Tentative Order states the SUSMP provisions will apply to "[p]arking lots 5,000 square feet or more or with 15 or more parking spaces and potentially exposed to urban runoff." Therefore, if the specific parking lot situations described above are not potentially exposed to urban runoff, then they would not be subject to the SUSMP provisions.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: F. 1.b.(2)(a)(vii) page 16; Environmentally Sensitive Areas
"Environmentally sensitive areas include ... and any other equivalent environmentally sensitive areas which have been identified by the Copermittees. "

The above language in bold type would open the designation of "environmentally sensitive areas" to a non-formal determination process that could lead to arbitrary decisions and a lack of consistency in their application. Therefore this language should be deleted from the permit. (Sempra Energy)

Response: How "any other equivalent environmentally sensitive areas" are identified is left to the discretion of the Copermittees. Utilization of the public process to identify such areas is encouraged in the Tentative Order, which states in section F.6 that "[e]ach Copermittee shall incorporate a mechanism for public participation in the implementation of the Jurisdictional URMP." Furthermore, approval of the model SUSMP by the SDRWQCB will also undergo the public process, as stated in Tentative Order section F.1.b.2. Finally, the environmentally sensitive areas listed in the Tentative Order have been open for public comment during the Tentative Order adoption process.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: Under the definition of Environmentally Sensitive Areas, the Permit includes Areas of Special Biological Significance as areas where numeric sizing criteria should be utilized. However, the Ocean Plan with Proposed Amendments (amending 1997 Ocean Plan), recently approved by the State Board, provides that “waste shall not be discharged to areas designated as being of special biological significance.” (page B-22). Waste is then defined as “total discharge, of whatever origin.” (page B-32). Therefore, the Permit must explicitly prohibit discharges into ASBS areas, which should either be included in this section or in Sections A or C. Prohibitions of discharges into ASBS areas should also be included wherever there is discussions of prohibition of pollutants into 303(d)-listed waters. (San Diego Baykeeper)

Response: This issue has statewide significance and is currently scheduled to be addressed by the SWRCB. At the time the SWRCB has addressed the issue, the SDRWQCB will act accordingly.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: BMPs should be required rigorously for all environmentally sensitive areas. Greater weight should be placed on sensitivity of individual sites. (Environmental Health Coalition)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.a.vii

Comment: Modify the first sentence to: "AlI development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area, which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10% or more of its existing condition." (Port of San Diego)

Response: Section F.1.b.2.a.vii of the Tentative Order correctly refers to the increase of impervious area of greater than 10% of the naturally occurring condition because of the impact to receiving waters of impervious areas greater than 10% of a project area (Schueler 1994). Consequently, Regional Board staff recommend the language of Section F.1.b.2.a.vii be retained.

Section: F.1 Subsection: F.1.b.2.a.viii

Comment: Amend F.Lb.(2)(a)viii. pg.16 to include all open parking lots (instead of exempting non-commercial lots) as follows, "Parking lots 500 square feet or more or with 5 or more parking spaces and potentially exposed to urban runoff. . . ". (Environmental Health Coalition)

Response: The size threshold for parking lots of 5,000 square feet is the same as that included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. While the number of parking spaces threshold in the Tentative Order was reduced to 15 parking spaces (as opposed to the 25 parking space threshold included in the LARWQCB SUSMP), this reduction was based on comments received at the SDRWQCB's April 13, 2000 SUSMP Public Workshop. The size thresholds were placed on the parking lot SUSMP category to prevent SUSMP provisions from applying to smaller parking lots where SUSMP implementation may be cost prohibitive.

Section: F.1 Subsection: F.1.b.2.a.viii

Comment: Copermittees should be encouraged to collect runoff mitigation fees from new and redeveloped parking lots smaller than 5,000 square feet or 15 spaces. Such fees could then be applied to SUSMP or JURMP controls implemented on adjacent roads. (Surfrider Foundation)

Response: The Tentative Order requires the Copermittees to address urban runoff from parking lots of all sizes in sections F.3.a.3.b.i, F.3.c.2.g, and F.3.d.2. How the Copermittees address urban runoff from parking lots is left to their discretion in order to provide them with flexibility. Therefore, while the

SDRWQCB supports innovative measures such as runoff mitigation fees, they are not required by the Tentative Order.

Section: F.1 Subsection: F.1.b.2.a.viii

Comment: Would slurry sealing a parking lot constitute redevelopment, or would that be routine maintenance? (Industrial Environmental Association)

Response: Slurry sealing a parking lot would only constitute significant redevelopment, and therefore be subject to the SUSMP provisions, if the slurry sealing resulted in the creation or addition of 5,000 square feet of impervious surfaces or more.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: If RGOs are forced to implement active control measures (exceeding the "maximum extent practicable" criterion) CEQA, APA and Unfunded Mandate requirements would have to be applied. (Western States Petroleum Association)

Response: Structural controls meet the criterion of "maximum extent practicable", not merely "practicable". Practicability or practicality from a cost viewpoint is not exceeded. The typical costs for installation of a filtering unit is 400 to 800 dollars with yearly maintenance costs averaging about 240 dollars.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: The Water Code only requires that storm water control measures be implemented to the maximum extent practicable. Numeric Sizing Criteria and the use of treatment technologies at RGOs are not, therefore, mandated when other BMPs may suffice. (Western States Petroleum Association)

Response: A WSPA sponsored study, "Results of a Retail Gasoline Outlet and Commercial Parking Lot Stormwater Runoff Study ", concludes that pollutant concentrations from RGO runoff are similar to concentrations from commercial parking lots, restaurants and other urban developments that are properly regulated under Federal and State storm water pollution laws. Therefore, the discharges are significant. The fact that significant discharges were found in the study indicates that the current source control measures are not working and structural controls are needed to meet the criterion of "maximum extent practicable".

Section: F.1 Subsection: F.1.b.2.a.x

Comment: Sophisticated treatment technologies for dealing with gasoline spills are impractical because these approaches typically involve the installation of underground vaults. Such vaults trap gasoline vapors and air to create an explosive environment. (Western States Petroleum Association)

Response: Oil-water separators have been in common use at gasoline stations for many years. These separators are in essence the same as underground vaults. Safety issues have not been raised in the past concerning the potential for explosive environments to occur in separators. It is not likely that the chambers holding stormwater would create any more of an explosive environment than oil-water separators or utility vaults that are also common near RGOs.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: Filtration and treatment technologies used at RGOs are ineffective as BMPs. The BMP Guide states that these technologies did not pass peer review. A Sacramento study found that these approaches were generally not acceptable. (Western States Petroleum Association)

Response: The study by Larry Walker and Associates does indeed indicate that 13 of 14 of the devices tested were "not acceptable". In all but one case, the listed "deficiencies" (the entire basis for concluding that the devices were "not acceptable") were deficiencies of the study, not the devices themselves. In nearly every case, the deficiencies cited were the lack of the number of storms or lack of a sufficient number of sites to justify any conclusion. Therefore, the conclusion that the devices are "not acceptable" is not only misleading. It is false. The data simply did not justify a determination of acceptability. An EPA funded study, "The Rouge River National Wet Weather Demonstration Project" evaluated four filtration/treatment storm drain inserts. This study concluded that "all four filters performed well … and were relatively easy to maintain". The study also stated that, "these devices are applicable for use in gas stations … and they have a relatively low cost". None of the four devices tested in this study were considered in the Larry Walker study and this study was ignored in the BMP Guide.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: Numeric Sizing Criteria of the SUSMP promotes infiltration as a BMP for storm water runoff, but this is inappropriate for RGOs because it is not desirable to promote the infiltration of gasoline into soil and groundwater. (Western States Petroleum Association)

Response: SDRWQCB staff agree that infiltration BMPs should not be employed at RGOs. Numeric Sizing Criteria can be applied using other structural BMPs involving filtration or treatment.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: RGOs are not a significant source of stormwater pollution. There is no evidence that stormwater runoff from well-maintained RGOs results in any significant adverse water quality impact. A study performed by Geomatrix provides evidence that most contaminant levels in stormwater runoff from RGOs are below EPA's benchmark levels and therefore RGOs are not a significant source of stormwater pollution. (Western States Petroleum Association)

Response: The cited WSPA sponsored study, "Results of a Retail Gasoline Outlet and Commercial Parking Lot Stormwater Runoff Study ", concludes that pollutant concentrations from RGO runoff are

similar to concentrations from commercial parking lots, restaurants and other urban developments that are properly regulated under Federal and State storm water pollution laws. Therefore, the discharges are significant. The cited study employed of six selected (I.e. not randomly chosen) RGOs and four parking lots. This study clearly was not broad enough in scope to justify the conclusion that, "contaminant levels in stormwater runoff from RGOs show most contaminants are below EPA's benchmark levels and therefore RGOs are not a significant source of stormwater pollution".

Section: F.1 Subsection: F.1.b.2.a.x

Comment: RGOs are a unique source category and should not be treated identically with other types of sources. This was acknowledged by the State Water Board when they determined that RGOs should not be subject to numerical standards in the Los Angeles Region. The Board ordered that all BMPs listed in the BMP Guide be mandated. (Western States Petroleum Association)

Response: As noted in the comment, the Board allowed for the possible future addition of RGOs in the SUSMP design standards if it were shown proper justification for doing so at a later date. The Los Angeles Regional Board is currently in the process of providing such a justification. Since this issue is pending, it is not accurate to say that it has been determined that all BMPs in the BMP Guide are mandated. No evidence has been presented to support the argument that RGOs are unique or deserving of special treatment.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: SDBK and SDSF absolutely support the inclusion of Retail Gasoline outlets as priority projects subject to SUSMP requirements. (Surfrider Foundation)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.a.x

Comment: The BMP Guide set out standards that are consistent with the requirement for reducing discharges "to the maximum extent practicable". The criterion of practicability implies the need for cost-effective measures. The proposed requirements of the tentative order - for example, the requirement regarding peak discharge rates, and the numerical design standards - go beyond those of the BMP Guide and are therefore, not cost-effective. (Western States Petroleum Association)

Response: An EPA funded study, "The Rouge River National Wet Weather Demonstration Project" evaluated four filtration/treatment storm drain inserts. This study concluded that "all four filters performed well … and were relatively easy to maintain". The study also stated that, "these devices are applicable for use in gas stations … and they have a relatively low cost". The typical costs for installation of the filtering units being studied is 400 to 800 dollars with yearly maintenance costs averaging about 240 dollars per device. These are clearly reasonable and manageable costs for facilities such as RGOs.

Section: F.1 Subsection: F.1.b.2.b

Comment: Shall priority projects, from the outset of the establishment of the SUSMP, be conditioned to use all three forms of BMPs?

The intent of Section F.1.b. (2)(b) and (c) in particular is that new development shall begin to install and maintain structural BMPs immediately upon adoption of the local SUSMPs and supporting ordinance amendments. There are serious questions about our ability to do this without the necessary findings that the controls: 1) are required to address a significant impact, 2) are feasible mitigation measures that are necessary to substantially reduce adverse impacts, and 3) are capable of reducing the impact to a less than significant level according to adopted threshold criteria. (City of Chula Vista)

Response: The SUSMP provision that requires implementation of pollution prevention, source control, and structural treatment BMPs has been upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11, requires all three types of BMPs at all sites meeting the SUSMP priority development project category criteria. For example, pollution prevention BMPs (such as conservation of natural areas) are required at all SUSMP sites. Source control BMPs, such as properly designed trash storage areas, are also required. Furthermore, structural treatment BMPs which meet numeric sizing criteria are required at all SUSMP sites as well.

Findings 3, 4, and 5, as well as their corresponding discussions in the Draft Fact Sheet/Technical Report, address the impacts to receiving waters caused by urban development. Findings 11 and 12 discuss the effectiveness of BMPs in "substantially reduc[ing] adverse impacts," including data on the ability of various BMPs to reduce concentrations of pollutants in urban runoff. Furthermore, the feasibility of implementing such BMPs is addressed in the SDRWQCB's "Staff Report for Standard Urban Storm Water Mitigation Plans and Numerical Sizing Criteria for Best Management Practices," which found that structural BMP implementation could amount to less than 0.7% of project costs. Regarding similar cost calculations by the LARWQCB in the LARWQCB SUSMP, the SWRCB states in Order WQ 2000-11 that "[t]he Regional Board found that the cost to include BMPs that will meet the mitigation criteria will be one to two percent of the total development cost. This amount appears reasonable, especially in light of the amount of impervious surface already in Los Angeles County and the impacts on impaired water bodies."

Section: F.1 Subsection: F.1.b.2.b

Comment: Will the adequacy of BMPs for certain land uses and conditions be left solely to the municipal plan reviewer or will the RB specify adequacy of BMPs? (Anonymous Workshop 2)

Response: Determination of which BMPs are to be implemented is left to the discretion of the Copermittees, to provide the Copermittees flexibility in developing and implementing their programs.

Section: F.1 Subsection: F.1.b.2.b

Comment: Modify the first sentence to: "The SUSMP shall include a list of recommended pollution prevention, source control, and structural treatment BMPs or their equivalent." (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that most equivalent or alternative BMPs would fall under this broad definition, making the inclusion of such terms unnecessary.

Section: F.1 Subsection: F.1.b.2.b

Comment: The allegations of The County of San Diego that the SUSMP BMP provision violates State Water Code Section 13360 is not valid. While the permit does mandates numerous goals and objectives that must be achieved through implementation of post-construction BMPs, it does not mandate what specific types must be used to meet the new standards. Furthermore It is important to note that the permit is required by the Federal Clean Water Act and cannot be preempted by a state water code. Even if the permit would violate section 13360, which it would not, the Clean Water Act allows the EPA Administrator, or here the RWQCB, to require numerical sizing criteria as a form of numerical effluent limitation for NPDES permits (Surfrider Foundation)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.b

Comment: The permit should consider the economic viability of the measure being maintainable in perpetuity. The Permit allows the flexibility for the construction of manufactured BMPs. Many of these measures require a long term and high level of maintenance. (San Diego Audubon Society)

Response: In order to provide the Copermittees with flexibility, the Tentative Order does not specifically implementation of specific BMPs. Which BMPs are to be implemented at a particular site is left up to the Copermittees and developers. In deciding which BMPs are to be implemented, consideration of BMP maintenance is necessary. The Tentative Order ensures that BMP maintenance is considered during BMP implementation by requiring that a mechanism for the BMP maintenance be in place (section F.1.b.2.b.x).

Section: F.1 Subsection: F.1.b.2.b

Comment: Retain draft language for F.l.b. (2) (b)(c) because it is well-determined and well-supported by the facts and analysis. (Environmental Health Coalition)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.b.I

Comment: The BMP requirement of Section F.1.b.2.b.i. to "Maintain pre-development peak storm water runoff discharge rates and velocities" is unnecessary unless there is a potential for downstream

erosion. Water quality effects of velocity are considered elsewhere in the permit. (Building Industry Association of Southern CA)

Response: The intent of requirement F.1.b.2.b.i. is to protect against downstream erosion. Where there is not potential for downstream erosion, such as for discharges which directly enter the bay, the requirement need not apply.

See permit change at F.1.b.2.b.i.

Section: F.1 Subsection: F.1.b.2.b.ii

Comment: How will the tentative order define and implement the "conservation of natural areas?" (City of Carlsbad)

Response: How natural areas are to be conserved is left to the discretion of the Copermittees, who are responsible for developing and implementing their programs. Conservation of natural areas was also a requirement of the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

Details regarding the application of natural area conservation included in the LARWQCB SUSMP can provide guidance to the Copermittees. The LARWQCB SUSMP states:

"1. Concentrate or cluster development on portions of the site while leaving the remaining land in a natural undisturbed condition.
2. Limit clearing and grading of native vegetation at a site to the minimum amount needed to build lots, allow access, and provide fire protection.
3. Maximize trees and other vegetation at each site by planting additional vegetation, clustering tree areas, and promoting the use of native and/or drought tolerant plants.
4. Promote natural vegetation by using parking lot islands and other landscaped areas.
5. Preserve riparian areas and wetlands."

Section: F.1 Subsection: F.1.b.2.b.ii

Comment: As drafted, this requirement is too broad and undefined to be implemented. If read literally (and permits generally are), this equates to a prohibition on development since conservation and development are opposites. The County recommends amendment to state “Encourage the conservation of natural areas where feasible”. Conservation is an important objective which should be considered whenever possible. The County’s commitment to habitat conservation and land acquisition is longstanding. But, it is infeasible to require conservation as a standard condition of development project approval. (County of San Diego)

Response: Conservation of natural areas can provide significant protection to receiving waters from potential impacts from new development and significant redevelopment. For example, conservation of natural areas can be useful in helping maintain natural erosion and runoff rates. For these reasons, conservation of natural areas will be required in the SDRWQCB SUSMP provisions, as well as the LARWQCB SUSMP provisions, which were upheld by the SWRCB in Order WQ 2000-11. However, conservation of natural areas may not always be feasible, such as for small sites or redevelopment

projects. Therefore, Section F.1.b.2.b.ii of the Tentative Order will be changed to require conservation of natural areas only where feasible.

Section: F.1 Subsection: F.1.b.2.b.ii

Comment: Define conserve natural areas on page 17. (City of Carlsbad)

Response: To conserve natural areas is to use or manage natural areas wisely.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: What does "consideration of any pollutants for which the development's receiving water bodies are listed as impaired under CWA section 303(d)" mean? Section F.1.b.(1)(g) prohibits their discharge in any amount above pre-development levels. "Consideration" and "prohibition" are not synonymous. This section therefore implies a degree of flexibility which is precluded by section F.1.b.(1)(g). The inconsistency in its permit, moreover, creates an ambiguity in the permit. (County of San Diego)

Response: Language in section F.1.b.1.g which refers to the prohibition of discharges of pollutants in any amount above predevelopment levels has been removed. Therefore, the language in this section regarding consideration of pollutants is appropriate.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: The first sentence of this section misstates the function of source control BMPs. They do not minimize pollutants. They minimize or prevent their contact with stormwater. (County of San Diego)

Response: The first sentence of the requirement will be changed to clarify its intent. See change at permit section F.1.b.2.b.iii.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: "The development's receiving water bodies" is grammatically incorrect unless the RWQCB purports to assign ownership of receiving waters to the developments discharging to them. (County of San Diego)

Response: See change at permit section F.1.b.2.b.iii.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: "Increased runoff flow rate from the development and its potential downstream impacts" does not belong in this section since it has nothing to do with minimizing pollutants of concern or with the use of pollution prevention and source control BMPs. The County recommends its deletion. (County of San Diego)

Response: While increased runoff flow rates are a concern regarding new development and significant redevelopment, they are not controlled by pollution prevention and source control BMPs. Therefore, language in this section referring to increased runoff flow rates has been removed. See change at permit section F.1.b.2.b.iii.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: Section F.1.b (2)(b)iii: Does this provision refer to 303(d) water bodies within a development? (City of Chula Vista)

Response: Section F.1.b(2)(b)iii applies to all 303(d) listed water bodies that may be receiving waters for urban runoff discharges from areas subject to SUSMP requirements, including but not limited to 303(d) listed water bodies within a development.

Section: F.1 Subsection: F.1.b.2.b.iii

Comment: "Any pollutant associated with the land use type of the development" and "any pollutant commonly associated with urban runoff" are too broad and inclusive to have any chance of meaningful implementation. The goal of this program is not the removal of all identifiable substances. The County recommends deletion of everything after the first sentence or that this statement be amended to better reflect a process to identify contaminants that present a significant potential for beneficial use impairment. (County of San Diego)

Response: The Tentative Order states "[I]dentification of pollutants of concern should include consideration of any pollutants for which the development's receiving water bodies are listed as impaired under Clean Water Act section 303(d), any pollutant associated with the land use type of the development, any pollutant commonly associated with urban runoff, and increased runoff flow rate from the development and its potential downstream impacts." The key to this sentence is the terms "should include consideration." These words indicate that when a Copermittee or project proponent is identifying pollutants of concern, they should analyze "any pollutant associated with the land use type of the development" and "any pollutant commonly associated with urban runoff" to determine whether they might be a pollutant of concern. The Tentative Order does not state that "any pollutant associated with the land use type of the development" or "any pollutant commonly associated with urban runoff" is to be identified as a pollutant of concern, but rather that these types of pollutants must be assessed for their potential to be pollutants of concern during the identification process.

Section: F.1 Subsection: F.1.b.2.b.iv

Comment: In addition, the requirement to construct structural BMP's will increase the risk of vectors such as
mosquitoes and rats. Structural BMP's should be encouraged but not required. (SANDAG)

Response: This issue has been addressed in the revised Tentative Order in Finding 36. Although structural BMPs are a necessary component of the Standard Urban Storm Water Mitigation Plan, the Copermittees have the discretion to select and implement BMPs in such a way as to reduce the risk of vectors such as mosquitoes and rats.

Section: F.1 Subsection: F.1.b.2.b.iv

Comment: Revise the language "remove pollutants" to include the phrase "to the maximum extent practicable." (Building Industry Association of San Diego County)

Response: Controlling the discharge of pollutants to the maximum extent practicable is one basic standard of the Tentative Order. To the extent that it is a basic standard, it need not be reiterated on every line of the Tentative Order. Section F.1.b.2.b.iv requires that BMPs "[r]emove pollutants of concern from urban runoff […]". It does not require that all pollutants of concern be removed. While the MEP standard applies to this section, as well as throughout the permit, the language of the section in question is not conflict with the MEP standard.

Section: F.1 Subsection: F.1.b.2.b.iv

Comment: This requirement is open ended and exceeds the State's authority under the CWA. First "remove" should be amended to control the discharge of pollutants to its maximum extent practicable. Otherwise, its language exceeds the State's authority under the CWA. Second, if the definition of pollutants of concern used in section F.1.b.(2)(b)(iii) also applies here, this could amount to a mandate to remove everything detectable or imaginable. (County of San Diego)

Response: Controlling the discharge of pollutants to the maximum extent practicable is one basic standard of the Tentative Order. To the extent that it is a basic standard, it need not be reiterated on every line of the Tentative Order. Section F.1.b.2.b.iv requires that BMPs "[r]emove pollutants of concern from urban runoff […]". It does not require that all pollutants of concern be removed. While the MEP standard applies to this section, as well as throughout the permit, the language of the section in question is not conflict with the MEP standard.

Regarding the discussion of pollutants of concern in section F.1.b.2.b.iii, this section does not define pollutants of concern, but rather outlines the types of pollutants which must be considered when pollutants of concern are identified. That various types of pollutants must be considered during the identification of pollutants of concern does not indicate that these various types of pollutants must also be identified as pollutants of concern in all (or even most) cases.

Section: F.1 Subsection: F.1.b.2.b.iv

Comment: Section F. 1.b.2.b.iv lists "Remove pollutants of concern from urban runoff (through implementation of structural treatment BMPs)" should be reworded to acknowledge that there is no guarantee that implementing the BMPs will remove the pollutants of concern because the BMPs being implemented at this time have little or no effect on the majority of the pollutants of concern. (Building Industry Association of Southern CA)

Response: The wide range of BMPs available have been exhibited to be effective in removing pollutants of concern from urban runoff, both when used alone and in combination. Structural BMP performance data has been compiled and summarized by USEPA (USEPA, 1999a). This data indicates that structural BMPs can be effective in reducing pollutants of concern in urban runoff discharges. The summary provides the performance ranges of various types of structural BMPs for removing suspended solids, nutrients, pathogens, and metals from storm water flows. These pollutants are in general the pollutants of most concern in storm water in the San Diego Region. For suspended solids, the least effective structural BMP type was found to remove 30-65% of the pollutant load, while the most effective was found to remove 65-100% of the pollutant load. For nutrients, the least effective structural BMP type was found to remove 15-45% of the pollutant load, while the most effective was found to remove 65-100% of the pollutant load. For pathogens, the least effective structural BMP type was found to remove <30% of the pollutant load, while the most effective was found to remove 65-100% of the pollutant load. For metals, the least effective structural BMP type was found to remove 15-45% of the pollutant load, while the most effective was found to remove 65-100% of the pollutant load.

Section: F.1 Subsection: F.1.b.2.b.v

Comment: The County recommends amendment to state “Encourage the minimization of directly connected impervious areas where feasible”. This should really be a performance objective established by Copermittees, not a condition of approval set by the RWQCB. (County of San Diego)

Response: As discussed in Finding 5, numerous studies have demonstrated a direct correlation between the degree of imperviousness of a watershed and the degradation of its receiving water quality. Minimization of directly connected impervious areas is an effective means to reduce the impacts of increased imperviousness on receiving waters by helping to maintain or restore the natural flow regime of a developed property. For this reason, minimization of directly connected impervious areas is a requirement of the Tentative Order. However, there may be conditions where minimization of directly connected impervious areas may not be appropriate, such as where there may be a potential for groundwater contamination. Therefore, the directive shall be worded as "Minimize directly connected impervious areas where feasible."

Section: F.1 Subsection: F.1.b.2.b.vii

Comment: As a blanket requirement on all sites, this requirement is intrusive and excessive. The County recommends amendment to state “Encourage developers to stencil or label storm drain inlets where appropriate and feasible”. There is no evidence to show that labeling every storm drain on every new facility is worth the effort. Copermittees should be allowed to decide how they will utilize this in their programs. (County of San Diego)

Response: Storm drain stenciling and signage is a basic education measure widely used throughout the State. The effort needed to meet this requirement is minimal. In fact, volunteer groups are frequently utilized in the stenciling of storm drains. Regarding the pertinence of storm drain stenciling, USEPA states "Surrogate measures of the effectiveness of education and outreach programs include: […] the percentage of storm drains that have been stenciled" (USEPA, 1999a). Stenciling of storm drains is also a requirement of the LARWQCB SUSMP, the requirements of which were upheld by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.b.x

Comment: F.1.b.(2)(b)(x) "Include proof of a mechanism for ongoing long-term BMP maintenance"

The County recognizes and acknowledges the role of BMP maintenance in preventing the discharge of stormwater contaminants from new facilities. However, we object to the specification by the RWQCB of this or any other condition of approval for local permits. Such conditions are most appropriately determined by the Copermittees. Moreover, other than requiring appropriate maintenance through amendments to Codes, the co-permittees have no legal means to require "proof of a mechanism" for ongoing long-term BMP maintenance. (County of San Diego)

Response: BMPs which are not maintained eventually become ineffective in removing pollutants from urban runoff. In other words, BMPs which are not maintained adequately will not remove pollutants in urban runoff to the maximum extent practicable. For this reason, BMP maintenance is a requirement of the Tentative Order. The requirement in the Tentative Order that BMPs have proof of ongoing maintenance is the same basic requirement as that which was included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

The LARWQCB SUSMP can provide guidance on requiring proof of a mechanism for ongoing long term BMP maintenance. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private or public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the project's conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed,

and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural or Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Section: F.1 Subsection: F.1.b.2.b.x

Comment: Section F.1.b(2)(b)x. requires "proof of a mechanism for ongoing long-term BMP maintenance". As discussed below with respect to section F.8. (Fiscal Analysis Component), however, the realities of municipal governance preclude "proof" of ongoing BMP maintenance in perpetuity. The City's ability to appropriate funding for future BMP maintenance efforts is severely constrained by state laws restricting the imposition and collection of fees, taxes and assessments at the local level. Although the City may be able to obtain agreements from developers to install certain BMPs and to provide a means of funding their ongoing maintenance, such private mechanisms, too, are subject to uncertainty. For example, if a developer agrees to retain responsibility for funding ongoing BMP maintenance, such a mechanism would be of little value if the developer were to go out of business. Therefore, at the very least, we request that the Regional Board delete the phrase "proof of" from this requirement, such that it would read simply "Include a mechanism for ongoing long-term BMP maintenance," in recognition of the issues described above. (City of San Diego)

Response: Proof of a mechanism for ongoing long term BMP maintenance can be provided by either the project proponent or the Copermittee. If a Copermittee finds that it shall have difficulty ensuring maintenance, it can require proof of a mechanism of BMP maintenance from the project proponent. This does not mean that the project proponent must be responsible for the BMP maintenance in perpetuity, but rather will be responsible for providing a mechanism which will ensure BMP maintenance in perpetuity. The requirement in the Tentative Order that BMPs have proof of ongoing maintenance is the same basic requirement as that which was included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11.

More detailed requirements included in the LARWQCB SUSMP regarding BMP maintenance can serve as guidance to the Copermittees. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private of public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year

and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural of Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Section: F.1 Subsection: F.1.b.2.b.x

Comment: What does "proof of a mechanism" mean? What kind of proof would the RWQCB expect? (County of San Diego)

Response: The requirement in the Tentative Order that BMPs have proof of ongoing maintenance is the same basic requirement as that which was included in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP can provide guidance on requiring proof of a mechanism for ongoing long term BMP maintenance. The LARWQCB SUSMP states:

"[T]he Permittee shall require that the applicant provide verification of maintenance provisions through such means as may be appropriate, including, but not limited to legal agreements, covenants, CEQA mitigation requirements and/or Conditional Use Permits.

For all properties, the verification will include the developer's signed statement, as part of the project application, accepting responsibility for all structural and treatment control BMP maintenance until the time the property is transferred and, where applicable, a signed agreement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance. The transfer of property to a private or public owner must have conditions requiring the recipient to assume responsibility for maintenance of any Structural or Treatment Control BMP to be included in the sales or lease agreement for that property, and will be the owners responsibility. The condition of transfer shall include a provision that the property owners conduct maintenance inspection of all Structural or Treatment Control BMPs at least once a year and retain proof of inspection. For residential properties where the Structural or Treatment Control BMPs are located within a common area which will be maintained by a homeowner's association, language regarding the responsibility for maintenance must be included in the projects conditions, covenants and restrictions (CC&R). Printed educational materials will be required to accompany the first deed transfer to highlight the existence of the requirement and to provide information on what storm water management facilities are present, signs that maintenance is needed, how the necessary maintenance can be performed, and assistance that the Permittee can provide. The transfer of this information shall also be required with any subsequent sale of the property.

If Structural or Treatment Control BMPs are located within a public area proposed for transfer, they will be the responsibility of the developer until they are accepted for transfer by the County of other

appropriate public agency. Structural or Treatment control BMPs proposed for transfer must meet design standards adopted by the public entity for the BMP installed and should be approved by the County or other appropriate public agency prior to its installation."

Section: F.1 Subsection: F.1.b.2.b.xi

Comment: This statement should be amended to include "as needed". Otherwise, we would be required to include additional provisions for each category regardless of whether a need exists. (County of San Diego)

Response: Each SUSMP priority development project category has specific pollution prevention and source control BMPs which are applicable to it, but may not be applicable to the other priority development project categories. For example, properly designed kitchen mat washdown areas are necessary source control BMPs for restaurants, but are not applicable elsewhere. Similar SUSMP category specific BMPs exist for all SUSMP categories. Therefore, additional provisions are required for each SUSMP category. This is in line with the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP identified additional provisions to be required of each SUSMP priority development project category.

Section: F.1 Subsection: F.1.b.2.b.xii

Comment: This provision exceeds the MEP standard. (County of San Diego)

Response: The intent of this requirement was not to require BMPs to be designed to remove all pollutants beyond what is considered practical, but rather to ensure that BMPs be designed correctly so that they are effective in removing pollutants. Therefore, Section F.1.b.2.b.xii of the Tentative Order will be clarified to express this intent.

Section: F.1 Subsection: F.1.b.2.b.xii

Comment: In combination with the guidance for identifying pollutants of concern in section F.1.b.(2)(b)(iii) above, this requirement could result in significant costs that provide little or no environmental gain. Would the Copermittees have to identify all pollutants associated with runoff and design their BMPs to the most restrictive standard? Has there been a cost/benefit analysis? (County of San Diego)

Response: As stated elsewhere, the Tentative Order provides that "[I]dentification of pollutants of concern should include consideration of any pollutants for which the development's receiving water bodies are listed as impaired under Clean Water Act section 303(d), any pollutant associated with the land use type of the development, any pollutant commonly associated with urban runoff, and increased runoff flow rate from the development and its potential downstream impacts." The key to this sentence is the terms "should include consideration." These words indicate that when a Copermittee or project proponent is identifying pollutants of concern, they should analyze "any pollutant associated with the land use type of the development" and "any pollutant commonly associated with urban runoff" to determine whether

they might be a pollutant of concern. The Tentative Order does not state that "any pollutant associated with the land use type of the development" or "any pollutant commonly associated with urban runoff" is to be identified as a pollutant of concern, but rather that these types of pollutants must be assessed for their potential to be pollutants of concern during the identification process.

Therefore, BMPs are not required under this directive to maximize their pollutant removal capabilities for all pollutants, but rather for pollutants which have been identified as pollutants of concern. This directive seeks to ensure that BMPs are designed properly, so as to be effective in removing these pollutants of concern. Designing BMPs to maximize their capability for removing pollutants of concern will provide most environmental gain, contrary to the commentor's assertions. This in turn will increase the benefit of the BMP implementation.

Section: F.1 Subsection: F.1.b.2.b.xiii

Comment: This requirement violates CWC section 13360. With respect to F.1.b.(2)(b)(xiii), the CWC section 13360 is violated because RWQCB staff have attempted to specify (in this case to restrict) the location of controls (on-site, and prior to entry into the MS4 or receiving waters), thereby eliminating other viable and lawful approaches (for example, off-site and/or after entry into the MS4). The County continues to assert that regional and sub-regional approaches are legally valid, and in many instances can be more cost-effective than the site-specific approach advocated by RWQCB staff. This position was emphasized by the SWRCB during the LA County SUSMP appeal (State Board Order No. WP 2000-11, p. 21), and is consistent with the USEPA's Final Phase II Rule (Federal Register/Vol.. 64, No. 235,p. 68760) which states: "Each new development and redevelopment should have a BMP component. It is also required by State Law. (See Cal. Water Code § 13225(i).) If an approach is chosen that primarily focuses on regional or nonstructural BMPs, however, then, the BMPs may be located away from the actual development site (e.g., a regional water quality pond)." (County of San Diego)

Response: As stated elsewhere, "sub-regional" or "sub-watershed" or "neighborhood" BMPs implemented upgradient from any receiving waters supporting beneficial uses may be a viable option for addressing urban runoff from development. While the SDRWQCB strongly supports implementation of post-construction BMPs as close to the source as possible, it recognizes that this may not always be feasible. Therefore, the directive has been changed to reflect this. See change at permit section F.1.b.2.b.xiii.

Section: F.1 Subsection: F.1.b.2.b.xiii

Comment: This statement is grammatically incorrect. "[I]nto the MS4 or other receiving waters" should be amended to "into the MS4." As previously stated, MS4s are not receiving waters. (County of San Diego)

Response: While it is possible that a portion of an MS4 can also be considered a receiving water (see Finding 8), this is not always the case. Therefore, the commentors assertion that MS4s do not equate with receiving waters is correct. The directive has been changed to reflect this difference. See change in permit section F.1.b.2.b.xiii.

Section: F.1 Subsection: F.1.b.2.b.xv

Comment: Section F.1.b (2(b) xv: Does the requirement regarding runoff from developments apply only to direct discharges to a 303(d) water body? (City of Chula Vista)

Response: No, the requirement regarding post development runoff applies to all urban runoff discharges to a 303(d) listed water body.

