The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553-1293

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra
Costa
County

John Cullen
Clerk of the Board
and
County Administrator
(925) 335-1900

February 26, 2008

John Muller, Chair
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Municipal Regional Permit (MRP) Tentative Order Comments

Dear Mr. Muller:

This letter is written in response to the draft Municipal Regional Permit Tentative Order (MRP) released by the San Francisco Bay Regional Water Quality Control Board (RWQCB) on December 4, 2007, and then revised on December 14, 2007. The purpose of this letter is to convey comments and concerns that the Contra Costa County Board of Supervisors has with regards to the MRP, and how it may adversely affect the citizens, businesses and government of Contra Costa County.

The County strongly supports the RWQCB's overarching goal to improve water quality and embraces overall principles of environmental sustainability. Achieving water quality goals in the MRP must be reviewed in the context of meeting the County's total responsibilities, such as smart growth, affordable housing, and protecting the health and safety of our citizens. The County must be able to protect and improve the natural environment in a sustainable fashion that does not jeopardize our other responsibilities and goals. We would like to work with the Regional Board to meet water quality goals in the most cost effective manner.

We estimate the cost to implement the MRP in our unincorporated communities to be $75 million over the next five years (our current revenue source for the County's NPDES program generates about $3 million per year). For Fiscal Year 08/09, the State is facing a $14 billion budget shortfall and the County shortfall is projected to be $60 million. Given our limited ability to generate funding, the high cost of implementing the MRP will result in an even more drastic reduction of services to our citizens.

The Regional Board should not be promulgating such costly regulation without providing offsetting funds. Without additional funding, local government will be forced to reduce safety, health and other programs, which will not be acceptable alternatives for our citizens. We are sure this is not what the RWQCB intends. We request the Regional Board lead the effort to develop the funding sources necessary to implement the MRP and work collaboratively with us on an implementation schedule as funding is developed.

Some provisions in the MRP are in conflict with public safety standards. One example of this is the required design or redesign of rural roads. The MRP requires that rural road standards be revised to specify that stormwater discharges uniformly across the road and not be concentrated in roadside ditches and cross-culverts. This sounds innocuous. However, this redesign puts the traveling public at risk by encouraging road designs that would cause vehicles to hydroplane on the resulting layer of stormwater. This provision of the MRP also requires that roads be "regraded to slope outward". This design would result in a centrifugal force (as a vehicle rounds a corner) that could "push" the vehicle off the road. Good road engineering would instead use super-elevation (cross-slope roads towards the inside of curves) to counteract centrifugal forces and drain water off the roadway helping to keep the vehicle safely on the road. This is one example of how these regulations do not take into account all ramifications, including public safety, and conflicts with accepted standards (in this instance CALTRANS).

We want to work together with the Regional Board to meet water quality goals with the most cost effective expenditure of public funds. Give us the water quality goals and allow us to work with you to develop the most effective implementation measures. In the example above, if the goal is to reduce sediment loading and reduce flow velocities, this could be accomplished by installing asphalt berms to direct the flows to flat broad ditches where the sediment can drop out, or building roadside ditches with small check dams to create "steps" for the silt to settle, or directing the flows to stilling basins prior to discharge into the creek, or a myriad of other possibilities depending on the circumstances in the field.

The county and cities of Contra Costa are deeply concerned about the MRP as it is currently written and will be commenting to the Regional Board through various organizations. We are encouraged, however, that this MRP will be administered on a regional basis. By applying the same regulations to all the Phase I communities in the San Francisco Bay Area, it is hoped that we may tackle some of these issues on a regional basis with regional solutions, regulations and legislation.

Contra Costa County is supportive of the water quality improvement goals of the RWQCB and the MRP and looks forward to working with the RWQCB to refine the MRP to meet its water quality goals in a manner that facilitates permit implementation. Contra Costa County will continue to protect and enhance our natural environment, while sustaining the health and well being of our communities, to the maximum extent our resources allow.

Thank you for the opportunity to comment on the MRP. Please see attachments A and B for more detailed comments.

Sincerely,

Supervisor Federal Glover, Chair
Contra Costa County Board of Supervisors

RL:jj:lz
G:\FldCtl\NPDES\PERMIT\MRP Letter BOS to SFRWQCB\MRP comment letter BOS to SFRWQCB 2-26-08.doc
Attachments: General Comments (Attachment A)
Specific Comments by Provision (Attachment B)

c: Dale Bowyer RWQCB
John Cullen, County Administrator
Carlos Baltodano, Building Inspection Director
Dennis Barry, Community Development Director
Silvano Marchesi, County Counsel
Robert Kochly, District Attorney
Michael Lango, General Services Director
Dr. William Walker, Health Services Director
Edward Meyer, Agriculture Department Commissioner/Director
M. Shiu, Public Works Director
J. Bueren, Chief Deputy Public Works Director
M. Avalon, Deputy Public Works Director
P. McNamee, Deputy Public Works Director
S. Kowalewski, Deputy Public Works Director
B. Balbas, Deputy Public Works Director
M. Carlson, Transportation/Engineering
G. Connaughton, Flood Control
K. Emigh, Construction
K. Freitas, Airport
M. Hollingsworth, Design
G. Huisingh, Engineering Services
K. Law, Real Property
J. Yee, Maintenance
Don Freitas, Clean Water Program
Tom Dalziel, Clean Water Program
Rich Lierly, CWP
Charmaine Bernard, CWP
David Swartz, CWP
Michele Wara, Administration

