Responsiveness Summary – Ventura MS4 Permit
Comment Due Date: June 7, 2010

	Date Received	Name	Agency
1	6/7/2010	Schroeder, Holly; Grey, Mark; and Henderson, Andrew	BIA, BILD and CICWQ
2	6/7/2010	McGovern, Lucie	City of Camarillo
3*	6/7/2010	Forester, Larry	City of Signal Hill (on behalf of Coalition for Practical Regulation)
4	6/7/2010	Allen, Vaikko P. II	Contech Construction Products, Inc.
5	6/7/2010	Doose, Ginn	n/a
6	6/7/2010	Jensen, Don	Jensen Design and Survey, Inc.
7	6/7/2010	Jordan, Teresa (2)	n/a
8	6/7/2010	Praw, Albert	Landstone Communties, LLC
9	6/7/2010	Lall, Yugal K.	City of Moorpark
10	6/7/2010	mursandy@sbcglobal.net	n/a
11	6/7/2010	Beckman, David; Gold, Mark	Natural Resources Defense Council and Heal the Bay
12	6/7/2010	Shreiner, Nancy Kirstyn	Nordman Cormany Hair & Compton LLP
13	6/7/2010	Lindholm, Nancy	Oxnard Chamber of Commerce
14	6/7/2010	Glad, Amy	Pardee Homes
15	6/7/2010	Norman, David J.	City of Port Hueneme
16*	6/7/2010	Perry, Steve Lumley, Robert Tash, Debra Kinney, Steven L. Franklin, John Mittelstadt, Jacqueline Bruce, Lori	n/a BLT Enterprises CAPR Ventura County The Economic Development Corporation of Oxnard Franklin Real Estate Development, LLC Hackerbraly, LLP Lennar

		Mitchell, Jim Breiner, Matthew J. Lappin, Steven A. Bianchi, Rick Vander Velde, John Horn, Ronald R.	n/a Oro Vista Corp. Pacific Cove Development, Inc. Pulte Homes/Centex/Del Webb Shea Homes LP Sikand
17	6/4/2010	Smith, David	US EPA Region IX
18	6/7/2010	Pratt, Jeff	Ventura County Public Works Agency
19	6/7/2010	Camacho, Norma	Ventura County Watershed Protection District
20	6/4/2010	Hubner, Gerhardt J	Ventura Countywide Stormwater Quality Management Program

* Same letter submitted by all parties

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1.1	BIA, BILD and CICWQ		Our comments below are aimed at the Land Use Development section of the tentative permit (Section E), and most especially at the 5th Draft Permit's rejection of the generally recognized rule that bio-filtration should be used in design as a strategy to maintain pre-development hydrology as much as reasonably feasible. Specifically, the comments below relate to seven discrete topics.	See detailed response to each of the seven topics, below.
1.2			The most fundamental policy aim of so-called Low Impact Development (LID) concerning new development is to maintain or closely replicate – to the extent feasible – the predevelopment hydrology, within the overall goals of development projects. The most basic and fundamental principle of the concept of LID is to develop real property in ways that minimize – as much as reasonably possibly given the context at hand and practical considerations – the differences between a site's pre-development hydrology (i.e., the hydrological situation prior to development) and its post-development hydrology (i.e., the hydrological situation after development is completed). In other words, the most important aim of LID is to maintain the natural flow of diffuse and discrete surface water as much as reasonably possible when developing land.	While one of the goals of LID is often cited as preserving or mimicking natural hydrology, at its most fundamental level, "it is a source control option that minimizes stormwater pollution by recognizing that the greatest efficiencies are gained by minimizing stormwater generation" (LID Center 2007). Furthermore, US EPA states that, "[i]n areas where development has already occurred, LID can be used as a retrofit practice to reduce runoff volumes, pollutant loadings, and the overall impacts of existing development on the affected receiving waters" (US EPA 2007). Numerous studies have shown that development results in an increase in storm water runoff from a project

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				site with a resulting increase in runoff discharging across property lines. The intent of the on-site retention requirement incorporated in the Order is to mitigate a significant portion of the increased flow resulting from new development and redevelopment and reduce pollutant discharge from a site as well as mitigate hydromodification impacts downstream. The Order specifies the retention of a set volume. Once that volume has been retained, the remaining runoff may be discharged offsite.
1.3			The natural flow doctrine, which allows and seeks to maintain the natural flows of diffuse and discrete surface water, is also consistent with the federal Clean Water Act's overarching and lofty objective to "restore and maintain" the natural integrity of waters. Therefore, we would expect the 5th Draft Permit's LID requirements to cleave closely to the natural flow doctrine, and to advance the central LID goal of maintaining or closely replicating predevelopment hydrology.	The common law requirements referenced by the commenter relate to the doctrines of nuisance and trespass with respect to adjoining or downgradient properties. They have no application to restrict the Administrator or the state when implementing modern environmental law based upon federal and statutory mandates. Additionally, the Clean Water Act's central goal to restore and maintain the natural integrity of waters

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				includes the physical, chemical and biological integrity of waters. The minimization of effective impervious area and the on-site retention requirements are both important tools for restoring and maintaining the chemical and biological integrity of surface waters as well as their physical integrity.
1.4			Rather than encouraging the maintenance or close replication of natural flows from projects, the 5th Draft Permit's LID provisions require the unnatural and unprecedented arresting of storm water flows from properties. Rather than adhere to the principal LID aim of maintaining predevelopment hydrology through thoughtful development strategies, the 5th Draft Permit would mandate the unprecedented and unsound practice of purposefully arresting – on each and every site developed – storm water that otherwise would naturally leave the site in its predevelopment state. Specifically, subparts 4.E.III.1 (a)-(d) and 4.E.III.2 (a)-(c) have as their central aim not the maintenance or close replication of predevelopment hydrology, but instead the uncritical prevention of the discharge of storm water across property lines regardless of predevelopment hydrology – at great and undue expense.	Depending on the level of development and the site planning methods used, development can result in a significant increase in surface runoff to greater than 50 percent of the overall precipitation (Department of Environmental Resources, Prince George's County 1999). The LID requirements in the Tentative Order are written to reduce the increased runoff resulting from development by requiring minimization of EIA tied to on-site retention of a certain volume of runoff (based on one of three criteria specified in section 4.E.III.1(c)), and thus pollutants. It does not require that all storm water flows are retained on site. This is consistent with the key principle of LID, which

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				is to minimize stormwater pollution by recognizing that the greatest efficiencies are gained by minimizing stormwater generation (LID Center 2007). Further, EPA promotes the use of LID in areas where development has already occurred because of its value in reducing runoff volumes, pollutant loadings, and the overall impacts of existing development on the affected receiving waters (US EPA 2007).
1.5			The main provision of the 5th Draft Permit which departs from the central aim of LID is stated in subpart 4.E.III.1(c). There, the draft permit language states that -- to comply with the permit – any meaningful amount of development can occur on any parcel only if the parcel is developed and engineered such that the parcel will "infiltrate, store for reuse, or evapotranspire *without any runoff*[,] at least the volume of water that results from" a very substantial storm (based on one of three optional tests: 85% of a 24-hour storm, 80% of annual storm water, or a ¾" storm). (Emphasis added.) *Importantly, the proposed, arbitrary, absolute on-site retention mandates would be imposed even at sites where the predevelopment hydrology would naturally allow storm water to flow across property lines* – perhaps flowing to receiving waters, habitat areas or other areas that depend on those natural flows.	See response to comments 1.2 and 1.4.
1.6			The result of these requirements would be that countless	The Order allows many options