Section: F.1 Subsection: F.1.b.2.c

Comment: As regards the SUSMP requirement, and especially the inclusion of numeric sizing criteria, the County of San Diego has taken the position that the RWQCB must conduct CEQA review to assess environmental impacts of the proposed permit. This position is totally untenable. Section 13389 of the California Water Code provides a specific CEQA exemption applicable to the adoption of any waste discharge requirement (WDR). CEQA Guidelines section 15307 and section 15308 also exempt the RWQCBs when the activities do not include a relaxation of standards leading to environmental degradation. (Surfrider Foundation)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.c

Comment: Modify the first sentence to: "The SUSMP shall require structural treatment BMPs or their equivalent to be implemented at all priority development projects. In addition to meeting the BMPs requirements listed in item F. l. b. (2) (b) above, all structural BMPs or their equivalent for a single priority development project shall collectively be sized to with the following numeric sizing criteria:" (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any equivalent alternative would fall under this definition, making the inclusion of such terms unnecessary.

Section: F.1 Subsection: F.1.b.2.c

Comment: The permit will create hundreds of costly small-scale treatment facilities. The dependence on infiltration is flawed considering SD has limited infiltration capabilities. (Building Industry Association of San Diego County)

Response: The Tentative Order does not require that structural treatment BMPs infiltrate stormwater. The Tentative Order states that structural treatment BMPs "shall be designed to mitigate (infiltrate, filter, or treat) […]." This requirement provides flexibility in which type of BMP is to be implemented. Therefore, where infiltration is limited due to soil conditions, other types of BMPs can be used, such as detention or filtration BMPs.

Section: F.1 Subsection: F.1.b.2.c

Comment: Add a baseline numeric sizing criteria to F.Lb.(2)(c) pg.18. A minimum required numeric sizing criteria would mitigate polluted non-storm water runoff (dry weather flows) and insure against the potential misuse of flexibility in the numeric sizing criteria where insufficient mitigation may be allowed. We feel that an appropriate baseline numeric sizing standard, below which no discharger would be able to fall, would strengthen the permit and still afford local municipalities more than adequate flexibility to determine their own standards (which could be more protective) and how to meet them.

We request the Regional Board add the following language to the end of the subsection: "BUT Baseline Criteria vi. at a minimum, volume-based BMPs must collectively be sized for the volume of runoff produced by. 6 inches of rainfall in a 24- hour period; and vii. at a minimum, flow-based BMPs must collectively be sized for the maximum flow rate of runoff produced from rainfall intensity of 0.2 inches of rainfall per hour. " (Environmental Health Coalition)

Response: The requirement for capture of the 85th percentile storm event is based on the concept of diminishing returns. The 85th percentile storm event represents the BMP capacity beyond which, insignificant increases in pollutant removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, it would not be cost effective to require municipalities to size BMPs to capture storm events larger than the 85th percentile storm event. A minimum numeric sizing criteria, as proposed, has the potential to require municipalities to capture runoff from storm events beyond the point of diminishing returns, thereby reducing the cost effectiveness of numeric sizing criteria. For example, the 85th percentile 24-hour storm event for Lindbergh Field is roughly 0.5 inches. Requiring BMPs at Lindbergh Field to capture 0.6 inches of rainfall would cost more, yet provide little water quality benefit. For this reason, a minimum numeric sizing criteria will not be included in the Tentative Order.

Section: F.1 Subsection: F.1.b.2.c

Comment: SDBK and SDSF strongly support the inclusion of numeric sizing criteria in the permit. All of the Copermittees have failed to adequately implement the past permit to a degree sufficient to protect receiving waters. The numerous beach closures, during periods of even moderate rain, make it clear that current practices are insufficient to protect receiving waters from pollutants in stormwater and urban runoff. (Surfrider Foundation)

Response: Comment noted.

Section: F.1 Subsection: F.1.b.2.c

Comment: Modify the first sentence to: "Volume-based BMPs or their equivalent shall be designated to mitigate (infiltrate, filter, or treat) either:" (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any equivalent alternative would fall under this definition, making the inclusion of such terms unnecessary.

Section: F.1 Subsection: F.1.b.2.c

Comment: Delete section F.1.b(2)(c) because it has no relationship to pollutant loading or water quality objectives. Each watershed should be given the flexibility to establish design criteria and programs that address pollutants of concern in relationship to basin objectives and facts on the ground. The section establishes a one size fits all approach of costly facilities, which may or may not address a demonstrated concern. (City of Carlsbad)

Response: Numeric sizing criteria for structural treatment BMPs is directly related to pollutant loading and water quality objectives. Section F.1.b.2.b.iv of the Tentative Order states "[r]emove pollutants of concern from urban runoff (through implementation of structural treatment BMPs)." Identification of pollutants of concern includes consideration of pollutant loading from various types of development, as well as consideration of pollutants which may cause or contribute to an exceedance of water quality objectives. Once pollutants of concern have been identified, the Tentative Order requires that BMPs be implemented which will address these pollutants of concern. Numeric sizing criteria essentially ensures that the BMPs implemented are adequately sized so as to be effective in removing the pollutants of concern.

The numeric sizing criteria section of the Tentative Order (which requires treatment of the 85th percentile storm event) is essentially the same as that of the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. A December 26, 2000 SWRCB memo states "[t]he Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP" (SWRCB, 2000b).

Section: F.1 Subsection: F.1.b.2.c

Comment: Modify the first sentence to: "Flow-based BMPs or their equivalent shall be designated to mitigate (infiltrate, filter, or treat) either:" (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any equivalent alternative would fall under this definition, making the inclusion of such terms unnecessary.

Section: F.1 Subsection: F.1.b.2.c

Comment: Additionally, we recognize the need to periodically re-evaluate these and any other design criteria that we choose to utilize as part of our management programs. This is especially true since design criteria are only indirectly related to program performance objectives. As we continue to evaluate this nexus over time, it may become necessary to re-evaluate the use of particular criteria, especially in light of potential unintended environmental consequences. As such, we recommend that this section be moved

to the Technical Report as suggested guidance, and that flexibility be permitted in the application of the sizing criteria to particular developments. (County of San Diego)

Response: Inclusion of numeric sizing criteria in the Tentative Order has essentially been dictated by the SWRCB in its precedential decision in Order WQ 2000-11. The SWRCB states: "Several of the conclusions reached in the Order are likely to recur, and future municipal storm water permits must be consistent with the principles set forth therein. […] The Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP" (SWRCB, 2000b).

Section: F.1 Subsection: F.1.b.2.c

Comment: The mandate that all new development and redevelopment adhere to structural numeric sizing BMPs is excessive, unwarranted, and bureaucratic overkill. (Building Industry Association of San Diego County)

Response: Numeric sizing criteria for structural treatment BMPs is directly related to pollutant loading and water quality objectives. Section F.1.b.2.b.iv of the Tentative Order states "[r]emove pollutants of concern from urban runoff (through implementation of structural treatment BMPs)." Identification of pollutants of concern includes consideration of pollutant loading from various types of development, as well as consideration of pollutants which may cause or contribute to an exceedance of water quality objectives. Once pollutants of concern have been identified, the Tentative Order requires that BMPs be implemented which will address these pollutants of concern. Numeric sizing criteria essentially ensures that the BMPs implemented are adequately sized so as to be effective in removing the pollutants of concern.

The numeric sizing criteria section of the Tentative Order (which requires treatment of the 85th percentile storm event) is essentially the same as that of the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. A December 26, 2000 SWRCB memo states "[t]he Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP" (SWRCB, 2000b).

Section: F.1 Subsection: F.1.b.2.c

Comment: Reject the recommendation in the APWA September 21, 2000 Letter to the Regional Board
The APWA analysis is severely flawed on several fronts, is not adequately protective of our water quality, and should not be adopted by the Board. It is fatally flawed in that it uses an inappropriate MEP parameter, inadequate sampling, and mistaken comparative analysis to recommend a insufficient numeric sizing criteria for the new permit that does not provide adequate protection for water quality. Most essentially, the APWA bases its entire analysis on the assumption that the 80" percentile runoff event as the design event that achieves the MEP definition under the Clean Water Act. It bases its assumption on a single reference -- a popular engineering manual. The choice of a MEP parameter is the most determinative step in calculating the volume or flow criteria yet APWA affords it the most cursory research or explanation. While determining the percentile runoff event that best represents the design event for MEP is both technically and politically controversial, it is critical if the efforts for SUSMPS are

to yield the benefit we need. Yet, APWA pulls a number from a single reference with no defense of that position.

The APWA recommendations are also unsupportable because they rely on a single sample and incorrect comparisons. For its analysis of the whole of San Diego County, the APWA relies on weather monitoring data from Lindbergh Field. For these purposes, Lindbergh Field does not geographically or climactically represent the entire San Diego County. Moreover, any scientific analysis attempting to extrapolate conclusions from a single sample demonstrates crippling statistical weakness. In the alternative, the Regional Board staff's proposed method considers rainfall through out the County in its calculations.

Then, the APWA attempts to substantiate these faulty conclusions with inappropriate comparative analysis. The APWA takes the ratio of precipitation at a single location in Los Angeles County with precipitation at a single location in San Diego County and implies that they have calculated a universal conversion for precipitation and runoff between the two counties. They then proceed to calculate a San Diego volume criteria from the Los Angeles volume criteria as if rainfall to storm event frequency graphs are all linear. Frankly, their comparative analysis has little foundation in either science or common sense.

We request the Regional Board to reject the recommendations of the APWA September 10, 2000 letter and retain its current numeric sizing criteria provisions notwithstanding our other comments on those provisions. The 85' percentile is practicable and we support the staff finding that it may be the point of diminishing returns. Other proposal for flow and volume should not be considered unless they provide equivalent protection, not less. (Environmental Health Coalition)

Response: The APWA proposal for determination of the amount of runoff to be treated under SUSMPs raises two issues: (1) The SUSMPs requirement for the treatment of the 85th percentile storm event should be reduced to the 80th percentile storm event; and (2) hourly rainfall data from Lindbergh Field should be applied to precipitation contour maps to determine the size of the storm which must be treated.

(1) First of all, reducing the requirement for the treatment of the 85th percentile storm event to the 80th percentile storm event is inappropriate for the San Diego Region. The sole reasoning provided by APWA for reducing the size of the design storm which must be captured is that the City of Denver has chosen to capture the 80th percentile storm event. It is doubtful that the City of Denver has a more than $1.2 billion tourism economy as closely tied to water quality as that of the San Diego Region (a SANDAG memo states that projections by the California Department of Boating and Waterways find nearly $1.2 billion in direct revenue and $1.2 billion in indirect revenue is pumped into the San Diego area economy each year by out-of-state visitors) (SANDAG, 1996).

Capture of the 80th percentile storm event is equivalent to capture of runoff form approximately 0.4 inch of rainfall in the City of San Diego, as calculated by APWA. This is a smaller amount of rainfall than must be treated in Austin, Virginia, Delaware, Maryland, New Jersey, Chicago, New Jersey, Florida, and the Puget Sound Basin. More importantly, the 80th percentile storm event is less than what has been determined to constitute MEP by the SWRCB in Order WQ 2000-11. The SWRCB states “The Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP” (SWRCB, 2000b). While Denver may arguably have a climate which is somewhat similar to San Diego’s, certainly criteria developed by the SWRCB for the Los Angeles region are more applicable to San Diego than criteria used by Denver, Colorado.

In addition, capture of the 80th percentile storm event ignores the concept of diminishing returns. The 85th percentile storm event is representative of the point of diminishing returns for the San Diego Region. The 85th percentile storm event represents the BMP capacity beyond which, insignificant increases in runoff capture will occur, relative to additional costs. Even a cursory look at APWA's graphed data (Exhibit A of their proposal, which is item B of Attachment 13 of the Executive Officer Summary Report for the December 13, 2000 Public Hearing) shows that capture of a 0.4 inch storm is well below the "knee of the curve," or the point of diminishing returns.

(2) The APWA proposal also recommends a different method for calculation of the design storm event from that proposed in the Tentative Order. Where the Tentative Order proposes use of 24-hour rainfall data from several locations, the APWA proposal uses hourly rainfall from one location (Lindbergh Field). The Tentative Order proposes that each Copermittee use 24-hour rainfall data from its area to calculate its design size storm. While use of 24-hour rainfall data is not as rigorous as use of hourly rainfall data, 24-hour data is typically much more available, thereby allowing Copermittees to use local data to calculate the design storm to be used in their jurisdictions. In fact, a lengthy record of hourly rainfall data is only available in one place within San Diego County: Lindbergh Field. The APWA proposal uses this hourly rainfall data from Lindbergh Field and applies it to the entire county through the use of precipitation contour (isopluvial) maps. While there may be potential inaccuracies in applying data from one site to the entire county, use of such precipitation contour maps is common practice.

In light of the increased rigorousness of using hourly data, as well as the common practice of using precipitation contour maps, the Tentative Order will be modified to allow for the 85th percentile storm event to be calculated by applying hourly rainfall data from Lindbergh Field to precipitation contour maps.

See change at permit section F.1.b.2.c.

Section: F.1 Subsection: F.1.b.2.c

Comment: Because it imposes an arbitrary requirement that the first .2 inches of storm water be captured and treated, the SUSMP will make it extremely difficult to develop new affordable housing, and, again, it could impose significant costs on local businesses and taxpayers. (Alliance for Water Quality)

Response: Comment noted. The requirement that flow-based BMPs be designed to mitigate runoff generated by a rainfall intensity of 0.2 inches per hour is based on hourly rainfall data from Lindbergh Field in San Diego. The 85th percentile hourly rainfall intensity was calculated from this data to be 0.1 in/hr. In developing the numeric sizing criteria for flow-based BMPs, this number was doubled to account for intense bursts of rainfall which may occur within an hour period. The 0.1 in/hr rainfall intensity assumes that rain falls at an even rate over an hour period. This is frequently not the case. Rainfall often occurs in intense bursts over periods of time shorter than an hour in duration. If 0.1 inches of rainfall were to occur in a short intense burst, as opposed to falling at an even rate over an hour, the flow rate resulting from the short intense burst of rainfall would be greater than the flow rate generated by the steady hour-long rain. Therefore, a BMP sized to treat or filter the peak flow rate resulting from a steady hour-long 0.1 in rainfall would be inadequately sized to treat peak flows from a 0.1 in rain event falling over a 30 minute period. For this reason, the 85th percentile hourly rainfall intensity was doubled to develop the numeric sizing criteria for flow-based BMPs. A flow-based BMP sized to treat or filter runoff resulting from a 0.2 in/hr rainfall intensity (as the proposed numeric sizing criteria would require) would be adequately sized to capture most peak flow rates resulting from 0.1 inch of rain falling over time

periods shorter than one hour. It is worth noting that this approach of doubling the design hourly rainfall intensity for developing numeric sizing criteria for flow based BMPs is supported by APWA (APWA, 2000) and the LARWQCB.

Section: F.1 Subsection: F.1.b.2.c

Comment: The Draft Permit appears to divide the world into "Source Control BMPs" and "Treatment Control BMPs." An unanswered question is why Regional Board Staff do not consider Source Control BMPs as part of the strategy for achieving SUSWMP MEP. The current SUSWMP proposal appears to reject Source Control BMPs.

Source Control BMPs are a necessary and essential strategy for the Urban Core. Here where infiltration is both economically and technically infeasible, the only Treatment Control BMPs that remain are filtration. While filtration may be effective in removing cigarette butts and Styrofoam cups from storm water, their usefulness in removing fecal coliform or dissolved metals is limited at best. Without equal recognition and emphasis for Source Control BMPs achieving storm water quality goals in the Urban Core will be prohibitively expensive. First, urban project proponents will be forced to install Treatment Control BMPs that have been shown not to work. Then, the project proponent inevitably will be required to implement Source Control BMPs at an additional cost.

We propose Copermittees may treat Source Control BMPs equally with Treatment Control BMPs for achieving compliance with the SUSWMP in the Urban Core. If a project proponent proposes only Source Control BMPs to achieve the removal of Pollutants of Concern to the Maximum Extent Practicable, the Copermittee should have to make the following findings before approval:
1. The proposed project is in the Urban Core;
2. The Copermittee projects that the removal rates achieved for the pollutants of concern are equivalent to or more stringent than those achievable through permissible Treatment Control BMPs in the Urban Core (i.e. no infiltration);
3. The project proponent has made adequate financial and technical provisions for the analysis of storm water discharges to assure that the predicted removal rates for pollutants of concern are achieved; and
4. The project proponent has made adequate provisions for the installation of Treatment Control BMPs if later storm water analysis shows that the Source Control BMPs are not achieving the projected removal rates.

Source Control BMPs are recognized to be the most cost-effective means of protecting storm water quality. Thus, by giving equal treatment to Source Control BMPs, project proponents have the opportunity to maximize the removal of pollutants of concern. However, if the Source Control BMPs are inadequate to achieve MEP, this proposal provides for the necessary resources to fall back on Treatment Control BMPs. (McKenna & Cuneo, L.L.P.)

Response: The Tentative Order explicitly includes source control BMPs as part of the SUSMP strategy for addressing urban runoff from new development. The Tentative Order states “[t]he SUSMP shall require all new development and significant redevelopment projects falling under the above priority project categories or locations to implement a combination of BMPs selected from the recommended BMP list, including at a minimum (1) pollution prevention BMPs, (2) source control BMPs, and (3) structural treatment BMPs.”

A combination of source control and structural treatment BMPs is the most effective means for controlling pollutant discharges in urban runoff coming from development. While source control BMPs can be effective, they do not assure that pollutants have been removed (or never generated). Structural treatment BMPs provide this assurance as a second line of defense. USEPA addresses the uncertainty of the effectiveness of source control BMPs by stating "BMPs such as street sweeping, public education and outreach, collection of lawn debris, etc., are conceptually very effective means of controlling the generation of pollutants that can enter storm water runoff. However, it is often very difficult to develop a representative means of monitoring or evaluating their effectiveness. Additional work in this area is needed in order to measure the effectiveness of these controls" (USEPA, 1999a).

In light of this uncertainty, the SUSMP requires structural treatment BMPs in addition to source control BMPs. Due to the heavy use of areas within the urban core, structural treatment BMPs are needed there as well as other locations. Structural treatment BMPs can be used to remove pollutants of concern quite effectively within the urban core. Sand and other media filters, which can be installed underground, have been found to remove 50-80% of metals, while porous pavement has been found to remove 65-100% of pathogens (USEPA, 1999a). Furthermore, the cost of implementation of such BMPs is reasonable. The capital cost for a sand filter for a 5-acre commercial site has been estimated at $35,000-70,000. The overall cost of development of a 5-acre commercial site could cost $6 million (see Attachment E of the SDRWQCB "Staff Report for Standard Urban Storm Water Mitigation Plans and Numerical Sizing Criteria for Best Management Practices"). The cost of the sand filter would therefore constitute approximately 1% of the total project cost. Regarding such costs, the SWRCB states in Order 2000-11 "[t]he Regional Board found that the cost to include BMPs that will meet the mitigation criteria will be one to two percent of the total development cost. This amount appears reasonable, especially in light of the amount of impervious surface already in Los Angeles County and the impacts on impaired water bodies."

Section: F.1 Subsection: F.1.b.2.c.

Comment: The permit should contain a more protective volume of rainfall capture requirement pending site specific determinations of the 85th percentile. Until such numbers are derived, the .75 inch standard adopted by the SWRCB for the Los Angeles Region should be used. (Surfrider Foundation)

Response: The SDRWQCB has calculated the 0.6-inch 24-hour storm as the rough average 85th percentile storm for San Diego County. Since this average is based on rainfall data from 4 areas within San Diego County, it is more applicable for use in San Diego County than criteria developed for the Los Angeles area using Los Angeles rainfall data.

Section: F.1 Subsection: F.1.b.2.d

Comment: Section F.1.b(2)(d), found at page 18, allows Copermittees to develop "any equivalent numeric sizing criteria or performance-based standard for post-construction structural treatment BMPs as part of the model SUSMP." However, this section does not indicate which entity -- the Copermittee or the Regional Board -- determines whether a proposed "equivalent" standard actually complies with the conditions of the Order. Please clarify. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: Any equivalent numeric sizing criteria put forward by the Copermittees must be part of the model SUSMP. Approval of the model SUSMP by the SDRWQCB will undergo a public process. Therefore, the SDRWQCB would authorize the use of an equivalent numeric sizing criteria. The Tentative Order has been changed to clarify this. See change at permit section F.1.b.2.d.

Section: F.1 Subsection: F.1.b.2.d

Comment: F.1.b.(2)(d) "Equivalent Numeric Sizing Criteria"
The County is very interested in the potential for flexibility this section could provide. Unfortunately, as its currently drafted, this section is extremely confusing. Section F.1.b.(2)(d) allows Copermittees to develop "any equivalent numeric sizing criteria or performance-based standard for post construction BMPs as part of the model SUSMP." For this section to have meaning, "Equivalency" must be defined. Numeric sizing criteria are a design criteria, yet this section seems to imply that an alternative performance standard could be proposed. This section seems to be confusing the meaning of the two terms. If both are meant, the section heading should be amended to reflect both.

Since minimum standards are already prescribed, it is difficult to see where the flexibility might occur. For instance, would a 70th percentile event be considered if a rational justification were proposed? What about after SUSMP model completion? If new information becomes available after SUSMP completion that suggests that we were headed in the wrong direction, how will flexibility be provided in the future? (County of San Diego)

Response: The intent of the "equivalent numeric sizing criteria" provision was to provide the Copermittees with flexibility in choosing methods for calculating the 85th percentile storm event. For example, APWA has proposed using isopluvial maps for determining what size storms BMPs must be sized to capture. The provision was not meant to provide means for reduction of the 85th percentile criteria. The SWRCB has found in Order WQ 2000-11 that capture of the 85th percentile storm event constitutes MEP for structural treatment BMPs at new development sites. The Tentative Order has been modified to clarify this intent.

See change at permit section F.1.b.2.d.

Section: F.1 Subsection: F.1.b.2.d

Comment: The Regional Board should delete section F.l.b.(2)(d) pg.18, or amend it as follows: ". . . Such equivalent sizing criteria may be authorized subject to public review and Regional Board action for use in place of the above criteria. . . ". Oversight is needed to prevent local authorization of inadequate numeric sizing criteria. (Environmental Health Coalition)

Response: Any equivalent numeric sizing criteria put forward by the Copermittees must be part of the model SUSMP. Approval of the model SUSMP by the SDRWQCB will undergo a public process.

Section: F.1 Subsection: F.1.b.2.d

Comment: Sections F.l.b (2) (d) (e) (f) (g) page 18 - Delete these sections. This whole approach of dictating a blanket criterion for the whole county should be eliminated in favor of an element developed as a part of the Watershed Urban Run-off Management Program. A section should be added to Section J.2. Watershed Co-permittees shall establish numeric sizing criteria to apply to new development, which will assist in assuring water quality objectives in pollutants of concern to the watershed by January 2005. (City of Carlsbad)

Response: The SWRCB upheld the general SUSMP requirements in Order WQ 2000-11. Furthermore, in a December 26, 2000 memo, the SWRCB stated "[t]he general principles of the Order [Order WQ 2000-11] - that design standards for BMPs for new development and redevelopment are required - must be implemented." In light of this guidance, the SUSMP provisions are included in the Tentative Order. In addition, based on the current rate of development within San Diego County, postponing SUSMPs and numeric sizing criteria implementation until a watershed program can be developed in 2005 is not warranted.

Section: F.1 Subsection: F.1.b.2.d

Comment: Any equivalent numeric sizing criteria put forward by a Copermittee must be subjected to public review, comment, and hearing. (Surfrider Foundation)

Response: Any equivalent numeric sizing criteria put forward by the Copermittees must be part of the model SUSMP. Approval of the model SUSMP by the SDRWQCB will undergo a public process.

Section: F.1 Subsection: F.1.b.2.e

Comment: Recommend providing definition for "pollutants of concern" that is consistent with the federal Clean Water Act and California Water Code. (Port of San Diego)

Response: Defining and identifying pollutants of concern is the responsibility of the Copermittees. The Copermittees are responsible for reducing pollutant discharges into and from their MS4s to the maximum extent practicable. Part of this responsibility is identifying the pollutants in the discharges, since it is difficult to remove pollutants if it is not known which pollutants are present. Data from the Copermittees dry and wet weather monitoring programs, as well as from other published sources, can be useful in identifying pollutants of concern. The SDRWQCB can help the Copermittees in locating applicable sources of information.

Section: F.1 Subsection: F.1.b.2.e

Comment: F. 1.b.(2)(e) Pollutants of concern, page 18. This section in part states "The procedure shall include, at a minimum, consideration of (1) receiving water quality (including pollutants for which receiving waters are listed as impaired under the Clean Water Act section 303 (d)..." The concern with this language is that "consideration" can be ineffectual in achieving the goal to clean up impaired waters. To this end we recommend a separate section devoted to impaired waters and how the Copermittee should address this issue. TMDL's are notably absent from the Tentative Order. In this case concerning the

impaired waters, we recommend that TMDL's be addressed in the permit. The permit should have a tie in with the TMDL programs. Paragraph F.3.a.(4)(c) on page 26 addresses this but it would be more direct to have BMP's for impaired waters in F. 1 .b. (Sierra Club)

Response: Currently, there are no USEPA approved TMDLs for the San Diego Region, and therefore no limitations that can be explicitly included in the Tentative Order at this time. However, 40 CFR 122.44 (d)(vii)(B) requires that NPDES effluent limitations be consistent with any waste load allocation for the discharge prepared by the state (Regional Board) and approved by USEPA. In other words, once TMDL limits are established and approved by USEPA, NPDES permits must include effluent limitations that are consistent with the TMDL. Furthermore, USEPA's guidance for developing TMDLs in California includes a recommendation that the state (State and Regional Boards) evaluate how waste load allocations will be translated into NPDES permits as part of the development of the TMDL implementation plan.

Section: F.1 Subsection: F.1.b.2.e

Comment: A number of the permit requirements, such as the SUSMP requirement, should be developed after the pollutants of concern have been identified. (County of San Diego)

Response: The overall impacts of runoff from urban development have been widely documented (see Findings 3, 4, 5, 6, 7, and 9, as well as their corresponding discussions in the Draft Fact Sheet/ Technical Report). Controls on new development and significant redevelopment are clearly needed, irregardless of which pollutants are identified to be of principal concern. SUSMPs provide the framework for addressing urban runoff from new development and significant redevelopment, while allowing for the details of implementation to be addressed after pollutants of concern have been identified. For example, the SUSMP requirements provide a framework by providing that structural BMPs must be implemented. However, the details of the SUSMP requirements, such as which particular BMPs are to be implemented, is left to be determined after pollutants of concern have been identified.

It is important to note SWRCB Order WQ 2000-11 supports the SUSMP approach.

Section: F.1 Subsection: F.1.b.2.e

Comment: The RWQCB should be the one to determine the pollutants of concern instead of the Copermittees. They have the expertise and have been receiving the monitoring data necessary to make such decisions. (Building Industry Association of Southern CA)

Response: The Copermittees are responsible for reducing pollutant discharges into and from their MS4s to the maximum extent practicable. Part of this responsibility is identifying the pollutants in the discharges, since it is difficult to remove pollutants if it is not known which pollutants are present. Therefore, defining and identifying pollutants of concern is the responsibility of the Copermittees. Data from the Copermittees dry and wet weather monitoring programs, as well as from other published sources, can be useful in identifying pollutants of concern. The SDRWQCB can help the Copermittees in locating applicable sources of information.

Section: F.1 Subsection: F.1.b.2.e

Comment: The Draft Permit requires that Copermittees will regulate all proposed and existing development to remove "Pollutants of Concern" to the "Maximum Extent Practicable. Thus, in order for Copermittees to assure compliance within their jurisdiction and thereby avoid the specter of costly litigation, they must have a clear understanding of what the term of art "Pollutant of Concern" means. Neither the Draft Permit nor the Glossary attached thereto defines the term.

We propose the following definition:
A "Pollutant of Concern" is a physical or chemical characteristic of the receiving water into which the Copermittee directly discharges its storm water for which the Regional Board determined the receiving water is "impaired" at the time the project proponent applies for a tentative map from the Copermittee. For the purposes of this definition, the term "receiving water" shall be defined as the first waters of the State, or of the United States, into which the Copermittee's storm water discharges. For the purposes of this definition, a finding of "impairment" by the Regional Board shall be defined as the placement of the water body on the 303(d) list for the pollutant in question or in the alternative, by a finding in the Regional Board's Basin Plan that a specific water segment is impaired for a specific beneficial use because the water quality objective for a specific pollutant has been exceeded.

Requiring the regulatory agencies primarily charged with the obligation to protect waters of the State and United States to define pollutants of concern significantly improves the SUSWMP process. It limits the potential liability of both Copermittees and project proponents. It provides clarity to the Copermittees. It places the obligation to set water quality standards on the agencies empowered to do so. Further, it assures consistency in implementation of the SUSWMP across the Basin. Further, this definition avoids later misunderstandings and second-guessing. Each Copermittee can determine the completeness of an application simply by comparing the application's discussion of pollutants of concern with the list of impairments to the appropriate receiving water in the 303(d) list and/or the Basin Plan. If the project proponent considers each of these pollutants in its proposal, both the proponent and the Copermittee will know that they have met the minimum requirements of this element of the SUSWMP. Further, this definition does not prevent a Copermittee from setting higher standards for itself following local ordinances. Thus, the definition defines a floor and not a ceiling. (McKenna & Cuneo, L.L.P.)

Response: The Copermittees are responsible for reducing pollutant discharges into and from their MS4s to the maximum extent practicable. Part of this responsibility is identifying the pollutants in the discharges, since it is difficult to remove pollutants if it is not known which pollutants are present. Therefore, defining and identifying pollutants of concern is the responsibility of the Copermittees.

The Tentative Order contains guidance for the identification of pollutants of concern in section F.1.b.2.e. It includes consideration of other pollutants besides those simply identified as a potential threat to 303(d) listed water bodies. These other pollutants must also be addressed in order to meet the MEP standard and antidegradation policy. The Copermittees are to develop a standard procedure for pollutants of concern to be identified in the model SUSMP. Development of such a standard procedure in the model SUSMP will help ensure consistency and clarity for the development project application process.

Data from the Copermittees dry and wet weather monitoring programs, as well as from other published sources, can be useful in identifying pollutants of concern. The SDRWQCB can help the Copermittees in locating applicable sources of information.

Section: F.1 Subsection: F.1.b.2.g

Comment: This exemption is meaningless unless section F.1.b.(1)(g) is deleted. These restaurants would still have to meet the requirement to maintain pre-development velocity / flow rates. They could not do this without numerically sized structural controls. (County of San Diego)

Response: The intent of this provision was to exempt restaurants smaller than 5,000 square feet from the structural treatment BMP requirements, including requirements for the control of flow rates. The language of section F.1.b.2.g has been clarified to address this. As discussed elsewhere, requirements for the control of flow rates from new development will be limited to development projects falling under the SUSMP categories. Section F.1.b.1.g. has been changed to reflect this, and therefore does not conflict with this provision. See change at permit sections F.1.b.1.g and F.1.b.2.g.

Section: F.1 Subsection: F.1.b.2.h

Comment: What is the criteria to be used in order to qualify for a waiver? (Anonymous Workshop 1)

Response: The Tentative Order states "A waiver of infeasibility shall only be granted by a Copermittee when all available structural treatment BMPs have been considered and rejected as infeasible." The Copermittees have discretion in identifying in their model and local SUSMPs applicable specific situations for waivers. However, it is important to note that the waiver fund requirement (for project proponents who have received a waiver to transfer their cost savings to a storm water mitigation fund) precludes findings of infeasibility based on cost.

The Los Angeles RWQCB SUSMP provides guidance on situations where waivers may apply, stating "[r]ecognized situations of impracticability include, (i) extreme limitations of space for treatment on a redevelopment project, (ii) unfavorable or unstable soil conditions at a site to attempt infiltration, and (iii) risk of groundwater contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than 10 feet from the soil surface."

Section: F.1 Subsection: F.1.b.2.h

Comment: Aside from that, the cost savings should be used in the Co-permittee's jurisdiction first, at the Co-permittee's discretion, before being used in the Co-permittee's watershed. (City of Coronado)

Response: How waiver funds are used is at the discretion of the Copermittees, provided funds "be used on projects to improve urban runoff quality within the watershed of the waived project."

Section: F.1 Subsection: F.1.b.2.h

Comment: The waiver funding requirement under the SUSMP provisions is unworkable and should be stricken.

The Tentative Order includes a "waiver funding" provision that allows a Copermittee to exempt a project from the numeric sizing requirements upon a showing of "infeasibility." In such instances, the Copermittees are required to develop a program "to require project proponents who have received waivers to transfer the savings in costs, as determined by the Copermittees(s) to a storm water mitigation fund. The problem with this waiver fund provision, in part, arises out of the obligation of the Copermittees to set up a fund that is equivalent to the total amount of savings in costs to the project applicant, irrespective of whether or not the finding of infeasibility was based on economics, i.e., if the waiver was granted because of the economics, the waiver will be ineffective as the same savings in costs apparently will have to be transferred to the waiver fund. Such a provision is impracticable and should be modified to provide discretion to the Copermittee to set the amount of the fund based on the use and purposes of the fund, and the projects to be carried out with the funds. (County of San Diego)

Response: The criteria included in the Tentative Order upon which a waiver may be issued is based upon the waiver criteria in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP states “A waiver of impracticability shall be granted only when all other Structural and Treatment Control BMPs have been considered and rejected as infeasible.” When discussing situations where a waiver may be issued, the LARWQCB SUSMP does not include cost considerations. Cost considerations are not a valid reason for waiver issuance, since the SDRWQCB and LARWQCB have exhibited that structural BMP implementation is generally less than 1% of total project cost. The SWRCB finds that this cost is “reasonable” in Order WQ 2000-11. Since waivers are not to be issued based on cost considerations, the requirement for project proponents who have received a waiver to transfer the resulting savings to a storm water mitigation fund is appropriate.

The waiver provision in the Tentative Order provides the Copermittees considerable discretion in how the dollar amount of fund contributions will be determined and spent. However, a waiver cannot be granted in order to save a project proponent money.

Section: F.1 Subsection: F.1.b.2.h

Comment: The Copermittee must show infeasibility of all available structural treatment BMPs including those not recommended in the local SUSMP. (Surfrider Foundation)

Response: It is anticipated that the list of structural treatment BMPs included in the model and local SUSMPs will be complete, wide-ranging, and thorough. While the list is not designed to exclude the use of any applicable BMPs, it should be adequate to assess the feasibility of BMP implementation at a site. In addition, requiring project proponents to show infeasibility of all BMPs in existence may be impractical.

Section: F.1 Subsection: F.1.b.2.h

Comment: Page 19, SectionF.1.b. (2) (h) Waiver Provision- Please include language to provide for public participation in the Waiver Provision process, and allow the public to comment on the validity of the waiver as well as how and where money from the stormwater mitigation fund will be spent. (Surfers Tired of Pollution)

Response: The SDRWQCB strongly encourages the Permittees to include public participation in their waiver and budget processes. However, in an attempt to provide the Permittees with flexibility no such requirement will be included in the Tentative Order. However, it is important to note that when a waiver is approved by a Permittee, that Permittee is required to notify us. The public is then welcome to review our files that contain these waiver notifications.