Attachment A

General Comments

The County is required to function in an environment of ever-increasing and frequently conflicting regulations. We are often faced with situations in which government regulations are drafted with a very narrow focus, and conflict with other regulations. Our current National Pollution Discharge Elimination System (NPDES) permit contains "safe harbor" language, which provides that the County will not be held responsible for non-compliance if that non-compliance is a result of adhering to competing regulations. We are very concerned that this MRP does not include similar "safe harbor" language, and request that such a provision be included in the MRP.

The draft MRP requires the County to conduct many scientific studies that go beyond the County's core mission, and the experience and expertise of municipal staff. This includes the required Source Control Evaluation Study, PCB Sampling and Analysis Plan, Fate and Transport Studies, Brake Pad/Desktop Study, Copper Toxicity Study, PBDE Legacy Pesticides and Selenium Regional Study, and many others. These are in addition to the overwhelming requirements of the Urban Creeks Monitoring Report and Integrated Monitoring Report. The County has neither the staffing capacity nor the funding to conduct all of these specialized studies. In addition, many of these studies appear to be precursors to development of Total Maximum Daily Loads (TMDLs), which have historically (and more appropriately) been functions of the RWQCBs

The County objects to the degree to which the MRP's "tabular annual report" will increase the effort required for reporting and documentation, without a corresponding benefit to water quality. Under our current NPDES permit, approximately 20% of our available funds are spent in reporting and administering the provisions of the permit. County environmental staff spends two months each year preparing the voluminous annual report required by the permit. This MRP expands the reporting and documentation requirement substantially, and requires an overly-prescriptive format that will require wholesale changes to County record-keeping, and will cause the County to incur additional costs that are unlikely to improve water quality in any way. This time and money could be better put to use improving our environment, rather than on complex documentation processes.

Businesses in the County already find it extremely expensive and burdensome to comply with the many levels of governmental regulation (Federal, State and local) imposed on them. As a result of these often confusing, conflicting, and expensive governmental regulations, many businesses leave our County, the State, and even the Nation. This MRP will add yet another set of regulations (some in conflict with existing regulations). We are concerned the increased burden on local businesses that will result from the MRP will cause more businesses to leave our County.

With this MRP in place, the County will be required to significantly increase its oversight of the business community even though multiple agencies are already mandated to perform regular environmental inspections (Department of Toxic Substances Control, Regional Water Quality Control Boards, Air Quality Management District's) and public safety inspections (Fire Districts, Health Department). Currently, the responsibility (and established fees) for inspection of businesses that are issued waste discharge requirements lies with the RWQCBs. The MRP proposes to shift the responsibility to for inspecting these businesses to local government, but does not make any of the RWQCB's fee revenue available to offset the costs. The County anticipates problems recovering inspection costs through imposition of additional fees on businesses that already pay inspection fees to the RWQCB.

In 2003, the RWQCB revised the County's NPDES permit to amend provision C.3. These C.3 requirements went into effect in February of 2004. Due to the nature of the development process, the first batch of developments being built in compliance with C.3 is just being completed. The implementation of the amended C.3 provision is still in its infancy, and has yet to be thoroughly evaluated. The MRP should not expand upon those regulations until their efficacy is demonstrated.

The draft MRP has a multitude of new requirements for the County. Aside from several extensive and problematic provisions, many provisions by themselves are manageable. However, when all of these individual manageable provisions are put together, the cumulative effort becomes unreasonable. The County only has so much capacity for performing work within each given year; protecting and improving water quality is only one facet of the County's functions. The RWQCB must prioritize and require the County to perform only the most important provisions, and eliminate or take on the lower priority provisions themselves.

GENERAL RECOMMENDATIONS:

- The MRP should provide over-riding language that allows the County the flexibility to propose alternative methods of meeting the intent of any particular provision, as long as RWQCB staff approves the alternative means of compliance.

- The RWQCB must prioritize provisions of the MRP and require the County to perform only the most important provisions. The RWQCB should either eliminate the lower priority provisions or the RWQCB should take them on themselves.

- The RWQCB, not the County, is the appropriate agency to develop TMDLs. The RWQCB should continue to use its staff's expertise to do this work, and continue to coordinate such work with other appropriate State agencies.

- The MRP should include the "Safe Harbor" language that exists in the current permit to protect the County from any non-compliance that may result from conflicting and/or confusing regulations.