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			property owners, in order to develop their parcels, would need to undertake measures to accomplish – if possible – what would be, in many contexts, be unnatural and expensive. For example, where enough marginally-useful rain barrels could not be utilized to capture rainwater for on-site use, expensive cisterns would need to be buried under or within homes and businesses. The potential benefits of such expensive measures are particularly dubious in the semi-arid environment of Ventura County, where rain events are relatively infrequent and/or may occasionally come back to-back such that the volume capture requirements would be insufficient to yield meaningful benefit in comparison to costs.	other than rain barrels and cisterns to comply with the on-site retention requirements. See Finding 27 of Tentative Order.
1.7			**Instead of mandating deviations from predevelopment hydrology (as the 5th Draft Permit's LID provisions would do), *bio-filtration*, used in combination with strategies aimed at detaining – but not permanently retaining – storm water, should be allowed as the preferred alternative in many situations. Specifically, the permit requirements should not establish a compliance metric of "Effective Impervious Area" (EIA) viewed on a lot-by-lot or individual project scale. Instead, the permits LID requirement should require designs and strategies aimed more directly at managing storm water based on volume and water quality outcomes.** Briefly, the main and fundamental change that is needed in the draft permit requirements is this: The final permit	The Low-Impact Development Hydrologic Analysis Manual prepared by Prince George's County (1999) states that depending on the level of development and the site planning methods used, the alteration of physical conditions can result in a significant increase of surface runoff to over 50 percent of the overall precipitation. An increasing body of scientific research, conducted in many geographic areas and using many techniques, supports the theory that impervious cover is a reliable

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			language should reject any mandate to ***retain*** storm water on site "without any runoff" (subpart 4.E.III.1(c)), and instead allow property owners to ***detain*** storm water and then discharge it across property lines (in a manner more consistent with natural flows) using bio-filtration, bio-swales, and other appropriate vegetated management practices that have been proven successfully to treat storm water before its discharge from the site. More specifically, the 5th Draft Permit is unreasonable for a number of reasons. First, subpart 4.E.III.1(a) introduces a new and unprecedented limitation on "effective impervious area" (EIA), allowing no more than 5% of any parcel to be developed with "effective impervious" surfaces as defined and qualified in the succeeding subsections.	indicator of stream degradation. Furthermore, impervious cover is a practical measure of the impact of development on watersheds because: • it is quantifiable; • it is integrative, meaning that it can estimate or predict cumulative water resource impacts; • it is conceptual, meaning that it can be easily understood by water resource scientists, municipal planners, landscape architects, developers, policy makers and citizens. For these reasons, impervious cover is emerging as a scientifically sound, easily communicated, and practical way to measure the impacts of development on water quality. The EIA metric not only addresses the erosive effects of storm water but the water quality impacts resulting from development by preventing pollutant loads generated from the majority of a site from leaving the site through surface runoff. The National Research Council in its publication "Urban

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				Stormwater Management in the United States" states that, "[f]low and related parameters like ***impervious cover*** should be considered for use as proxies for stormwater pollutant loading," stating that "[t]hese … have great potential as a federal stormwater management tool because they provide specific and measurable targets, while at the same time they focus regulators on water degradation resulting from the increased volume as well as increased pollutant loadings in stormwater runoff" (emphasis added). In the Tentative Order, the EIA metric is translated into a volume based requirement (see section 4.E.III.1(c)). This volume based requirement is based extensive information that the majority of pollutants flow off a site during the "first flush" of a storm. Therefore, by requiring that the initial storm volume be retained on site, pollutants will not be mobilized off

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				site by runoff and, thus, the water quality of downstream receiving waters will be improved. Infiltration and capture techniques that prevent pollutants from being discharged from a site are preferred to attempting to remove pollutants from storm water runoff (treatment/filtration), where feasible.
1.8			We strongly oppose the uncritical use of EIA on a parcel-by-parcel basis as a performance metric associated with the implementation of low impact development best practices. As we have pointed out previously, numerous problems exist with using EIA as a performance metric. First and foremost, the use of EIA at a small-scale (lot-by-lot or individual project) level –especially when it is translated into a mandate to arrest natural storm water flows – removes the focus from where it should be: squarely on designing to approximate predevelopment hydrology and, just as importantly, managing the quantities (i.e., volumes) and quality of storm water. Importantly, the evidence shows that detention and bio-filtration (as opposed to uncritical storm water *retention*) will yield superior water quality impacts over a range of storm events and frequencies, largely owing to the practical inability to retain on site relatively large and/or back-to-	See response to comments 1.2 and 1.7.

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			back storms.	
1.9			Second, the term "EIA" lacks a common, understandable and implementable definition – particularly concerning the "effective" element of "effective impervious area." In other words, the concept of "effective" impervious surfaces necessarily implies the ability to render otherwise impervious improvements "ineffective" (and therefore permissible) through the use a volume based translator relevant to LID BMP sizing. Therefore, the term is too vague and ambiguous to be used as a logical regulatory standard apart from a *storm water volume detention* requirement, design storm exceptions, etc.	EIA or Effective Impervious Area is clearly defined in Part 6 of the Order as "that portion of the surface area that is hydrologically connected via sheet flow over a hardened conveyance or impervious surface without any intervening medium to mitigate flow volume." EIA is defined in the same way in the National Research Council document "Urban Storm Water Management in the United States" as the impervious surfaces with direct hydraulic connection to the downstream drainage (or stream) system. In summary, EIA is a well understood term in the stormwater management/LID fields. Furthermore, in the Tentative Order it is tied to a clear volume retention requirement based on one of three criteria in order to facilitate its implementation.
1.10			CICWQ, in particular, has instructed repeatedly that a limitation on EIA as a performance standard for sizing LID BMPs engenders widespread confusion and is	See response to comment 1.9. The use of the EIA metric in conjunction with a volume standard helps ensure

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			understanding in the development and building industry with respect to its definition, what this standard would require, and especially the justification for it. Proposing EIA as a performance standard has also created confusion among stormwater professionals generally, including those serving the principal permittee and co-permittees and those within Regional Board staff as well. For example, the Ventura Watershed Protection District worked for nearly a year on a Technical Guidance Manual (TGM) attempting to define and clarify the use of EIA; but debate and uncertainty remains. Both the San Diego and Santa Ana regional water quality control boards ultimately rejected the use of EIA in favor of a single volume-management approach.	that LID is implemented to the maximum extent possible on a site and that pollutants are abated throughout the majority of a project. A standard based solely on properly sizing retention measures to meet a design storm volume does not ensure that pollutants will be mitigated from the majority of a site, while this volume standard may be appropriate for the purpose of abating hydromodification impacts, it is not sufficient for ensuring abatement of water quality impacts.
1.11			Moreover, it is clear that EIA does not have an agreed upon, logical definition or justification; and its proposed applicability on a parcel-by-parcel basis (i.e., irrespective of any scale) raises serious concerns about unintended consequences (such as limiting infill and redevelopment, promoting low-density sprawl, and steering development unwisely toward relatively naturally pervious areas). In addition, any EIA mandate based on permanent retention for infiltration would have limited utility and/or possibly even be dangerous in many site contexts – such as hillsides, bluffs and palisades, soils with restrictive layers such as hard pans, or high water tables.	EIA is defined in Part 6 of the Order and is used in conjunction with a volume standard. The definition of EIA in the Tentative Order is consistent with definitions used by others across the nation (for example, NRC 2008; Center for Watershed Protection 2003). EIA is recognized nationally as a valuable metric of the impact of development on water quality. An increasing body of scientific research, conducted in many geographic areas and using many techniques, supports the theory that impervious cover is a