Section: F.1 Subsection: F.1.b.2.h

Comment: A waiver provision would be unnecessary if the permit provided sufficient flexibility to allow Copermittees to design and implement their programs. This section should be deleted and replaced with a provision to allow Copermittees to develop and submit a proposed waiver program. Copermittees should be allowed to propose, with sufficient rationale, a program that considers and addresses the full range of situations in which waivers might be needed and/or allowable (including regional strategies). (County of San Diego)

Response: The waiver provision provides significant flexibility to the Copermittees in identifying situations where waivers are applicable. The issuance of waivers is left entirely to the Copermittees, provided that "all available structural treatment BMPs have been considered and rejected as infeasible." The Copermittees have discretion in identifying in their model and local SUSMPs applicable situations for waivers. However, it is important to note that the waiver fund requirement (for project proponents who have received a waiver to transfer their cost savings to a storm water mitigation fund) precludes findings of infeasibility based on cost.

The LARWQCB SUSMP provides guidance on situations where waivers may apply, stating "[r]ecognized situations of impracticability include, (i) extreme limitations of space for treatment on a redevelopment project, (ii) unfavorable or unstable soil conditions at a site to attempt infiltration, and (iii) risk of groundwater contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than 10 feet from the soil surface."

Section: F.1 Subsection: F.1.b.2.h

Comment: Change or Delete F.1b.(2)(h) Waiver Provision pg.19.
We are very wary of the allowance of any waiver provision for numeric sizing criteria and think that at a minimum any such a provision must be based on negligibility of water quality impacts and not on feasibility. Land use law is simply all about public and environment protection overriding individual economic interest. Ideally, it is development interest that should accommodate regulatory requirements and not vice versa. If a project is infeasible under the requirements of the law, it shouldn't be built. We apply this simple calculus to earthquake and fire safety provisions all the time. The extreme interest in preventing the harms of noncompliance obviates the inclusion of any provision for waiver. Water quality protection rises to the same level of public and environmental concern, thereby precluding the availability of a waiver.

If the Regional Board chooses to permit waivers, we strongly encourage that such provisions require a lower on-site numeric sizing criteria in addition to off-site mitigation or fund contribution. For example, in addition to the transfer of savings in cost provisions, the model SUSMP must require project proponents who have received waivers to mitigate 80% of the volume or flow rate set by the numeric

sizing criteria. That way, at least we still protect against most of the dry weather flows and some of the first flush. (Environmental Health Coalition)

Response: A waiver provision is necessary for certain specific situations where compliance with numeric sizing criteria is infeasible. For example, it is conceivable that a project may have such extreme limitations of space that no room for structural treatment BMPs exists. Where a waiver is granted, the project proponent is still required to implement the other provisions of the SUSMP. Furthermore, a contribution to a storm water mitigation fund is required if a waiver is received. These two requirements will ensure that the project does not result in a cumulative impact to the watershed. Finally, inclusion of a waiver provision was supported by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.h

Comment: Use of the word "infeasible" without an explanatory definition makes it another "I know it when I see it" concept that is inherently problematic.

We propose that the Draft Permit's Waiver Provisions be modified as follows:
A Copermittee may, through adoption of an ordinance or code incorporating the Treatment Control BMPs of the SUSWMP, provide for a waiver from the requirement if impracticability for a specific property can be established. Recognized situations of impracticability include, but are not limited to: (i) redevelopment in the Urban Core; (ii) extreme limitations of space for treatment on a redevelopment project outside the Urban Core; (iii) unfavorable or unstable soil conditions at a site to attempt infiltration; and (iv) risk of ground water contamination because an underground source or potential source of drinking water is less than 10 feet from the soil surface.

If a waiver is granted for impracticability, the Permittee shall first require the project proponent to propose one or more Source Control BMPs to reduce Pollutants of Concern to the Maximum Extent Practicable. Any savings in cost between the approved Source Control BMPs and the waived Treatment Control BMPs, but not exceeding 0.7% of the total cost of the project shall be transferred to a Storm Water Utility District encompassing the watershed in which the waiver was granted. The Storm Water Utility District shall use the transferred funds to develop and implement regional alternative solutions for storm water pollution in the storm watershed.

These modifications to the waiver language are intended to clarify the language of San Diego's SUSWMP. Second, they place time limits on the procedures which may be necessary. The revisions also recognize that Source Control BMPs as a viable part of the solution to storm water pollution. Finally, the proposed modifications encourage the development and funding of watershed Storm Water Utility Districts as the legitimate vehicle to expand storm water protection from individual projects to watersheds. (McKenna & Cuneo, L.L.P.)

Response: What constitutes infeasibility is at the discretion of the Copermittees, in order to provide them flexibility in developing and implementing their SUSMPs. The Copermittees' model and local SUSMPs should include criteria for the determination of infeasibility. However, it is important to note that the waiver fund requirement (for project proponents who have received a waiver to transfer their cost savings to a storm water mitigation fund) precludes findings of infeasibility based on cost. Also, due to the heavy use development projects receive in the urban core, infeasibility simply based on a project's location within the urban core (as proposed by the commentor) is not appropriate. While certain projects within the urban core may be eligible for a waiver, certainly many other projects have the capability for

structural treatment BMP implementation. For example, the proposed ballpark in downtown San Diego has extensive plans for structural BMP implementation. A blanket exemption of urban core projects is not adequately protective of receiving water quality.

It is also important to note that receipt of a waiver does not constitute a waiver from the entire SUSMP requirements. It is merely a waiver from the requirement that structural treatment BMPs be implemented which meet numeric sizing criteria. Therefore, the source control BMPs in section F.1.b.2.b are still required of projects which receive a waiver. For this reason, calculations to determine waiver fund contributions which include consideration of dollars spent on source control BMPs are inappropriate.

Finally, nothing in the Tentative Order precludes the Copermittees from developing a storm water utility district.

Section: F.1 Subsection: F.1.b.2.h

Comment: Section F.1.b(2)(h), found at page 19, provides that if a project cannot feasibly implement the required structural treatment BMPs, the Copermittee may grant that project a waiver from those requirements. However, the Tentative Order then states that "[a]s part of the model SUSMP, the Copermittees shall develop a program to require project proponents who have received waivers to transfer the savings in cost, as determined by the Copermittees, to a storm water mitigation fund." The problem here is that most project proponents seeking the waiver will do so on the grounds that the required structural BMPs are too expensive and therefore infeasible. It would make no sense to grant the waiver and then demand that the project proponent pay the amount "saved" into a storm water mitigation fund. The entire point of granting the waiver -- to avoid potentially devastating costs -- would be defeated. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The point of the waiver is not to avoid asserted potentially devastating costs, but rather to allow flexibility "when all available structural treatment BMPs have been considered and rejected as infeasible" due to situations such as extreme limitations of space or dangerous soil conditions.

The criteria included in the Tentative Order upon which a waiver may be issued is based upon the waiver criteria in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP states “A waiver of impracticability shall be granted only when all other Structural and Treatment Control BMPs have been considered and rejected as infeasible.” When discussing situations where a waiver may be issued, the LARWQCB SUSMP does not include cost considerations. Cost considerations are not a valid reason for waiver issuance, since the SDRWQCB and LARWQCB have exhibited that structural BMP implementation is generally less than 1% of total project cost. The SWRCB finds that this cost is “reasonable” in Order WQ 2000-11. Since waivers are not to be issued based on cost considerations, the requirement for project proponents who have received a waiver to transfer the resulting savings to a storm water mitigation fund is appropriate.

The waiver provision in the Tentative Order provides the Copermittees considerable discretion in how the dollar amount of fund contributions will be determined and spent. However, a waiver cannot be granted in order to save a project proponent money.

Section: F.1 Subsection: F.1.b.2.h

Comment: This waiver provision should only be granted when not doing so would constitute a "taking", denying an owner all economic Use of his property. As stated, a huge portion of projects are likely to routinely submit applications for waivers. The labor force and legal resources needed to evaluate them would be overwhelming. (San Diego Audubon Society)

Response: Waivers may only be issued "when all available structural treatment BMPs have been considered and rejected as infeasible." Due to the wide range and adaptability of BMPs available, it is anticipated that waiver issuance will be relatively rare. Where a waiver is granted, the project proponent is still required to implement the other provisions of the SUSMP. Furthermore, a contribution to a storm water mitigation fund is required if a waiver is received. These two requirements will ensure that the project does not result in a cumulative impact to the watershed. Finally, inclusion of a waiver provision was supported by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.h

Comment: Further, this provision is confusing and ambiguous as it appears to require the same amount in cost savings for SUSMP compliance to be deposited into the Fund. As the State Board found with the LARWQCB sump, the Fund terms have not been sufficiently developed. (State Board Order WP 2000-11, p. 2.) (County of San Diego)

Response: The criteria included in the Tentative Order upon which a waiver may be issued is based upon the waiver criteria in the LARWQCB SUSMP, which was upheld by the SWRCB in Order WQ 2000-11. The LARWQCB SUSMP states “A waiver of impracticability shall be granted only when all other Structural and Treatment Control BMPs have been considered and rejected as infeasible.” When discussing situations where a waiver may be issued, the LARWQCB SUSMP does not include cost considerations. Cost considerations are not a valid reason for waiver issuance, since the SDRWQCB and LARWQCB have exhibited that structural BMP implementation is generally less than 1% of total project cost. The SWRCB determined in Order WQ 2000-11 that this cost is “reasonable”. Since waivers are not to be issued based on cost considerations, the requirement for project proponents who have received a waiver to transfer the resulting savings to a storm water mitigation fund is appropriate. The waiver provision in the Tentative Order provides the Copermittees considerable discretion in how the dollar amount of fund contributions will be determined and spent. However, a waiver cannot be granted in order to save a project proponent money.

The Tentative Order gives the Copermittees significant discretion in determining the terms of the waiver fund and in developing and implementing the fund. The terms of the fund which the Tentative Order requires the Copermittees to identify are based on SWRCB Order WQ 2000-11. The waiver fund terms included in the Tentative Order are terms the SWRCB identified in Order WQ 2000-11 as terms which need to be resolved. The Copermittees are provided one year from date of adoption of the Order to develop these waiver fund terms, and an additional six months to implement them.

Section: F.1 Subsection: F.1.b.2.h

Comment: If a cost estimate can be generated for a structural treatment BMP, how can that same BMP then be considered infeasible? From an engineering standpoint, what is infeasible is that which simply cannot be built, no matter how much is spent; therefore, no savings can be estimated.

Also, doesn't the waiver provision violate a fundamental premise that polluters shall not buy their way out of mitigation responsibilities? (City of Chula Vista)

Response: The primary criteria for infeasibility is that "all available structural treatment BMPs have been considered and rejected as infeasible" for implementation. The point of the waiver is not to avoid asserted high costs, but rather to allow flexibility "when all available structural treatment BMPs have been considered and rejected as infeasible" due to situations such as extreme limitations of space or dangerous soil conditions. In situations such as these, where a waiver is issued, the Copermittees have discretion with regard to "how the dollar amount of fund contributions will be determined," as stated in the Tentative Order. One way to determine the dollar amount to be contributed to the fund would be to simply assess how much a similar site (which doesn't have the same constraints) has spent on its structural treatment BMPs.

The waiver fund does not allow developers to buy their way out of mitigation, indeed, just the opposite. The waiver fund assures that even if a waiver is received, the developer must contribute to mitigation of urban runoff within the watershed of their development.

The waiver provision provides significant flexibility to the Copermittees in identifying situations where waivers are applicable. The issuance of waivers is left entirely to the Copermittees, provided that "all available structural treatment BMPs have been considered and rejected as infeasible." The Copermittees have discretion in identifying in their model and local SUSMPs applicable situations for waivers. However, it is important to note that the waiver fund requirement (for project proponents who have received a waiver to transfer their cost savings to a storm water mitigation fund) precludes findings of infeasibility based on cost.

The LARWQCB SUSMP provides guidance on situations where waivers may apply, stating "[r]ecognized situations of impracticability include, (i) extreme limitations of space for treatment on a redevelopment project, (ii) unfavorable or unstable soil conditions at a site to attempt infiltration, and (iii) risk of groundwater contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than 10 feet from the soil surface."

Section: F.1 Subsection: F.1.b.2.h

Comment: Section F. 1.b.(2)(h): Waiver Provision: The waiver provides for the transfer of any cost savings due to a determination of the unfeasibility of all structural treatment BMPs to a storm water mitigation fund. The amount of such transfer could be difficult to determine and could be open to wide interpretations. (City of Coronado)

Response: The dollar amounts of waiver mitigation fund transfers have large potential for a wide range of interpretations. The Tentative Order therefore requires, as part of the model SUSMP, that the Copermittees develop a waiver program which identifies how the dollar amount of fund contributions will be determined.The Copermittees are provided one year to develop the waiver program, with an additional six months for its implementation. Once a regionwide method for implementing the waiver program is developed by the Copermittees, consistency in waiver fund transfers should be achieved.

Section: F.1 Subsection: F.1.b.2.h

Comment: Any consideration for a waiver must also be based largely on what the pollution impact would result from granting the waiver. As it is currently written, the Copermittee, or the Regional Board would have no ability to require that a different type or magnitude of development be considered in lieu of the waiver. As written, this weak provision could largely undermine the implementation of this Permit. We urge that the waiver provision be limited to "takings" situations and that it incorporate a consideration of the water quality impact. In a situation where the two conflict the only viable alternative might be for the public to reject the project and acquire the property. (San Diego Audubon Society)

Response: Waivers may only be issued "when all available structural treatment BMPs have been considered and rejected as infeasible." Due to the wide range and adaptability of BMPs available, it is anticipated that waiver issuance will be relatively rare. Where a waiver is granted, the project proponent is still required to implement the other provisions of the SUSMP. Furthermore, a contribution to a storm water mitigation fund is required if a waiver is received. These two requirements will ensure that the project does not result in a cumulative impact to the watershed. Finally, inclusion of a waiver provision was supported by the SWRCB in Order WQ 2000-11.

Section: F.1 Subsection: F.1.b.2.h

Comment: If the waiver system is instituted, the proceeds should go only to mitigating pollution from existing sources, or for watershed-focused prevention programs. The Copermittees should resist proposals to use the Storm Water Mitigation Fund to offset pollution from new priority sources, unless there is a compelling rationale for doing so. (City of Chula Vista)

Response: Application of waiver funds is left to the discretion of the Copermittees, provided that the funds "be used on projects to improve urban runoff quality within the watershed of the waived project."

Section: F.1 Subsection: F.1.b.2.I

Comment: The Regional Board should not prohibit infiltration structural BMPs for areas subject to high vehicular traffic, but rather should ensure that proper siting and maintenance requirements are included in the permit. (San Diego Baykeeper)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations

and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.I

Comment: In regards to the use of infiltration structural treatment BMPs, the requirement to guarantee that an exceedance of groundwater water quality objectives will not occur should be removed because a property owner can only design the infiltration BMPs in compliance with the guidelines established by the RWQCB. They don't have the expertise to predict how well the BMPs will perform. (Building Industry Association of Southern CA)

Response: The Tentative Order states "Use of infiltration structural treatment BMPs shall not cause or contribute to an exceedance of groundwater quality objectives." If this requirement cannot be met, infiltration structural treatment BMPs should not be implemented.

Section: F.1 Subsection: F.1.b.2.I

Comment: This section is in conflict with Finding No. 34. Subsection (ii) implies that sedimentation occurs in an impervious basin. Subsection (iii) would indicate that wash water or irrigation run-off on parking lots could not be diverted onto landscaped areas. This appears to conflict with other parts of the permit and desirable practices. Subsection (iv) would appear to be adequate to address the concern addressed in section g). Subsection (vi) should not apply to degraded ground waters, which have no beneficial use to protect. Subsection (viii) appears to eliminate infiltration for any industrial use in Carlsbad. Subsurface geology needs to be taken into consideration to avoid consequences discussed above. (City of Carlsbad)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.ii

Comment: Section F.l.b.(2).(i).ii and iii - Page 19 - Urban Runoff and Dry Weather Infiltration: The statement that all dry weather flows be pretreated or be diverted from infiltration devices conflicts with the requirement to mitigate the 85 th percentile flow or volume of a storm event. Technically, it may not be possible to capture one and divert the other. The permit shall allow agencies to exempt some dry weather flows from the permit requirements. (City of La Mesa)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.iii

Comment: In many areas of the County there are no sanitary sewers into which dry weather flows can be diverted. Requiring the diversion of dry weather flows in these areas could not be feasibly implemented, and there is no support for its requirements. (County of San Diego)

Response: Diversion of dry weather flows away from infiltration devices, as the Tentative Order provides, does not require that all dry weather flows be diverted to the sanitary sewer. Rather, the dry weather flows are to be diverted to other categories of BMPs, such as swales or filters, where the primary function is not to infiltrate large quantities of water.

Section: F.1 Subsection: F.1.b.2.i.iii

Comment: All dry weather flows shall be diverted Page 19 of 50 - paragraph F. l.b.(2)(i)(iii) - from infiltration devices. Does this mean that non-prohibited water discharges from sources such as irrigation and residential car washes (sources of dry weather flows) must be diverted from lawns or grassy swales or other infiltration devices? If so, why? (City of Imperial Beach)

Response: Focusing infiltration of large volumes of dry weather flows in small areas has the potential to adversely impact groundwater quality. For this reason, restrictions have been placed on the infiltration of dry weather flows in section F.1.b.2.i.iii. These restrictions are to apply to structural infiltration BMPs only. These restrictions on dry weather flow infiltration are appropriate and are based directly on USEPA guidance. The restrictions are recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The guidance the SWRCB refers to in Order WQ 2000-11 includes USEPA's recommendation against the infiltration of dry weather flows.

However, the SDRWQCB acknowledges that dry weather flow infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order will be changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB.

See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.iii

Comment: Section F.1.b (2)(i) iii: Where shall dry weather flows be diverted? (City of Chula Vista)

Response: Where dry weather flows need to be diverted, they should be diverted to other BMPs, which do not have the principal function of infiltrating large quantities of water in a concentrated area. For example, filters and swales could be effective.

Section: F.1 Subsection: F.1.b.2.I.iv

Comment: Modify this sentence to: "Pollution prevention and source control BMPs or their equivalent shall be implemented at a level appropriate to protect groundwater quality at sites where infiltration structural treatment BMPs are to be used." (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any equivalent alternative would fall under this definition, making the inclusion of such terms unnecessary.

Section: F.1 Subsection: F.1.b.2.i.v

Comment: This section should be deleted. It violates the MEP standards under the CWA. (County of San Diego)

Response: The intent of this requirement is not meant to require removal of all pollutants but rather to ensure that infiltration BMPs be adequately maintained so as to be effective in removing pollutants. Section F.1.b.2.i.v of the Tentative Order is recommended to be changed to clarify this intent.

Section: F.1 Subsection: F.1.b.2.i.vi

Comment: This requirement cannot be feasibly implemented in all instances. In areas throughout the County, the seasonal high groundwater mark is within 10 feet of natural ground. The construction of detention basins to reduce stormwater discharge rates and velocities will naturally infiltrate in these areas. The discharge of roadway catch basins and down drains into natural water courses will also infiltrate these areas. (County of San Diego)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order has been changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB. See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.2.i.vii

Comment: What physical and chemical characteristics of soil are adequate? What constitutes proper infiltration duration and treatment of urban runoff? (City of Chula Vista)

Response: Determination of whether a site has adequate soil characteristics for significant infiltration is the responsibility of the project proponent or the Copermittees. Numerous guidance documents are available such as "Storm Water Management in Washington State" (Washington State Department of Ecology, 1999), "Guidance Manual for On-Site Stormwater Quality Control Measures" (City of Sacramento, 2000), and "2000 Maryland Stormwater Design Manual" (Maryland Department of the Environment, 1999).

Section: F.1 Subsection: F.1.b.2.i.viii

Comment: Definition of "areas of industrial or light industrial activity" is needed. Would this be based on the specific facility type (e.g., SIC code), land use or zoning, or a particular area within a development boundary (a process area rather than an office)? What if the facility does not have significant exposure (e.g., an "industrial" facility with all activities indoors and properly contained)? (County of San Diego)

Response: The Tentative Order would leave to the discretion of the Copermittees designation of light industrial areas and activities for which structural infiltration BMPs should not be implemented.

Section: F.1 Subsection: F.1.b.2.i.viii

Comment: A rationale for the blanket exclusion of flows from infiltration devices in these areas should be provided. As before, flows must already meet an MEP standard for pollutant reduction, cannot cause or contribute to an exceedance of groundwater quality objectives, must be subjected to pollution prevention, source control, and pre-treatment BMPs, must be vertically separated from groundwater by at least 10 feet, and must be at least 100 feet from any supply well. If dischargers can (and must) meet these other conditions, why does the RWQCB believe it can and should lawfully impose these additional restrictions? No findings and evidence is provided in this regard. (County of San Diego)

Response: Focusing infiltration of large volumes of water in small areas has the potential to adversely impact groundwater quality. For this reason, infiltration restrictions have been placed on the use of structural infiltration BMPs in section F.1.b.2.i. These restrictions are to apply to structural infiltration BMPs only. These restrictions on structural infiltration BMPs are appropriate and are based directly on USEPA guidance. The restrictions are predominantly recommended by the USEPA Risk Reduction Engineering Laboratory (USEPA, 1994). Other infiltration restrictions are based on restrictions used elsewhere, such as Los Angeles, the State of Washington, and the State of Maryland. Furthermore, the restrictions are supported by the SWRCB in Order WQ 2000-11. The Order states: "The Regional Board did consider the potential impacts to groundwater from infiltration, and included appropriate limitations and guidance on its use as a BMP." The limitations and guidance the SWRCB refers to in Order WQ 2000-11 include most of the restrictions on infiltration included in the Tentative Order.

However, the SDRWQCB acknowledges that infiltration restrictions may not be necessary in all cases. For this reason, the Tentative Order has been changed to allow the Copermittees to develop their own restrictions on the use of structural infiltration BMPs in the model SUSMP, for approval by the SDRWQCB. See change at permit section F.1.b.2.i.

Section: F.1 Subsection: F.1.b.1.g

Comment: Although a requirement for structural treatment BMPs is not explicitly stated in this section, part F.1.b.(1)(g) imposes a requirement to maintain pre-development runoff rates and velocities, as well as similar requirements for pollutant reduction. Since it is not possible to meet these standards

without the use of structural controls, this equates to a mandate for their use on all development sites. (County of San Diego)

Response: The language regarding peak flow rates and velocities in F.1.b.1.g has been removed. Control of peak flow rates and velocities shall instead apply only to SUSMP priority development projects.

Section: F.1 Subsection: F.1.c

Comment: The word ""would" should be changed to ""could" in the CEQA Checklist questions. (Surfrider Foundation)

Response: The revised Tentative Order will use "could" in place of "would" in Section F.1.c.

Section: F.1 Subsection: F.1.c

Comment: We would note, though, that the Regional Board, despite being a "Responsible Agency" under CEQA, rarely comments on projects undergoing CEQA review. Such comments from the Regional Board would be helpful to municipalities attempting to evaluate and mitigate the water quality impacts of proposed projects. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: The Regional Board is aware of its responsibility to comment on CEQA projects that may have an impact on water quality. Currently, all CEQA documents received by the Regional Board office are logged into a database, and all staff are provided a list of these documents monthly. Staff reviews the list of CEQA documents to identify those that may have water quality issues, and comments on these documents as appropriate. However, due to limited staff resources, the Regional Board generally does not comment on CEQA documents that do not have identified water quality issues.

Section: F.1 Subsection: F.1.c.1.g

Comment: Section F.1.c (1)(g): How would this provision affect the Multiple Species Conservation Plan? (City of Chula Vista)

Response: Areas acquired and set aside for mitigation under the Multiple Species Conservation Plan would be considered environmentally sensitive areas.

Section: F.1 Subsection: F.1.c

Comment: What is required for CEQA compliance is well established by statute and the legislation there under, and the Regional Board has no authority to modify or amend the requirements of CEQA. Recommend coordinating the CEQA Checklist Form changes with the Governor's Office of Planning and

Research so they can be implemented consistently throughout California. (County of San Diego, Port of San Diego, Anonymous, La Mesa, Procopio, Cory, Hargreaves & Savitch)

Response: The intent of section F.1.c was for the Copermittees to consider water quality impacts in their environmental review processes. The requirement that CEQA initial study checklists be revised to consider water quality impacts was incorporated into the Tentative Order directly from SANDAG's Water Quality Element of its Regional Growth Management Strategy. However, since the Copermittees do not have authority to change CEQA checklists, language referring to CEQA checklists will be removed from section F.1.c.

See change at permit section F.1.c.

Section: F.1 Subsection: F.1.c.1.k

Comment: Add: (1) Will the project create new mosquito/vector breeding sites? and
Does it require a Mosquito/Vector Prevention Control Plan? (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F Subsection: F.1.d.

Comment: Add: (d) Mosquito/vector control impacts (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.1 Subsection: F.1.d.2

Comment: Add: (e) Mosquito/vector impacts (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.1 Subsection: F.1.d.2

Comment: Page 20, Section F.1.d.(2) External: Project Applicants, Developers,

Contractors, Property Owners- Please add Community Planning Groups, Planning Boards, and Elected Officials to those who should be included in the educational program. (Surfers Tired of Pollution)

Response: The SDRWQCB agrees that project applicants, developers, contractors, and property owners should all be included in the education program because of their influence over land use decisions. The SDRWQCB will make permit changes based on your suggestions.

See changes to Permit Section F.1.d.2.

Section: F.2 Subsection: F.2

Comment: Permit compliance should not be predicated on compliance with the plan. The actual status of grading will vary daily throughout the project until complete. The inspector needs the flexibility to adjust measures as required by weather condition. Effective measures require daily inspection to insure effectiveness of erosion control measures. Performance criteria are required to fairly enforce violation. It is suggested that the permit adopt a criteria that restricts construction sedimentation to fifty percent of the erosion potential in the before site conditions utilizing with Conservation Service Methods of analysis. For purpose of this section MEP should be defined as a 50 % reduction of sedimentation of the pre construction conditions. (La Mesa, Carlsbad (1), Carlsbad (2), Carlsbad (3), Carlsbad (4))

Response: Permit compliance is necessarily not determined by assessing a site's compliance with its erosion control/grading plan. It is more important to ensure that BMPs are implemented in the field. However, a upkept erosion control/grading plan can be a useful tool for both the contractor and the inspector. Both contractors and inspectors should utilize erosion control/grading plans. In addition, Copermittees are encouraged to develop performance standards for construction site runoff.

Section: F.2 Subsection: F.2

Comment: Implementation of F.2.a, F.2.b, F.2.c, F.2.d will take longer than 180 days. Infeasible implementation schedule. Copermittee grading ordinances updates cannot be completed within 180 days. The time needed for completing revisions, providing adequate public review, and conducting CEQA would extend well beyond the period proposed by staff. The County recommends that this implementation schedule be deleted from the permit and replaced with a requirement for the Copermittees to develop and submit a schedule for review and revision (if necessary) of their ordinances to comply with the permit as finally amended. (County of San Diego (1), County of San Diego (2), County of San Diego (3), County of San Diego (4), County of San Diego (5), County of San Diego (6))

Response: The implementation schedule for the Jurisdiction Urban Runoff Management Program, excluding Section F.1, has been extended in the revised Tentative Order from 180 days to 365 days.

Section: F.2 Subsection: F.2.b

Comment: "[S]hall review and update its grading ordinances as necessary for compliance with its stormwater ordinances and this Order" implies a relationship between stormwater and grading ordinances which does not exist. While Copermittees may choose to provide linkages between ordinances to bolster their effectiveness, they may just as often choose not to do so. The CWA only requires the Copermittees have in place sufficient legal authority to enforce the permit. Whether the authority exists, or whether it is in a "grading" ordinance or some other ordinance, is irrelevant. This statement should be deleted from the permit. Even assuming the RWQCB can compel Copermittees to require pollution prevention, source control, and structural BMPs on all project sites, which it cannot, such conditions need not be included in grading ordinances. This requirement should be deleted. (County of San Diego (355), County of San Diego (356))

Response: Grading ordinances and storm water ordinances are closely related. Grading activities and the ordinances which regulate them have the potential to significantly impact construction site runoff water quality. For example, a grading ordinance which does not place any restrictions on the amount of area which can be cleared at any time can result in hundreds of acres of exposed soil. When this much soil is exposed, it is nearly impossible to control the water quality of the runoff. To the extent that grading ordinances have the potential to impact water quality, they should be updated.

The provision does not require that the grading ordinances include ordinances which are better suited as storm water ordinances. Rather, the provision requires that the grading ordinances be in compliance with storm water ordinances. In other words, the requirement ensures that conflicts do not exist between the two types of ordinances.

USEPA provides legal authority for this requirement, stating that "A description of the local erosion and sediment control law or ordinance is needed to satisfy this requirement [i.e., Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(2)]" (1992). Regarding Copermittee approval of construction activities, the US EPA further states that "applicants must propose site review and approval procedures that address sediment and erosion controls, storm water management, and other appropriate measures. Approvals should be clearly tied to commitments to implement structural and nonstructural BMPs during the construction process" (1992).

Furthermore, in its Phase II Final Rule, US EPA requires small municipalities to develop and implement for construction sites "An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance […]" (1999). Due to the greater water quality concerns generally experienced by larger municipalities, Phase II Final Rule requirements for small municipalities are also applicable to larger municipalities such as the Copermittees.

Section: F.2 Subsection: F.2.b

Comment: F.2.e Threat to Water Quality Prioritization (Construction)
Grading will occur during the rainy season. Making any project that has grading in the rainy season a high priority project will put many small projects on the high priority list. This may place single-family residence room additions on that list. This would be extremely cumbersome and make the list less valuable. A minimum size of project that has grading in the wet season should be considered. (SANDAG (782), County of San Diego (375))

Response: The construction site prioritization language of the Tentative Order has been modified in order to help ensure that insignificant projects are not designated as high priority, thereby requiring frequent inspections.

See change at permit section F.2.e.2.

Section: F.2 Subsection: F.2.c.1.b

Comment: The construction component conditions of approval says dry seasonal grading only. This is overly restrictive since grading is also restricted during other times for environmental concerns.

F.2.b. - Grading Ordinance Update (Construction)
The statewide permit for Caltrans does not have a restriction on grading m the coastal areas of the San Diego region. This permit should be aligned with the Caltrans permit. If seasonal grading restrictions are required, it potentially reduces the window available for grading to just a few months a year because of other environmental criteria already in
place. (Anonymous, BIASC, Chula Vista, SANDAG, County of San Diego, Associated General Contractors of America)

Response: The language of Section F.2.c.1.b has been changed to provide greater flexibility to allow wet season grading.

Section: F.2 Subsection: F.2.f.2

Comment: "[I]ncluding BMPs which are more stringent than those required under the statewide General Construction Permit" (section F.2.f.(2)) is beyond the State's authority. It would be impossible to require more stringent BMPs for a construction site than those required under the statewide General Construction Permit since the compliance level, in theory, required of construction sites for pollution prevention and elimination is identical for the statewide General Construction Permit and the Municipal Permit. This provision appears to be designed to transfer statewide General Construction Permit responsibilities to local agencies. (County of San Diego, Chula Vista)

Response: In order to comply with Order No. 2001-01 requirements, implemented BMPs may need to be more stringent than those required under the statewide General Construction Permit. The US EPA implies that local sediment and erosion control requirements may be more stringent than statewide General Construction Permit requirements when it states that "construction sites covered under NPDES permit regulations must indicate whether they are in compliance with State and local sediment and erosion control plans" (1992).

While minimum BMPs will be required at all construction sites, implementation of particular BMPs will be site specific in order to address various conditions at different sites. Regarding site specific BMPs, the US EPA states "Appropriate structural and nonstructural control requirements will vary by project.

Project type, size, and duration, as well as soil composition, site slope, and proximity to sensitive receiving waters will determine the appropriate structural and nonstructural BMPs" (1992).

Section: F.2 Subsection:

Comment: Recommend a separate section be added that is devoted to pollutant controls for staging areas to give this matter the attention it deserves. (Sierra Club)

Response: The Tentative Order provides the Copermittee flexibility in developing the specific BMPs of their URMP. Each Copermittee is required implement a Construction Component of its Jurisdictional URMP to reduce pollutants in runoff from construction sites during all construction phases. This includes a pollution prevention section. Pollution prevention implies source controls for all areas of the construction site, including staging areas. It is not necessary to add a section devoted to staging areas.

Section: F.2 Subsection:

Comment: Are street maintenance activities (slurry seal, resurfacing, sidewalk repair) considered to be construction under this permit? (Anonymous Workshop 2)

Response: Yes. Street maintenance activities are considered construction under the Tentative Order.

Section: F.2 Subsection:

Comment: We need aggressive construction site inspections for erosion control, and their enforcement of tougher ordinances regarding grading. Both the cities and the county needs to be leaders in this with the support of their elected officials. (USEPA)

Response: Comment noted.

Section: F.2 Subsection:

Comment: The permit should establish a performance standard that plans be implemented that reduce erosion potential to 50 percent of the before construction erosion potential. Erosion control performance standards should be established. Co-permittees should not be punished for minor technical infractions that have little or no impact on water quality objectives. (City of Carlsbad)

Response: The Copermittees have the discretion to develop and implement performance standards for construction sites. As part of their Jurisdictional Urban Runoff Management Programs, the Copermittees are required to describe the BMPs which will be required to be implemented at construction sites within their jurisdictions. This description of BMPs can be used to describe the BMPs which will be required by the Copermittee to ensure that performance standards developed by the Copermittee will be met.

Section: F.2 Subsection: F.2

Comment: The County disagrees with the Regional Board's contention that CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and 40 CFR 122.26(d)(2)(i)(B,C,E, and F) and 40 CFR 122.26(d)(2)(iv) provide blanket authority to prescribe the detailed programs in section F.2. (County of San Diego)

Response: California Water Code section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. The Tentative Order's required programs are consistent with the CWA because they reduce the discharge of pollutants to the maximum extent practicable (MEP). Furthermore, the CWA and Federal regulations describe only minimal storm water program components, such as the construction component at 40 CFR 122.26(d)(2)(iv)(D). Although the Tentative Order may describe portions of program components that are not specifically addressed in the Federal requirements and regulations, the SDRWQCB has made express findings that these components are be necessary to address significant sources of storm water pollution. For example, most of the lagoons in San Diego are impaired for sediment. Construction is a significant source of sediment. Therefore, the SDRWQCB has required specific detail regarding the Copermittees' responsibility for oversight at construction sites. Since the CWA and Federal regulations do not exclude sources that are significant pollutant contributors, it is appropriate to cover the sources in the Tentative Order.

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.2 in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.2 Subsection: F.2.a

Comment: A requirement to implement pollution prevention BMPs exceeds the requirements for sites subject to the State General Construction Permit. Under the General permit, sites are required to develop a SWPPP that describes the implementation of BMPs to reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges. Requirement of pollution prevention BMPs would therefore establish a general state of non-compliance even for sites already subject to significant regulation. (County of San Diego)

Response: It is the responsibility of each Copermittee to reduce pollutants in storm water discharges to the maximum extent practicable. The Statewide General Construction Permit requires that construction sites greater than 5 acres implement BMP to reduce the discharge of pollutants to the BAT/BCT level.

Section: F.2 Subsection: F.2.b

Comment: Modify the first sentence to read: "Each Copermittee shall review and update its grading and/or stormwater ordinances as necessary for compliance with this order." This modification is consistent with 40 CFR 122.26 (d) (2) (1). (Port of San Diego)

Response: Comment noted. Although both grading and stormwater ordinances are required to implement the Tentative Order, the grading ordinances are considered a subset of the Copermittees' storm water ordinances.