- Since the cost to comply with this MRP could have significant negative impacts on the County's budget, the RWQCB should allow the County to develop the necessary funding before requiring the County to comply with the significantly enhanced and costly requirements. The RWQCB may also assist the County with development of this funding.

- Since the California State government (and, as a result, the County) is in a budget crisis, implementation of this MRP should be delayed until both the State and the County are able to absorb the significant new costs that will result from the MRP.

- We request the RWQCB direct their staff to meet with County and city staff to understand how some MRP provisions may conflict with public safety standards and how the regulations can be crafted to allow cost effective implementation.

- We request the RWQCB consider the more detailed comments in Attachment B, regarding specific provisions (in addition to these general comments).

RMA:lz
G:\FldCtl\NPDES\PERMIT\MRP Letter BOS to SFRWQCB\MRP Attachment A - 2-26-08.doc

Attachment B

Specific Comments by Provision

C.2 - MUNICIPAL OPERATIONS

C.2.a STREET AND ROAD SWEEPING AND CLEANING

The County currently sweeps all publicly-maintained curbed streets once a month. The MRP will require a significant increase in sweeping area and frequency. The MRP requires that all public streets (curbed or not) and public parking lots (libraries, hospitals, offices, etc.) be swept. Due to the designs of many of these parking lots, our current trash collection services (including hand sweeping) performed by our General Services Department and Probation Department's Juvenile Work Program provide more effective pollution prevention, but would not meet the requirements of the MRP. As with many sections of the MRP, there needs to be flexibility that allows alternative means of accomplishing the overall purpose.

The MRP requires other increased activities such as manual litter collection, where street sweeping is infeasible. Due to the remote and disconnected nature of many high litter areas in the County, such as Vasco Road, a implementation date of August 1, 2009 is requested in order to ramp up our existing sweeping/litter clean-up operations.

The County is extremely concerned that the MRP may require sweeping of private streets and parking lots (which are not explicitly excepted by the permit language). This is unacceptable - the County may not have the legal authority to conduct such activities. County road repairs and public health and safety services should not be scaled back in order to fund the expansion expand street sweeping service to private property areas (and assume related liabilities); moreover, sweeping of private roads with public funds may not be legally permissible, as it would constitute a gift of public funds.

C.2.g STORMWATER PUMP STATIONS

It may not be possible to comply with the requirement to eliminate all non-stormwater discharges from the pump station. This provision (in conjunction with **C.11.f**) appears to imply that eliminating discharges of non-stormwater is to be accomplished by pumping to the sanitary sewer, which may not be accepted by the local Sanitary District.

C.2.h RURAL PUBLIC WORKS CONSTRUCTION AND MAINTENANCE

The new section of the MRP poses substantial problems for the County, especially since we have hundreds of miles of rural roads (much of which is isolated or non-contiguous). Unless significant additional sources of funding are developed, this will result in a reduction of road maintenance projects (which will cause an increase in deferred maintenance and a reduction in public safety). At current funding levels, it is estimated

that this provision will result in an approximately 25% decrease in the total scope of rural road maintenance projects.

Since human health and safety will always remain the highest priority for the County, portions of this section are unacceptable. For example, **C.2h.ii(3)(a)** requires that roads be "re-graded to slope outward". In many instances this is contrary to road engineering safety standards and in conflict with State and Federal Highway standards. The County will not redesign roads to prioritize water quality over human safety. The parenthetical statement "(where consistent with road engineering safety standards)" should be added to the end of this provision.

Some of the language of this provision is unclear and requires further clarification including the pre-rainy season inspection program for rural roads (**C.2.h.ii(2)(f)**), increased maintenance on rural roads adjacent to streams and riparian habitat (**C.2.h.ii(3)(a)**), and the requirement for rehabilitation of existing culverts and bridge crossings(**C.2.h.ii(3)(b)**).

C.2.i CORPORATION YARD BMP IMPLEMENTATION

As stated in this section "The requirements in this provision shall apply only to facilities that are not already covered under the State Board's Statewide Industrial Stormwater NPDES General Permit." This language implies that the County's three Corporation Yards (in Martinez, Richmond and Brentwood) do not have to comply with the requirements of this section, since they are already covered under the General Industrial NPDES Permit (due to their Motor Freight and Transportation Warehousing NAIC code). If the above-noted inference is correct, than this provision is acceptable.

C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

Although the County generally embraces the C.3 requirements in the draft Tentative Order MRP, several specific changes are recommended. Also, several areas are unacceptable or require clarification.

C.3.a.i(8)/C.3.a.ii: The timetable for requiring General Plan amendments is unrealistic. Change implementation date (C.3.a.ii) to July 1, 2009.