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				reliable indicator of stream degradation. Furthermore, impervious cover is a practical measure of the impact of development on water quality (BASMAA 1999). The National Research Council in its publication "Urban Stormwater Management in the United States" (2008) states that, "[f]low and related parameters like ***impervious cover*** should be considered for use as proxies for stormwater pollutant loading," stating that "[t]hese … have great potential as a federal stormwater management tool because they provide specific and measurable targets, while at the same time they focus regulators on water degradation resulting from the increased volume as well as increased pollutant loadings in stormwater runoff" (emphasis added). Additionally, the Tentative Order includes alternative compliance measures in cases of technical infeasibility, including smart growth

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				and infill or redevelopment locations where the density and/or nature of the project would create significant difficulty for compliance with the on-site volume retention requirement; locations with potential geotechnical hazards; locations where seasonal high groundwater is close to the surface; among others. Where technical infeasibility is demonstrated, EIA may be increased above 5% with off-site mitigation. Additionally, Board staff has developed alternative language that would eliminate the 30% EIA cap by allowing a demonstration of technical infeasibility for a site not only between 5-30% EIA, but also above 30% EIA with additional off-site mitigation.
1.12			Worse, the notion that EIA considerations should be made applicable to each and every parcel of land (regardless of any scale) springs from uncritical academic speculation. EIA has been studied only at a larger scale and generally under uncontrolled conditions (i.e., where there is no consideration of the existence or non-existence of engineered solutions or hydrology-based LID applications). Accordingly, the conclusions that can be drawn from the existing science have meaning only on a watershed scale	There is ample evidence regarding the efficacy of EIA as a metric, as described in response to comments 1.10 and 1.11. The implementation of the 5% EIA provision on each project within a watershed helps ensure that the 5% EIA threshold is met within a given subwatershed area. Compliance with the 5% EIA

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			where its definition first appeared. Only one academic, Dr. Richard Horner, has uncritically applied the findings of other EIA studies to conclude that each and every parcel must be bound by the same EIA standard. His conclusion about the need to apply EIA on a parcel-by-parcel basis is refuted by numerous studies and commentators. For example, the 5th Draft Permit at Finding No. 19 on page 7, cites (again purportedly in support of the 5th Draft Permit requirements) the U.S. Environmental Protection Agency document entitled Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices, USEPA Doc No. EPA 841-F-07-006, December 2007. That EPA report states at pp. 1-2 the following (with emphasis added): ***Water quality protection [LID] strategies are often implemented at three scales: the region or large watershed area, the community or neighborhood, or [development] site or block***. Different storm water approaches are used at different scales to afford the greatest degree of protection to waterbodies because the influences of pollution are often found at all three scales. … [LID] [s]trategies related to the broad growth and development issues are often implemented at the regional or watershed scale. Once communities have determined where to grow and where to preserve, various storm water management techniques are applied at the neighborhood or community level. These measures, such as road width requirements, often	threshold on a site by site basis and on a watershed level are not mutually exclusive. This notwithstanding, the Tentative Order already allows Permittees the option of developing alternative post-construction stormwater mitigation programs on a ***regional basis*** (Redevelopment Project Area Master Plans, or RPAMPs) in consideration of exceptional site constraints that would inhibit site-by-site implementation of permit requirements. See section 4.IV.3.

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			transcend specific development sites and can be applied throughout a neighborhood. ***Finally, site specific stormwater strategies, such as rain gardens and infiltration areas, are incorporated within a particular development.*** …. ***Many smart growth approaches can decrease the overall amount of impervious cover associated with a development's footprint***. These approaches include directing development to already degraded land; using narrower roads; designing smaller parking lots; integrating retail, commercial and residential uses; and ***designing more compact residential lots***.	
1.13			Applying an EIA standard on the scale of each and every residential lot – as Dr. Horner champions – is contrary to and conflicts with this evidence. First, it would prevent a more scalable look at development and mitigation opportunities by requiring that, in effect, all mitigation must occur on each parcel – even on each residential lot. This, in turn, creates an impediment to "designing more compact residential lots" as the above-quoted EPA report advocates. Respectfully, the Board should reject the imposition of EIA generally and especially when applied on a parcel-by-parcel, lot-by-lot basis. We are attaching hereto as Attachments 1 and 2 the detailed refutation of Dr. Horner's Low Impact Development Case Study for Ventura County and a rebuttal to a paper submitted by Dr. Horner titled Assessment of Evaporation Potential with Los Impact	See response to comment 1.12.

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			Development, each prepared by Geosyntec Consultants, Inc.	
1.14			Instead of embracing the EIA concept at the lot-by-lot scale, there seems to be a relatively broad willingness on the part of Ventura stakeholders (perhaps even including the nongovernmental organizations, or NGOs) to consider a volume detention approach as the single performance standard to be used, without the complication and confusion created by appending EIA to it. Specifically, the NGOs have acknowledged that EIA lacks meaning unless a design storm volume is specified and there are clear criteria of what would be considered non-effective impervious area in light of such volumetric considerations. This is an important acknowledgement because it correctly confirms that EIA as a stand-alone concept falls short as a performance standard.	The Tentative Order does link the EIA limitation to a design storm volume, meaning that impervious surfaces are considered rendered "ineffective" if the stormwater runoff from those surfaces is fully retained on-site for the design storm volume specified in Part 4.E.III.1(c). See also response to comment 1.10.
1.15			The U.S. EPA, as well, seemingly would be pleased to defer to the Board if it were reject the 5th Draft Permit's EIA requirements and adopt instead a volume detention approach. In correspondence between BIA/SC and EPA prior to the Board's May 2009 adoption hearing, EPA stated that it was willing to accept alternative engineering approaches other than EIA, such as a volume detention approach (which is contained in adopted MS4 permits in southern California and the Bay Area and found in guidance documents in several states). Specifically, BIA/SC wrote to EPA to question their representatives' seeming support for using EIA as a performance standard in designing and implementing LID BMPs at one	Staff disagrees. The US EPA has indicated that it supports the EIA metric as used in the current Order and continues to be supportive of the New Development/Redevelopment Performance Criteria as a whole in the Tentative Order as reflected in its June 4, 2010 comment letter on the Tentative Order. US EPA states, "EPA supports adoption of the permit as proposed in the Tentative Order. In particular, we support the permit's New Development

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			or more scales. Although EPA supports the use of "clear, measurable, and enforceable requirements" for LID performance, such as limitations on EIA, EPA's letter to BIA/SC dated July 31, 2008 (*see* Attachment 3 hereto) explained that "use of the 5% EIA requirement is not the only acceptable, quantitative approach for incorporating LID into renewed MS4 permits in southern California." The EPA further stated that "we are open to other quantitative means for measuring how LID tools reduce storm water discharges."	Performance Criteria (Section 4.E.III.), portions of which are being reconsidered. We have been advocating for clear, measurable, and enforceable Low Impact Development (LID) requirements, such as those included in the Tentative Order, in MS4 permits throughout California."
1.16			In addition, EPA commented on the Santa Ana Regional Board's north Orange County MS4 permit (March 24, 2009) and stated that "EPA has not determined that EIA is not necessarily the only or always the best method to implement LID" and that they are supportive of a volume capture approach. Of course, because we presume that the EPA would want to conform its policies to the intent of Congress as reflected in 42 U.S.C. § 17094 (discussed above), we also presume that the EPA would prefer volume capture "strategies … to maintain … the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." Thus, a volume detention and release approach utilizing bio-filtration would best fulfill the goal of LID.	See response to comment 1.15.
1.17			Continuing with our specific concerns about the 5th Draft Permit's LID requirements, subpart 4.E.III.1 (b), (c) and (d) describe how impervious surfaces on new and redevelopment may be rendered ineffective through the retention of storm water discharges regardless of	Comment noted.