Section: F.2 Subsection: F.2.b

Comment: The County of San Diego must reconsider its grading ordinance as it pertains to the clearing and brushing of land for agricultural purposes. It is our understanding that many agricultural grading practices are currently exempted from environmental review due to the alleged economic hardship that would befall small farmers if forced to comply with CEQA. Under the permit, the County should be required to develop a grading ordinance that will allow adequate consideration of water quality (both surface and ground) impacts prior to all land alteration. Water quality impacts should not be balanced ,against any Copermittee's desire to promote agriculture locally or regionally. (Surfrider Foundation)

Response: The Tentative Order does not regulate grading or clearing and brushing of land for agricultural purposes. The Copermittees have the discretion to develop a grading ordinance with respect to agriculture that will allow adequate consideration of water quality (both surface and ground) impacts prior to all land alteration.

Section: F.2 Subsection: F.2.b

Comment: Grading Ordinance Update. Section F.2.b, set forth on page 21 of the Tentative Order, requires that each Copermittee review and update its grading ordinances to meet the storm water standards of the Order. Again, the Regional Board may be able to suggest changes to a municipality's grading ordinance, but it cannot dictate those changes. The same goes for the Order's requirement that Copermittees modify their construction and grading approval processes. (Section F.2.c, at page 22.) (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: While the Copermittees are not responsible for enforcing or overseeing the General Statewide Industrial or Construction Permits, they are required to adopt and enforce ordinances that implement the requirements of Tentative Order 2001-01, including the prohibitions against illicit discharges. The SDRWQCB will enforce the General Statewide Industrial and Construction Permits. The Copermittees have local regulatory authority over the majority of construction and industrial sites since they issue the development and land use permits for the sites. In other words, the Copermittees are responsible for the water quality consequences of their planning, construction, and land use decisions. In some cases, the Copermittees may be required to implement or require the implementation of BMPs at construction or industrial sites that exceed the minimum requirements of the General Statewide Industrial or Construction Permits in order to achieve compliance with the requirements of the Tentative Order. USEPA supports this approach, clearly placing responsibility for the control of discharges from

construction and industrial sites with municipalities. The USEPA notes in the preamble to the Storm Water Regulations that municipalities are in the best place to enforce compliance with storm water discharge requirements:

"Because storm water from industrial facilities may be a major contributor of pollutants to MS4s, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program…The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal."

As noted in the Fact Sheet/Technical Report, the USEPA felt it so important to control the discharge of pollutants from construction and industry that it established a double system of regulation over construction and industrial sites. Two parallel regulatory systems were established with the same common objective of keeping pollutants from construction and industrial sites out of the MS4. A structure was created where local governments must enforce their local ordinances and permits as required under their municipal storm water permits, while the SDRWQCB (State) must enforce its statewide general construction and industrial storm water permits. The two regulatory systems were designed to complement and support each other in the shared goal of minimizing pollutant discharges in runoff from construction and industrial sites.

Regarding construction sites, USEPA also places enforcement responsibility on municipalities, requiring small municipalities to develop and implement "[a]n ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance […]" (40 CFR 122.34(b)(4)(ii)(A)). Additionally, The US EPA suggests that local ordinance be used to require implementation of BMPs, stating that "A description of the local erosion and sediment control law or ordinance is needed to satisfy this requirement [i.e., Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(2)]" (1992).

In its guidance for the Phase II regulations, US EPA goes on to support increased municipality responsibility, stating "Even though all construction sites that disturb more than one acre are covered nationally by an NPDES storm water permit, the construction site runoff control minimum measure for the small MS4 program is needed to induce more localized site regulation and enforcement efforts, and to enable operators of regulated small MS4s to more effectively control construction site discharges into their MS4s." While these above citations refer to small municipalities under Phase II of the NPDES program, USEPA recommendations to small municipalities are applicable to larger municipalities such as the Copermittees, due to the typically more serious water quality concerns attributed to such larger municipalities.

Furthermore, Copermittees must reduce pollutant discharges in storm water from construction sites to the maximum extent practicable. In order to achieve this level of pollution reduction, BMPs must be implemented. An effective means for ensuring BMP implementation at construction sites is through the development and implementation of grading ordinances which require pollution prevention, source control, and structural treatment BMPs. Updated grading ordinances which adequately address water quality considerations will provide Copermittees with the necessary legal authority to require effective BMPs at construction sites.

Regarding Copermittee approval of construction activities, the US EPA further states that "applicants must propose site review and approval procedures that address sediment and erosion controls, storm water

management, and other appropriate measures. Approvals should be clearly tied to commitments to implement structural and nonstructural BMPs during the construction process" (1992).

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.2.b in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.2 Subsection: F.2.b

Comment: The Grading Ordinance Update should distinguish "natural hydrologic features" by some parameter.

"Retention of sediments and other construction pollutants on-site" should be followed by: "Specific provisions for disposing of all retained sediments and construction pollutants shall be proposed and subject to City approval" (City of Chula Vista)

Response: Natural hydrologic features should be determined on a site by site basis by the Copermittees authorizing the construction activity.

A requirement has been added (to the list of requirements in F.2.b.) that the Copermittees adopt a grading ordinance specifying that "Specific provisions for disposing of all retained sediments and construction pollutants shall be proposed and subject to City approval."

Section: F.2 Subsection: F.2.b

Comment: Page 24, Section F.2.b. Grading Ordinance Update (Construction)- Please provide language to ensure that the public has the ability to review and comment on the adequacy of the BMPs for the grading permit prior to project approval, since the public currently has no opportunity to comment on the SWPPPs and the pre- and post-construction BMPs being proposed for the project. (Surfers Tired of Pollution)

Response: Review of grading and storm water control plans by the public is left to the discretion of the Copermittees.

Section: F.2 Subsection: F.2.b.

Comment: Add: (10) Prevention of mosquito/vector breeding (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.2 Subsection: F.2.b.5

Comment: F.2.b (5) page 21 - Revegetation as early as feasible is one of the more effective measures to accomplish early site stabilization. Stabilizing with finish landscaping is the optimum condition. Implementation of this provision requires flexibility in time constraints and a long-term approach to the erosion strategy i.e. Multi Year Program. (City of Carlsbad)

Response: Comment noted.

Section: F.2 Subsection: F.2.c

Comment: F.2.c. "Modify Construction and Grading Approval Process"

Section F.2.c. requires a stormwater quality review for all construction and grading permits. This would eliminate the ability of Copermittees to issue these permits ministerially. This section should be replaced with the following: "The Copermittee shall amend its construction and grading approval process as needed to ensure compliance with the provisions of this section." (County of San Diego)

Response: The language of Section F.2.c has been revised in the Tentative Order for greater clarity and to permit ministerial approval.

Section: F.2 Subsection: F.2.c.1.a

Comment: Non-storm water discharges should be removed from regulation unless they are a significant source of pollution. (Building Industry Association of Southern CA)

Response: Only non-storm discharges specifically identified in Section B.2 of the Tentative Order are conditionally exempt. Non-storm water discharges listed in Section B. 2. only need to be prohibited if the Copermittee identifies them as a significant source of pollutants to water of the United States. Section F.2.c.1.a., referred to in this comment, gives examples of conditions of approval for local grading and construction permits to ensure that pollutant discharges from construction sites are reduced to the maximum extent practicable. Non-storm water discharges listed under Section B.2 may need to be managed on-site prior to discharge, whereas, non-storm water discharges not exempt under Section B.2 must be managed on-site to prevent from being discharged to a MS4.

Section: F.2 Subsection: F.2.c.1.j

Comment: Section F.2.c (1)(j): When would evidence of N.P.D.E.S. General Construction Permit be required? (City of Chula Vista)

Response: Evidence of coverage is a condition of approval under Tentative Order 2001-01. The Tentative Order requires that the Copermittees review evidence of coverage under the statewide NPDES General Construction Storm Water Permit and to review all proposed construction and grading plans (e.g.

the required Storm Water Pollution Prevention Plan) as well as to require measures to ensure that pollutants from the site will be reduced to the MEP and will not cause or contribute to an exceedance of water objectives.

Section: F.2 Subsection: F.2.c.I

Comment: Stabilization of all slopes infers that slopes under construction would also require stabilization at all times. This is not a requirement of the Statewide Permit with Caltrans. Again, these permits should be consistent with one another. (SANDAG)

Response: The mission of the RWQCBs and SWRCB is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The "benefit" to which this mission statement refers is expressed in terms of the beneficial uses designated in regional water quality control plans (basin plans). Each RWQCB develops these plans for its own region, in keeping with California Water Code § 13240 et seq. Since the mission of the RWQCBs involves protecting beneficial uses that are designated by region or portion thereof, it is appropriate for the actions of a RWQCB to be specific to its region or portions thereof. In other words, in carrying out its mission, it is more important that the SDRWQCB take actions as necessary and appropriate to protect beneficial uses in the San Diego region than it is to achieve multi-regional or statewide permit consistency. The Tentative Order is intended first and foremost to protect beneficial uses in the area to which it applies, not to be consistent with permits adopted in the past that are applicable to other areas. Therefore, the slope stabilization requirement will not be changed.

Section: F.2 Subsection: F.2.d

Comment: Each Copermittee, shall annually develop... a watershed based inventory of all construction sites ... regardless of size. The IEA strongly urges the RWQCB to set minimum exemptions. (Industrial Environmental Association)

Response: The Copermittees are being asked to inventory all construction sites. This inventory will help the Copermittee determine which sites are high priority and it will also be an important tool in watershed planning and management.

Section: F.2 Subsection: F.2.d

Comment: Inclusion of “all construction sites” in the inventory is too broad. While the intent here may be to use the inventory as a basis for prioritization in section F.2.e., it would be prudent to allow Copermittees to conduct some initial prioritization (e.g., based on project type) prior to assembling the inventory. Only those sites that have the potential for site or soil disturbance, rather than interior tenant improvements or remodels for example should be included in the inventory. (County of San Diego)

Response: The Copermittees are being asked to inventory all construction sites. This inventory will help the Copermittee determine which sites are high priority and it will also be an important tool in watershed planning and management.

Section: F.2 Subsection: F.2.e

Comment: Is the NPDES "threat to water quality/complexity" rating, similar or different than the water quality prioritization? (Zachary, Karen)

Response: The Threat to Water Quality Prioritization is similar to the waste discharge threat to water quality and complexity categorization scheme for state waste discharge requirements and NPDES permits. Threat to Water Quality Prioritization allows the Copermittee to rate which site (construction, municipal, industrial, residential) will receive more of their oversight resources due to the sites ability to cause an greater negative impact to the receiving water quality in the event of a discharge. Sites that receive high priority ratings would be inspected more frequently than a medium or low rated site and if the Copermittee so chooses be charged a higher fee for oversight.

Section: F.2 Subsection: F.2.e

Comment: Section F.2.e.(1) provides a list of criteria that must be addressed by Copermittees in determining construction site priorities. Presumably, the RWQCB used this prioritization methodology in determining the minimum list of high priority sites in section F.2.e.(2). Is this correct? If not, why? If so, why were the results of this assessment not provided in the Technical Report? If this assessment has not been conducted, the County recommends that the RWQCB delete section F.2.e.(2) from the permit. There is insufficient evidence to support the inclusion of such a requirement. (County of San Diego)

Response: Section F.2.e.(1) provides a list of criteria that the Copermittees should use in evaluating threat to water quality of construction sites. Section F.2.e (2) sets minimum criteria for determining if a construction site is a high priority site. The Tentative Order has been revised to define high priority sites as a site meeting either of the following criteria or equivalent criteria:
a. >50 acres and grading during the raining season
b. >5 acres and a tributary to a 303(d) impaired water body for sediment.
This change will allow the Copermittee greater flexibility in determining which sites within their jurisdiction are of the highest priority thus reducing the burden of potentially having all of their construction sites fall within the high priority classification. Also, the Copermittees have the option in its Jurisdiction URMP to propose an equivalent method to determine which sites they believe fall in the high priority classification.

Construction sites with large amounts of exposed sediment during the raining season pose a significant threat to water quality. Since these sites have a greater chance of discharging sediment they require frequent site visits to ensure the discharger is properly implementing BMP to prevent a discharge to the MS4. Sites greater than 5 acres and located near a tributary to a Clean Water Act section 303(d) impaired water body for sediment require frequent site visits to ensure the water body does not receive additional sediment. These are minimum requirements and this does not limit the Copermittee from developing additional criteria or equivalent criteria.

Section: F.2 Subsection: F.2.e

Comment: The RWQCB's proposed assignment of high priority sites is too broad and inclusive. The inclusion of several open-ended and poorly defined categories (e.g., hillside development, "tributary to" CWA 303(d) waterbodies, etc.) could make most or all sites high priority. Since this obviously has significant financial implications both for Copermittees and the parties they regulate, a closer and more reasoned examination of the methodology and results of this assessment must be conducted prior to permit adoption. (County of San Diego)

Response: Section F.2.e.(1) provides a list of criteria that the Copermittees should use in evaluating threat to water quality of construction sites. Section F.2.e (2) sets minimum criteria for determining if a construction site is a high priority site. The Tentative Order has been revised to define high priority sites as a site meeting either of the following criteria or equivalent criteria:
a. >50 acres and grading during the raining season
b. >5 acres and a tributary to a 303(d) impaired water body for sediment.
This change will allow the Copermittee greater flexibility in determining which sites within their jurisdiction are of the highest priority thus reducing the burden of potentially having all of their construction sites fall within the high priority classification. Also,
the Copermittees have the option in its Jurisdiction URMP to propose an equivalent method to determine which sites they believe fall in the high priority classification.

Section: F.2 Subsection: F.2.e.2

Comment: ... high priority construction sites shall at a minimum be defined as ...
After (2)(d) the word "and" should be replaced with "or" (Industrial Environmental Association)

Response: Comment noted.

See change at permit section F.2.e.2.d.

Section: F.2 Subsection: F.2.e.2

Comment: Page 23, Section F.2.e (2). Threat to Water Quality Prioritization-Please include as a high priority construction site: (f) any site that is located directly adjacent to or within 500 feet of wetlands, vernal pools, coastal salt marsh or estuaries that could discharge pollutants directly to or into a tributary of a waterbody that could impact the beneficial uses of those areas. (Surfers Tired of Pollution)

Response: Section F.2.e (2) does not preclude the Copermittee from including sites located directly adjacent to or within 500 feet of wetlands, vernal pools, coastal salt marsh or estuaries that could discharge pollutants directly to or into a tributary of a water body that could impact the beneficial uses of those areas. This section sets minimum criteria while allowing the Copermittees flexibility to determine which areas are high priority within their jurisdiction.

Section: F.2 Subsection: F.2.f

Comment: The SDRWQCB lacks legal authority to compel Copermittees to require year-round implementation of BMPs by project proponents. (County of San Diego)

Response: CWA 402(p)(3)(iii) requires controls to reduce the discharge of pollutants to the maximum extent practicable, including management practice, control techniques and system, design and engineering methods, and such provisions as the Administrator or the State determines appropriate for the control of such pollutants. Discharges of pollutants to the MS4 could occur year-round and are not limited to the rainy season. Construction sites typically use large amounts of water for activities including but not limited to, dust control, planting of vegetation on slopes and irrigation. These activities coupled with large amounts of exposed sediment, topsoil, and fertilizer can lead to discharges regardless of the time of year.

Section: F.2 Subsection: F.2.f.4

Comment: Page 23 of 50 F.2.f.(4), Page 28 of 50 F.3.b.(4)(c) – What kind of additional controls are required? Are the controls required if they exceed the Maximum Extent Practicable (MEP)? (City of Chula Vista)

Response: Additional controls may be necessary at construction sites where the discharge may be tributary to a 303(d) listed water body, coastal lagoon, or other sensitive water bodies as necessary to comply with the Tentative Order. The type and implementation of the additional controls will be determined by the Copermittee and will be dependent on the pollutant(s) of concern for the 303(d) listed water body, coastal lagoon or other sensitive water body and the potential source(s) of the pollutant(s) of concern at construction sites or related activities. The additional controls could include, but are not limited to, more stringent BMPs, more frequent inspections, grading ordinance restrictions, etc. The additional controls will be specified in the Copermittees' Jurisdictional Urban Runoff Management Documents and Annual Reports as well as during the construction authorization and inspection programs.

CWA section 303(d) water bodies are impaired water bodies which are not achieving the water quality objectives necessary to protect their beneficial uses. As discussed in Finding 3, urban runoff discharges from MS4s are a leading cause of receiving water quality impairment in the San Diego Region and throughout the United States. Since discharges which cause or contribute to an exceedance of water quality standards are prohibited (see section C.1. of Order No. 2001-01), any discharges to CWA section 303(d) waterbodies of pollutants for which the waterbody is impaired are prohibited. Therefore, construction sites and activities tributary to these water bodies must implement additional controls to ensure that they are not discharging the pollutants which are causing or contributing to the impairment of these water bodies.

With regards to coastal lagoons and other sensitive water bodies, additional controls are needed to protect these valuable and unique resources. In their Nonpoint Source Program Strategy and Implementation Plan, the SWRCB and California Coastal Commission support additional controls for critical coastal areas, stating “the State will seek to attain and maintain applicable water quality standards, and protect waters threatened by land uses, or by substantial expansion of existing land uses, by implementing additional management measures.”

Furthermore, US EPA supports additional controls for construction sites tributary to impaired or sensitive water bodies, stating "The proximity and sensitivity of the receiving water to which the construction site discharges is an important consideration. For construction sites that discharge to receiving waters that do not support their designated use or other waters of special concern, additional construction site controls are probably warranted and should be strongly considered" (1992).

Section: F.2 Subsection: F.2.g.1.a

Comment: Section F.2.g (1)(a): Is there a criterion for weekly inspections? (City of Chula Vista)

Response: As discussed in Finding 24, inspections provide a necessary means by which Copermittees can evaluate compliance with their ordinances. Inspections are especially important at high risk areas for pollutant discharges, such as industrial and construction sites. To ensure that BMPs are properly installed, US EPA states MS4 operators should "develop procedures for site inspection and enforcement of control measures to deter infractions" (2000). Regarding inspections, US EPA further states "Inspections give the MS4 operator an opportunity to provide additional guidance and education, issue warnings, or assess penalties" (2000).

Construction site inspections shall be conducted to determine compliance with applicable ordinances and permits, including Order No. 2001-01. To this effect, the US EPA states that "Site inspections are expected to be the primary enforcement mechanism by which erosion and sediment controls are maintained" (1992). When inspections result in findings of noncompliance, follow-up by the Copermittee to ensure compliance is necessary. The US EPA states "Effective inspection and enforcement requires […] intervention by the municipal authority to correct violations" (1992).

Construction site inspection frequencies are to be based on threat to water quality prioritization. US EPA supports this, stating that site inspection procedures should "identify priority sites for inspection and enforcement based on the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality" (2000). For example, construction sites which are considered a high threat to water quality are to be given a high priority for inspection. This will allow for limited inspection and monitoring time to be most effective. Weekly to monthly inspection of high threat sites is necessary due to the dynamic nature of construction activities. Medium and low threat construction sites can be inspected less frequently, due to their reduced risk of negatively impacting receiving waters. Review of SWPPPs can be one effective tool for determining frequency of site inspections. Construction sites which effectively implement the measures of a comprehensive SWPPP may not need to be inspected as frequently as less diligent sites.

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.2.g in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.2 Subsection: F.2.g.2.a

Comment: RWQCB staff have failed to assess the potential staffing and cost implications of this section. Section F.2.g(2)(a) would require weekly inspections of all high priority construction sites during the wet season, and additional inspections. The County has only had time to estimate increased inspection costs for single family dwellings. For cost estimation purposes, the County also assumed that

inspection would only be required from the time ground was disturbed, until permanent BMPs were in place. This would still require that County inspections of single family homes be approximately tripled. This would require 40 additional staff and other supporting expenditures. First year costs (in this case, including office space) would be $5 million, and subsequent year costs $3.6 million per year.

Additionally, the difficulty of significantly increasing staffing levels for the wet season only have not been considered. Assuming that this extra work could be contracted, it would not be possible to find qualified temporary help in these numbers, especially if the competition with neighboring Copermittees is considered, and the provisions were otherwise found to be legal.

Monthly inspections would be allowed only if the County could and would take on the burden of directly enforcing general permits issued by the state, which is inappropriate. (County of San Diego)

Response: In response to comments and to provide the Copermittees with greater flexibility and discretion in implementing the Tentative Order, Section F.2.g has been revised to lower costs by reducing the number of high priority sites to be inspected. The criteria in Section F.2.e, which set the minimum criteria by which a site is determined to be a high threat to water quality, have been revised to reduce the number of high priority sites to be inspected. Also, the Copermittees have the discretion under F.2.e.2 to propose "equivalent criteria" by which to prioritize sites as high threats to water quality. The Tentative Order still requires weekly inspections of high priority construction sites in order to address frequently changing conditions on construction sites. However, the number of sites requiring inspections should be reduced due to the Tentative Order modifications.

The SDRWQCB has the authority to assign site priorities for oversight by the Copermittees. The Federal NPDES regulations clearly place an emphasis on the prioritization of sites of various land uses. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(3) provides that the proposed management program include "A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality." Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(5) provides that the proposed management program include "A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges." Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C)(1) provides that the Copermittee must "identify priorities and procedures for inspections and establishing and implementing control measures for such discharges."

The Tentative Order's requirements regarding site prioritization are more detailed than those in the Federal NPDES regulations. The SDRWQCB has increased the detail of the site prioritization requirements under Clean Water Act section 402(p)(3)(b)(iii), which states that a storm water program "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

This increased detail is necessary due to the continued degradation of the region's receiving waters caused by urban runoff. The "1998-1999 City of San Diego and Co-Permittee NPDES Stormwater Monitoring Program Report" indicates that the typical urban runoff coming from residential, commercial, industrial, and roadway land uses frequently contains such pollutants as Total Phosphorus, Nitrate + Nitrite Nitrogen, Total Suspended Solids, Lead, Copper, and Zinc at concentrations which exceed USEPA benchmark values for storm water (City of San Diego, 1999). Construction sites are also a significant concern due to the impairment caused by sediment of such valuable water resources within the region as

Agua Hedionda Lagoon, Buena Vista Lagoon, San Elijo Lagoon, and Los Penasquitos Lagoon. Increased detail in the prioritization of sites is further supported by USEPA's "Interim Permitting Approach" which supports expansion of permit requirements where necessary to attain water quality standards (USEPA, 1996).

Finally, the SWRCB upheld in Order WQ 2000-11 prioritization of sites by a Regional Board in the LARWQCB SUSMP. The LARWQCB SUSMP identified various priority development project categories which are high priority. The SWRCB found that identification of high priority sites was appropriate.

Furthermore, Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(3) requires construction site inspections by the Copermittees, stating their programs shall include "A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality." USEPA places importance on inspections, stating "Site inspections are expected to be the primary enforcement mechanism by which erosion and sediment controls are maintained" (USEPA, 1992). Since USEPA places high priority on inspections, and since the majority of the lagoons within the region are impaired for sediment, the Tentative Order has placed high priority on construction site inspections. The SDRWQCB has authority to require these inspections under USEPA's "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits" (USEPA, 1996). This guidance states "The interim permitting approach uses best management practices (BMPs) in first-round permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards."

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.2.in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.2 Subsection: F.2.j

Comment: This section is ambiguous and redundant. It should be deleted. (County of San Diego)

Response: Comment noted. As discussed in Finding 23, implementation of an education program is an important best management practice for construction sites and activities. The SWRCB Technical Advisory Committee (TAC) "recognizes that education with an emphasis on pollution prevention is the fundamental basis for solving nonpoint source pollution problems." The TAC points out several target communities for education efforts, including "Government: Educate agencies and officials to achieve better communication, consistency, collaboration, and coordination at the federal, state and local levels" and "Development Community: Educate the development community, including developers, contractors, architects, and local government planners, engineers, and inspectors, on nonpoint source pollution problems associated with development and redevelopment and construction activities and involve them in problem definitions and solutions."

The US EPA also supports education efforts for parties involved in construction, stating "technical information on how to incorporate storm water management with erosion and sediment control and other BMP training courses are recommended for municipal employees and construction site operators."

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.2.j. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.2 Subsection: F.2.j

Comment: Page 24, Section F.2.j. Education Focused on Construction Activities (Construction) Please add Community Planning Groups, Planning Boards and Elected Officials to those who should be included in the education process. (Surfers Tired of Pollution)

Response: With respect to Section F.2.j Education Focused on Construction Activities (Construction), "Community Planning Groups, Planning Boards and Elected Officials" could be considered "responsible parties" by the Copermittees and do not need to be further specified in the Tentative Order.

Section: F.3 Subsection: F.3

Comment: A requirement to implement storm water pollution prevention BMPs exceeds the requirements of the State General Industrial Permit. Because the General Industrial permit allows applicants to choose the BMPs they will use to comply, a specific requirement to use pollution prevention BMPs would put virtually all of them out of compliance. This requirement for the Copermittees to develop pollution prevention techniques for all industries within their jurisdictions may not be as thorough as those developed by specific industries because they know the intricacies of their businesses. (Port of San Diego, County of San Diego)

Response: The Copermittees have the discretion under the revised Tentative Order to require industrial pollution prevention BMPs for cases where they decide they are appropriate.

Section: F.3 Subsection: F.3.a

Comment: The requirements for "all municipal land use areas, the inclusion of roads, street etc., muni waste facilities, and corporate yards" are vague and ill defined. The level of effort to include all of these facilities is objectionable and unnecessary, inappropriate, and are not based upon adequate data from either the Regional Board or data from the Copermittees. (County of SD)

Response: Section F.3.a. covers Municipal areas and is designed to address those properties and areas for which the Permittees have the most direct influence over land use and management decisions. The level of effort to include these facilities should be among the most reasonable and easily accomplished in the municipal storm water permitting program. Therefore, the requirements will not be changed.

Section: F.3 Subsection: F.3.a.3

Comment: The threat to water quality prioritization is not supported by the legal authorities cited, are not within the provisions of the federal and state statutes and regulations, and are overly broad. (County of San Diego)

Response: The municipal threat to water quality prioritization is supported by the federal NPDES regulations, as well as USEPA guidance.

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(1) provides that the proposed management program include "A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers."

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(3) provides that the proposed management program include "A description for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities."

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(4) provides that the proposed management program include "A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible."

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(5) provides that the proposed management program include "A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges."

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(6) provides that the proposed management program include "A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities."

Identification of high priority municipal pollutant areas and activities allows for limited pollution reduction resources to be most effective. Targeting high priority municipal areas and activities for BMP implementation, inspection, and monitoring provides the greatest reduction in risk of degrading receiving waters per expenditure.

Items (i), (ii), and (iv) above are considered to be high priority sources since they are specifically addressed in Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(A)(3-5). Regarding roads, highways, and parking facilities, the US EPA states "Road maintenance practices, especially snow management and road repair, and traffic are significant sources of pollutants in storm water discharges. […] Municipal equipment yards and maintenance shops that support road maintenance activities can also be significant sources of pollutants" (USEPA, 1992). Regarding flood management projects and flood control devices, the USEPA states "Storm water management devices and structures that focus solely on water quantity are usually not designed to remove pollutants, and may sometimes harm aquatic habitat and aesthetic

values" (USEPA, 1992). Regarding municipal waste facilities, the USEPA states "Applicants must describe programs that identify measures to monitor and reduce pollutants in storm water discharges from facilities that handle municipal waste, including sewage sludge. […] The types of facilities that should be included are: active or closed municipal waste landfills; publicly owned treatment works, including water and wastewater treatment plants; incinerators; municipal solid waste transfer facilities; land application sites; uncontrolled sanitary landfills; maintenance and storage yards for waste transportation fleets and equipment; sites for disposing or treating sludge from municipal treatment works; and other treatment, storage, or disposal facilities for municipal waste" (USEPA, 1992).

Areas and activities included in item (iii) are considered high priority due to their location in relation to CWA section 303(d) water bodies and environmentally sensitive areas. Pollutant loading of these water bodies must be avoided to aid in their recovery and ensure against their further degradation. The intent of this requirement was not to include all sites which were tributary to any 303(d) water body, but rather to include sites which had pollutants on site which were tributary to 303(d) water bodies impaired for the same pollutants. In addition, the intent regarding environmentally sensitive areas was to provide these areas protection from municipal areas and activities within or directly adjacent to the environmentally sensitive areas. For these reasons, the Tentative Order will changed to clarify this intent.

See change at permit section F.3.a.3.b.iii.

Section: F.3 Subsection: F.3.a.3

Comment: The prioritization criteria for construction site threat to water quality does not include a method for the process. The Fact Sheet/Technical Report does not provide an assessment matrix and Order should allow the Copermittees to develop the methodology that will ensure the criteria are met and stabilize the sites as quickly as possible. The frequencies stipulated are not adequate for most cases. Prioritization of basin has no operational value and should be eliminated. The approach outlined will likely lengthen the time of site exposure and maximize the opportunities for violation and the accompanying enforcement processes.

The County agrees with this approach, but questions whether the RWQCB has employed it in assigning their minimum frequencies. Since the Technical Report has not addressed the issue, we are specifically requesting an explanation of how staff determined the particular minimum inspection frequencies that it has assigned. What is the nexus between a high priority status and a weekly inspection frequency? Why are monthly inspections deemed to be equivalent to weekly if the Copermittees enforce the General Construction Permit? What is the reasoning for two inspections of medium and low priority sites during the wet season? Why not one or seven? If medium and low priority sites warrant the same inspection frequency, why are they ranked differently? Is there a Threat to Water Quality threshold below which inspection frequencies can all be the same? If so, how was it determined that high priority sites are above it? The Findings, the evidence, and the law do not support the inclusion of such a requirement. (County of San Diego, Carlsbad (1084), County of San Diego (385)

Response: The SDRWQCB has the authority to assign site priorities for oversight by the Copermittees. The Federal NPDES regulations clearly place an emphasis on the prioritization of sites of various land uses. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(3) provides that the proposed management program include "A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the

characteristics of soils and receiving water quality." Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(5) provides that the proposed management program include "A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges." Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C)(1) provides that the Copermittee must "identify priorities and procedures for inspections and establishing and implementing control measures for such discharges."

The Tentative Order's requirements regarding site prioritization are more detailed than those in the Federal NPDES regulations. The SDRWQCB has increased the detail of the site prioritization requirements under Clean Water Act section 402(p)(3)(b)(iii), which states that a storm water program "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

This increased detail is necessary due to the continued degradation of the region's receiving waters caused by urban runoff. The "1998-1999 City of San Diego and Co-Permittee NPDES Stormwater Monitoring Program Report" indicates that the typical urban runoff coming from residential, commercial, industrial, and roadway land uses frequently contains such pollutants as Total Phosphorus, Nitrate + Nitrite Nitrogen, Total Suspended Solids, Lead, Copper, and Zinc at concentrations which exceed USEPA benchmark values for storm water (City of San Diego, 1999). Construction sites are also a significant concern due to the impairment caused by sediment of such valuable water resources within the region as Agua Hedionda Lagoon, Buena Vista Lagoon, San Elijo Lagoon, and Los Penasquitos Lagoon. Increased detail in the prioritization of sites is further supported by USEPA's "Interim Permitting Approach" which supports expansion of permit requirements where necessary to attain water quality standards (USEPA, 1996).

Finally, the SWRCB upheld in Order WQ 2000-11 prioritization of sites by a Regional Board in the LARWQCB SUSMP. The LARWQCB SUSMP identified various priority development project categories which are high priority. The SWRCB found that identification of high priority sites was appropriate.

Furthermore, Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(3) requires construction site inspections by the Copermittees, stating their programs shall include "A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality." USEPA places importance on inspections, stating "Site inspections are expected to be the primary enforcement mechanism by which erosion and sediment controls are maintained" (USEPA, 1992). Since USEPA places high priority on inspections, and since the majority of the lagoons within the region are impaired for sediment, the Tentative Order has placed high priority on construction site inspections. The SDRWQCB has authority to require these inspections under USEPA's "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits" (USEPA, 1996). This guidance states "The interim permitting approach uses best management practices (BMPs) in first-round permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards."

It should be noted that the designation for high priority construction sites has been modified. This was to allow the Copermittees more discretion in their inspections. The Tentative Order still requires weekly inspections of high priority construction sites in order to address frequently changing conditions on

construction sites. However, the number of sites requiring inspections should be reduced due to the Tentative Order modifications.

See change at permit section F.2.e.2.

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.2.g in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.3 Subsection: F.3.a.4.b.i.

Comment: The requirement to retrofit where needed is open-ended and is not completely supported by statutes or regulations. The language should require an evaluation and then begin a process to retrofit. (County of San Diego, City of San Diego)

Response: The requirement to retrofit where needed is broad in order to provide Copermittees flexibility in maintaining their systems. Determination of necessity of retrofitting is left to the discretion of the Copermittees. The provision does require an evaluation, stating "Each Copermittee shall evaluate feasibility of retrofitting […]". Again, the process of retrofitting is the responsibility of the Copermittees.

Section: F.3 Subsection: F.3.a.4.b.i.

Comment: This section is unclear with regards to retrofits. Work with co-permittees for clarity and implementation schedule. (County of San Diego (1), County of San Diego (2))

Response: The Tentative Order says, "Each Copermittee shall evaluate feasibility of retrofitting existing structural flood control devices and retrofit where needed." In the phrase "where needed," SDRWQCB is giving the Permittees the opportunity to develop a schedule based on their needs. Therefore, SDRWQCB will not develop an implementation schedule as doing so would result in decreased flexibility given to the Permittees.

Section: F.3 Subsection: F.3.a.5

Comment: The requirement for annual inspections and removal of waste from urban streams is unfeasible and ambiguous. The total length of all the streams is very large and a cost/benefit analysis has not been conducted. Other regulatory requirements, such as, Fish and Game or Corps, permits will conflict with this requirement. Additional cleaning as necessary does not make sense. The scheduling of the cleaning is not clear and the requirement for proper disposal of waste is over regulation and repeats other statutory requirements and unnecessary. (County of San Diego)

Response: Section F.3.a.5 of the Tentative Order requires that each Copermittee implement a schedule of maintenance activities at all structural controls designed to reduce pollutant discharges to or

from its MS4 and related drainage structures, as well as a schedule of maintenance for the MS4. This requirement does not necessitate the maintenance of the entire MS4 system and related drainage structures every year, but rather that the Copermittee develop and submit as part of its Jurisdictional Urban Runoff Management Program Document and Annual Reports a schedule of maintenance activities for the MS4 system and related drainage structures. The Copermittees have the discretion under the Tentative Order to identify the 20% of the system that requires more frequent maintenance and schedule the remaining 80% as they determine is necessary to comply with the Tentative Order. The frequency of maintenance for lined channels necessary to comply with the Tentative Order is also left to the discretion of the Copermittees to determine.

Section: F.3 Subsection: F.3.a.6

Comment: The language used for the requirement of BMPs, such as at "important municipal area and activities," is unclear and unfeasible. (County of San Diego)

Response: The entire sentence reads, "Important municipal areas and activities include municipal facilities, public rights-of-way, parks, recreational facilities, golf courses, cemeteries, botanical or zoological gardens and exhibits, landscaped areas, etc." The phrase, "important municipal area and activities" is clarified by a subsequent list indicating what the SDRWQCB sees as "important."