C.3.b.i(1 and 3): Compliance with the "50% rule," which requires projects redeveloping more than 50% of the existing impervious surface to treat 100% of stormwater runoff (including runoff from existing impervious surface that are not affected by the project) is not feasible for all redevelopment projects. Some of these projects would be effectively prevented by this language, as for some sites the existing topography (or other site conditions) would render treatment of existing impervious surfaces to be cost prohibitive. Language should be added allowing projects to exclude the requirement for runoff from existing impervious surfaces (that are not redeveloped as part of the project) from treatment, where infeasibility of treatment is demonstrated.

This would not exacerbate impacts to water quality impairment, as excluding such areas would have no effect on water quality, and the existing language might prevent projects from being completed that would otherwise provide water quality benefits.

C.3.b.i(1 and 4): Unacceptable to change benchmark for "grandfathering" compliance under old permit from "deemed complete" to "received final discretionary approval." The "deemed complete" benchmark should be retained. Changing this distinction to "received final discretionary approval" would negatively affect projects that have yet to receive final discretionary approval, but have been deemed complete prior to the effective date of C.3 (existing permit), as well as projects that have been working toward being deemed complete. This would require the County to modify recommended conditions of approval for projects that have already received final recommended conditions but have not been granted final discretionary approval, and to require compliance for projects that had been "grandfathered" under the current permit. This may not be consistent with the Permit Streamlining Act. It is likely that this change would cause projects to be withdrawn that have merit and are consistent with the provisions of the current permit, and would cause unnecessary redesigns, delays, and expense to developers.

Also, the change in the "grandfathering" benchmark for public projects from "funding committed and scheduled by" to "funding committed and scheduled *to begin* by" will dramatically increase the cost of projects that are designed, funded and scheduled, but fall between these two distinctions. It may result in a reduction in road projects that are necessary for public safety, or cause severe delays and cost increases; it is therefore contrary to the best interests of the public. The current language should be retained (excluding the words "to begin").

C.3.b.i(4): Requiring runoff from bicycle lanes and trails to be treated by permanent stormwater management facilities seems inconsistent with some goals of the NPDES permit. Encouraging these alternative modes of transportation (bicycle and pedestrian) reduces the need for paving elsewhere, and eliminates introduction of pollutants associated with automobiles. This requirement is likely to result in a reduction in the development of trails and bicycle lanes. A requirement for these amenities to be developed with materials more pervious than concrete/asphalt would be a more appropriate requirement (with a proviso: "where the trail/bicycle lane is not contiguous with road pavement, and more pervious materials are consistent with ADA regulations").

C.3.b.i(5): It is not entirely clear that intent is to reduce the threshold for requiring road expansion and rehabilitation projects to install permanent stormwater management facilities from 10,000 to 5,000 square feet of impervious surface. There are differences between the language in the "effective date" paragraph in this section and the analogous paragraph in section C.3.b.i(1) that imply that this is not the intent. If this is not the intention, this reference (to 5,000 square feet) should be removed. If

the intention is to reduce this threshold, than this is not appropriate, and should be removed. These types of retrofits are extremely costly, will reduce road maintenance projects (which do not exacerbate water quality impairment), and offer far less "bang for the buck" than other types of projects. It is not always feasible to provide treatment for these projects, especially where there is existing development on both sides of the right-of-way. It does not make sense to reduce the threshold for this type of project. The existing threshold should be retained, and permit language should facilitate providing equivalent off-site treatment (or regional facilities) for this type of project.

C.3.b.i(5)(a): This language is not clear. It is assumed that "from the gravel base up" is inclusive of removal and replacement of the gravel base.

C.3.c.i(2)(b): The requirement to minimize impervious surface should add the language: "consistent with zoning and building regulations, and consistent with good planning practices". While minimizing imperviousness is a legitimate that is embraced by the County, the degree to which this can be required varies. Other provisions require runoff from impervious areas to be mitigated, so a strict requirement to minimize imperviousness is not necessary.

C.3.c.i(2)(e): More pervious paving materials are sometimes inconsistent with fire district regulations. The following proviso should be added: "where consistent with fire district requirements."

C.3.e: Alternative compliance should be allowed for a wider range of types of projects, upon demonstration of infeasibility of compliance with provisions C.3.b and C.3.d.

C.3.e.i(3)(b): The referenced Government Code Section (65589.5(h)(3)) states, "housing for very low, low-, or moderate income households" means that at least **20%** of the total units shall be sold or rented to lower income households, or 100% of the units shall be sold or rented to moderate-income households." The County recommends that this low income housing definition coincide with the California Redevelopment Law requirement of 15%, as stated under Government Code Section 33413 subdivision (b)(2)(i), which is consistent with the County's 15% Inclusionary Housing Ordinance requirement (Section 822-4.402(a) of the County Ordinance Code). The current language provides something of a disincentive to provide affordable housing in accordance with County regulations. Modifying the percentage to meet existing California Redevelopment Law (and the County's current Inclusionary Housing requirement) may provide an incentive for developers to build affordable units.