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			predevelopment hydrology. Specifically, as we noted briefly above, the 5th Draft Permit would recognize EIA as rendered ineffective impervious area if the property owner can demonstrate that the parcel will retain enough storm water "without any runoff" for infiltration, harvest and use, or evaporative measures.	
1.18			We take issue with this regulatory scheme for several reasons that deserve greater explanation. First, as noted above at length, it constitutes an intentional, improper departure from the mandated goal of trying to replicate, to the extent feasible, pre-development hydrology. Second, the LID requirement is again applied on a parcel-by-parcel, lot-by-lot basis, rather than on a scalable basis (development or block, neighborhood or community) as recommended by EPA in the 2007 report quoted above.	See response to comments 1.2 and 1.12. Additionally, there is support for implementing LID requirements on a site-by-site basis. The Low-Impact Development Hydrologic Analysis Manual prepared by Prince George's County (1999) states, "Low-impact development technology employs microscale and distributed management techniques, called integrated management practices (IMPs) to achieve desired post-development hydrologic conditions. LID IMPs are used to satisfy the storage volume requirements. They are the preferred method because they can maintain the redevelopment runoff volume and can be integrated into the site design. The design goal is to locate IMPs at the source or lot, ideally on level ground within individual lots of the development."

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				Many other sources also support implementation of LID at the site level (for example US EPA 2007; BASMAA 1999).
1.19			Third, and most importantly in terms of understanding the alternative that we urge the Board to embrace, is that the retention requirement is contrary to EPA's definition of LID because it disfavors development strategies designed to appropriately "filter" runoff, such as bioretention cells or other vegetated LID BMPs. There are five principal EPA documents regarding LID; and four of them approvingly point to biotreatment-type development strategies, such as detention (i.e., slow down, treat through vegetation, and then release across property lines), filtration, and surface release of stormwater. In a compilation of case studies by EPA, most of 17 exemplary projects included biotreatment elements, such as bioretention, swales, wetlands. *See* U.S. EPA 841-F-07-006. Each of two case studies described in another EPA document (s*ee* Attachment 4 hereto, at pp. 1-2, EPA 841-B-00-005) included the use of underdrains, and the example in one of the two specifically fed into the MS4 system at issue. Another EPA document updated in January 2009 refers to the many practices used to adhere to LID principles of promoting a watershed's hydrologic and ecological functions, such as bioretention facilities and rain gardens to adhere to LID principles. *See* Attachment 5 hereto, at p. 2, EPA- 560-F-07-231 (describing "an under-drain system to release treated stormwater off site," permitting planted	The US EPA encourages retention and harvesting of storm water runoff. The US EPA commissioned the NRC report (2008), "Urban Stormwater Management in the United States" that concluded, stormwater control measures that focus on retention such as better site design, downspout disconnection, conservation of natural areas, among others can dramatically reduce the volume of runoff and pollutant load from a new development and that such SCMs should be considered first. NRC further states that "SCMs that harvest, infiltrate, and evapotranspirate stormwater are critical to reducing the volume and pollutant loading of small storms." In the manual, *Green Infrastructure in Arid and Semi-Arid Climates*, US EPA states, "Green infrastructure refers to a set of practices that mimic natural processes to ***retain and use*** stormwater. By promoting ***infiltration, evapotranspiration, and harvesting*** throughout the landscape, green infrastructure preserves and restores the natural water balance" (emphasis added). See also response to comment 1.2.

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			areas to "safely allow filtration and evapotranspiration of stormwater"); http://www.epa.gov/owow/nps/lid/ (fact sheet describing under-drains used to release treated stormwater off site and permitting planted areas to safely allow filtration of stormwater).	
1.20			Similarly, the volume detention approach that we recommend as an alternative to the 5th Draft Permit's EIA, on-site retention approach is consistent with State Water Resources Control Board's guidance, which generally defines LID practices as including filtration, detention, bioretention, and other practices, each of which produce runoff. *See,* http://www.waterboards.ca.gov/water_issues/programs/low_impact_development/ (describing design techniques that "filter" and "detain" runoff as consistent with the goal of LID, and also describing LID practices to include bioretention facilities, rain gardens, grass swales and channels, vegetated rooftops, vegetated filter strips, and permeable pavements). The State Board, as well, recognized mimicking pre-development hydrology as a goal (*See, A review of Low Impact Development Policies: Removing Institutional Barriers to Adoption, pp.13*) whereas, in contrast, the 5th Draft Permit intentionally departs from that goal by mandating the heroic retention of storm water regardless of the predevelopment hydrology.	The on-site retention requirement with allowances for alternative compliance where there is demonstrated technical infeasibility is consistent with other recently adopted MS4 permits in southern California, including permits issued by the San Diego Region for the County of Orange (Order No. R9-2009-0002) and Santa Ana Region for the County of Orange (Order No. R8-2009-0030). The MS4 permit for Riverside County issued by the Santa Ana Regional Board also requires on-site retention unless there is demonstrated infeasibility. Only then can bio-filtration be used. See also response to comments 1.2 and 1.10.
1.21			Finally, there are the massive costs of compliance with such a requirement. A lot-by-lot, parcel-by-parcel large volume retention requirement remains impractical and unwise in	The Tentative Order does not require large volumes of water to be retained regardless of feasibility.

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			most circumstances, and is not a goal that can be achieved for most projects within any reasonable costs, despite heroic efforts. Although the NGO stakeholders have pointed to other programs, guidelines and permits and argued that the 5th Draft Permit is proven achievable and therefore practicable. However, a careful review of the examples to which the NGO stakeholders point reveals that the indications are misleading. Specifically, a careful review and analysis of documents referenced by NRDC in a 2009 comment letter regarding the Orange County MS4 permit was prepared by Geosyntec Consultants Attachment 6). The Geosyntec review shows that, in all of the examples cited by NRDC, none of the LID BMP sizing provisions appear in an adopted permit covering a watershed to size and scale of Ventura County, so the utility, practicability, and results of such guidelines or permit conditions remains to be seen. In addition, in contrast to the 5th Draft Permit, none of the examples cited generally mandate zero discharge "without any runoff" or require large volumes of water to be collected in infiltration, harvest and use or evapotranspiration regardless of feasibility.	Alternative compliance measures, which do not require on-site retention, and allow biofiltration and other types of treatment controls, are provided in the Order where there is demonstrated technical infeasibility. See section 4.III.2(b). Additionally, Permittees have the option to develop alternative post-construction storm water mitigation programs on a regional basis (Redevelopment Project Area Master Plans, or RPAMPs) to support redevelopment projects in consideration of exceptional site constraints that would inhibit site-by-site implementation of permit requirements. See section 4.IV.3. Staff has also developed for the board's consideration revised language that would eliminate the 30% EIA cap by allowing a demonstration of technical infeasibility not only between 5-30% EIA, but also above 30% EIA with additional off-site mitigation measures.
1.22			There are many locations where it would be unhelpful (at	The Order includes technical