Section: F.3 Subsection: F.3.b

Comment: Requiring the Copermittees to develop pollution prevention methods, F.3.b.(1) and to evaluate threat to water quality in F.3.b.(3) is a violation of CWC and CWA. (County of San Diego)

Response: Under the CWA, the Copermittees are required to reduce pollutants in urban runoff discharges to the maximum extent practicable. Pollution prevention is an important part of meeting the MEP standard. However, in order to provide the Copermittees discretion in implementing their urban runoff management programs, pollution prevention will only be required where the Copermittees deem it appropriate. By not specifying its use in any particular instance, and not specifying types of pollution prevention to be used, the requirement for pollution prevention does not violate the CWC and CWA.

The Federal NPDES regulations and USEPA guidance emphasize prioritization of industrial sites. Regarding prioritizing industrial sites, Federal NPDES regulation 40 CFR 122.26(d)(2)(ii) provides that the Copermittee “Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity.”

Regarding industrial site priority designation, the US EPA states that “When municipalities develop criteria for identifying additional priority industrial facilities, they are advised to consider, at a minimum: (1) The type of industrial activity (SIC codes can help characterize the type of industrial activity); (2) The use and management of chemicals or raw products at the facility and the likelihood that storm water

discharge from the site will be contaminated; and (3) The size and location of the facility in relation to sensitive watersheds" (USEPA, 1992).

The SDRWQCB has identified high priority industrial sites based on their potential to be sources of pollutants, as well as their proximity to sensitive water bodies. High priority designation is included in the Tentative Order under CWA section 402(p)(3)(B)(iii) and CWC section 13377.

Section: F.3 Subsection: F.3.b.

Comment: The responsibility for enforcing the state general industrial permit and this Order, and inspecting industrial facilities is the responsibility of the RWQCB not the Copermittees. (County of San Diego)

Response: The Tentative Order does not require the Copermittees to enforce the General Industrial Permit. The Tentative Order requires the Copermittees to implement their responsibility to inspect industrial facilities as required by Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C)(1), which states "Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges."

Routine inspections provide an effective means by which Copermittees can evaluate compliance with their ordinances. Inspections are especially important at high risk areas for pollutant discharges, such as industrial and construction sites. Industrial site inspection frequencies are to be based on threat to water quality prioritization. For example, industrial sites which are considered a high threat to water quality are to be given a high priority for inspection. This allows for limited inspection resources to be most effective. Annual or bi-annual inspection of high threat sites is necessary to ensure that changes to the site which may be detrimental to water quality are identified and addressed.

Review of a facility's Storm Water Pollution Prevention Plan (SWPPP) can be an effective tool in inspecting the facility's storm water controls. The US EPA recommends that municipalities review SWPPPs during inspections when it states "Municipalities are urged to evaluate pollution prevention plans and discharge monitoring data collected by the industrial facility to ensure that the facility is in compliance with its NPDES storm water permit. Site inspections should include (1) an evaluation of the pollution prevention plan and any other pertinent documents, and (2) an onsite visual inspection of the facility to evaluate the potential for discharges of contaminated storm water from the site and to assess the effectiveness of the pollution prevention plan" (1992).

Regarding industrial site inspections, the US EPA finds that "The proposed management program should describe the inspection procedures that will be followed.[…] Proposed management programs should address minimum frequency for routine inspections. For example, how often, how much of the site, and how long an inspection may take are appropriate to explain in this proposed management program component. Applicants should also describe procedures for conducting inspections and provide an inspector's checklist" (1992). The US EPA also finds that follow-up actions are to be implemented based upon site inspection findings: "The results of inspection may be used as a basis for requiring storm water management controls and enhanced pollution prevention measures" (1992).

Due to the large number of industrial sites within the region, sites which have been inspected by the SDRWQCB do not need to be re-inspected by a Copermittee within the same year. This provision has been included in the Tentative Order to ease the burden of inspections for the Copermittees.

Section: F.3 **Subsection: F.3.b.3**

Comment: The threat to water quality prioritization is too complex and the minimum list in F.3.b.(3) should be deleted to allow for the Copermittees to develop the methodology for the threat to water quality. Not all sites under the statewide permit pose a significant threat to water quality through storm water discharges. This also seems to require the municipalities to use a higher standard than the RWQCB uses. This section should be modified to exempt those sites not posing such a threat. (County of San Diego, Industrial Environmental Association)

Response: The designation of high priority industrial sites is reasonable and justified. Industrial sites that are subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) are identified in the Federal NPDES regulations as sites for which the Copermittees must provide oversight. USEPA has also placed high priority on industrial sites subject to the General Industrial Permit by requiring them to receive coverage under the permit.

Industries are also considered high priority due to their location in relation to CWA section 303(d) water bodies and environmentally sensitive areas. Pollutant loading of these water bodies must be avoided to aid in their recovery and ensure against their further degradation. The intent of this requirement was not to include all sites which were tributary to any 303(d) water body, but rather to include sites which had pollutants on-site which were tributary to 303(d) water bodies impaired for those same pollutants. In addition, the intent regarding environmentally sensitive areas was to provide these areas protection from industrial sites within or directly adjacent to the environmentally sensitive areas. For these reasons, the Tentative Order will changed to clarify this intent.

Annual or bi-annual inspection of high threat sites is necessary to ensure that changes to the site which may be detrimental to water quality are identified and addressed. However, due to the large number of industrial sites within the region, sites which have been inspected by the SDRWQCB do not need to be re-inspected by a Copermittee within the same year. This provision has been included in the Tentative Order to ease the Copermittees' inspection burden.

See change at permit section F.3.b.3.b.

Section: F.3 **Subsection: F.3.b.5**

Comment: Group monitoring should be allowed and the Copermittees should not be required to collect the data. (County of San Diego, Port of San Diego)

Response: The Tentative Order will be changed to allow for group monitoring. The Tentative Order does not require the Copermittees to collect data. The Copermittees can require industry to conduct monitoring and submit monitoring reports.

Section: F.3 Subsection: F.3.b.6

Comment: RWQCB staff have failed to assess the potential staffing and cost implications of this section. Section F.2.g(2)(a) would require annual inspections of all high priority industrial sites. The potential costs and staffing increases necessary to implement this provision are not addressed in the Technical Report. (County of San Diego, Procopio, Cory, Hargreaves & Savitch)

Response: USEPA places emphasis on the inspection of industrial sites. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C)(1) provides that the Copermittee must "identify priorities and procedures for inspections and establishing and implementing control measures for such discharges." USEPA also finds that "The proposed management program should describe the inspection procedures that will be followed.[…] Proposed management programs should address minimum frequency for routine inspections. For example, how often, how much of the site, and how long an inspection may take are appropriate to explain in this proposed management program component. Applicants should also describe procedures for conducting inspections and provide an inspector's checklist" (USEPA, 1992).

Annual or bi-annual inspection of high threat sites is necessary to ensure that changes to the site which may be detrimental to water quality are identified and addressed. The SDRWQCB attempted to ease the burden of inspection by providing that sites which have been inspected by the SDRWQCB do not need to be re-inspected by a Copermittee within the same year.

Section: F.3 Subsection: F.3.b.6

Comment: The County has an inspection program. The Regional Board has not justified requiring another inspection program and the requirement is an unfunded mandate. (County of San Diego)

Response: The Tentative Order leaves the development of inspection programs largely to the discretion of the Copermittees. The Copermittees are allowed to designate and inspect medium and low priority sites at their discretion. The Tentative Order only assigns minimum high priority sites and requires their annual inspection.

The designation of high priority industrial sites is reasonable and justified. Industrial sites that are subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) are identified in the Federal NPDES regulations as sites for which the Copermittees must provide oversight. USEPA has also placed high priority on industrial sites subject to the General Industrial Permit by requiring them to receive coverage under the permit.

Industries are also considered high priority due to their location in relation to CWA section 303(d) water bodies and environmentally sensitive areas. Pollutant loading of these water bodies must be avoided to aid in their recovery and ensure against their further degradation. The intent of this requirement was not to

include all sites which were tributary to any 303(d) water body, but rather to include sites which had pollutants on-site which were tributary to 303(d) water bodies impaired for those same pollutants. In addition, the intent regarding environmentally sensitive areas was to provide these areas protection from industrial sites within or directly adjacent to the environmentally sensitive areas. For these reasons, the Tentative Order will changed to clarify this intent.

Annual or bi-annual inspection of high threat sites is necessary to ensure that changes to the site which may be detrimental to water quality are identified and addressed. However, due to the large number of industrial sites within the region, sites which have been inspected by the SDRWQCB do not need to be re-inspected by a Copermittee within the same year. This provision has been included in the Tentative Order to ease the Copermittees' inspection burden.

See change at permit section F.3.b.3.b.

Section: F.3 Subsection: F.3.c.2

Comment: The priorities assigned by the SDRWCB "based on the number of complaints received by the RWQCB and Copermittees" do not appear to reflect our experience. Please provide documentation of the "analysis" of complaints that was used to assign these priorities. (County of San Diego, La Mesa)

Response: The assignment of high priority to the commercial sites and sources is based on several factors (as discussed in the draft Fact Sheet/ Technical Report). The primary factor considered was the presence of pollutants at the commercial sites/sources listed. All of the commercial sites/sources are associated with the use or generation of pollutants commonly found in urban runoff. These included oil, grease, and metals for categories a-h and u; Pesticides for categories i, o, p, q, r, and s; coliform for categories j and v; construction byproducts for categories l - n;detergents for category k; and chlorine for category t. In addition, the choice of categories was bolstered by years of professional experience receiving and reviewing complaints regarding illicit discharges. Other considerations included number of sites/sources and size of site/sources.

Section: F.3 Subsection: F.3.c.2

Comment: Section F.3.c.(2) - What is the RWQCB's expectation for inventorying mobile services? How do you require that a mobile service meet the requirements (and possibly permitting) of a number of agencies? If a mobile service obtains a countywide permit, who is responsible for enforcement if violations occur within city limits? (Coronado)

Response: In order to provide the Copermittees with the maximum amount of flexibility, a requirement for addressing interjurisdictional mobile services is left to their discretion. The Copermittees could address this issue through the interjurisdictional agreements the Tentative Order requires and through regional cooperative and collaborative efforts, which other commentors have cited and emphasized in their comments.

Section: F.3 Subsection: F.3.d.3

Comment: Further study the impact of the proposal with regard to the increased impact on existing residential uses. Our concerns center around the activities described in section F.3.d. (2) which out lines high level residential threats to water quality. These high threat activities include parking your car, washing your car, disposal of pet waste and the use of pesticides, herbicides and fertilizers. Section F.3.d. (3), which covers the implementation of BMPs, is so vague as to provide no guidance. In Section F.3.d (2) it is not clear why residential automobile washing and parking are included as high priority activities. The Order is confusing on the type of programs the cities are expected to implement in what the Order terms "existing high priority residential areas"; it is not clear if the Order is requesting that cities inventory every resident who either repairs or washes their own vehicle, and if the cities are supposed to cite or find residents who wash their own vehicles. (San Diego County Apartment Association, Lemon Grove, Coalition for Practical Regulation)

Response: SDRWQCB believes it is well established that these residential activities generate pollutants which find their way to surface waterways. By mere virtue of the materials and chemicals involved with these activities, the cumulative impact of hundreds of thousands of households are detrimental if done without water quality protection in mind. Further study of the impact of the proposal is not seen as necessary to establish a link to benefits that will be gained in addressing these pollutant sources. Due to the non specific nature of the many residential land uses in the San Diego Region, Section F.3.d. (3) is written to provide maximum flexibility to the Permittees. SDRWQCB feels that the Section is not vague but rather allows Permittees to design a program that is best for their locality. Again, in response to your comment, "...it is not clear if the Order is requesting that cities inventory every resident who either repairs or washes their own vehicle, and if the cities are supposed to cite or find residents who wash their own vehicles," the Tentative Order does not give a specific directive on the course of action the Permittees should take. In some instances, it will be necessary to survey residential activity. In other instances, it will be necessary to enforce ordinances when a resident contributes to illicit discharges. This discretion is left up to the local jurisdiction.

Section: F.3 Subsection:

Comment: The permit should speak as strongly as is legally possible to require Copermittees to take necessary steps to ban problematic chemical pest-control substances such as Diazinon (in F.3). (Environmental Health Coalition)

Response: The Tentative Order requires the Copermittees to address pesticides in Sections F.3.a.6 and F.3.d.2. The Copermittees are given the discretion and flexibility to track and report municipal pesticide use, to reduce commercial pesticide use, and to consider targeting percentile reductions for total use and the use of high priority (high risk) pesticides, through the use of ordinances, local policies, zoning and permitting processes, the letting of deeds and other “mechanisms” that may be used by local government to limit or eliminate pesticide use.

Section: F.3 Subsection:

Comment: 1. The Order does not specify what programs the cities are supposed to implement in "high priority" areas, leaving the Order open to speculation and litigation by the environmental community.

2. The permit lists "land application sites," but does not define what exactly this type of site consists of.

3. It is not clear what type of retrofitting the cities are supposed to evaluate, thus leaving the cites exposed to litigation from the environmental community, even when a city uses its best efforts to comply. (Coalition for Practical Regulation)

Response: The revised Tentative Order requires the Copermittees to identify high priority sites within the framework provided and specify the programs they will implement in high priority areas in their Jurisdictional Urban Runoff Management Program Document, which is subject to review and comment by the SDRWQCB. Land application sites are areas where wastes are applied onto or incorporated into the soil surface for treatment and disposal. With respect to retrofitting, the revised Tentative Order only requires the Copermittees to "evaluate feasibility of retrofitting existing structural flood control devices and retrofit where needed."

Section: F.3 Subsection: F.3.a

Comment: Add: (9) Disease prevention: mosquito and vector control (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.3 Subsection: F.3.a

Comment: The Permit should require dischargers to track and report municipal pesticide use in addition to requiring pesticide use reduction. Also, the Permit should require actual pesticide use reductions, quantifying target percentile reductions for total use and the use of high priority (high risk) pesticides, through the use of ordinances, local policies, zoning and permitting processes, the letting of deeds and other “mechanisms” that may be used by local government to limit or eliminate pesticide use. (San Diego Baykeeper)

Response: The Tentative Order requires the Copermittees to address pesticides in Sections F.3.a.6 and F.3.d.2. The Copermittees are given the discretion and flexibility to track and report municipal pesticide use, to reduce commercial pesticide use, and to consider targeting percentile reductions for total use and the use of high priority (high risk) pesticides, through the use of ordinances, local policies, zoning and permitting processes, the letting of deeds and other “mechanisms” that may be used by local government to limit or eliminate pesticide use.

Section: F.3 Subsection: F.3.a.3

Comment: In Section F.3.a (3) it is not clear why existing roads and streets should be included as high priority areas instead of medium or low priority areas. (City of Lemon Grove)

Response: Roads and streets are identified as high priority due to their potential to be a significant contributor of pollutants in urban runoff. A Federal Highway Administration "Pollutant Loading and Impacts from Highway Stormwater Runoff, Volume 3; Analytical Investigation and Research Report" (1990) finds that concentrations of total suspended solids, nitrate + nitrite nitrogen, and zinc exceed USEPA benchmark values for concentrations of these pollutants in urban runoff.

Section: F.3 Subsection: F.3.a.3.b

Comment: Airfields should be included as a source of pollutants. (Sierra Club)

Response: Section F.3.a.3 of the Tentative Order has been revised to include airfields as a high priority threat to water quality to be addressed in the Jurisdictional Urban Runoff Management Program.

Section: F.3 Subsection: F.3.a.3.b.I

Comment: How will the permits handle existing parking lots? Due to oils, antifreeze, silt, etc. in parking lots, even one small storm event will cause non-compliance. Are parking lots also assumed to need best management and to be included in the permit? (Anonymous Workshop 1)

Response: The tentative order requires the Copermittees to designate and implement or require the implementation of minimum BMPs for high priority threats to water quality including municipal, commercial, and residential parking lots in Sections F.3.a.3, F.3.c.2, and F.3.d.2.

Section: F.3 Subsection: F.3.a.3.b.ii

Comment: What are "Flood Management Projects & Flood Control Devices" that are high priority municipal areas? -Give some examples. (Anonymous Workshop 1)

Response: Flood Management projects and Flood Control Devices include structures designed to manage water quantity, but not necessarily quality. Such structures were usually not designed to remove pollutants and may sometimes harm aquatic habitat and aesthetic values through downstream erosion, elevated water temperatures, and increased pollutant loadings. This is considered a high priority since it is specifically addressed in the Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(A)(3-5).

Identification of high priority municipal pollutant areas and activities allows for limited pollution reduction resources to be most effective. Targeting high priority municipal areas and activities for BMP implementation, inspection, and monitoring provides the greatest reduction in risk of degrading receiving waters per expenditure.

Section: F.3 Subsection: F.3.a.5

Comment: Section F.3.a. (5).(c). i. Maintenance of MS4 (Municipal): It is Page 26 - -not feasible for the City to inspect its entire system each year between May 1 to Sept. 30. This window is restricted further by nesting season restrictions for the unlined channels. 20% of the system creates 80% of the problems-Copermittees should be allowed to identify the problem areas and schedule them for more frequent maintenance. Requirements relative to the entire system make maintenance efforts less effective. It is recommended to eliminate the section or reword it to provide flexibility in maintenance schedules. Limit channel cleaning on an annual basis to lined sections. (City of La Mesa)

Response: Section F.3.a.5 of the Tentative Order requires that each Copermittee implement a schedule of maintenance activities at all structural controls designed to reduce pollutant discharges to or from its MS4 and related drainage structures, as well as a schedule for maintenance of the MS4. This requirement does not necessitate the maintenance of the entire MS4 system and related drainage structures every year, but rather that the Copermittee develop and submit as part of its Jurisdictional Urban Runoff Management Program Document and Annual Reports a schedule of maintenance activities for the MS4 system and related drainage structures. The Copermittees have the discretion under the Tentative Order to identify the 20% of the system that requires more frequent maintenance and schedule the remaining 80% as they determine is necessary to comply with the Tentative Order. The frequency of maintenance for lined channels necessary to comply with the Tentative Order is also left to the discretion of the Copermittees to determine.

Section: F.3 Subsection: F.3.a.5

Comment: Does the Regional Board consider BMP maintenance a BMP? (City of Encinitas)

Response: No. This would fall under your BMP maintenance program. Many BMPs are properly designed, installed, and used; but then never maintained. Without all steps, the BMP is rendered useless and may itself become a source of pollution. Maintenance of BMPs are a necessary management practice intrinsic to the existence of the Best Management Practice.

Section: F.3 Subsection: F.3.a.5.c

Comment: Add: vi. Measures to prevent breeding of vectors. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.3 Subsection: F.3.a.5.c.iv

Comment: The RWQCB lacks the legal authority to regulate the disposal of waste through this permit except as it pertains to the Copermittees' MS4s. There is no legal basis for requiring in this permit that wastes be disposed of lawfully. As per sections A and B of this Order, they may not be disposed of to the Copermittee's MS4. That is the limit of the RWQCB's authority on this matter. (County of San Diego)

Response: California Water Code § 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Since tentative Order No. 2001-01 is written to implement CWA requirements, it does not violate section 13360 (Regional Board prohibition from specifying the manner of compliance with waste discharge requirements) for the SDRWQCB to include specified programs of Best Management Practices (BMPs) to be implemented by the municipalities in order to carry out CWA requirements. Specificity is even more crucial in waste discharge requirements for storm water discharges given their lack of numerical effluent limits. Therefore the SDRWQCB can supply certain details of BMPs including their maintenance and the lawful disposal of accumulated wastes.

Section: F.3 Subsection: F.3.a.6

Comment: Page 26, Section F.3.a. (6) Management of Pesticides, Herbicides, and Fertilizers (Municipal) - Please include language to require the inclusion of NGOs and members of the public to participate in the discussion, preparation and implementation of BMPs. (Surfers Tired of Pollution)

Response: SDRWQCB encourages the Permittees to include public input in the preparation of BMPs. However, it will not make such a provision a requirement of the Tentative Order as doing so will deny the Permittees flexibility in their approach to best management procedures.

Section: F.3 Subsection: F.3.a.6

Comment: The minimum BMP program this section would establish is unsupported by Federal regulation and violates CWC section 13360. On this matter, 122.26(d)(2)(iv)(A)(6) states: "[The applicant must include a] description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities."

Section F.3.a.(6) exceeds this authority in several important ways. First, it expands "application" to "application, storage, and disposal". Second, it specifically prescribes the municipal areas and activities to be included ("municipal facilities, public right-of-ways, parks, recreational facilities, golf courses, cemeteries, botanical or zoological gardens and exhibits, landscaped areas, etc."). Third, it specifies minimum BMPs that are applicable to each of these categories, and does so in a way that is so prescriptive that it violates CWC section 13360 by directing the manner of compliance toward RWQCB staff preferences. (County of San Diego)

Response: California Water Code (CWC) section 13360 generally prohibits the Regional Boards from specifying the manner of compliance with state waste discharge requirements. However, CWC section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Since tentative Order No. 2001-01 is written to implement CWA requirements, it does not violate section 13360 for the SDRWQCB to include specified programs of Best Management Practices (BMPs) to be implemented by the municipalities in order to carry out CWA requirements. Specificity is even more crucial in waste discharge requirements for storm water discharges given their lack of numerical effluent limits. In order to reduce storm water pollution to the maximum extent practicable (MEP), the tentative order must require specific styles of BMPs (i.e., structural or source control), but that is not to say that the SDRWQCB is dictating one specific BMP to accomplish the task. The municipalities often have many BMPs available to get the job done.

Section: F.3 Subsection: F.3.a.6

Comment: The Port of SD supports the IPM program. (Port of San Diego)

Response: Comment noted.

Section: F.3 Subsection: F.3.a.6

Comment: The IEA strongly supports the development and use of Integrated Pest Management (IPM) programs. (Industrial Environmental Association)

Response: Comment noted.

Section: F.3 Subsection: F.3.b

Comment: Section F.3.b, Page 27 – Definition of Industry is not clear. The Permit needs to clarify which Standard Industrial Classification (SIC) categories are intended to be covered by this section. (City of Chula Vista)

Response: The definition of industry is satisfactory. The requirements in Section F.3.b refer to all industrial sites regardless of whether the industrial site is subject to the California statewide General NPDES Permit for Storm Water Discharges Associated With Industrial Activities Except Construction or other individual NPDES permit. The Tentative Order requires the Copermittees to include in their inventories the minimum information for each site including SIC codes that best reflect the principal products or services offered by each facility.

Section: F.3 Subsection: F.3.b

Comment: Where there are conflicting requirements in an existing NPDES Permit, which Permit takes precedence? (Industrial Environmental Association)

Response: The requirements of Tentative Order 20001-001 should not conflict with the requirements of Order No. 97-03-DWQ, NPDES No. CAS000001, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Order No. 97-03-DWQ applies to storm water and authorized non-storm water discharges associated with industrial activities. Tentative Order No. 2001-001 applies to discharges into Municipal Separate Storm Sewer Systems. But in the event that the requirements of Order No. 97-03-DWQ are in conflict with Tentative Order No. 2001-001 the SDRWQCB will conduct a thorough evaluation of individual conflicts and determine which requirement will prevail.

Section: F.3 Subsection: F.3.b

Comment: If the General Industrial Permit is inadequate, the Regional Board staff should tell the SWRB and the USEPA. (County of San Diego)

Response: The General Industrial Permit is not inadequate, but in order to adequately protect receiving water quality and allow Copermittees to meet their permit responsibilities under Order No. 2001-01, additional BMPs may be required, including BMPs more stringent than those required under the state wide General Industrial Permit.

Regarding additional BMP requirements of this type, the US EPA finds that "nothing in the Federal regulations would prohibit the municipality from requiring additional controls beyond the permit requirements for industrial activities. For this reason, the EPA recommends that municipal applicants incorporate a provision in the proposed storm water management program that allows the municipality to require priority industrial facilities to implement the controls necessary for the municipality to meet its permit responsibilities" (1992).

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program items F.3.b.(4)(a) and F.3.b.(4)(b) in Order No. 2001-01 under the broad legal authority cited in the Tentative Order.

Section: F.3 Subsection: F.3.b

Comment: This section would place additional and more restrictive requirements on facilities already subject to the statewide General Industrial Permit. (County of San Diego)

Response: CWA sections 402(p)(3)(B)(ii-iii) require each Copermittee to prohibit non-storm water discharges into its MS4 and to reduce the discharge of pollutants to the maximum extent practicable for all urban land uses. The purpose of these two broad requirements is to minimize the short and long-term impacts of urban runoff on receiving water quality. Land used for industrial activities is clearly identified

in the federal regulations as one of several high priority land uses from which pollutants in urban runoff discharges must be reduced to the maximum extent practicable by each Copermittee. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) requires the development of a proposed management program to reduce the discharge of pollutants in storm water to the maximum extent practicable. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C) requires that this program include a component which addresses industrial sites.

Due to their numerous potential pollutant sources, industrial sites are relatively high risk areas for pollutant discharges to storm water. In order to control the discharge of pollutants from industrial sites to the maximum extent practicable, implementation of BMPs is necessary. As discussed in Finding 12, BMPs effectively reduce pollutants in urban runoff by emphasizing pollution prevention and source controls, followed by treatment controls. The industrial existing development component will provide a program for the development and implementation of BMPs to address pollutants in storm water discharges from industrial sites. The US EPA supports such a program, stating "NPDES permits for MS4s will establish responsibilities for municipal system operators to control pollutants from industrial storm water discharged through their system" (1992).

The revised Tentative Order requires the Copermittees to implement pollution prevention methods and require minimum BMPs for sites they determine to be high, medium and low threats to water quality based on their inventory and prioritization of sites. The Tentative Order requires minimum BMPs that are as industry-specific and site-specific as appropriate. The requirements of the pollution prevention methods and minimum BMPs must meet, but not necessarily exceed the requirements of the General Industrial Permit, unless the Copermittee determines that the BMPs must be more stringent to comply with the Tentative Order.

The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.3.b. in Order No. 2001-01 under the broad legal authority cited in the Fact Sheet/Technical Report.

Section: F.3 Subsection: F.3.b.1

Comment: Page 27, Section F.3.b.(1) - Pollution Prevention (Industrial) -
Please explain how the public can participate in this process, and if an education element will be required. (Surfers Tired of Pollution)

Response: The Copermittees are required under Section F.6 to incorporate a mechanism for public participation in the implementation of the Jurisdictional Urban Runoff Management Program. In order to provide the Copermittees with flexibility and discretion, the manner in which they implement a public participation component is left to their discretion.

Section: F.3 Subsection: F.3.b.2

Comment: The Watersheds should be given the flexibility to apply resources to the areas of highest concern and greatest potential to resolve problems. This whole section should be converted to a guidance document. (City of Carlsbad)

Response: CWA sections 402(p)(3)(B)(ii-iii) require each Copermittee to prohibit non-storm water discharges into its MS4 and to reduce the discharge of pollutants to the maximum extent practicable for all urban land uses. The individual Copermittee is held responsible for these requirements within its jurisdiction. The purpose of these two broad requirements is to minimize the short and long-term impacts of urban runoff on receiving water quality. Land used for industrial, commercial, and residential activities are clearly identified in the federal regulations as several high priority land uses from which pollutants in urban runoff discharges must be reduced to the maximum extent practicable by each Copermittee. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) requires the development of a proposed management program to reduce the discharge of pollutants in storm water to the maximum extent practicable.

The Tentative Order requires the Copermittees within a watershed to collaborate to develop a Watershed Urban Runoff Management Program in which they address the issues identified in the Jurisdictional Urban Runoff Management Program on a watershed level. The early cooperation and collaboration between Copermittees in a watershed within the framework provided in the Tentative Order will prevent the development of "inconsistent jurisdictional level activities" and ensure the "regional consistency" referred to by other commentors.

Section: F.3 Subsection: F.3.b.3

Comment: The State should provide a list of what industrial sites are considered high, medium or low threats to water quality (Page 28 of 50). Otherwise, the cities would be open to speculation and litigation from the environmental community due to the vagueness of the permit on the types of industrial sites which must be inventoried. (Coalition for Practical Regulation)

Response: Section F.3.b.2 of the revised Tentative Order does require the Copermittee to inventory and prioritize industrial sites as high, medium, or low priorities and provides specific criteria defining high priority industrial sites. The definition of low and medium priority sites will be made at the discretion of the Copermittees.

Section: F.3 Subsection: F.3.b.4

Comment: Subparagraph F.3.b.4 Proposed Wording:
(4) BMP implementation and proof of long-term maintenance. (Downstream Services)

Response: Comment noted.

Section: F.3 Subsection: F.3.b.4.a

Comment: Modify the first sentence to "Each Copermittee shall designate a set of minimum BMPs or their equivalent for high, medium, and low threat to water quality industrial sites (as determined under section F.3.b.(3)). (Port of San Diego)

Response: The definition of BMP in Attachment D of the Tentative Order is broad and inclusive. It is likely that any equivalent alternative would fall under this definition, making the inclusion of such terms unnecessary.

Section: F.3 Subsection: F.3.b.5

Comment: Where would Copermittees obtain the legal authority (1) to require them to monitor? and/or (2) to make them submit data they collected under a different permit? (County of San Diego)

Response: The Copermittees have the legal authority to require monitoring and pollution prevention BMPs under their individual authority to enact ordinances and issue permits for operation.

The Copermittee is ultimately responsible for discharges to and from their MS4. Each Copermittee must therefore develop and enforce storm water ordinances in order reduce pollutant discharges to the MS4 to the maximum extent practicable and comply with its permit responsibilities. These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. To this effect, the US EPA "recommends that municipal applicants incorporate a provision in the proposed management program that allows the municipality to require priority industrial facilities to implement the controls necessary for the municipality to meet its permit responsibilities" (1992). Regarding enforcement at industrial sites, the US EPA further states "The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers" (1992). The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.3.b.(7) in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.3 Subsection: F.3.b.5

Comment: Provisions are made in the Statewide Permit to reduce sampling. This section does not allow for the same provision. It should be modified to conform to SRWCB guidelines. (Industrial Environmental Association)

Response: Group monitoring will be allowed in the Tentative Order.

See change at permit section F.3.b.5

Section: F.3 Subsection: F.3.b.5

Comment: If this section is interpreted to mean all industrial sites having or needing all NPDES Permit or
General Industrial Permit must sample, the impact on analytical laboratories should be addressed. The IEA recommends language reaffirming group application and monitoring processes be placed in this section. (Industrial Environmental Association)

Response: Group monitoring will be allowed in the Tentative Order.

See change at permit section F.3.b.5

Section: F.3 Subsection: F.3.b.5

Comment: The monitoring program would impact current monitoring programs for industrial facilities required by industrial and/or construction storm water permits. Would the monitoring program in the Order be in addition to, replace or supplement facilities' monitoring programs. (City of San Diego)

Response: In most instances, it is expected that the monitoring program required by the Tentative Order will supplement the monitoring currently being conducted for industrial facilities. However, since there a number of facilities which use industrial-type materials, but are unregulated under the General Industrial Permit there will be areas in which the municipal monitoring program will be conducted in addition to current industrial monitoring.

Section: F.3 Subsection: F.3.b.5

Comment: This section would also expand these industrial permit monitoring requirements to an unspecified larger group of other “industrial” facilities. Where are these “industrial” facilities and why aren’t they subject to the General Industrial permit? (County of San Diego)

Response: It is the Copermittees responsibility under Tentative Order 2001-01 to identify and inventory all industrial activities within their jurisdiction. During this process, the Copermittees may identify facilities that should be subject to the General Industrial permit that do not have the required coverage. Also, if the facility is not subject to the General Industrial permit, the Copermittee may determine that in order to control the discharge of pollutants from the facility in question to the maximum extent practicable, implementation of BMPs and the submittal of results from a monitoring program are necessary. The Copermittees are required to conduct or require the industry to conduct a monitoring program for runoff from each high threat to water quality industrial site.

Due to their numerous potential pollutant sources, industrial sites are high risk areas for pollutant discharges to storm water. In order to prohibit non-storm water discharges, reduce industrial pollutant sources to the maximum extent practicable, and ensure that adequate BMPs are implemented, each Copermittee must first identify all industrial sites within their jurisdiction. Development of an inventory of industrial sites within a watershed will help identify potential industrial sources of pollutants in storm water. By assessing information provided in the inventory (such as principal products, services provided, and location), sites with the highest risk to receiving water quality can be identified, and priority for inspection, monitoring, and enforcement can be placed on those sites. By focusing inspection and monitoring on high priority sites, the effectiveness of limited inspection and monitoring resources can be maximized.

In order to control the discharge of pollutants from industrial sites to the maximum extent practicable, implementation of BMPs is necessary. As discussed in Finding 12, BMPs effectively reduce pollutants in urban runoff by emphasizing pollution prevention and source controls, followed by treatment controls. The industrial existing development component will provide a program for the development and

implementation of BMPs to address pollutants in storm water discharges from industrial sites. The US EPA supports such a program, stating "NPDES permits for MS4s will establish responsibilities for municipal system operators to control pollutants from industrial storm water discharged through their system" (1992).

Section: F.3 Subsection: F.3.b.5

Comment: When the regulations conflict between the industrial permit, the construction permit or the municipal, which permit is enforced? (Sachse, Marvin)

Response: We do not anticipate conflicts arising between Tentative Order 20001-001 and Order No. 97-03-DWQ, NPDES No. CAS000001, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities or Order No. 99-08-DWG, NPDES No. CAS000002, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the Discharges of Storm Water Runoff Associated with Construction Activity. Order No. 97-03-DWQ applies to storm water and authorized non-storm water discharges associated with industrial activities. Order No. 99-09-DWQ applies to storm water and non-storm water runoff associated with construction activity on sites greater than 5 acres. Tentative Order No. 2001-01 applies to discharges into Municipal Separate Storm Sewer Systems. At a minimum, the BMPs and other measures required for industrial and construction activities by the Copermittees must meet or exceed the requirements of the General Statewide Permits. The Copermittees may require more stringent measures be implemented at industrial or construction sites in order to comply with the Tentative Order. In the event that the requirements of Order No. 97-03-DWQ or Order No. 99-08-DWQ are in conflict with Tentative Order No. 2001-001 the SDRWQCB will conduct a thorough evaluation of individual conflicts and determine which requirement will prevail.

Section: F.3 Subsection: F.3.b.5

Comment: According to this section, Copermittees would have to require monitoring for all the listed constituents from at least two events every year. The General Industrial permit provides some flexibility with respect to monitoring requirements. For instance, some facilities participate in group monitoring programs in which they must only sample in two of the five years of the permit cycle. The General Industrial permit also allows other exemptions and reductions (Sampling and Analysis Exemptions and Reductions; Section B.12.). Tentative Order No. 2001-01 would not allow Copermittees to provide the same flexibility. (County of San Diego)

Response: The purpose of the monitoring program is to provide the information needed by each Copermittee to assess the effectiveness of its Industrial BMP Program. Quantitative data is required for two storm events per year in order to identify potential trends and/or anomalies in the data. The Copermittee may be able to obtain this monitoring information from some industrial sites by requesting submittal of the Annual Reports required under the General Industrial Storm Water Permit. The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.3.b.(5) in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.3 Subsection: F.3.b.5.b

Comment: Section F.3.b (5)(b): What testing standards are required? (City of Chula Vista)

Response: Sampling and testing standards for industrial sites may be found in Section B of the Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (General Industrial Storm Water Permit) SWRCB Order No. 97-03-DWQ.