C.3.e.i(3)(d)(footnote 2(ii)): Land uses are subject to change after a project is established. This section should add language indicating that the parking ratios should be required for the designed occupancy. It will not be feasible to require that changes

of lessees be required to maintain the same use (i.e. restaurant-occupied spaces be required to only be used as restaurants).

C.3.e.i(4)(a)(footnote 3): "Purchase and preservation, by deed instrument, of natural/pervious area" should be offered as an additional option for equivalent offsite treatment should be added, with an appropriate ratio of impervious area created to natural/pervious area preserved.

C.3.g.ii(5)/Attachment C.1.b: No basis is provided for disallowing use, for projects above 10 acres, of the design procedure, criteria, and sizing factors specified in the Contra Costa Clean Water Program's *Stormwater C.3 Guidebook.* No similar exclusion is made for other County's programs' current procedures. The County is unaware of any reason why this exclusion would yield improvements in water quality. Unless there is a compelling basis for this, there is no reason to require both developers and County staff (for both public and private projects) to go through more complicated/expensive exercises to comply with the permit's hydromodification management requirements, the County should be allowed to continue to utilize the guidance in the *Stormwater C.3 Guidebook*. If this exclusion is retained, an effective date with an adequate opportunity for preparation is absolutely necessary (July 1, 2010, at the earliest).

C.3.j: Collection of data for projects creating between 1,000 and 10,000 square feet of impervious surface will be costly and time consuming. The purpose of this data is not clear. It is also unclear how this activity (and the associated expense) would improve water quality. If this data collection is to be required, it should exclude projects creating 5,000 to 1,000 square feet of impervious surface that are will be required to install stormwater management facilities, and will already be reported (per **C.3.b.i(1)**, and possibly **C.3.b.i(5)**).

C.4 - INDUSTRIAL AND COMMERCIAL SITE CONTROLS

The County objects to the significantly increased oversight of the business community. The inspections required by **C.4.b.i** may be duplicative of inspections that numerous other agencies are already mandated to conduct regularly, including environmental inspections (Dept. of Toxic Substances Control, Regional Water Quality Control Boards, Air Quality Management Districts) and public safety inspections (Fire Districts, Health Department).

It is unacceptable to expect the County, already operating on limited resources, to be required to divert resources from activities that directly improve water quality in order to fulfill administrative requirements that have historically been the responsibility of the Water Board(s). The County specifically objects to being required to determine whether businesses are required to file for coverage under the State General Industrial Permit (and report those that have not), and to track businesses that should already have coverage under the State's General Industrial Permit. It is not entirely clear whether the

intent of **C.4.b.ii(3)(d)**, **C.4.b.ii(4)(d)** and **C.4.c.iii(4)** is to require local jurisdictions to cite NOI / State General Industrial Permit facilities that have been reported in violation". The County does not have the authority to cite violations of a State permit. We only inspect and enforce local stormwater regulations (the County Ordinance). It should also be noted that SIC codes (referenced in **C.4.b.ii(3)(b)**) are outdated and are not used by the County; this reference should be replaced with a more appropriate designator of use.

It is not acceptable for the County to be required to develop the authority to conduct cleanup activities, and to bill violators to recover costs (**per C.4.a.i(1)(b)** and **C.4.c.i(5)**). This may result in significant County exposure to liability associated with cleanup. These requirements should be removed from the MRP.

It is also not feasible for the County to track all changes in commercial and industrial uses to review for changes in the potential to contribute to pollution and whether inspections (or increased frequency) are required (per **C.4.b.ii(5)(e)**). Not all types of changes to use are subject to review by the County, and it is not feasible for the County to inspect every facility every year.

C.5 - ILLICIT DISCHARGE DETECTION AND ELIMINATION

The County's ability to effectively combat illegal dumping is severely compromised by our limited legal authority under various State laws. It is extremely important to analyze what additional legal authorities, including changes to State law, the County would be required to develop in order to comply with various C.5 Provisions related to identifying parties responsible for illegal dumping and litter violations and either citing/fining them or recovering clean-up costs from them.

The extent of County's enforcement for litter & dumping violations (dictated by CA Penal Code – Sections 374.3, 374.4 & 374.7) is enforced by the County Sheriff's Office (with prosecutions handled by District Attorney). Because the activities called for in provision **C.5.b.i(4)** are generally handled by the Sheriff's Office, which often has more urgent issues to address, it will not always be able respond to litter/dumping referrals as they are reported. An implementation date of 07/01/09 is suggested to allow sufficient time to establish necessary authorities within other departments.

It should also be noted that it is rarely possible to identify a "responsible party" for illegal dumping and litter cases. The burden of proof is significant, generally requiring confessions or eyewitnesses. Even finding someone's name in dumped materials is not adequate proof, per the District Attorney's Office.