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			best) or even very dangerous (worse) to apply an imperviousness standard for purposes of facilitating storm water retention and infiltration. For example, bluff tops (such as those at Pacific Palisades in Los Angeles County or La Conchita Ranch farther west in Ventura County) would be rendered dangerously unstable by any mandate of imperviousness and infiltration coupled with development. Even moderately sloping hillsides would similarly be negatively affected, as would areas where the natural water table is relatively high (for example, Moorpark in Ventura County). Nor would the EIA requirement do any good where development occurs on top of hard pan soils or bedrock, where infiltration could not occur. In many such areas, storm water would flow very *naturally* off of the parcel.	infeasibility criteria, including locations with potential geotechnical hazards, seasonal high groundwater close to the surface, and other site or implementation constraints. See section 4.III.2(b). See also response to comment 1.21.
1.23			We recognize that it may be difficult for some to visualize the consequences of the 5th Draft Permit's onsite retention requirement. Therefore, we have attached hereto the declaration of Dr. Mark Grey (See Attachment 7), which reflects some quantification of the EIA requirement as presented in the 5th Draft Permit. Note also that these calculations were validated by staff at the Ventura County Watershed Protection District. • A moderately-sized single family home would need the equivalent of 27 50- gallon drums to store the water as mandated by the permit. • An extremely low-density 10-acre commercial	The examples referenced only apply if the project were to use capture and harvest as the sole means to comply with the on-site retention standards. There are a number of acceptable means to comply with the on-site retention requirements as described in Finding 27.

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			property would need the equivalent of a 6 lane swimming pool (25 yards in length, 3.5 feet deep). • The Ventura County Fire Station currently under construction in Simi Valley needs space for a typical backyard swimming pool.	
1.24			As we have noted before, a 5% EIA requirement would have additional negative ramifications. For example, the requirement would encourage and incentivize sprawl, steering development to areas that have the most fields susceptible to digging and flexibility concerning perimeter features – in other words, development would be pushed toward open spaces that have little utility otherwise. Such policy implications are particularly problematic in Ventura County, which has a strict SOAR initiative (urban growth limitations), such that maximum flexibility to accommodate dense development should be maintained.	The Order allows alternative compliance measures for individual sites under conditions where the density or nature of a smart growth or infill or redevelopment project would create significant difficulty for compliance with the on-site retention requirement. Additionally, the Order also allows a Permittee or a coalition of Permittees to apply to the Regional Water Board for approval of a Redevelopment Project Area Master Plan (RPAMP) for redevelopment projects within the Redevelopment Project Areas, in consideration of exceptional site constraints that inhibit site-by-site or project-by-project implementation of post-construction requirements. This provision applies to City Center areas, Historic District areas, Brownfield areas, Infill

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				Development areas, and Urban Transit Villages.
1.25			Because the proposed EIA requirement would apply notwithstanding the many circumstances where it would be inappropriate (suboptimal at best, harmful at worse), the requirement is proposed in disregard of Calif. Water Code section 13241(b), which requires consideration of the "[e]nvironmental characteristics of the hydrographic unit under consideration." Attention to this consideration would indicate that – of course – a 5% EIA requirement should not be generally or universally imposed.	See response to comments 1.21, 1.22, and 1.24. Further, consideration of the Water Code section 13241 factors are only required when permit conditions go beyond the requirements of federal law. (See *City of Burbank v. State Water Resources Control Board*, 35 Cal.4th 613 (2005)). Conditions to require permittees to control the pollution in storm water to the maximum extent practicable (MEP) are required by federal law. Therefore, permit conditions that are within that requirement are not beyond federal law. There is no evidence that the 5% EIA requirement and related provisions are beyond MEP. In fact, the co-permittees themselves, in advocating for the 5% EIA requirement at the May 7, 2009 hearing, indicated that the requirements are practicable. While members of the building industry may be key stakeholders in this permit, their entitlement to develop ultimately derives from the

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				co-permittees, and the building interests are necessarily subject to the land-use conditions, requirements, and policy determinations of the local governmental bodies. While we understand that some members of the building industry may not agree or like those policies, the Cities are entitled to propose the means they believe is best for themselves to control storm water pollution—and the Los Angeles Water Board is entitled to give deference to the Cities and County when adopting their MS4 permit.
1.26			Subparts 4.E.III.2 (a) and (b) of the 5th Draft Permit describe how a project that cannot meet the onsite volume capture standard may qualify for alternative compliance for *technical* infeasibility with additional planning and land development requirements. Importantly, the omission of any consideration of *economic* feasibility is obviously problematic. Obviously, it does not matter that a particular LID approach is *technically* feasible if it costs vastly too much to afford or no one would ever buy the resulting improvements made at great expense.	Comment noted.
1.27			We recommend that the Board look to the permits recently adopted by the Santa Ana and San Diego Regional Boards	Comment noted.

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			in 2009. Those permits include language that clearly requires examination of both technical and economic factors that must be balanced when selecting suitable LID BMP combinations.	
1.28			Subpart 4.E.III.2 (c) of the 5th Draft Permit introduces the specific requirements for alternative compliance for those projects that can demonstrate true *technical* infeasibility (i.e., regardless of design, cost, or consumer appetite). The subpart would establish a limit of no more than 30% EIA without exception. We must first note that the pathway for supposedly accommodating "infeasibility" still mandates that runoff from 70% of the site must be infiltrated or harvested for reuse on-site. A site with technical limitations or where infiltration is undesirable (e.g., a brownfield) is likely to be infeasible at 30% EIA as much as it is as 5% EIA. Furthermore, the 30% EIA limitation is arbitrary, has no foundation from a scientific or technical standpoint, and has no source to support its selection as a standard of compliance. We oppose this standard as a performance metric particularly because it would operate to rule out or render economically infeasible many development projects that would otherwise integrate multiple societal benefits (for example, high density urban housing near transit nodes or mixed use development on former brownfields). These types of development projects already face daunting technical hurdles without placing special restrictions on *on-site* stormwater management features.	The 30% EIA limitation is not arbitrary. This threshold has water quality relevance as discussed in several documents. BASMAA (1999) in its design guidance manual "Start at the Source" states, "At impervious land coverage over 30%, impacts on streams and wetlands become more severe, and degradation is almost unavoidable without special measures. Similarly, the Center for Watershed Protection (2003) in its comprehensive monograph "Impacts of Impervious Cover on Aquatic Ecosystems" concludes that it is almost inevitable that a stream ***will not*** attain a high quality score when watershed impervious cover exceeds 25%. This notwithstanding, Board staff has developed revised language that would allow sites with demonstrated technical infeasibility to exceed 30% EIA with a requirement for increased offsite mitigation in

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				recognition of the likelihood of severe water quality impacts at this level of imperviousness.
1.29			Lastly, subpart 4.E.III.2 (d) of the 5th Draft Permit introduces the concept of determining watershed equivalency alternative compliance, but it does so by again using the 5% EIA metric as a performance metric. Here again, the regulatory focus on EIA as a performance metric is inappropriate, when the focus should be on managing quantities and quality of storm water. In addition, because ascertaining watershed equivalency is complex and dependent upon countless considerations and context, it is inappropriate to try to define such equivalency in the MS4 permit itself. The subpart as written is confusing and will be extremely difficult to apply in any meaningful way.	See response to comments 1.7 and 1.10. Additional detail on defining watershed equivalency will be provided in the Technical Guidance Manual that must be submitted by the Permittees for approval by the Executive Officer within 120 days of adoption of the Tentative Order.
1.30			To truly demonstrate approximate equivalency, multiple metrics would need to be considered and proven, possibly including attention to long term hydrologic records and water quality monitoring data over long temporal scales; but this would be extremely difficult and incredibly expensive. Given the difficulties inherent in approximating watershed equivalency, and attempt to streamline the ascertainment should be addressed as part of the Technical Guidance Process and Manual update and development and interpretation by local authorities.	See response to comment 1.29.
1.31			To recap, we believe that a *volumetric detention* engineering approach, coupled with appropriate automatic waivers based on objective site-specific circumstances, is far better than any EIA approach (especially the on-site	See response to comments 1.2, 1.10 and 1.24.