Section: F.3 Subsection: F.3.b.6

Comment: Does Section F.3.b(6) allow for third-party (contractor) inspections of industrial site? (City of San Diego)

Response: Provided the Copermittees can demonstrate that all of the requirements of Tentative Order Section F.3.b(6) are met, the Copermittees are permitted to conduct the inspections using third-parties (contractors). The Copermittees are, however, ultimately responsible for implementing or requiring the implementation of all requirements in the Tentative Order.

Section: F.3 Subsection: F.3.c

Comment: Commercial BMP, F.3.C., is not clear if every parking lot is included. (City of Poway)

Response: Because parking lots are a surface onto which vehicles deposit a significant load of pollutants, they are addressed in the Tentative Order in the Jurisdictional Urban Runoff Management Program Municipal, Commercial and Residential components. The specific comment on F.3.c refers to all parking lots associated with commercial activities.

Section: F.3 Subsection: F.3.c.2

Comment: Please provide examples of types of commercial facilities or activities that were considered but not included on the RWQCB's high priority list (County of San Diego)

Response: The categories of commercial activities and facilities included in the high priority list in Section F.3.c.2 were drawn from the lists of complaint investigations and detections of illicit discharges reported to the SDRWQCB by the Copermittees and the public. The sites and activities are identified as such due to their frequent use of substances often found to be present as pollutants in urban runoff, combined with frequent mismanagement of runoff from the sites and activities. Therefore, development of an inventory of these commercial sites within a watershed will help identify the location of potential sources of pollutants in storm water. Pollutants found to be present in receiving waters can then be traced to the sites which frequently use such substances. In this manner an inventory of commercial sites can help in targeting commercial sites for inspection, monitoring, and potential enforcement. This will allow for limited inspection, monitoring, and enforcement time to be most effective.

Some commercial activities that were considered but were not included are strip malls providing multiple services, dry cleaning establishments, and home improvement centers. The Copermittees are free, however, to cover these and other potentially serious pollutant sources under item (w) "Other Commercial sites/sources that the Copermittee determines may contribute a significant pollutant load to the MS4..."

Section: F.3 Subsection: F.3.c.2

Comment: Home improvement and building supply centers should be listed as they contain many of the sources listed here. (Sierra Club)

Response: Home improvement and building supply centers may be addressed by the Copermittees under several of the categories listed (e.g. landscaping, greenhouses and nurseries, masonry) or they may elect to cover these commercial activities under Section F.3.c.2.w "Other commercial sites/sources that the Copermittee determines may contribute a significant pollutant load to the MS4." The Regional Board does not recommend adding this category to Tentative Order 2001-01.

Section: F.3 Subsection: F.3.c.3

Comment: F.3.c.(3) "BMP Implementation"

The RWQCB lacks the legal authority to compel Copermittees to require implementation of BMPs at commercial facilities. (County of San Diego)

Response: California Water Code (CWC) section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Therefore the SDRWQCB has the authority to require specified programs of Best Management Practices (BMPs) to be implemented by the municipalities in order to carry out CWA requirements. Furthermore, commercial facilities are specifically addressed at 40 CFR 122.26(d)(2)(iv)(A).

Section: F.3 Subsection: F.3.d.2

Comment: Threat to Water Quality Prioritization (Residential)- Automobile washing is listed here as a threat, but on Page 9 of the permit it is excluded unless it "is a significant source of pollutants." This seems incongruent and should be addressed. (Industrial Environmental Association)

Response: Automobile washing is appropriately identified as a threat to water quality because of the many pollutants associated with automobiles that may be washed into the MS4. This category of illicit

discharge is also correctly excluded from the list of prohibited illicit discharges until such time as the Copermittees identify this activity as a significant source of pollutants. Automobiles can be washed without discharging pollutants to the MS4 and so should not be prohibited without justification.

Section: F.3 Subsection: F.3.d.2

Comment: Section F.3.d (2): All residences in the City would be classified as "high priority" since the entire City is tributary to San Diego Bay. (City of Chula Vista)

Response: The City of Chula Vista is tributary to San Diego Bay, which is a 303(d) listed water body, and would be classified as high priority under Tentative Order 2001-01.

Section: F.3 Subsection: F.3.d.2

Comment: Section F.3.d.(2) - Page 31 - Threat to Water Quality Prioritization (Residential); and F.3.d.(3) - Page 32 - BMP Implementation (Residential): If automobile parking on the streets is determined to be a high priority residential activity, how do you mitigate (other than catch basin inserts which haven't proven to be too effective)? If some people park on the streets and others don't, who pays for the BMPs? (i.e., will residents who don't park on the streets be amiable to paying for those - other residents and visitors - who do?) How do you determine if parking or driving is the significant source? (City of La Mesa)

Response: The BMPs to be chosen for implementation is left to the discretion of the Copermittees. One method which might be effective is education. People could be educated on the impacts of their oil leaks, and potentially influenced to get the leaks fixed. Municipalities could also consider areas where cars are most heavily parked on the street, such as a downtown area, a choose to implement catch basin inserts in that particular area.

Section: F.3 Subsection: F.3.d.2

Comment: Section F.3.d. (2) - Page 31 - Threat to Water Quality Prioritization (Residential): It requires the Copermittees to identify a list of predetermined residential activities assumed to be threats to water quality. If any of these activities are not prohibited by the Copermittees (for being deemed a non-significant sources of pollutants) they should not be inventoried. (City of La Mesa)

Response: Section F.3.d.2 of the Tentative Order requires the Copermittees to identify high priority threats to water quality in their Jurisdictional Urban Runoff Management that include the categories in F.3.d.2 and to implement or require the implementation of minimum BMPs for high threat water quality residential areas and activities that are area or activity specific.

The above residential areas and activities are identified as high priority threats to water quality due to their wide distribution, their association with pollutants of concern in urban runoff, and their historical mismanagement of associated urban runoff. Identification of high priority residential areas and activities will help focus BMP implementation efforts on these areas and activities. By focusing efforts on high

priority areas and activities, the greatest potential for water quality improvements will result. Therefore, limited Copermittee staff time will be focused where it can be most effective. The SDRWQCB has discretion to require Jurisdictional Urban Runoff Program item F.3.d.(2) in Order No. 2001-01 under the broad legal authority cited in the Fact Sheet/Technical Report.

Section: F.4 **Subsection:**

Comment: Although cities share responsibility in increasing public awareness, the public would be better served by a State funded public education program. The State should approach this on a statewide basis to take advantage of major media outlets. A statewide-integrated program will be most cost effective and consistent. (Coalition for Practical Regulation, City of Carlsbad, City of Poway)

Response: SDRWQCB believes that public education is important at all levels of government. EPA develops and publishes storm water guidance materials. The State Water Quality Control Board also develops and distributes such guidance. This information is made available on several websites which are accessible to everyone. However, local entities need the flexibility to tailor public outreach to the efforts which are most pressing for that area. For instance, the land use activities and resulting water quality problems vary widely from urban centers to agricultural regions. The outreach must be tailored for the target audience and prioritized to local issues. A local entity would best be able to determine what those priorities should be. Such outreach is intrinsic to any storm water management plan. Therefore, the requirement for active municipal involvement in public education shall remain in the Tentative Order.

Section: F.4 **Subsection:**

Comment: Section F.4. establishment by the RWQCB of minimum target communities and minimum program content violates CWC section 13360. This also applies to Copermittee outreach programs. (County of San Diego)

Response: CWC Section 13360 specifies that the Regional Board shall not specify the design, location, type of construction, or particular manner in which a permittee shall comply with permit requirements. The education component of section F.4 of the draft permit specifies that communities are subject to the education component and which topics must be addressed. The draft permit, however, does not specify how the education component or outreach programs will be carried out. Copermittees will be required to design their own programs in order to comply with permit requirements; therefore Section F.4 of the draft permit is consistent with CWC 13360.

Section: F.4 **Subsection:**

Comment: What criteria will be used by the Regional Board to "measure" increases in knowledge and behavioral changes in target communities regarding MS4s, impacts of urban runoff, and potential BMP solutions, and judge whether a particular educational component is satisfactory? What is the RWQCB's expectation for measurably increasing the knowledge of transient target communities such as visitors (although not listed, they could possibly be identified as a "significant source of pollutants")? (Procopio, Cory, Hargreaves, & Savitch, L.L.P., Coronado)

Response: SDRWQCB believes that in order to provide the Permittees with maximum flexibility, they may develop their own criteria for which to measure their success. Some possible suggestions would be to conduct random baseline surveys of target audiences, followed by periodic follow-up surveys; charting the hits on Permittee-run informational internet sites over time; numbers of classroom presentations over time; measuring media attention on Permittee sponsored water quality protection issues; number of workshops participants overtime; etc. As these programs continue, it is expected that the Permittees will devise new and creative ways to measure increases in knowledge.

Section: F.4 Subsection:

Comment: Copermittees should consider partnerships with local environmental groups, such as SDBK and SDSF who are already engaged in programs of educating citizens regarding discharge impacts and requirements. (Surfrider Foundation)

Response: Comment noted.

Section: F.4 Subsection: F.4

Comment: Allowance should be made for water washing unsanitary conditions on side walks such as food spillage. (City of Lemon Grove)

Response: Washing of sidewalks, patios, etc. is permissible, provided BMPs are implemented. For example, the wash water could be captured and collected or absorbed, or directed towards pervious areas (as long as the washing is infrequent). Directing the wash water through a filter may also be acceptable. There are many guidance documents available regarding BMP implementation in such cases, such as the California Storm Water Best Management Practices Handbooks developed by the Storm Water Quality Task Force.

Section: F.4 Subsection: F.4.a

Comment: "F.4.a. All Target Communities"

This section is ambiguous and unworkable. It should be deleted. (County of San Diego)

Response: For at least eighteen categories, Section F.4.a specifically identifies the activities for which the Permittees must consider individuals as members of a "Target Community." This Section sets a clear minimum criteria for identifying the target communities to which the Permittees must direct public education efforts. Section F.4.a. is necessary to provide clarification, so it has not been deleted.

Section: F.4 Subsection: F.4.b

Comment: Add: Disease prevention, mosquito/vector awareness (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: F.5 Subsection:

Comment: The requirement that each Copermittee "…shall prevent, respond to, contain and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals)." should be modified to state that this requirement is to be performed to the MEP or be deleted. Because private laterals are owned and operated by private parties (such as residential property owners), preventing spills from such laterals is beyond the Copermittees' ability to control and such a program would be unlikely to be effective in practice. The Copermittees will be logistically unable to respond to both private lateral blocks and sewer main blockage as resources will spread too thin. The main priority must be to prevent sewage spills from the City main lines. While there is no way to assure that the Copermittee is notified of all spills into its MS4, it is practicable for the Copermittees to establish programs (i.e. educational outreach, communication links, etc.) to require and enable citizens to notify the Copermittees of sewage spills from private laterals. This requirement should be removed or modified to require such programs be implemented to the MEP. (City of San Diego, Chula Vista, La Mesa, Imperial Beach, Metro Commission)

Response: Sewage and other spills frequently enter the MS4, to be carried and discharged to receiving waters. Such spills into and from the MS4 can severely impair receiving water quality and pose a significant threat to public health. To avoid these negative impacts, the proposed management program must describe procedures that the Copermittee will implement to prevent, contain, and respond to spills that may discharge into the MS4. The US EPA states "The goal of a spill prevention program is to reduce the frequency and extent of spills of hazardous materials which can cause water quality impairment. Spill containment programs may establish minimum chemical storage and handling requirements, require users to submit prevention and control plans, and ensure site inspections. […] Spill response teams should attempt to prevent or minimize contamination of surface water, groundwater, and soil. Spill response programs often require a coordinated response from a number of municipal departments. Municipalities should describe how response procedures within these programs attempt to mitigate potential pollutant discharges to surface waters and the MS4" (1992). The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.5.f in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report pp. 157-158.

Section: F.5 Subsection: F.5.g

Comment: Citizens are extremely effective in assisting Copermittees to identify violators of local discharge prohibitions. However, citizens have experienced difficulty contacting local enforcement personnel on weekends or after hours, when many violations occur. To facilitate public reporting of violations, the Copermittees should be required to maintain a daily 24-hour "stormwater hotline," maintained by a live person during business hours and checked periodically after-hours. Moreover, the Copermittees should also facilitate the use of electronic mail as a means of reporting discharge violations.

The current hotline rolls over to the 911 emergency system after hours and on weekends. The IEA strongly feels this is an inappropriate use of the 911 emergency system, and may result in complaints or reports not being investigated in a timely manner. The IEA strongly urges the Board to direct the Copermittees to develop and properly staff a 24-hour hotline. (Surfrider Foundation, Industrial Environmental Association)

Response: The Copermittees have the discretion to implement the requirements of Section F.5.g of the Tentative Order in the manner they determine is the most effective. The revised Tentative Order does not direct the Copermittees to roll-over calls from their storm water hotline to the 911 emergency system. The Copermittees are not required, but do have the discretion, under the revised Tentative Order to facilitate the use of electronic mail as a means of reporting discharge violations.

Section: F.5 Subsection: F.5.h

Comment: The language in Section F.5.h “Facilitate Disposal of Used Oil and Toxic Materials” should be revised to clarify the SDRWQCB’s intent and add formal requirements or otherwise be deleted. Curbside collection of hazardous wastes may be a potential health risk and a source of contamination from leaky containers, improper handling and mixing, and irregular pick up, etc. Collection programs may increase public exposure to the risks of improperly handling and mixing of chemicals. Any mandate or encouragement by the Regional Board for curbside collection programs should include requirements for a formal collection program with authorized containers and educational programs.
To avoid these unintended consequences, we suggest the Regional Board add the following language: ". . . Formal curbside collection programs for the collection of household hazardous wastes deposited in secure authorized containers is encouraged. Such a curbside collection program must include a substantial educational component concerning the public handling and depositing of the household hazardous wastes. " The requirement is necessary, however, because the current programs for disposal of household toxic waste do not adequately facilitate the public's ability to dispose of their waste. There need to be more collection sites established with regular hours. It is difficult for many San Diegans to find disposal sites located in a convenient area. This discourages people from disposing of their wastes properly. (Environmental Health Coalition, Sierra Club, Surfers Tired Of Pollution)

Response: Curbside collection is only encouraged, not required, in the Tentative Order. The issues raised in the comment are pertinent and were addressed in the Public Workshops. It is the responsibility of the Copermittees to design and implement a program that meets or exceeds the requirements of Section F.5.h of the Tentative Order and does not result in a threat to human or environmental health.

The US EPA states "If private individuals find the proper disposal of used oil or toxic materials difficult, incidents of improper disposal (such as into the MS4) increase" (1992). Therefore Copermittees are required to propose a program component that will facilitate the proper disposal of used oil and toxics from households by establishing municipally operated collection sites, or ensuring that privately operated collections sites are available. The US EPA suggests this program component "should describe outreach plans to handlers of used oil and to the public, and operating plans for oil and household waste collection programs" (1992). The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management Program item F.5.h in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.5 Subsection:

Comment: Furthermore, we urge you to include specifically in Section F.5. coverage for failing septic systems as an illicit discharge. (USEPA)

Response: Section F.5 of the Tentative Order has been revised to specifically include failing septic systems as an illicit discharge.

Section: F.5 Subsection:

Comment: The Regional Board has not established that it has the jurisdictional authority to dictate the manner in which municipalities regulate illicit discharges into their MS4s. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: California Water Code (CWC) section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Therefore the SDRWQCB has the authority to require specified programs to be implemented by the municipalities in order to carry out CWA requirements. Furthermore, illicit discharges are specifically addressed at 40 CFR 122.26(d)(2)(iv)(B).

Section: F.5 Subsection: F.5.g

Comment: We strongly support the requirement for all reporting hotlines in Spanish and English (Section F. 5. G). (Environmental Health Coalition)

Response: Comment noted

Section: F.5 Subsection: F.5.I

Comment: Similarly, section F.5.i. requires Copermittees to limit infiltration of seepage from municipal sanitary sewers to MS4s, and to conduct routine maintenance of both the MS4 and the sanitary sewers. However, routine preventive maintenance of the storm drain system will not result in less sanitary sewer infiltration – such infiltration can be addressed effectively only through maintenance and repair of the sanitary sewer system which is the source of such infiltration. Furthermore, the sanitary sewer system is regulated under a separate NPDES permit, and it would be more appropriate and effective to require maintenance and repair of the sanitary sewer in the NPDES permit applicable to the sanitary sewer system. Finally, for the reasons just discussed, the City also requests that the reference to sanitary sewer maintenance be removed from the definition of MEP contained in Attachment D to the Tentative Order (Glossary). (City of San Diego)

Response: Regarding seepage from sanitary sewers, the US EPA states "Raw sewage can seep from sanitary sewage collection systems through leaks and cracks in aging pipes, poorly constructed manholes and joints, and main breaks. Sewage from a leaky sanitary system can flow to storm sewers or contaminate ground water supplies. Interaction between sanitary sewers and separate storm sewers may occur at manholes and where sanitary sewer laterals and storm sewer trenches cross. Separate storm sewers and sanitary sewers may share the same trench, which is generally filled with very porous material such as gravel" (1992). Also, the Federal NPDES regulations 40 CFR 122.26(d)(7)(iv)(B)(7) requires "A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewers…" When raw sewage enters the storm water system, it can reach receiving waters untreated, posing a threat to water quality and public health.

Municipalities that operate a MS4 often also operate or contract for the operation of a sanitary sewerage system as well. In such cases, the management and maintenance of the two systems should be coordinated to limit infiltration of seepage from the municipal sanitary sewer to the MS4s. The fact that the two activities are authorized under separate NPDES permits does not relieve the Copermittee in question of the requirement to perform or require the performance of routine and thorough preventative maintenance of both to limit infiltration from the municipal sanitary sewer into the MS4.

However, some Copermittees operate MS4s in service areas where a different entity operates or contracts for the operation of the municipal sanitary sewerage system. In such cases, the Tentative Order should not require those Copermittees to conduct thorough, routine preventive maintenance of the municipal sanitary sewer. Accordingly, the language of Section F.5.i has been revised (as written below) to require the thorough, routine preventive maintenance of the MS4 system of all Copermittees and the thorough, routine preventive maintenance of the municipal sanitary sewer only in those cases where the Copermittee has direct authority over the municipal sanitary sewer:

The definition of MEP contained in Attachment D of the Tentative Order has been revised to refer to the maintenance of the municipal separate storm water sewer system rather than the sanitary sewer system.

Section F.5.I has been revised as follows:
Each Copermittee shall implement controls to limit infiltration of seepage from municipal sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4. Each Copermittee that operates both a municipal sanitary sewer system and a MS4 shall implement controls and measures to limit infiltration of seepage from municipal sanitary sewers to MS4s that include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both.

Section: F.5 Subsection: F.5.I

Comment: Paragraph F.5.i is another example. Padre Dam MWD owns and operates the wastewater collection system in Santee, and parts of El Cajon and the County of San Diego. We do not expect any one of these agencies to perform the acts specified in F.5, nor does the City of Santee have equipment and staffing to do this work.

Recommendation: (a) Ensure that this permit is not in conflict with other outstanding permits of agencies in the region. (b) Provide language excluding those Copermittee agencies from responsibilities of managing wastewater systems that are owned and operated by other agencies. (Padre Dam Municipal Water District)

Response: Municipalities that operate a MS4 often contract for the operation of a sanitary sewerage system as well. In such cases, the management and maintenance of the two systems should be coordinated to limit infiltration of seepage from the municipal sanitary sewer to the MS4s. The fact that the two activities are authorized under separate NPDES permits does not relieve a Copermittee of the requirement to perform or require the performance of routine and thorough preventative maintenance of both to limit infiltration from the municipal sanitary sewer into the MS4.

However, some Copermittees operate MS4s in service areas where a different entity operates or contracts for the operation of the municipal sanitary sewerage system. In such cases, the Tentative Order should not require those Copermittees to conduct thorough, routine preventive maintenance of the municipal sanitary sewer. Accordingly, the language of Section F.5.i has been revised (as written below) to require the thorough, routine preventive maintenance of the MS4 system of all Copermittees and the thorough, routine preventive maintenance of the municipal sanitary sewer only in those cases where the Copermittee has direct authority over the municipal sanitary sewer:

Regarding seepage from sanitary sewers, the US EPA states “Raw sewage can seep from sanitary sewage collection systems through leaks and cracks in aging pipes, poorly constructed manholes and joints, and main breaks. Sewage from a leaky sanitary system can flow to storm sewers or contaminate ground water supplies. Interaction between sanitary sewers and separate storm sewers may occur at manholes and where sanitary sewer laterals and storm sewer trenches cross. Separate storm sewers and sanitary sewers may share the same trench, which is generally filled with very porous material such as gravel” (1992). Also, the Federal NPDES regulations 40 CFR 122.26(d)(7)(iv)(B)(7) requires "A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewers…" When raw sewage enters the storm water system, it can reach receiving waters untreated, posing a threat to water quality and public health.

The definition of MEP contained in Attachment D of the Tentative Order has been revised to refer to the maintenance of the municipal separate storm water sewer system rather than the sanitary sewer system.

Section F.5.I has been revised as follows:
Each Copermittee shall implement controls to limit infiltration of seepage from municipal sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4. Each Copermittee that operates both a municipal sanitary sewer system and a MS4 shall implement controls and measures to limit

infiltration of seepage from municipal sanitary sewers to MS4s that include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both.

Section: F.7 Subsection: F.7.c

Comment: The requirement in Section F.7.c to include in the Individual Jurisdictional URMP Annual Reports a self-assessment of "overall percent compliance" with the Tentative Order should be deleted. It is inappropriate to require Copermittees to assess their own compliance. It is not possible for Copermittees to assess their own "percent compliance" without the establishment of objective criteria by which to gauge their performance. Such criteria do not exist, and it would be inappropriate for the Copermittees to establish them since this would present an obvious conflict. Also, not only would it be difficult and potentially impossible to meaningfully satisfy this requirement on an individual basis, but the self-assessments of each Copermittee taken together would be even less meaningful because of the inherently subjective nature of such self-assessments. Assessing the performance of Copermittees is the responsibility of the RWQCB, and should remain so. (City of San Diego, County of San Diego, Chula Vista, La Mesa, Imperial Beach, Port of San Diego)

Response: The SDRWQCB agrees with your point that a self assessment of overall percent compliance is arbitrary and will result in the generation of meaningless figures which will not serve to measure true compliance. Therefore, the Tentative Order will be changed to reflect your suggestion.

See Section F.7.c. for the changes.

Section: F.7 Subsection: F.7

Comment: The Regional Board needs to provide guidance by working collaboratively with Watersheds in defining watershed objectives and performance measures. (City of Carlsbad)

Response: As addressed during the workshops, SDRWQCB staff will participate in the development of the Watershed Urban Runoff Management Plans as well as the County Project Clean Water Program. The definition of watershed objectives and performance measures will be determined by the Copermittees based in part on receiving water quality objectives, the Copermittees Jurisdictional Urban Runoff Management Programs, and other factors the Copermittees may identify.

Section: F.7 Subsection: F.7.a

Comment: Require testing program to measure pollutants meet MEP standards, not specific sites standards which may be under water due to tide or under influence from Mexico or other sources. (City of Imperial Beach)

Response: Section F.7 requires that the Copermittee develop a long term strategy to assess the effectiveness of the Jurisdictional Urban Runoff Management Program (JURMP) using a number of

parameters proposed in the it's JURMP Document subject to SDRWQCB review. The Copermittees have the discretion to include direct and indirect measures that include, but are not limited to pollutant loading and receiving water quality monitoring data.

Section: F.7 Subsection: F.7.a

Comment: How is the pollution from Mexico included when calculating the effectiveness of the URMP in Imperial Beach? (City of Imperial Beach)

Response: Selection of sample sites and water quality constituents can be conducted to identify local sources of pollutants resulting from urban runoff discrete from pollutant loadings from Mexico. In addition, the Copermittees can develop other methods of evaluating the effectiveness of the Jurisdictional and Watershed Urban Runoff Management Programs.

Section: F.8 Subsection:

Comment: This requirement is not supported by Federal regulations and could be impossible to implement. It is clear that the agencies will be required to pay for the implementation of the Tentative Order and that the SDRWQCB has little concern for what the cost may be or how the agencies shall provide funding comply with the Tentative Order. This requirement should be deleted. (County of San Diego, Imperial Beach, Carlsbad)

Response: Federal NPDES regulation 40 CFR 122.26(d)(2)(vi) provides that "[The Copermittee must submit] for each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2)(iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds."

A fiscal analysis can be an important planning tool. The US EPA finds that "examining the levels of proposed spending and funding allows the permitting authority to gauge the ability of the applicant to implement the program and predict its effectiveness. The fiscal analysis also will help the [SDRWQCB] determine whether the applicant has met the statutory requirement of reducing the discharge of pollutants to the MS4 to the maximum extent practicable. Finally, the estimates help the applicant evaluate the feasibility and cost-effectiveness of its program" (1992). The SDRWQCB has discretion to require Jurisdictional Urban Runoff Management item F.8 in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: F.8 Subsection:

Comment: The Copermittees' ability to obtain funding and effectively conduct a fiscal analysis, including securing the resources necessary to meet the requirements of this Tentative Order, is severely

constrained by state laws restricting the imposition and collection of fees, taxes and assessments at the local level, thereby inhibiting the Copermittees' ability to accurately forecast such receipts. For example, pursuant to Proposition 218, certain fees must be approved by City residents via the ballot process. Although Proposition 37 failed to pass in the recent election, a similar proposition could impact the City's ability to establish new fees or assessments. As a result, the City's ability both to obtain funding through this process, and to forecast the likely level of such funding, is highly unpredictable. Any fiscal analysis required by the Tentative Order needs to take account of these restrictions on municipal funding and planning efforts and include workable timelines. To help augment local programs, the City requests support by the Regional Board staff to work with the Copermittees to obtain state and federal funding. (City of San Diego, El Cajon, Escondido, Imperial Beach, Coalition for Practical Regulation)

Response: The implementation schedule for most of the Jurisdictional Urban Runoff Management Programs has been extended from 180 days to 365 days to provide the Copermittees additional time to secure adequate funding.

The SDRWQCB has recently undergone an extensive process to support the Copermittees attempts to securing funding resulting from passage of Proposition 13. The SDRWQCB also assists in securing funds from other state and federal sources.

Section: F.8 Subsection:

Comment: By what legal authority does the Regional Board impose the requirement that each Copermittee shall secure the fiscal resources necessary to meet the requirements of this Order? The order has no assessment of its economic and fiscal impacts on the Copermittees. (Procopio, Cory, Hargreaves, & Savitch, L.L.P.)

Response: California Water Code (CWC) section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Therefore the SDRWQCB has the authority to require specified programs to be implemented by the municipalities in order to carry out CWA requirements. Furthermore, a fiscal analysis is specifically addressed at 40 CFR 122.26(d)(2)(vi).

Section: F.8 Subsection: F.8

Comment: How can the fiscal analysis of the Jurisdictional URMP be completed before the watershed URMP is completed? The BMP's that may result from the Watershed URMP might have significant costs that affect the Jurisdictional URMP. (Pountney & Associates)

Response: The fiscal analysis of the Jurisdictional Urban Runoff Management Program is an annual reporting requirement that is expected to be updated every year that new data (i.e. increased or decreased costs estimates related to the Watershed Urban Runoff Management Program) becomes available.

Section: G Subsection:

Comment: The date to implement the land use planning date and SUSMP conflict by 180 days, even though SUSMPs are part of land use planning. (Bartleman, W.)

Response: Comment noted. Regional Board staff recommend the Tentative Order be modified to correct this discrepancy.

See change at permit section G.

Section: H Subsection: H

Comment: The City questions the submittal of the Jurisdictional URMP Documents.
Requiring the City to submit the unified Documents to the Regional Board on the same day that the City and other Copermittees must begin implementing the Jurisdictional URMP is impractical. The City suggests that it submit the unified Documents at a reasonable time after adoption of the Tentative Order, but prior to the date implementation of the Jurisdictional URMP must commence.
The City, as Principal Permittee, also questions that it be required to prepare and submit, as an additional section of the unified Documents, a description of common activities conducted by the Copermittees. This activities will be addressed by the Copermittees in their individual Documents and the Watershed URMPs. (City of San Diego)

Response: The Copermittees have the discretion to submit their Jurisdictional Urban Runoff Management Program Documents prior to the implementation date. While the SDRWQCB will review and comment on the JURMP Documents, the Copermittees are expected to implement their JURMPs immediately, since the JURMPs are based on requirements largely derived from Order 90-42 and the NPDES regulations which have been in place for many years.

Compilation of the individual Jurisdictional URMP documents into a unified Jurisdictional URMP document by the Principal Permittee will simplify review and evaluation of the information contained in the documents. The Principal Permittee's provision of a summary covering common activities conducted collectively by the Copermittees will provide a useful overview of urban runoff management efforts within the County of San Diego. This type of compilation of the Copermittees' documents has been recommended by the Copermittees in the past.

The SDRWQCB has discretion to require Submittal of Jurisdictional URMP Document item H. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: H Subsection: H

Comment: H. SUBMITTAL OF JURISDICTIONAL URMP DOCUMENT

The lists of reporting requirements in sections H.1.a. and H.1.b. are cumbersome and will likely be subject to significant change if the permit is amended. The County recommends that these lists be deleted and replaced with a requirement for the Copermittees to develop and submit report formats (including suggested content) at least 90 days prior to each submittal deadline. The deleted detail should instead be located in the Technical Report as suggested guidance. (County of San Diego)

Response: The reporting requirements in H.1.a and H.1.b are directly based on the requirements of the Jurisdictional Urban Runoff Management Programs. Reporting on all aspects of the Jurisdictional Urban Runoff Management Programs is necessary for the SDRWQCB to assess the Copermittees' compliance with the Tentative Order. Therefore, the requirements of H.1.a and H.1 b are appropriate.

Section: H Subsection: H

Comment: The City questions the need to prepare a unified Jurisdictional URMP annual report detailing the common activities of the Copermittees, as such activities will be set out in each Copermittee's individual Jurisdictional URMP annual report and more importantly, in the Watershed URMP Annual Report. (City of San Diego)

Response: The Tentative Order requires a Unified Jurisdictional Urban Runoff Management Program (JURMP) Annual Report to cover common activities conducted collectively by the Copermittees. The rest of the Unified JURMP Annual Report consists of the submitted JURMP Annual Reports submitted individually by the Copermittees. The Unified JURMP Annual Reports can also be useful tools for the Copermittees. They provide a focus to review, update, or revise the URMPs on an annual basis. Successful and unsuccessful measures can be identified, helping to focus efforts on areas or issues which provide the greatest results. Areas or issues which have received insufficient efforts can also be identified and improved.

The SDRWQCB has the discretion to require Submittal of Jurisdictional URMP Annual Report item I. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: H Subsection: H.1.a

Comment: Add the following requirement to sections (1), (2), (3), (4) & (5): Procedures for preventing vector breeding in BMPs, including plan review and approval and surveillance processes. (State Department of Health Services)

Response: In recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: H Subsection: H.2.b

Comment: H.2.b. [Unified URMPs]
To which activities does "a section covering common activities conducted collectively by the Copermittees" refer? Is the SDRWQCB asking for a description of the activities leading to the development of the SUSMPs? If so, why? Shouldn't the completed SUSMPs suffice? (County of San Diego)

Response: This refers to activities on which Copermittees collaborate in implementing parts of their urban runoff management programs. Examples can include regional education efforts (Think Blue campaign), preliminary watershed efforts, etc.

Section: I Subsection: I.1.f

Comment: Section I.1.f, which requires that Copermittees report on annual expenditures from previous years, is inconsistent with section F.8, which only requires an evaluation of projected expenditures. Because reports on annual expenditures from previous years exceed the requirements of 40 CFR 122.26(d)(2)(vi), the submission of financial data from previous fiscal years therefore cannot be required under Tentative Order No. 2001-01. (County of San Diego)

Response: Comparison of expenditures would be useful to help determine the level of efforts implemented by each Copermittee. However, it is not critical to the assessment of each Copermittee's compliance with the requirements of the Jurisdictional Urban Runoff Management Program. Therefore, section I.1.f will be changed to only require an evaluation of projected expenditures.

Section: I Subsection: I.2

Comment: The requirement for the first report should be deleted and that the January 21, 2003 report cover the period of January 1, 2001 through June 30, 2002. This will avoid the unnecessary cost of generating an additional report for a 6-month period during which significant program amendments will be occurring. (County of San Diego, Anonymous)

Response: The revised Tentative Order requires the submittal of the first Jurisdictional Urban Runoff Management Plan (JURMP) Annual Report to the SDRWQCB on January 31, 2003. This revision is the result of the consolidation of the submittals of the first and second JURMP Documents and the extension of the implementation of the JURMP from 180 days to 365 days following the adoption of the revised Tentative Order.

Section: I Subsection: I.1.e

Comment: SUBMITTAL OF JURISDICTIONAL URMP ANNUAL REPORT"

"I.1.e."

Would these "special investigations" be voluntary or directed by the RWQCB pursuant to Tentative Order No. 2001-01? The RWQCB lacks the legal authority to require the submission of data or other monitoring information relating to investigations not required under this Order. (County of San Diego)

Response: Section I.1.e. of the tentative order requires the submission of "[a] summary of all urban runoff related data not included in the annual monitoring report (e.g., special investigations)," therefore it is a requirement and not a voluntary submission. The SDRWQCB does have adequate justification in requesting the submission of a summary data document pursuant to 40 CFR 122.42(c)(4) which states annual reports shall include a "summary of data, including monitoring data, that is accumulated throughout the reporting year." California Water Code (CWC) section 13377 provides that the Regional Boards shall issue waste discharge requirements which apply and ensure compliance with all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended, also known as the federal Clean Water Act (CWA). Section 402(p)(3)(B)(iii) of the CWA requires municipalities to implement "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The SDRWQCB's responsibility is to translate this section of the CWA into the form of waste discharge requirements. Therefore the SDRWQCB has the authority to require specified programs to be implemented by the municipalities in order to carry out CWA requirements.

Section: I Subsection: I.1.g

Comment: I.1.g. / I.1.h. - How would conditions of "proven to be effective" and "proven to be ineffective" be determined? (County of San Diego)

Response: Under Order 90-42, the Copermittees have had ten years to identify BMPs that have proven or not proven to be effective in reducing pollutants in discharges to the MEP. As the Copermittees implement the requirements of the Tentative Order, additional information will be developed on specific BMPs or activities that are found to be effective or ineffective in reducing the pollutants in the discharges to the MEP and that do not cause or contribute to the exeedances of receiving water quality objectives. Section I.1.g and I.1.h require the Copermittees to include this information in their Jurisdictional Urban Runoff Management Program Annual Reports.

Section: I Subsection: I.1.I

Comment: This requirement is more appropriate for the Copermittees' monitoring reports. (County of San Diego)

Response: The Copermittees are expected to make use of their joint Receiving Water Monitoring Reports, but may also collect additional monitoring information that should be evaluated and reported. Identification of water quality improvements or degradation within a municipality's jurisdiction is an appropriate requirement of the Jurisdictional Urban Runoff Management Program Annual Report.