The County's legal authority to recover costs of abatement only applies to the property owner, as dictated by CA Government Code – Section 25845 (including

notifications/process required, also prescribing time frames); the owner of the property is often not necessarily the "responsible party," so these regulations are ambiguous in how they may apply to mobile sources. It is also not acceptable to subject the County to the liabilities associated with conducting cleanup activities (per **C.5.a.i(1)(b)**, **C.5.a.i(2)(b)** and **C.5.b.i(1)**).

The County currently has the authority to issue criminal enforcement and penalties for illicit discharges as written in Chapter 1014-6 in the County Ordinance, upon conviction. However, an Ordinance change will be required to issue administrative penalties and fines (required in **C.5.a.i(2)(a)**). If the administrative penalty system must be employed, November 30, 2008 is not enough time to implement a change in the County Ordinance. An implementation date of July 1, 2009 is recommended.

C.6 - CONSTRUCTION SITE CONTROL

C.6.a.i/C.6.b.ii(5): It is not appropriate to require the County to perform cleanup activities (and seek reimbursement from the operator) in response to construction site stormwater pollutant control. Although cleanup clearly must be required, the County should not be required to conduct this activity and face exposure to the enormous related liabilities.

C.6.a.ii(3)/C.6.a.iii: Establishment of legal authorities is not feasible prior to November 30, 2008. This requirement should be changed to November 30, 2009.

C.6.c.ii(3): In the first sentence, the words "if necessary" should be moved such that they follow the word "implementation" so that it is clear that it pertains to all of the advanced treatment measures listed.

C.6.e.ii(1): The County will be able to more effectively (and less expensively) implement screening level inspections if the inspector, after observing an violation, were allowed to contact appropriate County staff to follow the ERP and document the violation. The following parenthetical statement should be added at the end of the last sentence: "(or cause the ERP to be followed and the violation to be documented)".

C.6.e.iii: It is not feasible or valuable for reporting to include the total number of screening level inspections conducted (this would be the total number of inspections conducted by the County). The text of provision C.6.e.iii indicates that screening level inspections need be reported only when a violation is observed. The annual report form (Attachment L) implies that all screening level inspections are to be listed; this field should be removed from (or clarified in) the annual report form.

C.6.e/C.3.f/C.3.g: Since the activities that are precursors to implementation of provisions C.6.e, C.3.f , and C.3.g are not to be completed by November 30, 2008 (per provisions C.6.a.ii(3) and C.6.b.ii(7)) and are not to be reported until the October 2009

annual report (per provisions C.6.a.iii and C.6.b.iii), implementation dates for provisions C.6.e, C.3.f , and C.3.g should not be required for at least one year after the precursor activities (recommended implementation date: July 1, 2010).

C.7 - PUBLIC INFORMATION AND OUTREACH

The PEIO portion of the new MRP is acceptable, though there are more requirements than in the existing permit, most of them can be met through existing County programs.

One facet of the permit that is unclear and will require further explanation by the RWQCB is that many other sections of the permit have outreach/education associated with them, but are not referenced in Provision C.7. This includes sections C.9.h Pesticide Toxicity Control - Public Outreach, C.10.b.i(1) Trash Reduction - Enhanced Trash Management Control Measures, C.11.i Mercury Controls – Development of a Risk Reduction Program, and C.12.i.i. PCB Controls - Development of a Risk Reduction Program. These associations should be specifically referenced in provision C.7.

Provision **C.7.k** is unclear. Clarification is requested regarding exactly what is required with regards to outreaching to municipal officials. It is assumed that participation in the County Clean Water Program achieves compliance with this requirement.

C.8 - WATER QUALITY MONITORING

The requirements of the section C.8 (as well as C.9 and sections C.11 through C.14) may be able to be carried out on a regional basis with tasks/costs shared by all co-Permittees. Use of the term "collectively" in the aforementioned provisions should be clarified with reference to establishment of sampling plans. If regional cooperation is allowed in carrying out the requirements of these water quality and specific monitoring Provisions, memorandums of agreement may need to be established. This approach would streamline efforts and produce a more consistent data set by utilizing the same field staff, equipment, analytical laboratories, etc.. However, this proposition may require development of an oversight organization such as a Regional Monitoring Committee Program, or could be overseen by the Bay Area Stormwater Management Agencies Association (BASMAA).

Historically, the required level of monitoring (which is presumably set forth with the goal of developing data to be used for the establishment of future TMDLs) has been the responsibility of the State Water Resources Control Board. The County questions the appropriateness of transferring this responsibility to the permittees. Additional new monitoring requirements will require time to organize, select sampling sites, and develop sampling plans. We recommend an implementation date of July 1, 2009 for both regional and Permittee monitoring efforts.

The timeline for reporting on the pollutants of concern monitoring project status is currently specified at six months after completion of data collection. This reporting requirement should be restated to occur within one year follow data collection or in the next annual report. The nine required monitoring projects would be unnecessarily burdensome, if required under the current implementation schedule. Prioritization and phasing of implementation dates is recommended in order to ensure quality of data. The large number of sampling sites (15) to be performed at lower reaches of watershed will result in redundant data sets and wasted sampling/analysis costs. This should be changed to a percentage of sample sites per mile of creek reach.