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			retention requirement regardless of context or natural hydrology) and more in accord with the federal and state statutes and policy goals. Ideally, the volumetric detention engineering approach would be based on calculations that seek to approximate, as closely as practicable, the pre-construction run-off patterns (a so-called "delta volume" or "delta-v" approach). However, as an administrative and engineering expedient, we would subscribe to (and have supported in discussions with the San Diego and Santa Ana regional boards) the detention and treatment of the entire volume of a reasonably moderate design storm.	
1.32			**The sudden "about-face" findings set forth in 5th Draft Permit (which purport to justify the proposed LID requirements) are unsupported by substantial evidence and are instead undercut by the evidence in the record (which broadly supports bio-filtration options instead).** The Board should take particular note of the radical changes that took place within the "Findings" between the penultimate 4th Draft Permit (revision dated April 30, 2009) and the 5th Draft Permit. Specifically, the April 30, 2009 revision to the 4th Draft Permit set forth a finding that was specifically critical of the EIA concept that is now reflected in the 5th Draft Permit. Specifically, Finding No. 19 of that draft read as follows: Staff finds there is a growing acceptance by stormwater professionals to integrate LID principles into stormwater management programs and MS4 permits. However, there remains significant controversy regarding the appropriate	While biofiltration is one LID technique, it is not the most preferred option. LID at its most fundamental level, "is a source control option that minimizes stormwater pollution by recognizing that the greatest efficiencies are gained by minimizing stormwater generation" (LID Center 2007). Furthermore, the National Research Council in its publication "Urban Stormwater Management in the United States" states that stormwater control measures (SCMs) such as better site design, downspout disconnection, conservation of natural areas, among others can dramatically reduce the volume of

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			requirements and metrics for LID. At the heart of this controversy is a dispute regarding the feasibility and effectiveness of requiring a fixed volume of stormwater to be captured and retained onsite for infiltration, reuse, and evapotranspiration, as opposed to permitting a portion of the stormwater to be released off site after it is treated, when it is infeasible to retain the required stormwater on site due to site specific conditions. Staff has reviewed extensive technical literature regarding this issue (e.g. R. Horner, Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County (February 2007); E.Strecker, A.Poresky, D. Christsen, Memorandum: Rainwater Harvesting and Reuse Scenarios and Cost Consideration, (April, 2009). Staff finds that there is consensus in the technical community that site conditions and the type of development can limit the feasibility of retaining, infiltrating, and reusing stormwater at sites due to a variety of site specific conditions. Factors that affect the feasibility of a fixed volume capture standard include, but are not limited to: soils infiltration capacity, subsurface pollution, and locations in urban core centers.	runoff and pollutant load from a new development and that such SCMs should be considered first. NRC goes on to state that "SCMs that harvest, infiltrate, and evapotranspirate stormwater are critical to reducing the volume and pollutant loading of small storms." Staff agrees that site conditions and the type of development can limit the feasibility of on-site retention. In light of this conclusion, the Tentative Order allows for a demonstration of technical infeasibility and alternative compliance measures in those situations, which addresses the comments raised in the previous finding. Additionally, Board staff has developed revised language that would allow sites with demonstrated technical infeasibility to also exceed 30% EIA, with a requirement for increased offsite mitigation in recognition of the likelihood of severe water quality impacts at this level of imperviousness.
1.33			**(Continuation of Finding No. 19 of April 30, 2009 draft**	The Order specifically defines

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			permit) ***Regarding the effects of capturing a fixed stormwater volume on site, Staff finds the fixed volume approach may be ignoring basic hydrological principles that relate the feasible infiltration volume to the infiltration capacity of local soils. Requirements to capture a fixed volume on site could disturb the natural water balance and lead to unintended engineering and hydrologic consequences.*** For example, a typical hydrological condition in Ventura County is one of successive storms during the winter which may exceed the stormwater capacity that can be retained on site. This may result in ponded water on site with attendant health and safety risks, saturation of the near surface soils, and reduction of water resources in Regional waterbodies. These effects could damage site structures, increase groundwater pollution by forcing enhanced pollution spreading, or destroy aquatic habitat. ***Staff finds these reasonably potential effects are not well evaluated scientifically. Finally, staff cannot find that a fixed retention volume versus a standard that attempts to release surface flows at a predevelopment level would result in a greater reduction of stormwater pollution***	"locations with potential geotechnical hazards" as one of the technical infeasibility criteria that when demonstrated allows an exemption from the on-site retention requirement in conjunction with offsite mitigation. See also response to comment 1.32.
1.34			At the May 7, 2009 hearing, however, the Board was presented with an ultimatum: Either (i) ***accept without change the secret "deal"*** that was negotiated behind the scenes (and which squarely conflicted with the finding set forth above), or (ii) instead displease some Board members' friends at the non-governmental organizations. In the Board discussion that followed,	Comment noted.

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			several members complained that they were being required to accept "all-or-nothing" provisions that were dictated through such a process. Nonetheless, the Board subscribed to the secret deal	
1.35			In response, BIASC, BILD, and CICWQ lodged a petition with the State Water Resources Control Board challenging the legitimacy of the May 7, 2009 adopted permit. On March 10, 2010, the State Board staff requested that the Board accept a voluntary remand of the challenged permit and cited numerous irregularities in the permit (including, apparently, secret and improper attempts by the Board's staff to alter belatedly the above-quoted finding).	Comment noted.
1.36			In what now appears to be an attempt to rationalize the Board's May 7, 2009 adoption of the secret deal, new and different findings were added to the 5th Draft Permit before it was released for public comment. These findings now are false and do not accurately represent their source material.	Staff disagrees. The new findings in the permit are supported by evidence in the permit's administrative record.
1.37			As noted above Finding Nos. 17 and 19 of the 5th Draft Permit discuss source materials from the California Office of Planning and Research and U.S. EPA, respectively, which define, discuss and champion LID. These findings are purported seemingly to support the EIA/on-site retention requirements set forth in subpart 4.E.III.1 of the 5th Draft Permit. Upon examination, however, the OPR and EPA materials that are cited recognize biofiltration and biotreatment as necessary and proper LID strategies. *See* Ocean Protection Council Resolution adopted May 15, 2008, as cited in Finding No. 17 of the 5th Draft Permit ("WHEREAS*, LID design detains, treats* and infiltrates	Staff agrees that OPC and EPA recognize biofiltration and biotreatment, but they also acknowledge infiltration and capture and reuse as appropriate, and often preferred, LID strategies. The quoted statement from the OPC Resolution emphasizes that LID design controls runoff by ***minimizing impervious area***, consistent with the Tentative Order's EIA requirements. Additionally, the