Section: I Subsection: I.3

Comment: It is unclear who would sign the certification statement on the Unified Report. It appears that there may be an expectation that the Principal Copermittee would certify data and information submitted to them by other Copermittees. This statement should be amended to clearly limit responsibility of all Copermittees to certifying their own reports or subsections of Unified Reports. (County of San Diego)

Response: The language of Section I.3 has been amended in the revised Tentative Order to clarify the certification signature requirements for the Unified Jurisdictional Urban Runoff Management Program(JURMP) Annual Report. The certification statement of the Unified JURMP Annual Report applies only to the material submitted by the Principal Permittee. Each Copermittee submits their individual Jurisdictional Urban Runoff Management Program Annual Report with a separate certification statement. The Principal Permittee is not expected to certify the data submitted to them by other Copermittees.

Section: J Subsection: J

Comment: The Tentative Order does not properly account for the different hydrology, soils, environments, jurisdictions, and other geographic features within a watershed. Applying the same requirements through the Watershed Urban Runoff Management Programs that disregard conditions between local water basins and topography is inappropriate. The Tentative Order does not consider existing efforts to manage local portions of watersheds. (Escondido)

Response: The Tentative Order's requirements for developing and implementing the Watershed Urban Runoff Management Programs (WURMP) are sufficiently flexible to allow the Copermittees to properly account for the different hydrology, soils, environments, jurisdictions, and other geographic features within a watershed as well as consider existing efforts to manage local portions of watersheds. Consistency of programs implemented under the WURMP within the guidelines provided is highly desirable as indicated by other commentors references to "regional consistency" and the threat of "inconsistent jurisdictional level activities."

Section: J Subsection: J

Comment: It is unlikely the local programs developed separately by the Copermittees in their Jurisdictional Urban Runoff Management Plans will provide the good basis for the transition to regional consistency and watershed URMPs that the Order envisions. During the first few years after final promulgation of the Order, each Copermittee will be forced by the prescriptive and detailed nature of the Order to focus attention on its own promulgation and implementation of mandatory program elements. The Order will lead to inconsistent jurisdictional level activities, and will make the transition from local programs to watershed-based programs more difficult than it needs to be. Cooperative study and planning by the Copermittees would provide a quicker path to excellent watershed-based storm water programs, but this Order would force Copermittees off of that path. (County of San Diego)

Response: Order No. 90-42 was drafted to provide the Copermittees with the maximum amount of flexibility to develop and implement their own jurisdictional storm water programs. Currently, each Copermittee focuses its attention on its own implementation of mandatory program elements, which has resulted in inconsistent jurisdictional level activities. The Tentative Order does not prevent the Copermittees from working together using cooperative study and planning to develop regional consistency and shared programs. It does, in fact, strongly encourage the Copermittees to develop regional and consistent management approaches to the management of storm water discharge. It is anticipated that future NPDES Permits for Storm Water will be issued by watershed rather than by jurisdiction. The elements of Section J are intended to transition the Copermittees into a watershed approach to storm water permitting and management.

Section: J Subsection: J

Comment: The additional requirement for the Watershed Urban Runoff Management Program is redundant with the Jurisdictional Urban Runoff Management Program and more importantly is in conflict with a stakeholder driven watershed approach. The proposed approach, without involvement from other stakeholders, will result in piece meal, redundant, and misdirected program producing little or no improvement in water quality. Generating another management program (i.e. the Watershed Urban Runoff Management Program) is redundant and inefficient as presently proposed and should be revised or deleted. (County of Orange)

Response: The Watershed Urban Runoff Management Program (WURMP) is not redundant with the Jurisdictional Management Program (JURMP) , but rather an extension of the JURMP and a means for each Copermittee to make the transition from jurisdictional storm water management programs to watershed based storm water management programs. The Tentative Order does not prevent the Copermittees from using a stakeholder driven approach and, in fact, requires and encourages public participation.

Section: J Subsection:

Comment: The permit's emphasis on "watershed-based" planning is appropriate and will result in efficient environmental management. (Environmental Health Coalition)

Response: Comment noted.

Section: J Subsection:

Comment: Why was the Tentative Order not based upon a watershed approach rather than a jurisdictional approach? (Aminpour, Khosro)

Response: The Tentative Order establishes that each Copermittee is responsible for the implementation of the Order within its jurisdiction. The Tentative Order, however, addresses the need for a watershed approach in urban runoff management and for consistency between jurisdictional level

programs. The requirement that within a watershed the Copermittees shall collaborate to develop and implement a Watershed Urban Runoff Management Program is intended to prepare the Copermittees for the anticipated watershed-delineated NPDES Storm Water Permits.

Section: J **Subsection:**

Comment: Are MS4s in more than one watershed subject to separate applications or regulations? (Mendoza, Carlos)

Response: The operators (Copermittees) of MS4s that are located in more than one watershed are subject to requirements for each watershed in which their MS4 is located. Several Copermittees will be required to participate in the development and implementation of more than one Watershed Urban Runoff Management Program.

Section: J **Subsection:**

Comment: Can the tentative order require the compilation of fertilizers and pesticides bought and applied per watershed from sales data? (San Diego Audubon Society)

Response: The compilation of fertilizers and pesticides purchased and applied per watershed from sales data can be performed at the Copermittees' discretion. The inclusion of this requirement in the Tentative Order is not necessary and would be too prescriptive.

Section: J **Subsection: J**

Comment: The City of Imperial Beach wants to implement lead watershed Copermittee responsibilities but wants financial and staffing assistance from the other watershed Copermittees. (City of Imperial Beach)

Response: Comment noted. The Copermittees are strongly encouraged to collaborate in the development of the Watershed Urban Runoff Management Programs.

Section: J **Subsection: J**

Comment: The City of El Cajon does not want to be the lead coordinator for the San Diego watershed because it is only a minor inland contributor to the watershed. (City of El Cajon)

Response: The selection of the Lead Permittees was based on a need to share the burden among all the Copermittees and to actively engage each Copermittee in the Watershed Urban Runoff Management Program development. The City of El Cajon is located within the watershed of a major tributary (Forrester Creek) of the San Diego River and has industrial and commercial parks located on the banks of this tributary. As indicated in the workshops, the Copermittees will be allowed discretion in selecting

Lead Permittees, but in the event that a Lead Permittee is not selected for a given watershed, the Copermittee indicated in the Tentative Order as the Lead Permittee will be designated the Lead Permittee by default.

Section: J **Subsection: J**

Comment: The City of Escondido does not want to be the lead watershed coordinator because it is a only a minor inland contributor in the watershed and a rationale should be developed to determine who the watershed lead coordinator should be. (City of Escondido)

Response: The selection of the Lead Permittees was based on a need to share the burden among all the Copermittees and to actively engage each Copermittee in the Watershed Urban Runoff Management Program development. As indicated in the workshops, the Copermittees will be allowed discretion in selecting Lead Permittees, but in the event that a Lead Permittee is not selected for a given watershed, the Copermittee indicated in the Tentative Order as the Lead Permittee will be designated the Lead Permittee by default.

Section: J **Subsection: J**

Comment: The BMP's that may result from the Watershed URMP might have significant costs that affect the Jurisdictional URMP. (Pountney & Associates)

Response: SDRWQCB recognizes that the implementation of BMPs may have significant costs. However, it does not expect that the implementation of the Watershed URMP will negatively impact the Jurisdictional URMP. These two programs were designed to compliment one another.

Section: J **Subsection: J**

Comment: Redundant phrase . . . to identify and mitigate. . . at p.41/50, paragraph J.1 should be deleted in favor of similar language in J.2.c which requires identification and prioritization of water quality problems. . . (City of Imperial Beach)

Response: Comment noted. Section J.1 of the Tentative Order identifies each of the Copermittees with their respective watershed(s) and requires collaboration to identify and mitigate the highest priority water quality issues/pollutants in the watershed(s). Section J.2 establishes the minimum requirements for the Watershed Urban Runoff Management Programs.

Section: J **Subsection: J**

Comment: Does the tentative Order allow a Storm Water Utility District be the lead watershed Copermittee? (Anonymous Workshop 1)

Response: A storm water utility district may be the lead watershed Copermittee. The formation of a storm water utility district, however, does not release the Copermittees from the individual and collective responsibilities to implement the requirements of the Tentative Order.

Section: J Subsection: J

Comment: When watershed URMP are in effect will jurisdiction URMP requirements be rescinded or modified? (Anonymous Workshop 1)

Response: The Jurisdictional Urban Runoff Management Program requirements will not be modified or rescinded by the SDRWQCB once the Watershed Urban Runoff Management Programs are in effect. The Watershed URMPs are an extension of the Jurisdictional URMPs and are meant to ensure consistency between programs within a watershed. The Watershed URMPs do not replace the Jurisdictional URMPs because each municipalities are individually responsible for their programs.

Section: J Subsection: J.1

Comment: Redundant phrase . . To identify and mitigate. . . at p.41/50, paragraph J.1 should be deleted in favor of similar language in J.2.c which requires identification and prioritization of water quality problems. . . (City of Imperial Beach)

Response: Comment noted. Section J.1 of the Tentative Order identifies each of the Copermittees with their respective watershed(s) and requires collaboration to identify and mitigate the highest priority water quality issues/pollutants in the watershed(s). Section J.2 establishes the minimum requirements for the Watershed Urban Runoff Management Programs.

Section: J Subsection: J.2.b

Comment: Water quality assessment is the responsibility of the RWQCB. While it is legal and appropriate to require Copermittees to monitor their own discharges, and the effects thereof, this requirement seems to reflect a different thinking. All monitoring data will be reported and interpreted in the Copermittees' monitoring reports. Also, the requirement to evaluate "[A]ll receiving waters in the watershed" is too broad a mandate. This does not allow for prioritization of efforts and would presumably open the door for a requirement for the collection of monitoring data from every receiving water in the County. Finally, the RWQCB cannot require Copermittees to assess "existing water quality data" unless it is collected pursuant to this Order. This requirement would be place the general responsibility for assessment and interpretation of water quality data on the Copermittees rather than the RWQCB. Section J.2.b should be deleted. (County of San Diego)

Response: The Tentative Order contains requirements for the development of Watershed Urban Runoff Management Programs. Most Copermittees have expressed strong support for the program, in that it allows for them to focus on the problems within their respective watersheds. However, to focus on problems within a watershed, one must know what those problems are. A water quality assessment that encompasses all of the receiving waters to which the Copermittees discharge urban Runoff is necessary.

An effective Watershed Urban Runoff Management Program should welcome consideration of all available data. Refusal to consider some data could lead to misguided programs. For this reason, section J.2.b was included in the Tentative Order.

Section 13225(c) of the California Water Code authorizes the Regional Board to "Require as necessary any state of local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom."

Section: J Subsection: J.2.f

Comment: The language of sections F.6, H.1.a(8)(a), and J.2.f should be revised to add language that is more specific and will provide for better public participation. This is one of the most important components of the permit and needs to be expanded to facilitate public involvement in the decision making processes. (Chula Vista, Surfers Tired of Pollution)

Response: The requirements for public participation provide flexibilityand discretion to the Copermittees to determine when and in what manner the public will participate in the development and implementation of the Jurisdictional and Watershed Urban Runoff Management Plans. Adding more specific language will limit that flexibility unnecessarily.

Section: J Subsection: J.2.a

Comment: Where can a listing of impairments to the Pacific Ocean be found?
Is the Pacific Ocean considered to be bacteriologically impaired at all times? (City of Coronado)

Response: The listing of impaired water bodies for the State of California may be found on the State Water Resources Control Board website (http://www.swrcb/tmdl/index.html). The determination that certain defined areas of the Pacific Ocean along the coast of the San Diego Region are bacteriologically impaired (i.e. the Pollutant/Stressor is High Coliform Count) is based on the number of beach closure days posted by the County of San Diego. Beach closures affect the beneficial uses of the Pacific Ocean. Thus, although coliform counts may vary day to day, an area is still considered impaired until the number of beach closure days is reduced and the area is formally removed from the 303(d) list.

Section: J Subsection: J.2.c

Comment: This directive is not implementable. Identification of the “likely source(s) of the problem(s)” at a watershed scale and understanding the relationship of MS4 discharges to “major water quality problems” are both exceedingly complex tasks that are beyond the expertise and resources of the Copermittees. In the context of this section, such a task is unlikely to produce more than general statements. (County of San Diego)

Response: The requirements of Section J.2.c for the Copermittees to identify and prioritize major water quality problems in the watershed caused or contributed to by MS4 discharges and the likely source(s) of the problem(s) is based on the ten years experience that the Copermittees have acquired while implementing the requirements of Order 90-42. In particular, the Copermittees have conducted seven years of receiving waters monitoring, which included mass loading estimates of pollutants from several categories of land use, and are currently in the process of evaluating previous monitoring data and methods for the Previous Monitoring and Future Recommendations Report. Some commentors have requested greater Copermittee latitude and discretion in determining the requirements of the receiving waters monitoring program, the dry weather monitoring program, and the development of storm water programs, among other provisions, based upon their knowledge of their existing MS4 systems and watershed information. In fact one Copermittee specifically requested that "the Watersheds should be given the flexibility to apply resources to the areas of highest concern and greatest potential to resolve problems." Given that there is some confidence among the Copermittees that they can make these determinations, the identification and prioritization of major water quality problems in the watersheds caused or contributed to by MS4 discharges and the likely source(s) of the problem(s) should not be beyond the expertise and resources of the Copermittees.

Section: J Subsection: J.2.d

Comment: This section is contradictory. If these activities really are “recommended”, the Copermittees cannot schedule their completion with any certainty. (County of San Diego)

Response: Section J.2.d is not contradictory. Section J.2.d of the Watershed Urban Runoff Management Program requires the Copermittees to propose an implementation schedule for activities they recommend to address high priority water quality problems. These activities can be conducted collectively or individually, at the Copermittees discretion, to address the highest priority water quality problems. The Copermittees have the flexibility and are in the best position to determine which of their recommended activities they can complete within a time frame they determine is most reasonable with some degree of certainty.

Section: J Subsection: J.2.g

Comment: Page 41 of 50 J.2.g. – Who are the audiences that the watershed based education program apply to? (City of Chula Vista)

Response: The Copermittees have the discretion to determine the audiences for their watershed based education programs. In general, the audiences would be those identified in their Jurisdictional Urban Runoff Management Programs for that watershed.

Section: J Subsection: J.2.g

Comment: Is this a requirement for an additional collaborative program or can jurisdictional programs be amended to reflect watershed issues? (County of San Diego)

Response: Jurisdictional programs can be amended to reflect watershed issues.

Section: J **Subsection: J.2.h**

Comment: Ambiguous requirements. Subsection (h) requires the Copermittees to create a "mechanism to facilitate collaborative 'watershed-based'. . . land use planning with neighboring local governments in the watershed." Even though each local agency has independent land use planning authority and processes, the Copermittees should be able to create a mechanism that will facilitate collaboration. However, subsection (i) requires that collaborative watershed-based land use planning occur on a schedule beginning in January 2005. Requiring the such planning occurs is completely different than creating a mechanism to facilitate collaboration. Therefore, subsection (i) is inconsistent with subsection (h) and removes the needed flexibility provided by the use of "facilitate" in subsection (h). (County of San Diego)

Response: While the SDRWQCB strongly supports collaborative watershed-based land use planning, it acknowledges that it may not always be possible. In order to provide the Copermittees with discretion with their land use planning, section J.2.i. has been removed from the Tentative Order.

See change at permit section J.2.i.

Section: J **Subsection: J.2.i.**

Comment: These requirements exceed the Regional Board's authority and demands that the Copermittees exercise authority they do not possess. Subsection (i)'s requirement is an unlawful and unwarranted invasion by the Regional Board into the land use planning authority of the Copermittees. They also require the Copermittees to be in a position to interfere with or control the land use planning processes of the other Copermittees. Subsection (h) provides sufficient flexibility to be workable for the Copermittees. However, the mandate required by subsection (i) is not workable, nor lawful. (County of San Diego)

Response: While the SDRWQCB strongly supports collaborative watershed-based land use planning, it acknowledges that it may not always be possible. In order to provide the Copermittees with discretion with their land use planning, section J.2.i. has been removed from the Tentative Order.

See change at permit section J.2.i.

Section: L **Subsection: L**

Comment: Please comment on the need or benefit of the unified watershed URMP document & annual report. Since the RWQCB has designated 9 watersheds based on their individual needs/concerns, is a unified approach contrary to the watershed approach?
The City questions the need to prepare a unified Jurisdictional URMP annual report detailing the common activities of the Copermittees, as such activities will be set out in each Copermittee's individual

Jurisdictional URMP annual report and more importantly, in the Watershed URMP Annual Report. (County of San Diego (492) City of San Diego)

Response: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv) require each Copermittee to develop and implement an urban runoff management program. The SDRWQCB must assess the urban runoff management program to ensure that it is adequate to prohibit non-storm water discharges and reduce pollutant discharges to and from the MS4 to the maximum extent practicable. In order for the SDRWQCB to assess the urban runoff management program, each Copermittee must submit to the SDRWQCB a description of their program. The description must detail all activities the Copermittee is undertaking to implement the requirements of each component of the Jurisdictional URMP section of Order No. 2001-01.

The submittal schedule of 180 and 365 days for Jurisdictional URMP documents is designed to provide each Copermittee some time to develop its Jurisdictional URMP. However, this time is limited since the Jurisdictional URMP requirements are based on NPDES regulations which have been in place for many years. The vast majority of the requirements in the Jurisdictional URMP should already be implemented by each Copermittee. Therefore, the provided submittal schedule should be more than adequate for each Copermittee to rework its Jurisdictional URMP to meet the Jurisdictional URMP requirements of Order No. 2001-01.

Compilation of the individual Jurisdictional URMP documents into a unified Jurisdictional URMP document by the Principal Permittee will ease the effort needed to assess and digest the information contained in the documents. The Principal Permittee's provision of a summary covering common activities conducted collectively by the Copermittees will provide a useful overview of urban runoff management efforts within the County of San Diego. This type of compilation of the Copermittees' documents has been recommended by the Copermittees in the past.

The reporting requirements in H.1.a and H.1.b are directly based on the requirements of the Jurisdictional Urban Runoff Management Programs. Reporting on all aspects of the Jurisdictional Urban Runoff Management Programs is necessary for the SDRWQCB to assess the Copermittees' compliance with the Tentative Order. Therefore, the requirements of H.1.a and H.1 b are appropriate.

The SDRWQCB has discretion to require Submittal of Jurisdictional URMP Document item H. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: L **Subsection: L**

Comment: City of Poway does not want to be the lead watershed Copermittee until extent of work and cost is identified. (City of Poway)

Response: The selection of the Lead Permittees was based on a need to share the burden among all the Copermittees and to actively engage each Copermittee in the Watershed Urban Runoff Management Program development. The City of Poway is partially located within the watersheds of Los Penasquitos Creek and its tributaries Poway, Beeler, and Rattlesnake Creeks. As indicated in the workshops, the Copermittees will be allowed discretion in selecting Lead Permittees, but in the event that a Lead Permittee is not selected for a given watershed, the Copermittee indicated in the Tentative Order as the Lead Permittee will be designated the Lead Permittee by default.

Section: M Subsection: M

Comment: As part of the unified Watershed Annual Report, the Principal Permittee, must a draft a description of common activities performed collectively by the Copermittees. This is unnecessary since such common activities already will be described in each watershed's Watershed Annual Report. The requirement to submit the unified Watershed Annual Report be deleted. The lists of reporting requirements in sections (M1)... are cumbersome and will likely be subject to significant change if the permit is amended these lists should be deleted and replaced with a requirement for the Copermittees to develop and submit report formats (including suggested content) at least 90 days prior to each submittal deadline. The deleted detail should instead be located in the Technical Report as suggested guidance. (City of San Diego, County of San Diego)

Response: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv) require the Copermittees to develop and implement urban runoff management programs, of which the Watershed Urban Runoff Management Programs (WURMPs) are a part. The SDRWQCB must assess the WURMPs to ensure that they are adequate to assess and address the specific water quality problems within each watershed. In order for the SDRWQCB to assess the WURMPs, the Copermittees must submit to the SDRWQCB annual reports describing all of the activities undertaken to meet the requirements of the Watershed URMP section of Order No. 2001-01.

The Unified Watershed Urban Runoff Management Program Annual Report (WURMP) to cover common activities conducted collectively by the Copermittees under the Watershed URMP section of Order No. 2001-01. The rest of the Unified WURMP Annual Report consists of the submitted WURMP Annual Reports submitted by the Copermittees from each watershed. The Unified WURMP Annual Reports can also be useful tools for the Copermittees. They provide a focus to review, update, or revise the URMPs on an annual basis. Successful and unsuccessful measures can be identified, helping to focus efforts on areas or issues which provide the greatest results. Areas or issues which have received insufficient efforts can also be identified and improved.

The SDRWQCB has the discretion to require Submittal of Watershed URMP Annual Report item M. in Order No. 2001-01 under the broad and specific legal authority cited in the Fact Sheet/Technical Report.

Section: N Subsection:

Comment: The relative brevity of this section reflects a general underemphasis on regional activities in Tentative Order No. 2001-01. As a whole, this Order presents a significant potential for the concurrent development of numerous inconsistent programs. By rushing to develop compliant programs that are consistent with their legal obligations at the jurisdictional level, Copermittees will give short shrift to the regional consistency that is critical for long-term program success. The region's citizens and business community will demand the consistency not provided for here. The County recommends that Tentative Order No. 2001-01 be withdrawn, and that the RWQCB work with Copermittees to develop a program structure that gives adequate weight to regional, watershed, and jurisdictional issues, and fully considers the inter-relationship of each during program implementation. (County of San Diego)

Response: The Tentative Order does require Copermittee collaboration and consistency regionwide. The Tentative Order states in section N.1 that "Each Copermittee shall collaborate with all other Copermittees regulated under this Order to address common issues, promote consistency among Jurisdictional Urban Runoff Management Programs (Jurisdictional URMPs) and Watershed Urban Runoff Management Programs (Watershed URMPs), and to plan and coordinate activities required under this Order." Nothing in the Tentative Order precludes the Copermittees from collaborating as much as they wish. In fact, nothing has precluded the Copermittees from collaborating on regional consistency over the last 10 years.

Section: O Subsection:

Comment: Add: 4. Serve as a liaison between the Copermittees and the Local Vector Control Agency and State Department of Health Services to ensure that the BMPs used do not create public nuisances. (State Department of Health Services)

Response: The proposed requirement that the Principle Permittee serve as a liaison between the Copermittees and local vector control agencies and State Department of Health Services is unnecessary. Sufficient provisions exist in the Jurisdictional Urban Runoff Management Program for the Copermittees and local vector control agencies and the State Department of Health Services to participate in the development of the JURMP to prevent vector production and the creation of public nuisances. However, in recognition of the potential public health threat, an additional Finding is recommended to be added to the Tentative Order. The Finding (no. 36) identifies the potential vector issues related to BMP implementation and the role of collaborative program development between municipalities and vector control agencies in addressing an minimizing vector production.

Section: O Subsection: O

Comment: Responsibilities of the principal permittee should not be specified in detail in Tentative Order No. 2001-01. These details should be worked out and formalized amongst the Copermittees. (County of San Diego)

Response: The revised Tentative Order defines the minimum level of responsibility that must be assumed by the Principal Permittee. The SDRWQCB has discretion to require Principal Permittee Responsibilities in item O. of Tentative Order No. 2001-01 under the broad and specific legal authority in the Fact Sheet/Technical Report.

Section: O Subsection: O

Comment: As previously noted, the City would want to enter into an agreement with the Regional Board that clearly spells out each party's role and shared responsibilities concerning storm water discharges at permitted industrial and construction sites, as well as to establish and clarify the roles, responsibilities, and expectations as Principal Permittee to expressly limit liability and legal exposure for other Copermittees' non-compliance. If the City is unable to come to an agreement with the Regional Board concerning these agreements, the City would be unwilling to serve as Principal Permittee. (City of San Diego)

Response: The Copermittees are not responsible for enforcing or overseeing the General Statewide Industrial or Construction Permits. The SDRWQCB will enforce the General Statewide Industrial and Construction Permits. The Copermittees are however, responsible for enforcing their ordinances that implement the Tentative Order, including the prohibitions against illicit discharges. In some cases, the Copermittees may be required to implement or require the implementation of BMPs at construction or industrial sites that exceed the minimum requirements of the General Statewide Industrial or Construction Permits in order to achieve compliance with the requirements of the Tentative Order. USEPA supports this approach, clearly placing responsibility for the control of discharges from construction and industrial sites with municipalities. The USEPA notes in the preamble to the Storm Water Regulations that municipalities are in the best place to enforce compliance with storm water discharge requirements:

"Because storm water from industrial facilities may be a major contributor of pollutants to MS4s, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program…The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal."

As noted in the Fact Sheet/Technical Report, the USEPA felt it so important to control the discharge of pollutants from construction and industry that it established a double system of regulation over construction and industrial sites. Two parallel regulatory systems were established with the same common objective of keeping pollutants from construction and industrial sites out of the MS4. A structure was created where local governments must enforce their local ordinances and permits as required under their municipal storm water permits, while the SDRWQCB (state) must enforce its statewide general construction and industrial storm water permits. The two regulatory systems were designed to complement and support each other in the shared goal of minimizing pollutant discharges in runoff from construction and industrial sites.

Local governments have the primary regulatory authority over the majority of construction and industrial sites since they issue the development and land use permits for the sites. In other words, the Copermittees are responsible for the water quality consequences of their planning, construction, and land use decisions.

Regarding construction sites, USEPA also places enforcement responsibility on municipalities, requiring small municipalities to develop and implement "[a]n ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance […]" (40 CFR 122.34(b)(4)(ii)(A)). In its guidance for the Phase II regulations, US EPA goes on to support increased municipality responsibility, stating "Even though all construction sites that disturb more than one acre are covered nationally by an NPDES storm water permit, the construction site runoff control minimum measure for the small MS4 program is needed to induce more localized site regulation and enforcement efforts, and to enable operators of regulated small MS4s to more effectively control construction site discharges into their MS4s." While these above citations refer to small municipalities under Phase II of the NPDES program, USEPA recommendations to small municipalities are applicable to larger municipalities such as the Copermittees, due to the typically more serious water quality concerns attributed to such larger municipalities.

The language of the Tentative Order has been revised to more carefully describe the requirements of the Tentative Order with regard to the dual regulation of construction and industrial sites as discussed above. With the recent addition of resources and staff from budget augmentations in several programs, including storm water, the SDRWQCB will "vigorously administer and enforce" the General Statewide Industrial

and Construction permits as requested by one commentor. The language of Finding 24 of the Tentative Order has been revised to remove all discussion of what constitutes "good faith" in enforcing local legal authority. Furthermore, the Tentative Order does not "reward" Copermittees that enforce its storm water ordinances that implement the Tentative Order. Rather, the Section F.2.g.2 offers the Copermittees the discretion to voluntarily use the requirements of the General Construction Permit to implement and enforce its own storm water ordinances. The SDRWQCB will enforce the General Statewide Construction Permit; the Copermittees are enforcing their own storm water ordinances.

The Tentative Order clearly defines and describes the responsibilities of the Copermittees with regard to storm water and authorized non-storm water discharges from permitted industrial and construction sites. The Tentative Order is a NPDES Permit and Waste Discharge Requirements that specify the conditions under which discharges of urban runoff from municipal separate storm sewer systems is authorized and is not an "agreement" between the SDRWQCB and the Principle or Copermittees.

The SDRWQCB has the broad and specific legal authority cited in the Fact Sheet/Technical Report

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Section: O Subsection: O

Comment: What criteria was used to select the Principal Copermittee? (Anonymous Workshop 1)

Response: The Principal Permittee was selected based on the level of experience and organizational preparedness demonstrated by the Principal Permittee under Order 90-42. The revised Tentative Order provides the Copermittees the flexibility and discretion to select a Principle Permittee(s).

Section: R Subsection: R.1

Comment: Reference is made to Section B.7. of Attachment C - should this be B.6.? (City of Coronado)

Response: The reference should have been B.6. The revised Tentative Order contains the corrected reference to Section B.6 of Attachment C.

Section: Attachment B Subsection: Attachment B

Comment: It is premature to require Coastal Storm Drain Outfall Monitoring of the Copermittees in the Tentative Order. The San Diego County Department of Environmental Health should be responsible for conducting this monitoring since they are State funded under AB 411 and are familiar with the coastal areas and the monitoring requirements. By assigning this effort to the Copermittees, duplication of efforts and existing expertise would occur which doesn't seem to be a cost effective way to obtain the information.
1. As stated in the Draft Fact Sheet/Staff Report for the Tentative Order, this program should be "integrated and coordinated with similar monitoring programs."
2. The continuation of "routine monitoring" will not aid in the effective resolution of this problem.

3. The Tentative Order should be revised to require the development of a coordinated program between state, regional, and local entities to address water quality problems associated with coastal storm drains during dry and wet weathers.
4. It is recommended that the future monitoring program be based on the assessment being currently performed, that a coordinated coastal storm drain monitoring program be developed to address dry and wet weather water quality problems associated with coastal storm drains but not include it as a permit requirement at this time. (Anonymous, La Mesa, City of San Diego, San Diego Copermittees)

Response: Following adoption of the Order and the submittal and review of the Previous Monitoring and Recommendations Report, it was anticipated that the Copermittees would meet with the SDRWQCB and the County Department of Environmental Health to determine how to conduct the Coastal Storm Drain Outfall Monitoring. AB 411 only requires dry weather monitoring of storm drains that discharge onto public beaches visited by at least 50,000 people per year. This monitoring is not required during the wet weather months. The Coastal Storm Drain Outfall Monitoring was intended in part to fill in this gap in storm drain outfall monitoring while also serving as an assessment of compliance assessment.

Section: Attachment B **Subsection: Attachment B**

Comment: The Tentative Order should not specify that monitoring be performed by a single contractor.
1. The RWQCB does not possess the legal authority to specify contractual relationships between Copermittees and/or their contractors.
2. Given the number of new requirements specified in the receiving waters monitoring program, it is likely that a single contractor cannot perform the work efficiently or cost effectively.
3. This requirement would limit the co-permittees flexibility to get the work done cost effectively.
4. Protocols can be established and work executed successfully with several contractors. (Anonymous, City of San Diego, County of San Diego)

Response: The requirement has been deleted.

Section: Attachment B **Subsection: Attachment B**

Comment: The first reporting period specified in the Tentative Order (October 2000-September 2001) should be changed to reflect the adoption schedule of the Tentative Order and the submittal of the Previous Monitoring and Future Recommendations Report. (Anonymous, City of San Diego)

Response: The first reporting period has been changed to reflect the adoption schedule of the Tentative Order and the anticipated submittal of the Previous Monitoring and Future Recommendations Report.

Section: Attachment B **Subsection: Attachment B**

Comment: The SDRWQCB has not provided the necessary justification and cost/benefit analysis for the Receiving Waters Monitoring Program.
Technical Report provides little discussion of the proposed elements, and no discussion of how they support the four objectives stated in the introduction to Attachment B. The RWQCB has an obligation to provide this justification, and specifically to consider the potential costs of the program. These costs are clearly very significant, and therefore should not and cannot be imposed without adequate justification by the SDRWQCB. The Technical Report fails to provide this justification. The Order imposes monitoring requirements that cannot be compelled under state law because no cost/benefit analysis has been performed. Section 13267(b)(1) imposes a requirement that "[t]he burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." Similarly, sections 13165 and 13235 require that a cost/benefit analysis be conducted before certain investigation obligations and reporting requirements can be imposed on state and local entities. The Fact Sheet/Technical Report argues that the reports mandated by the Order are needed, and are related to program goals. However, the Technical Report does not estimate the burden, costs, or benefits of the required work. Therefore, the requirements of sections 13267(b)(1), 13165, and13235 have not been met. Moreover, federal law also requires the "maximum extent practicable" standard to be applied in a "site specific flexible manner, taking into account cost considerations as well as water quality effects." (See 64 Fed. Reg. 68735.) (County of San Diego,)

Response: The Tentative Order and Fact Sheet/Technical Report provides the necessary justification and cite the broad and specific legal authority to require the Receiving Waters Monitoring Program. A cost/benefit analysis is the responsibility of the Copermittees to determine and optimize. According to one estimate submitted by a commentor, the annual financial burden for receiving waters monitoring under Tentative Order 2001-01 will be approximately $70,000 per Copermittee. Currently, each Copermittee contributes approximately $35,000 each annually for receiving waters monitoring. In comparison, San Diego shipyards with NPDES permits are spending in excess of $200,000 annually each for receiving water quality monitoring in a significantly smaller geographic area. The Bight 1998 Summer Shoreline Microbiology Study (Noble et. al. 2000) found that expressed as a fraction of tourism dollars and per capita,among the Southern California counties, San Diego County spent the smallest and second smallest amount, respectively, on shoreline monitoring similar to that proposed in the Tentative Order. The discharge of storm water in San Diego represents the single largest discharge of pollutants in San Diego receiving waters and yet receives one of the smallest relative monitoring efforts regionally. Consequently, the relative increase in expected expenditure per Copermittee for receiving water monitoring is reasonable and regionally consistent.

Section: Attachment B **Subsection: Attachment B**

Comment: The requirement that Receiving Waters Monitoring Reports be reviewed by an independent committee is illegal and impracticable and should be deleted. This process would substantially increase the cost and time required to produce and submit monitoring reports, with little or no apparent benefit. Clarification is required on the requirements and qualifications that an independent committee of peers need to review the monitoring reports prior to submittal to the SDRWQCB. The RWQCB does not possess adequate legal authority to mandate that reports the Copermittees submit be reviewed by an external committee. (County of San Diego, City of San Diego, Anonymous, Chula Vista)

Response: The requirement has been revised to require only that the Receiving Waters Monitoring Report be reviewed by a committee. The review of monitoring reports prior to submittal is reasonable and necessary to ensure completeness and scientific accuracy.

Section: Attachment B **Subsection: Attachment B**

Comment: The RWQCB also has no authority to require Copermittees to contribute to the costs of monitoring waters that are not affected by that Copermittee's discharges of stormwater without further public notice. We request that additional language be added to this paragraph clarifying that, if the Regional Board so directs Copermittees, Copermittees' participation in such comprehensive regional monitoring activities shall take the place of all monitoring activities specified in Attachment B, and Copermittees shall no longer be required to comply with the provisions contained in Attachment B. Any requirement to share the costs of regional monitoring must include an exemption if a Copermittee can demonstrate that discharges from its MS4s do not affect the quality of the waters being monitored. (City of San Diego, County of San Diego, Carlsbad)

Response: The requirement has been modified to require participation in regional monitoring efforts (e.g. The Bight 1998 Summer Shoreline Microbiology Study) in lieu of specific Tentative Order 2001-01 monitoring requirements by order of the SDRWQCB Executive Officer. San Diego Copermittees collectively discharge urban runoff to the Southern California Bight and thus bear a responsibility for monitoring receiving water quality impacts in the Southern California Bight resulting from that discharge. Participation in multi-agency monitoring efforts that address specific regional problems resulting from these discharges is both reasonable and necessary to satisfactorily assess the impact of permitted urban runoff on the water quality of the Southern California Bight.