Deployment of continuous sampling equipment for collecting general water quality parameters (at two sites per year at 15 minute intervals for two weeks) and for collecting temperatures (at six sites per year at 15 minute intervals for eight months) will require significant additional costs for technicians to routinely monitor and service equipment in addition to replacement costs in case of failure and vandalism. Additional monitoring requirements that will require increased funding include detailed trash assessments (at eight sites per year) and stream surveys of six stream miles per year.

C.9 - PESTICIDES TOXICITY CONTROL

Clarification is needed with regards to the requirement of **C.9.e** to work with Federal (US Environmental Protection Agency, US Department of Agriculture) and State (Department of Pesticide Regulation and Dept. of Toxic Substance Control) departments that oversee pesticides, since this role has traditionally been achieved by the State Water Resources Board (as a partner agency to DPR).

Tracking pesticide usage by operators should not be required of the local County government. This should be a function of the State Water Resources Control Board, pursuant to the State General Agricultural permit, and should be removed from the MRP.

It is not feasible to document of the effectiveness of pesticide reduction/Integrated Pest Management (IPM) outreach to residents in **C.9.h.iv** by tracking what percentage of stakeholders educated hired certified IPM contractors. As this is unlikely to yield valuable data, it should be removed from the MRP.

C.10 - TRASH REDUCTION

Although the County agrees that trash is unsightly and contributes to water pollution, the MRP's requirement to plan for a goal of zero trash impacts by 2023, although admirable, is completely unrealistic. The costs associated with the requirements of this section must be considered relative to the entirety of County's responsibilities to its population and environment, as well as the economic law of diminishing returns, and

should be revised accordingly. Ultimately, the solution involves human behavior modifications (and incentives) that will require time to develop.

The Counts supports trash reduction, both in waterways and throughout the County. However, there are a number of specific provisions that merit revision or more wholesale reconsideration, as noted below.

C.10.a: The Trash Reduction section of the proposed MRP refers to implementation of the full trash capture devices throughout 5% of jurisdictions' urban and suburban land area as a "pilot" project, which is a precursor to the Long-Term Plan for Trash Abatement. While the County supports trash reduction (especially insofar as its water quality impacts), it seems that a smaller pilot project would be appropriate for full trash capture devices (i.e. 5-10 pilot site projects distributed through the entire County, including incorporated cities) prior to requiring such a comprehensive and expensive project. This change to the MRP would require substantial changes throughout provision C.10.

C.10.a.i: Agricultural areas and non-urban parks should not be considered part of the County's "urban and suburban land area". The definition of "urban and suburban land area" currently does not exclude agricultural areas or non-urban parks, but does include "estate residential development areas". This appears to be an oversight, since non-urban parks and agricultural areas are significantly less urban than "estate residential development areas". The words "agricultural areas, and non-urban parks" should be added to the list of portions of the jurisdiction that are to be excluded from "urban and suburban land area".

The definition of "urban and suburban land area" should also be clarified such that it excludes areas that are within the ultimate permittees' boundaries, but are not within permittees' actual jurisdiction. This clarification is meant to clarify that there are areas where it is not legally feasible for the permittees to implement trash management (i.e. military bases, CalTrans' property, etc.).

C.10.a.ii(1): Provision C.10.a.ii encourages full trash capture devices to be placed to be located in lower reaches or upstream tidal reaches of major tributaries. This seems to potentially encourage installation of devices that would severely limit biological functionality of waterways in stretches where they are likely to be in relatively natural states; this may compromise biological integrity and impede beneficial uses. It should also be noted that much of the County's drainage infrastructure is in a relatively unimproved/natural state.

C.10.b.i: The definition of "full trash capture device" is defined in provision C.10.b.i (and the Glossary) as being required to trap particles retained by a 5mm mesh screen. The 5mm seems to be an arbitrary and especially fine gradation that will not necessarily produce a high degree of water quality benefit per dollar spent. It also seems to

increases chances of clogging, failure, and flooding. Unless there is specific science supporting the necessity of the 5mm specification, and a favorable cost-benefit ratio, the County requests that this specification be reviewed and adjusted appropriately (or deferred until appropriate studies can be conducted to determine the appropriate specification).

C.10.b.i(1): The requirement to conduct weekly street sweeping throughout 10% of the County is an expensive activity that yields a low cost-benefit ratio, especially during the dry season. Unless there is irrefutable evidence that such frequent street sweeping yields water quality results commensurate with the associated costs, the County requests that the frequency be reduced to twice per month during the dry season (consistent with provision C.2.a.ii(2)). Consideration of the relationship between water quality benefits and implementation costs is necessary.