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			runoff by minimizing impervious area….") (emphasis added)	NRC report (2008) commissioned by EPA in its effort to evaluate and strengthen the national stormwater program, promotes stormwater control measures that harvest, infiltrate, and evapotranspirate stormwater (i.e. on-site retention measures), and states that these types of measures should be considered first.
1.38			Similarly, Finding Nos. 19, 27, 28, and 29 undercut, rather than support, the permit requirements set forth in subpart 4.E.III.1 of the 5th Draft Permit. These findings refer to a 2007 compilation of LID case studies and cost data, none of which support the 5th Draft Permit's onsite-retention, EIA requirement. The background of the compilation study defines several excellent LID Best Management Practices (BMPs), including "Runoff Conveyance Practices (p.4) and "Filtration Practices" (p. 5) which are disallowed BMPs in the 5th Draft Permit. We respectfully urge the Board to change the requirements to assure that the use of these practices will be permissible.	See response to comment 1.37. Further, if technical infeasibility is demonstrated per the permit provisions then "filtration practices" and other runoff treatment controls would be permissible with off-site mitigation.
1.39			A close examination of the case study compilation reveals three major problems with using the study to justify an onsite retention requirement. First, none of the 17 case studies were conducted in the Southwest, with its unique climatic conditions (flashy, semi-arid climate). Second, nearly all of the case studies use some form of	US EPA states in the introduction to the case study compilation that, "[c]ost savings are typically seen in reduced infrastructure because the total volume of runoff to be managed is minimized through infiltration and evapotranspiration"

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			biofiltration BMP as part of the project; but biofiltration is not a permissible strategy under the 5th Draft Permit. Finally, the study concludes that there are no significant cost increases when LID is employed; but this particular finding is expressly based on an assumption of reduced infrastructure costs because LID would lead to narrower roads and shorter sidewalks. However, in nearly one year of work to implement the LID provisions, no changes to zoning codes or building standards have been proposed in Ventura County. The alleged cost offsets, therefore, cannot be assumed for Ventura County. Moreover, the 5th Draft Permit would impose costs associated with cisterns which were never considered in the studies compiled.	(US EPA 2007). The assumption of narrower roads and shorter sidewalks is but one factor that EPA cites as leading to cost savings. Additionally, biofiltration is a permissible strategy under the Tentative Order if technical infeasibility is demonstrated.
1.40			Finding Nos. 20 and 21 purport that ancillary benefits result from LID. The benefits discussed are, however, of the type that are appropriately weighed and evaluated, under California Law, through the California Environmental Quality Act. As we discuss below in more depth, we urge the Board to integrate its requirements with CEQA, which is the authoritative legislation on how to mitigate any environmental impacts of development.	*County of Los Angeles v. State Water Resources Control Board* (143 Cal.App.4th 985 (2006)) held that Water Code section 13389 provides a complete exemption from CEQA for issuing MS4 permits. Staff incorporated LID strategies to mitigate water quality and hydromodification impacts. The findings acknowledge ancillary benefits that do not exist with traditional treatment strategies. However, evaluation of the ancillary benefits is not required.
1.41			Finding No. 22 of the 5th Draft Permit is perhaps the most	Staff partially agrees and partially

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			egregious misrepresentation of the content of the cited material. The finding alleges that there is "growing acceptance" to LID and – in particular – "associated onsite retention criteria." Nothing could be further from the truth. First, each and every California MS4 permit adopted since May 7, 2009 has rejected the use of the Effective Impervious Area standard and has allowed biofiltration as an allowable BMP. We urge the Board to review these recent permits before it enacts the requirements in the 5th Draft Permit. Furthermore, the finding alleges that the other requirements cited rely upon an onsite retention strategy, which is not the case. Specifically: The West Virginia MS4 Permit, after setting a retention standard as described in the Finding, goes on to establish an elaborate "Credit" system that allows the volume of water to be reduced by up to 75%. *Furthermore, the permit requirements are not currently in effect, and will not be for 4-1/2 years after permit adoption. This significant allowance was provided in recognition of the significant regulatory requirements that needed to be changed to successfully implement the onsite retention requirement.* USEPA's Technical Guidance on Implementing Stormwater Runoff Requirements should be acknowledged for what it is – Guidance. This is not a binding requirement, and even the Finding acknowledges that it only applies where technically feasible.	disagrees. Retention is a valid mechanism endorsed by US EPA, other states, and other Southern California Regional Boards. See response to comments 1.19 and 1.20. The commenter points out that in other MS4 permits where on-site retention requirements are included there is an allowance for demonstrated infeasibility. Similarly, the Tentative Order provides allowances for circumstances where there is demonstrated infeasibility for sites that attain a maximum EIA of 30%. In these cases, the tentative Ventura MS4 permit allows biofiltration to treat off-site flows. Board staff has developed a proposed revision for the Board's consideration that provides flexibility to use off-site mitigation when the minimum on-site retention exceeds an EIA of 30% upon demonstration that retaining a volume equivalent to a 30% EIA standard is infeasible. This

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			In describing the requirements in the City of Philadelphia, Finding #22 again omits critical details. The requirements only apply when technically feasible and a Waiver is available. Most notably, the City of Philadelphia establishes an incentive to reduce impervious area to 5% - such a project would receive an expedited review within 5 days, an unprecedented turnaround time in Ventura County. Regardless, the criterion is used for establishing an incentive, not a mandate as the Finding purports. Finally, the requirements cited from the City of Portland are also incomplete. The requirement refers to the "Performance Approach" used by the city for "unique circumstances" and is silent with regard to the "Simplistic Approach" and "Presumptive Approach" more commonly employed. Within these approaches, the City of Portland establishes a hierarchy of BMPs with infiltration at the top; none-the-less, the hierarchy allows offsite discharge from vegetated facilities. (Stormwater Manual, p 1-10.)	infeasibility/off-site mitigation option is similar to the LID standards adopted in the West Virginia MS4 permit, which includes off-site mitigation requirements at a 1:1.5 to 1:2 mitigation ratio to compensate for situations where it is infeasible to retain the required storm volume on-site.
1.42			Finding Nos. 23 through 25 purport to justify the regulation of impervious areas, citing supposedly learned academic analysis related to the topic. That analysis and the studies on which it is based, however, relate to analyses of the effects of impervious areas at the watershed (i.e., regional) level, not at the level of individual lots or projects. Indeed, Dr. Horner, on whose research the secret deal is based, postulates that there should be absolutely no difference whatsoever between regulating at the watershed	There is ample evidence supporting the minimization of impervious area to prevent water quality degradation. See response to comments 1.7, 1.10 and 1.11.

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			or community level, on the one hand, versus at the level of an individual lot for a mobile home (or a dog house). The Board should reject such simplistic analysis.	
1.43			Finding No. 26 merely references the agreement (i.e., secret deal) that was struck between several Ventura County cities and certain environmental lobbying groups. The agreement, however, was not based on any particular research or scientific justification; it is acknowledged as a *political* compromise. See Transcript of Adoption Hearing May 7, 2009, at p. 298, testimony of Mike Sedell ("It was interesting to observe that while your staff recommendation was able to garner support for most of their proposals …, what the permittees and the NGOs developed is what we perceive to be a true compromise, was universally opposed, except, of course, by the two sides at the table."). The Board should neither be impressed with such a political compromise, nor the attempt by a subset of parties to coerce the Board into abdicating its responsibility.	Comment noted.
1.44			**As was a problem with the 4th Draft Permit, the 5th Draft Permit was derived without proper consideration of the statutory factors set forth in California Water Code Section 13241.** When enacting water quality requirements, the Board is obligated to "balance" using the considerations identified in Water Code section 13241, and made applicable to permit requirements by Water Code section 13263 (in accordance with *City of Burbank v. State Water Resources Control Bd*). This requirement is all the more imperative in the instant circumstance, because there remains – because of recent	This general comment about the permit is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any