Section: Attachment B **Subsection: Attachment B**

Comment: The Receiving Waters Monitoring Program is inadequate and should include an evaluation of the effectiveness of the pollution control BMPs. This section should be revised to require corrective action in the event that the monitoring program has identified a given BMP not to be effective. The current Copermittee joint monitoring and reporting is insufficient to comply with the mandates of the existing permit and EPA regulations. Expanded monitoring is required by both coastal and inland Copermittees. (Sierra Club, Surfrider Foundation)

Response: The Receiving Waters Monitoring Program of Attachment B is a framework for the Copermittees to implement as they and their advisors indicate is most scientifically and cost effectively effective manner subject to SDRWQCB review. The Receiving Waters Monitoring Program will implicitly assess the effectiveness of the Copermittees pollution control BMPS. Expanded monitoring and assessment are implicit on the Tentative Order's Receiving Waters Monitoring Program. The SDRWQCB has the authority to require corrective action in the event that the monitoring program has identified discharges that are causing or contributing to an exceedance of receiving water quality objectives.

Section: Attachment B **Subsection: Attachment B**

Comment: The monitoring requirement for San Diego Bay Toxic Hot Spots should only apply to the nine Copermittees in the San Diego Bay watershed, and should not be required until after the review and assessment of existing storm water data and program tools. (Anonymous, La Mesa, El Cajon, San Diego Copermittees, Esondido)

Response: The Copermittees have the discretion to assign responsibility for various monitoring requirements as they see fit. This element of the Receiving Waters Monitoring Program was discussed with the Copermittees on August 18, 2000. The results of the Previous Monitoring and Future Recommendations Report will be considered with respect to how to implement and coordinate this element in the Receiving Waters Monitoring Program.

Section: Attachment B **Subsection: Attachment B**

Comment: The proposed program is inconsistent with previous SDRWQCB direction. On August 18, 2000, several Copermittees and SDRWQCB staff met to discuss ideas on the future direction of the Copermittees' wet weather monitoring program both for the 2000/2001 wet weather season and beyond. All present agreed that greater cooperation between Copermittees and the SDRWQCB was desirable, and that the best means of finding a common direction was through an in-depth assessment of existing data and potential program tools. At that meeting, the Copermittees agreed to conduct this assessment, and committed approximately $250,000 toward that end. At that time, SDRWQCB staff also agreed that the development of future program details should be delayed until the results of the assessment were available. The receiving waters monitoring program should be proposed by the Copermittees after the completion of the review and assessment of the existing storm water monitoring data and potential program tools in August 2001. Moreover, it is inappropriate for the Tentative Order to require the submittal of the Previous Monitoring and Future Recommendations Report, as the Copermittees are preparing this aforementioned report under the existing MS4 storm water permit with a previously agreed upon deadline (with Regional Board staff) of August, 2001. (County of San Diego, City of San Diego, San Diego Copermittees)

Response: The monitoring requirements are not premature or inconsistent with previous SDRWQCB direction. During the August 18, 2000 meeting, the representatives of the Copermittees were shown the draft Receiving Waters Monitoring Program, including the requirement for the Previous Monitoring and Future Recommendations Report. The various elements of that program were discussed. Staff indicated that these elements were expected to form the framework for the Receiving Waters Monitoring Program that would be implemented under Tentative Order 2001. The Copermittees proposal to conduct an assessment of previous monitoring data and available tools and techniques under 90-42 was considered to be an early start on the Previous Monitoring and Future Recommendations requirement of Attachment B of the Tentative Order. The Previous Monitoring and Future Recommendations Report, to be submitted in August 2001, was expected to specify how these elements would be implemented and coordinated, not whether to include them or not. Nonetheless, staff expects revisions can be made at the discretion of the SDRWQCB Executive Officer after submittal and review of the Copermittees Previous Monitoring and Future Recommendations Report.

Section: Attachment Subsection: B

Comment: Who has the financial responsibility for sampling a dry weather storm drain within a POTW footprint? (Anonymous Workshop 3)

Response: The Tentative Order anticipates that the Copermittees will meet with operators of POTWs to determine an equitable division of responsibility for monitoring coastal storm drain outfalls within POTW footprints. The Copermittees will be expected to conduct year-round monitoring of coastal storm drain outfalls under the Receiving Waters Monitoring Program.

Section: Attachment Subsection: B

Comment: Do all Copermittees need to participate in storm drain monitoring or is storm drain monitoring just for the coastal cities? (City of San Diego)

Response: Each of the Copermittees will be responsible for participating in the Coastal Storm Drain Outfall Monitoring component of the Receiving Waters Monitoring Program. This monitoring is necessary for evaluating the impact of the discharge of urban runoff into coastal receiving waters.

Section: Attachment Subsection: B

Comment: How are samples to be taken when a storm drain discharge at a beach immediately infiltrates into the sand? (City of Imperial Beach)

Response: Samples should be taken just upgradient of the point where the discharge infiltrates into the sand. This location would be in the storm drain prior to the discharge entering the sand.

Section: Attachment Subsection: B

Comment: What is the correlation between bioassessment and waters impaired by sediment loading? (Anonymous Workshop 1)

Response: Bioassessment is a direct measurement of the impact of the discharge of urban runoff on the benthic invertebrate community of the receiving waters. Excess sediment loading is one of many parameters that is directly correlated with the benthic invertebrate community composition and structure.

Section: Attachment Subsection: B

Comment: What QA/QCand what monitoring data base will the tentative order require to ensure that the monitoring data collected by the Copermittees will be transferable and reasonably useful in analyzing the water quality of the watershed and analyzing the actions taken to improve the water quality of the watershed? (City of Encinitas)

Response: sufficient directives exist in Attachment B of the Tentative Order, in addition to the certification requirements of environmental laboratories in California under the Environmental Laboratory Certification Program, and in the American Water Works Association Standard Methods for the Examination of Water and Waste Water to provide the Copermittees with guidance and standards regarding quality assurance and quality control requirements. The Copermittees will be required under Tentative Order 2001-01 to submit for SDRWQCB review a Previous Monitoring and Future Recommendations Report which will address both quality assurance and the implementation of a Receiving Waters Monitoring and Reporting Program that identifies impairments resulting from the discharge of urban runoff and actions on the part of the Copermittees necessary to address those impairments.

Section: Attachment B **Subsection: Attachment B**

Comment: Attachment B implies, but does not state, a requirement for a year-round monitoring effort. This is true in two places; first, the title of section II of the Attachment is "Receiving Waters Monitoring Program – Year Round"; second, section V.D. states a requirement for estimation of pollutant loads both during wet and dry weathers. This issue must be clarified. If it is the RWQCB's intention to expand the Copermittees' monitoring obligations to year-round, the County asserts that this is unsupported by Federal regulations. (County of San Diego)

Response: Some elements of the Receiving Waters Monitoring Program (I.e. urban stream bioassessment and sediment toxicity) are best performed before and after the wet weather season rather during storm events. In addition, the Receiving Waters Monitoring Program also requires dry and wet season analytical monitoring of coastal storm drain outfalls. The SDRWQCB has the broad and specific legal authority cited in the Fact Sheet/Technical Report to require these elements of the Receiving Waters Monitoring Program.

Section: Attachment B **Subsection: Attachment B**

Comment: The Receiving Waters Monitoring Program objectives are too general and should be more specific. (City of Chula Vista)

Response: In order to provide the Copermittees with flexibility and discretion, the Receiving Waters Monitoring Program has been largely limited to general descriptions of program elements. During a meeting on August 18, 2000, the representatives of the Copermittees were shown the draft Receiving Waters Monitoring Program, including the requirement for the Previous Monitoring and Future Recommendations Report. The various elements of that program were discussed. The Previous Monitoring and Future Recommendations Report, to be submitted in August 2001, is expected to specify how these elements would be implemented and coordinated.

Section: Attachment B **Subsection: Attachment B.II.C.4**

Comment: Attachment B-4 II.C.4. – How often are the samples to be taken during the wet season and dry seasons? (City of Chula Vista)

Response: In order to provide the Copermittees flexibility and discretion to implement the Receiving Waters Monitoring Program, sampling frequency will be determined by the Copermittees following review of the Previous Monitoring and Future Recommendations Report.

Section: Attachment C **Subsection: B.6**

Comment: The proposed requirement to require Copermittees to report all non-compliance orally within 24 hours and in writing within 5 days is not supported by 40 CFR 122.44(I)(6). Although staff cite this section in support of a blanket 24 hour / 5 day reporting requirement, it is clearly limited to those events endangering health or the environment. First, all instances of noncompliance do not necessarily endanger health or the environment. Second, and more importantly, noncompliance in this instance refers to that of the Copermittee, not of third party dischargers within our jurisdictions (unless we determine that they endanger health or the environment). Copermittees are fully capable of determining when a violation is most appropriately referred to other agencies, including the RWQCB. The Copermittees have the discretion in determining when referrals of noncompliance should be made to the RWQCB. The proposed requirement to require Copermittees to report all violations orally within 24 hours and in writing within 5 days is impractical, would create a huge paper trail, and would have no benefit.

Non-compliance notification should be limited to major issues, otherwise much effort and resources will be spent without great water quality benefit. Are minute discharges required to be reported? Does the requirement refer to working or calendar days? How should violations that occur on weekends or holidays be detected and reported? Would it not be better to have comprehensive reporting of non-compliance and actions taken by Copermittee in the annual report? This section should also describe what actions Regional Board staff will undertake following the submittal of this information. (City of San Diego, SANDAG, Poway, La Mesa, County of San Diego, San Diego Co-permittees, Imperial Beach, Carlsbad, Chula Vista, Coronado)

Response: The language of Attachment C Section B.6 has been revised to require the Copermittees to develop criteria by which to evaluate events of non-compliance may pose a threat to human or environmental health. These criteria shall be submitted in the Copermittees Jurisdictional Urban Runoff Management Program Documents and Annual Reports. Events of non-compliance that are identified and evaluated by the Copermittees with these criteria and are found to pose a threat to human or environmental health must be reported by the Copermittees under the requirements of Attachment C, Section B.6.

Section: Attachment **Subsection: C.8.a**

Comment: Please provide a definition for "bypass" in Attachment D - Glossary. (Port of San Diego)

Response: "The term bypass, is defined in Attachment C.8(a), as follows

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

Section: Attachment Subsection: C.9

Comment: Please clarify if letters complying with Attachment C.9 reporting requirements need to be signed by either a principal executive officer or ranking elected official? (Port of San Diego)

Response: Reporting Requirement C.9(a)3 describes signatory requirements applicable to the Port of San Diego.

Section: Attachment Subsection: D

Comment: Should define "storm event". The definition should be the same as the Los Angeles County and Cities in Los Angles County (LA County) municipal permit definition. Where a "Storm Event"is a rainfall event that produces more than 0. I inch of precipitation and that which, is separated from previous storm event by at least 72 hours of dry weather. (Sempra Energy)

Response: Since the Tentative Order allows for various methods of calculating numeric sizing criteria, different definitions of storm event may apply. For this reason, the definition of storm event is left to the discretion of the Copermittees, to be included in the model SUSMP.

Section: Attachment Subsection: D

Comment: Pollution Prevention Definition Recommend revising the definition to: "practices and processes that recycle, reuse, reduce, or eliminate the generation of pollutants, in contrast to source control, treatment, or disposal." (Port of San Diego)

Response: The definition of Pollution Prevention is appropriate and is recommended to be retained in the revised Tentative Order. Although recycling and reusing are appropriate methods of managing waste, they are more characteristic of "treatment" rather than prevention. Pollution prevention refers to reducing or eliminating pollutant generating activities.

Section: Attachment D Subsection: Attachment D

Comment: A clear definition of the term "Maximum Extent Practicable" is essential to the selection and sizing of BMPs. An attempt should be made to define as dearly a possible "maximum extent practicable." Recommend providing definition for "maximum extent practicable."
Who determines when MEP has been achieved? (McKenna & Cuneo, L.L.P., SANDAG, Port of San Diego, Oceanside)

Response: The definition of the term "MEP" (Maximum Extent Practicable) in Attachment D Glossary is based upon and supported by direction from the Federal regulations and guidance, the

USEPA, and SWRCB. It is as narrowly defined as possible without prescribing for the Copermittees exact conditions. In order to provide the Copermittees with flexibility and discretion, the Tentative Order avoids as much as possible too prescriptive language in defining MEP.

In essence, the Copermittees are given the discretion, within an overall framework, to evaluate the totality of conditions and propose MEP in their Jurisdictional Urban Runoff Management Program Documents and Annual Reports, subject to review and comment by the SDRWQCB. Thus, both through the JURMP and an iterative BMP implementation process, the definition of MEP for a given set of circumstances is determined, after which, the Copermittees are responsible for determining and reporting that MEP is being met through implementation of BMPs under their JURMPs, and later, their joint WURMPS. Ultimately, the SDRWQCB is responsible for determining when MEP has not been met and taking appropriate action.

Section: Attachment D **Subsection: Attachment D**

Comment: B. Proposed Definition
We propose the following definition:
"Maximum Extent Practicable" (MEP) is achieved when:
The project proponent demonstrates that for each pollutant of concern a range of BMPs have been evaluated and one or more selected which together achieve the following criteria:
1. The project proponent selects BMPs designed to remove a significant portion of the mass of the pollutant of concern. (Note that this is a mass standard in harmony with the TMDL concept rather than a concentration standard.)
2. The addition or substitution of other BMPs would not yield a significant increase in mass removal rates at a cost less than or equal to 0.7% of the cost of the entire project. (McKenna & Cuneo, L.L.P.)

Response: The source of the definition in the tentative order is based on State Water Resource Control Board and U.S. EPA promulgated definitions. Regional Board staff is not recommending further modification to the definition in the tentative order.

Section: Attachment E **Subsection: Attachment E**

Comment: The collection and analysis of 2 samples per site in the Dry Weather Monitoring Program is unnecessary, will not produce significantly different results, be too expensive and should not be required for ponded water. Should the Board wish to retain multiple sampling within the new permit, we would recommend mixing the two samples and performing laboratory testing on the mixed sample only. The Copermittees should be permitted to submit a dry weather monitoring program for approval by the Regional Board based on threat to water quality rather than be required to implement a “blanket” monitoring program that ignores local conditions. (Nolte, D-Max, City of San Diego)

Response: The revised Dry Weather Monitoring Program requires only a single sample and provides more discretion on the part of the Copermittees to design and implement their Dry Weather Monitoring Programs subject to SDRWQCB review.

Section: Attachment E **Subsection: Attachment E**

Comment: The sampling frequency specified in the Analytical Dry Weather Monitoring Program (20% per year) is inadequate. The outfalls with no detected pollutants will not be investigated for the life of the permit. Due to the transient nature of non-storm water flow, there is no guarantee that these outfalls will be free of pollutants in the next dry weather season. This approach provides a snapshot of a limited number of outfalls at a single time. An effective program includes more frequent observations of the major outfalls within each municipality. This will provide a chronological data set, which reflects different activities within the drainage area. Some Copermittees currently perform two or more rounds of dry weather field screening sampling; the costs and other limitations of the Analytical Dry Weather Monitoring Program would limit the Copermittees to only one sampling per year. The scope of the Analytical Dry Weather Monitoring needs to be clarified with respect to the types of pollutants being identified and frequency of monitoring. The Copermittees should be allowed to design their own programs and submit them to the SDRWQCB for review. (D-Max, SANDAG)

Response: The Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is to encourage more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections.

Section: Attachment E **Subsection: Attachment E**

Comment: The SDRWQCB has not shown that it has the authority to require dry weather monitoring. The analytical monitoring effort (vs. field screening) and list of constituents are not supported by 40 CFR 122.26(d)(2)(iv)(B)(3). The Dry Weather Monitoring Program should remain a field screening program to identify illicit discharges and illegal connections and should not include analytical monitoring to characterize runoff. The costs of the analytical monitoring have not been considered by the SDWQCB. The Analytical Dry Weather Monitoring Program section should be deleted. (Procopio, Cory, Hargreaves, & Savitch, L.L.P., County of San Diego)

Response: The Tentative Order and Fact Sheet/Technical Report contain citations of the broad and specific legal authority of SDRWQCB to require a dry weather monitoring program. Some degree of analytical monitoring is necessary since the field screening test kits typically have high detection levels that fail to detect pollutants in any but the highest concentrations. The Dry Weather Monitoring Program has been revised to lower costs and provide greater discretion on the part of the Copermittees to design and implement it.

Section: Attachment E **Subsection: Attachment E**

Comment: The Analytical Dry Weather Monitoring Program as written will be too expensive for the Copermittees to implement. Laboratory costs are estimated between $1,000 and $1,300 per sample.

Further, 40 CFR 122.26(d)(2)(iii)(A) requires between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system. Anything beyond this requirement is clearly an unfunded mandate. Permitting Copermittees to design their own Dry Weather Monitoring Programs will still identify sources and locations of pollution, while eliminating unnecessary and costly monitoring. (D-Max, San Juan Capistrano, Pountney & Associates)

Response: The Dry Weather Monitoring Program has been revised to lower costs and provide greater discretion on the part of the Copermittees to design and implement it. The Dry Weather Monitoring requirement is a waste discharge requirement and not an unfunded mandate.

Section: Attachment E **Subsection: Attachment E**

Comment: Many of the requirements of the Analytical Dry Weather Monitoring Program provide the Copermittees too little flexibility to perform dry weather monitoring based on threat to water quality. The Copermittees present Dry-Weather testing is more effective. The Tentative Order be revised to allow the Copermittees to design (with justification) a Dry Weather Monitoring Program (number of sampling sites, frequency, and analysis) based upon their knowledge of the existing system and watershed information (business types, general land use, % impervious). This will reduce the cost of the program substantially and provide better coverage of the municipality outfalls. Limit the comprehensive laboratory analyses to the outfalls that indicate the potential for existing non-storm water pollution during the field screening program. Increase the frequency of outfall monitoring to assure that the major outfalls are monitored at least once per year. The field screening still could include pH, temperature, total chlorine, total copper, phenols, detergents and ammonia. The revisions should include a provision for Co-permittees to reduce sampling or delete a constituent test when there is “nondetect” historical data. (D-Max, San Diego Copermittees, Anonymous, City of San Diego, Poway, Chula Vista, La Mesa)

Response: The Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is to encourage more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections. The revisions do not include a provision for Copermittees to reduce sampling or delete a constituent test when there is “nondetect” historical data, because the dynamic and episodic nature of illicit discharges do not support a limited assessment that no future discharges or "detects" will occur at any given location.

Section: Attachment E **Subsection: Attachment E**

Comment: Sampling of ponded water twice over a four-hour period would be unnecessary duplication. It is suggested that ponded water be exempted from sampling. This will be a costly process which seems greatly to outweigh the benefits. It is more appropriate and reasonable for the Copermittees to be required to sample such ponded water once and analyze the samples based on sample location or other knowledge, such as land uses, historical information, etc. Water characteristics in ponded conditions during hot weather change drastically within a few hours. Presence or absence of pollutants in ponded

water does not necessarily correspond to the discharge of polluted water or vice versa. (City of San Diego, Chula Vista, San Diego Copermittees)

Response: The requirement to collect and analyze two samples was derived from the Federal NPDES regulations. The Dry Weather Monitoring Program has been revised to require only a single sample. The Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is to encourage more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections. However, the requirement to sample ponded water remains in the Tentative Order. It is the responsibility of the Copermittees to determine the source of water impounded in their respective MS4s. There is no reason that an illicit discharge cannot appear within the MS4 as ponded water and only monitoring can determine the nature of the impounded waters. Otherwise, contaminated water ponded within the MS4 may be discharged to receiving waters and cause or contribute to an exceedance of receiving water quality objectives or a constitute a threat to human or environmental health.

Section: Attachment E **Subsection: Attachment E**

Comment: The requirement for analytical monitoring of 31 parameters exceeds the SDRWQCBs authority to require dry weather field screening to detect illicit discharges and will result in a very expensive program and would not likely provide any more valuable information. The Dry Weather Monitoring Program should be designed by the Copermittees for review by the SDRWQCB and should require only the constituents in 40 CFR 122.26(d)(2)(iii)(A)(3). Residential versus commercial or industrial testing will need to have different parameters. The list of constituents be consistent with 40 CFR 122.26 (d) (2) (iii) (A) (3)"Total suspended solids, total dissolved solids, COD, BOP, oil and grease, fecal coliform, fecal streptococcus, pH, total kjeldahl nitrogen, nitrate/nitrite, dissolved phosphorus, total ammonia plus organic nitrogen and total phosphorus." The full range of laboratory testing of these samples should only be required if the source and the pollutants in the flow can not be reasonably determined. Placing emphasis on frequent field screening and more extensive upstream investigations will be more effective than comprehensive laboratory testing. It is suggested that the list of 27 laboratory tests be provided as suggested tests to be performed in the case of suspect discharges as determined from field observations, field screening tests, and upstream land use, etc.
Clarification is needed on whether in subsequent years the analytical monitoring is to be carried out only on the constituents that exceeded criteria in previous tests, or all 27 tests will need to be repeated. In the latter case what is the reason? (San Diego Copermittees, Port of San Diego, Poway, Imperial Beach, Chula Vista, County of San Diego, La Mesa, IEA)

Response: The Analytical Monitoring requirement of the Dry Weather Monitoring Program was suggested by staff from County of San Diego as a proposed improvement to the field screening techniques, which have the potential to fail to detect constituents that increased flow and dilution from other sources has masked. Nonetheless, the Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is to encourage more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections. The SDRWQCB has the broad and specific legal authority cited in the Fact Sheet/Technical Report to require a dry weather monitoring program.

Section: Attachment Subsection: E

Comment: Can the definition of "dry weather" be changed to include storms with rainfall at a lower precipitation rate such as 0.60" to 0.10" of rain which can produce urban runoff? (Wilkins, George)

Response: The definition of dry weather runoff is based on an antecedent dry period of 72 hours. Regional Board staff do not recommend changing the definition in the Tentative Order.

Section: Attachment Subsection: E

Comment: The Order does not specify which criterion is preferred for selecting the number of monitoring stations, whether it would be based on the municipality classification (large, medium or small) or classification based mainly on the interrelationships with the neighboring cities. (D-Max Engineering)

Response: The Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program, including the selecting the number and location of sampling stations, subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections.

Section: Attachment Subsection: E

Comment: Attachment E does not specify the dry weather period. Previously, the dry weather period had been defined as the period from May 1 to September 30. (D-Max Engineering)

Response: The Dry Weather Monitoring Program has been revised to specify a dry weather period of May 1st to September 30th of each year. Nonetheless, the Copermittees are encouraged to evaluate year-round dry weather flows since illicit discharges in San Diego are not limited to summer months.

Section: Attachment Subsection: E-4

Comment: 2 grab samples, 4 hours apart in a 24 hr period. Are they analyzed separately or combined? (Anonymous Workshop 1)

Response: The Tentative Order requires separate collection and analysis of 2 samples 4 hours apart at each Dry Weather Monitoring Site. The purpose of 2 sampling events on the same day is to address daily changes in flow resulting from illicit discharges from businesses and residences.

Section: Attachment Subsection: E.2.f

Comment: If co-permittees and other municipal separate storm sewer system municipalities use the grid system that the State Plane Coordinate System, NAD83 be used as the baseline grid anchor. Following this system will allow municipalities to interface their data and will be useful in the watershed coordination efforts. (Port of San Diego)

Response: The Dry Weather Monitoring Program has been revised to permit greater discretion for the Copermittees to design and implement their own program subject to SDRWQCB review. The emphasis in the revised Dry Weather Monitoring Program is more frequent and widely distributed sampling on an annual basis to facilitate the detection and elimination of illicit discharges and illegal connections. The Copermittees are strongly encouraged to collaborate in developing and implementing their Dry Weather Monitoring programs to allow interfacing of the data and be useful for watershed coordination efforts.

Section: Attachment E Subsection: Attachment E

Comment: The City also questions the requirement that it submit dry weather monitoring maps and procedures and implement the dry weather monitoring program within 180 days of the adoption of the Tentative Order. These deadlines are unrealistic and likely unachievable. The City recommends instead that it first develop a more appropriate and reasonable dry weather program based on threat to water quality, which also includes a reasonable implementation schedule, and submit the program to the Regional Board for its review. (City of San Diego)

Response: The Dry Weather Monitoring implementation schedule was based on the existing requirement under Order 90-42 for dry weather field screening, which under Federal regulations, included developing a map of each Copermittees' MS4. With the benefit of ten years dry weather monitoring experience, the submittal of dry weather monitoring maps and procedures and the implementation of the Dry Weather Monitoring Program within 180 days is not unrealistic or unachievable. Under the revised Dry Weather Monitoring Program in Attachment E of the Tentative Order, the Copermittees are provided increased flexibility and discretion to develop a program and submit it for SDRWQCB review and comment. The submittal and implementation timeline for this requirement, however, is not recommended to be extended.

Section: Attachment E Subsection: Attachment E.2.b

Comment: Attachment E-1 2.b. – How can a Copermittee establish a monitoring station if the MS4 is underground and not accessible in the cell requiring a station? (City of Chula Vista)

Response: As stated in the Tentative Order, the Copermittees shall locate dry weather analytical monitoring stations within its jurisdiction "...either at major outlets or other outfall points (or any other point of access such as manholes)…"

Errata Sheet for Response to Comments Document for Order No. 2001-01 (San Diego Municipal Storm Water Permit)

Additional Comments and Responses:

Section: Multiple **Subsection:** Multiple

Comment: The new requirements imposed by the Tentative Order may have a greater incremental impact on the County than on some other Copermittees because it would apply for the first time to rural parts of the County that were explicitly excluded from Order 90-42, which applied only to those parts of the unincorporated area of San Diego County that were within the Urban Limit Line. Much of the unincorporated area in San Diego County is undeveloped, rural, or agricultural in character. Subsurface storm sewers exist only in a handful of developed areas, and most stormwater is conveyed in natural stream-beds. This early imposition of requirement is ill-advised, because it will divert limited County resources from urban areas and urban programs during a difficult transition period. Because this early imposition of requirements is also obviously not based on federal law and regulations, it is a state mandate for which state funding must be provided.

Order 90-42 did not define "Urban Limit Line." Two plausible definitions exist. One approach would be to include within this line the Current Urbanized Development Area (CUDA) and Future Urbanized Development Area (FUDA) as defined in the County General Plan. A second approach would be to apply the U.S. Bureau of the Census "Urbanized Area" line for the San Diego metropolitan area. The Census definition reaches the "urban fringe" as shown by census tract data. The FUDA definition reaches rural areas identified for future development that may not yet be densely settled on a census tract basis. The Census approach is used for some purposes in U.S. EPA's Storm Water Phase II Final Rule (64 Federal Register 68721 et seq, December 8, 1999).

These circumstances raise two legal issues: (1) whether, under U.S. EPA's Phase II stormwater regulations the SDRWQCB can bring rural parts of the County under an NPDES municipal stormwater permit; and (2) if so, when the requirements of this expanded NPDES permit can be made applicable to rural parts of the County. Under these Phase II stormwater regulations, the RWQCB can bring a rural part of the County under a municipal stormwater permit if the MS4 in that rural area is physically connected to an MS4 that is already regulated under an NPDES municipal stormwater permit. But, in most of the rural parts of the County MS4s do not exist. Stormwater in these areas is conveyed in natural streams that were not constructed by and are not owned, controlled or maintained by the County. These streams are waters of the state, not MS4s. The RWQCB could also bring these rural areas under an NPDES permit after determining based on designated criteria that stormwater discharges from the rural MS4 (if an MS4 exists) would cause or have the potential to cause water quality problems. The RWQCB, however, has not developed these criteria, done this study, or made this determination.

The Clean Water Act (§ 402(p)(4), states that municipal stormwater permits shall "provide for compliance as expeditiously as practicable, but in no event later than three years after the date of issuance of such permit." Similarly, EPA's Phase II regulations provide for newly regulated systems to obtain permit coverage by March 10, 2003. The Order, in contrast, requires programs to be up and running in all parts of the County in 180 days. Requiring compliance with this permit that soon in all parts of the County is not "practicable," and therefore is illegal.

Therefore, as a matter of law any requirements imposed on the County by a revised Order, to the extent they apply outside the "urbanized area" of San Diego as defined in U.S. EPA regulations, are based exclusively on state law. Those requirements would therefore be state mandates, for which state funding must be provided.

If the Order is not substantially amended for all Copermittees, a separate Order with substantially different terms should be issued to the County. The Clean Water Act and U.S. EPA implementing regulations recognize that urban and rural stormwater problems are different. Most of the unincorporated area of the County is rural, and most of that area is not presently subject to Order 90-42.

These facts place the County in the position of legitimately asking for terms, compliance schedules, and/or exclusions from the Order that the SDRWQCB may be reluctant to extend to other copermittees. The County continues to believe the best cure for weak local stormwater programs is regional cooperation, assistance, and leadership, not an overly prescriptive Order. The County is ready to do what is needed to help other Copermittees improve their stormwater programs, provided the Order is amended to delete requirements the RWQCB cannot legally impose, to provide sufficient flexibility to Copermittees, and to provide sufficient time for compliance. If the Order is not amended in this way, the County demands that it be issued a separate permit, that takes proper account of expanded scope of this Order, and of the rural nature of most of the unincorporated portion of the County. (County of San Diego (1), County of San Diego (2), County of San Diego (3))

Response: A municipality's responsibility for discharges of storm water and urban runoff in its MS4 must be coextensive with the municipality's jurisdiction to regulate such discharges. Discharges of storm water that are not within a municipality's jurisdiction or that are not tributary to a municipality's MS4 may be subject to other water quality control requirements, but may not impose upon the municipality any regulatory obligation under these requirements. However, the commentor is incorrect to assert that a municipality should not be responsible under the requirements for discharges to natural drainages that are used as part of the municipality's MS4, regardless of the "ownership" of such a natural drainage or stream. The determination of whether or not a particular natural drainage or urban stream channel is or is not part of the municipality's MS4 depends on the particular circumstances of the channel and the municipality's urban runoff management practices. If municipalities rely on natural drainage channels or urban streams to collect and convey urban runoff and storm water to or from an MS4,

they should be recognized as components of the municipality's MS4; the municipality would be required to reduce pollutant discharges therein to the maximum extent practicable. Application of requirements for discharges of storm water in MS4s to natural drainages and urban streams does not "transform" such drainages and streams to MS4s; however, it does reflect the fact that the Regional Board recognizes the water quality consequences of municipalities' reliance on such drainages and streams for the management of storm water and urban runoff, and the environmental impact upon such drainages and streams as a consequence of the increased flows therein associated with urban development and land use under the planning and regulatory authority of municipalities.

The Tentative Order does not implement Phase II Federal NPDES regulations. Tentative Order 2001-01 implements the 1990 Federal Phase I NPDES regulations. In the Preamble to the 1990 Federal Rule, the USEPA notes:

"EPA recognizes that some of the counties addressed by today's rule have, in addition to areas with high unincorporated urbanized populations, areas that are essentially rural or uninhabited and may not be the subject of planned development. While permits issued for these municipal system discharges in unincorporated portions of the county, it is the intent of EPA that management plans and other components of the programs focus on the urbanized and developing areas of the county."

The Jurisdictional Urban Runoff Management Program (JUMRP) Document, to be submitted by the County of San Diego as a Copermittee under Tentative Order 2001-01, does not have to include requirements that would implement Phase II NPDES regulations in unincorporated rural areas. Rather, the Tentative Order seeks to recognize and require extension of the JURMP to those specific parts of the unincorporated County of San Diego that are now or will plausibly be urbanized during the term of the Tentative Order. Significant growth is occurring in the previously rural northern, eastern and southern parts of the County that will result in significant urban runoff discharges to inland rivers, streams, and municipal drinking water supply reservoirs. For example, as published in the San Diego Union Tribune November 24, 2000, SANDAG projects the population of Alpine will grow from 15,368 to 30,273 by 2020. This is six times the size of the City of Del Mar. By 2020, the populations of Ramona and Valley Center are expected to grow to 60,000 and 45,853, respectively. By 2020, under the current San Diego County General Plan, approximately 850,000 people will live in the unincorporated parts of the county. A significant percentage of that growth can reasonably be predicted to occur during the term of the Tentative Order and the even greater percentage of future growth will be effected by how the County of San Diego implements the Tentative Order. The requirements of the Tentative Order 2001-01 Jurisdictional Urban Runoff Management Program, appropriately and legally applied to existing and planned new development, will ameliorate the impacts of urban runoff discharges in presently rural areas. This is not an unfunded mandate intended to be indiscriminately applied by the County throughout the urban and rural county at enormous cost in advance of the Phase II NPDES federal regulations. The Tentative Order implements Phase I NPDES regulations, but is consistent with the Phase II NPDES regulations. As described above,

the County is responsible for implementing Tentative Order 2001-01 with respect to discharges to and from demonstrable MS4 systems operated in the unincorporated county. The County of San Diego is correctly and necessarily identified in Tentative Order 2001-01 as a Copermittee.

Section: F.3 **Subsection:** F.3.a.5.c

Comment: F.3.a.(5)(c) [Maintenance of Municipal Separate Storm Sewer System] (Municipal) The definition of accumulated waste includes sediment. The definition of accumulated waste should not include sediment. It is no value to remove all sediment from roadway culverts as they are a small part of a natural drainage system. In fact, roadway culverts that convey stormwater in a natural watercourse under a road or highway should be exempt. This would also apply to streams. (County of San Diego)

Response: Section F.3.a.5.c does not require the removal of all accumulated waste in all instances. Therefore it does not require removal of all sediment. However, sediment is a frequent cause of receiving water impairment within the region. Therefore, in cases where large deposits of sediment exist which were generated by man-made activities, this accumulated sediment should be removed. Since roadway culverts are part of the Copermittees' MS4s, accumulated waste should be removed from them in a similar manner as from rest of the Copermittees' MS4s.

Section: F.3 **Subsection:** F.3.a.5.c.ii

Comment: "F.3.a.(5)(c)(ii) Additional cleaning as necessary between October 1 and April 30 of each year;" - "as necessary" is ambiguous. Does this mean we would be required to inspect the entire MS4 in the off-season to determine whether additional cleaning is necessary? (County of San Diego)

Response: The term "as necessary" is included in section F.3.a.5.c.ii to provide the Copermittees discretion and flexibility in determining when additional cleaning should be conducted.

Section: F.3 **Subsection:** F.3.a.5.c.iv

Comment: F.3.a.(5)(c)(iv) Proper disposal of waste removed pursuant to applicable laws. This section inappropriately places additional liability on Copermittees for violations of existing laws. These "second tier" violations could carry significantly more severe penalties than do the original laws they duplicate. The County recommends deletion of this section. If the RWQCB staff wish to remind Copermitees of the need to

comply with waste disposal laws, they should do so in the Technical Report. (County of San Diego)

Response: Language in the Tentative Order regarding proper disposal of waste is included in order to ensure that the waste is not discharged in a manner which will result in the waste re-entering an MS4 or receiving water. Therefore, requirements for proper disposal of waste are applicable to the Tentative Order and will remain in the Tentative Order.

Section: F.3 **Subsection:** F.3.a.8

Comment: F.3.a.(8) Enforcement of Municipal Areas and Activities - What is the meaning of this section? Is it the RWQCB's intention that Copermittees would take enforcement actions against their own employees? The section is ambiguous, and is not supported by the findings, by existing evidence, nor by law. (County of San Diego)

Response: Section F.3.a.8 requires municipalities to enforce their storm water ordinances for all municipal areas and activities. This can apply to municipal areas which are open to the public, such as parks and streets. Enforcement in these areas may be necessary due to their heavy use. In addition, municipalities should ensure their employees comply with storm water ordinances. If their employees are not complying with the ordinances, some form of enforcement may be necessary, such as warnings, reprimands, etc.

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