The requirement for "maintenance of adequate litter receptacles in high traffic areas" is potentially problematic for multiple reasons: litter is often found around receptacles not in them; receptacles are often misused in place of property service; receptacles are often damaged/burned; there is often no clear delineation of where they are or who owns them, is responsible for emptying, repairing or replacing them, who is liable for any harm or damage caused as result of receptacle placement, use or servicing. The County may be required to develop new legal authority to require certain land owners and business operators in high trash or litter generation areas to purchase, install and adequately maintain and service litter receptacles.

C.10.b.i(2): The installation of Full Trash Capture Devices" in 5% of the County's Urban and Suburban Land Area is a financially burdensome requirements, which is estimated to cost between $16 – 250 million to implement. The County recommends that this requirement be reduced to a small number of pilot sites throughout the County until the devices' efficacy in trash removal, maintenance requirements, and cost effectiveness can be evaluated prior to making decisions regarding a more widespread implementation of Full Trash Capture Devices

C.10.c/C.10.d: It is not realistic to believe that any municipality can develop a plan that when implemented will ensure that there will be no trash impacts on beneficial uses within their jurisdictions. There will always be trash (dumping/litter) and therefore some degree of trash-related impacts. Development of a collective plan for an achievable degree of trash reduction, however, is acceptable.

The deadline for submitting the Long-Term Plan for Trash Abatement is listed as October, 2012 in section C.10.c, but is indicated as required in the October, 2011 annual report in C.10.d. The reference in C.10.d should be changed to October 2012 for consistency.

C.11 through C.14 – MERCURY CONTROLS, PCB CONTROLS, COPPER CONTROLS, and PDBE'S, LEGACY PESTICIDES AND SELENIUM

As noted in the comments regarding Provision C.8 and the general comments, the County is concerned about the appropriateness of this level of monitoring being shifted to the County. The number of studies and pilot projects, which are outside the expertise of County staff, would be anticipated to be extremely costly. Furthermore, the studies and pilot projects are not prioritized, and would be even more difficult to conduct simultaneously. In addition (also, as noted), the County objects to being required to gather data to be used in development of TMDLs. This has historically, and more appropriately, been a function of the RWQCB.

C.15 – EXEMPTED AND CONDITIONALLY EXEMPTED DISCHARGES

Due to a lack of clarity in sections **C.15.viii(1 and 2)**, it is difficult to address provision C.15. See the following comments and questions:

C.15.b.i/C.15.b.ii: It is not reasonable for the County to monitor all discharges from foundation drains, crawl space pumps, footing drains and air conditioner condensate from private property. The County may not have the legal authority to regulate these types of discharges, does not have an inventory of these types of mechanisms. Given the number of these existing in the County, the potential lack of legal authority, and the amount of time required to regulate this type of discharge, it would be an extremely inefficient means of improving/protecting water quality. These types of discharges should be relisted in C.15.a.i as exempt discharges. The County would be more appropriately engaged in public information and outreach regarding appropriate BMPs to minimize any water quality impacts associated with this sort of discharge.

C.15.b.iii: This section should be removed. Discharges of potable water should be subject to regulation. However, it is not appropriate or realistic for the jurisdictions to be required to oversee this regulation. Relationships vary between jurisdictions and water districts and fire districts. The County may not have the legal authority to require compliance from the water districts or the fire districts. The County would be happy to cooperate with water districts and fire districts in coordination of discharges of potable water into the County storm drain system, but it would be more appropriate for these discharges to be regulated directly by the Regional Water Quality Control Board.

C.15.b.iv: The County encourages responsible individual car washing practices, and intends to provide public information, outreach and assistance to increase the degree to which car washing is conducted responsibly. This section should be relocated to section C.7.

C.15.b.v: It is not reasonable for the County to monitor all discharges from swimming pools, spas, hot tubs and fountains from private property. The County does not have

an inventory of these features, and may not have the legal authority to regulate these discharges. Provision C.15.b.v(c) appears to prohibit pools from being constructed in areas that are not developed with sanitary sewer systems, which accounts for much of the unincorporated portion of Contra Costa County. It should be noted that the County would be more appropriately engaged in responding to discharges that are not conducted correctly and providing information regarding appropriate BMPs to prevent water quality impacts. The County has provided, and intends to continue to provide, public information and outreach regarding appropriate operation of pools, spas, hot tubs and fountains.

C.15.b.vi(e): The County may not have the legal authority to conduct "enforcement response" to large-volume irrigation runoff. This should not be regulated by the County, as it should be a function of the State Agricultural Permit.

C.15.viii(1 and 2): The meaning of these provisions is not entirely clear. Clarification is requested. If provision C.15.viii(1) implies that the preceding sections of provision C.15 only apply to agencies, activities and facilities that are owned, conducted and operated by the permittees, and provision C.15.viii(2) indicates that non-permittee dischargers would be regulated by the Regional Water Quality Control Board under a separate NPDES permit, then the County does not object to the provisions noted as unacceptable.

G:\FldCtl\NPDES\PERMIT\MRP Letter BOS to SFRWQCB\MRP Attachment B - 2-26-08.doc