

The Home Builders Association of Northern California (HBANC) submits the following comments on the May 1, 2007 Administrative Draft of the MRP:

1. Finding 25: We disagree with the blanket statement that all urban development creates “proportionately higher” levels of pollutants than pre-existing conditions. In many instances, redevelopment or reuse projects undertake massive soil and water remediation on a contaminated site that leaves the site far “cleaner” and with less impact to water quality even though more people may live on the site than before. The related statement that “runoff leaving the developed area is significantly greater in volume, velocity and pollutant load than the pre-development runoff from the same area” is similarly vastly overbroad and incorrect in a wide variety of development contexts. These statements should be stricken or at least significantly qualified.
2. Finding 29: There is no evidence to support the assertion that the land use planning phase “provides the greatest and most cost-effective opportunities to protect water quality in new and redevelopment.” The only justification advanced for this assertion is that “urban development begins at the land use planning phase.” It certainly does not follow that land use planning, as a result, represents the greatest and most cost-effective opportunities to protect water quality. In fact, in many development contexts, site constraints and challenges make land use planning/site design requirements the LEAST cost effective method and have substantial adverse impacts on important societal goals such as promoting infill development and housing development needed to meet the region’s job and population growth. This Finding should be stricken.
3. Finding 39: Please clarify how the statement that alternative HM compliance is allowed based on non-practicability of other measures relates to the Major Revisions document which states that the Administrative Draft “remove[s] the requirement for such a test to facilitate Alternative Compliance.”? If impracticability remains a hurdle for alternative compliance for HM controls, HBANC objects and recommends that it be removed.
4. C.3
 - i. C.3.a.(8): This paragraph should incorporate the MEP limitation as (9) does.
 - ii. C.3.a.(10)-(11): These requirements are overly prescriptive and violate the Porter-Cologne prohibition on mandating specific measures for achieving compliance.
 - iii. C.3.f.iii: We request clarification of how the Draft MRP’s provision relating to HM compliance relate to the HM provisions in the Attachments. The Attachments appear to require impracticability before alternative compliance is allowed; however, the Draft MRP appears to allow alternative compliance without such a showing in certain situations. We would like the MRP to clarify that impracticability is not a prerequisite. Also, we disagree with the provision that a project must not “increase the efficiency of drainage collection” if it is to be eligible for exemption. Virtually any project will increase the efficiency of drainage collection; yet those very same projects may

dramatically improve the overall quality of stormwater leaving the site and the increased conveyance may not have adverse impacts. This prerequisite should be stricken. We also believe that the 4 items identified for comparison have little or no relation to the factual question whether collection and conveyance have been increased.

5.C.3.g.:The categories of projects that are eligible for alternative compliance with provisions C.3.b and d are so narrow as to be almost useless. They are totally unacceptable. With respect to “brownfields,” there is no justification for limiting the alternative compliance option to projects that “receive a subsidy.” This is an irrational and possibly illegal discrimination against private projects that do not seek taxpayer subsidies. This limitation should be deleted and all brownfield projects should be eligible. Also, all projects within a Redevelopment Plan area should be eligible because these sites are by law economically and physically blighted. We have the same strong concern with the TOD category. The notion of limiting the eligibility to projects that are identified on an MTC list and that receive MTC funding is, again, totally unjustified. Whether a TOD project is on MTC’s list and/or receives MTC funding has no logical relation to whether it should be eligible for alternative compliance. A reasonable and appropriate TOD definition should be adopted. HBANC suggests that any project that is within a Transit Village Plan as defined in Article 8.5 (beginning with section 65460) of the Government Code (The Transit Village Development Planning Act of 1994) should be eligible for alternative compliance.

6. As a general public policy matter, HBANC believes that all projects should be eligible for alternative compliance. If a project can achieve equal or better water quality results through alternative means, the MRP should allow and encourage it.

7. C.3.i.ii.(4) : We do not understand the need and basis for the limitation on infiltration in the identified situations. We request a full explanation, supported by substantial evidence, that the restrictions are reasonably necessary.

Thank you for considering these comments.

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