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			litigation – a judicial cloud over the regional basin plan due to the Board's persistent refusal to consider the Water Code sections 13241 factors are they relate to storm water. Particularly given the status of the basin plan, it remains most perilous for the Board to again fail to take into account the section 13241 factors.	comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter." Furthermore, the commenters submitted this same comment to the Regional Board, almost verbatim, prior to the May 7, 2009 hearing. A response was provided in response to comment 2.1 in the May 2009 Response to Comments, which states: *City of Burbank* only requires consideration of the 13241 factors when permit conditions go beyond the requirements of federal law. Conditions to require permittees to control the pollution in storm water to the maximum extent practicable is required by federal law. Therefore, permit conditions that are within that requirement are not beyond federal law. Furthermore, provisions directed to the effective prohibition of non-storm water into the MS4

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				permit are absolutely required by federal law, even if not practicable. Since the permit provisions are not more stringent than federal law, *City of Burbank* does not require an analysis of the 13241 factors. Notwithstanding the absence of a legal requirement to consider the 13241 factors for this permit, several commenters have insisted that the Regional Board should consider the factors. Notably, no evidence has been submitted by anyone that any one or more of the factors described in section 13241 somehow make any specific provisions of the permit inappropriate. Nevertheless, in response to these comments, the Regional Board is releasing an internal study, entitled "Economic Considerations of the Proposed (February 25, 2008) State of California, Regional Water Quality Control Board, Los Angeles Region, Order 08-XXX, NPDES Permit No. CAS004002, Waste

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				Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges From the Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura, and the Incorporated Cities Therein." The author of the report has confirmed that the analysis remains accurate for the current version of the draft permit (released February 24, 2009). The study contains a detailed analysis of the economic considerations related to the MS4 permit. The Regional Board is further releasing the following documents, which relate to the others of the section 13241 factors: "VENTURA MS4 Section 13241 Considerations"

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1.45			The 5th Draft Permit states, however, that consideration of the Calif. Water Code section 13241 factors is *not* required, suggesting instead that the federal standard for MS4 permitting set forth in 33 U.S.C. section 1324(p)(3)(B)(iii) preempts the need or ability to consider the section 13241 factors. *See* Findings E.25 at p. 26. This legal conclusion is erroneous. Unless the Board changes course and honors its obligations under the California Water Code, it will simply be compounding its legal errors.	See response to comment 1.44.
1.46			It is true that the relevant federal statute law at issue – 33 U.S.C. section 1324(p)(3)(B)(iii) – directs the Board (here, as the U.S. E.P.A. Administrator's surrogate) to "require controls to reduce the discharge of pollutants to the maximum extent practicable[.]" However, this introductory "maximum extent practicable" directive is what is called "hortatory" (meaning it merely *encourages* or exhorts action) rather than mandatory (indicating any legally enforceable mandate). *See Rodriguez v. West*, 189 F.3d 1351, 1355 (Fed. Cir. 1999) (holding that the express "maximum extent possible" directive of former 38 U.S.C. section 7722(d) was "hortatory rather than to impose enforceable legal obligations"). Because the language is introductory and hortatory, it does not require the Board to impose any and all possible requirements. Instead, the directive is merely a charge to go forth, balance many interests, and require *some* reasonable controls. Certainly, the federal directive is not a mandate to be immoderate or a	See response to comment 1.44.

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			mandate to do something in Ventura County merely because it was tried once somewhere in Florida.	
1.47			Our reading of the relevant federal statute is bolstered by the remainder of 33 U.S.C. section 1324(p)(3)(B)(iii). Immediately following the hortatory "maximum extent practicable" language is this: "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.) Thus, the federal statute merely instructs the Board, as the E.P.A. Administrator's surrogate, to *exercise its broad discretion* – within bounds of reason, of course.	See response to comment 1.44. Nevertheless, an important clause in this section is "such other provisions as the … State determines appropriate for the control of such pollutants." Given the weight of evidence regarding the impacts of imperviousness on waterbodies, the Regional Board has found that a limitation on EIA used in conjunction with a volume capture requirement is necessary to control pollutants from urban runoff and stormwater. In addition, even if a 13241 analysis was required, all MS4 permits require the use of BMPs to achieve a variety of purposes. The 13241 analysis performed by the Los Angeles Water Board included consideration of a variety of BMP costs and considerations. The commenters have made no showing that BMPs that they would use to comply with the negotiated

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				provisions involve an inherently different cost metric to implement than those already analyzed.
1.48			The federal courts have consistently ruled that the section 1324(p)(3)(B)(iii) federal directive is one mandating only the reasonable exercise of broad discretion – nothing more. *See Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992) ("Congress has vested in the [EPA or a surrogate state] broad discretion to establish conditions for NPDES permits."); *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 96 F.2d 1292, 1308 (9th Cir. 1992) ("NRDC contends that EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments. *Because Congress gave the administrator discretion to determine what controls are necessary, NRDC's argument fails…. Congress did not mandate a minimum standards approach or specify … minimal performance requirements*." (emphasis added)); *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999) ("Under [the MEP standard set forth in Clear Water Act section 402(p)(3)(B)(iii)], the EPA's choice to include [or exclude] … limitations in [NPDES] permits [for MS4s] was within its discretion."); *City of*	This general comment on the permit is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter." Nevertheless, see response to comments 1.25, 1.44, and 1.47.

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			Abilene v. U.S. E.P.A, 325 F.3d 657, 661 (5th Cir. 2003) ("The plain language of [CWA section 402(p)] *clearly confers broad discretion* on the EPA [or a surrogate state agency] to impose pollution control requirements when issuing NPDES permits") (emphasis added).	
1.49			Given that the federal directive set forth in section 1324(p)(3)(B)(iii) merely mandates that the Board must take evidence and exercise its broad discretion concerning permit conditions, there is surely no conflict – of the type giving rise to federal preemption concerns – between 33 U.S.C. section 1324(p)(3)(B)(iii), on the one hand, and Calif. Water Code section 13241, on the other hand. The latter (California Water Code section 13241) requires the Board to consider, when exercising its discretion, a certain list of *non-exclusive* factors (beneficial uses, environmental characteristics, realistic outcomes, economic considerations, the need for housing, and the need to recycle water) – among any other factors. California law further requires the Board to provide a record of the required analysis which is sufficient to demonstrate that it has meaningfully weighed and considered each of the prescribed non-exclusive factors. *See Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515: "[T]he agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.... [The agency must reveal] the relationships between evidence and findings and between findings and ultimate action...."	See response to comments 1.25, 1.44, and 1.47.

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			In short, there is nothing about exercising discretion in compliance with Calif. Water Code sections 13241 and 13263 which conflicts with the federal mandate to go forth and exercise broad discretion when regulating MS4 permittees. The Supreme Court of the United States has stated that courts should always attempt to reconcile laws to avoid finding federal preemption. *See Merrill Lynch, Pierce, Fenner & Smith v. Ware*, 414 U.S. 117, 127 (1973); *see also Rice v. Norman Williams Co*., 458 U.S. 654, 659 (1982) ("[T]he inquiry is whether there exists an *irreconcilable conflict* between the federal and state regulatory schemes."). Both state and federal courts generally recognize a presumption *against* finding federal preemption, even when there is express preemptive language. *See, e.g., Washington Mutual Bank, FA v. Superior Court*, 75 Cal.App.4th 773 (1999): In interpreting the extent of the express [federal] preemption, courts must be mindful that there is a strong presumption against preemption or displacement of state laws. Moreover, this presumption against preemption applies not only to state substantive requirements, but also to state causes of action. *Id*. at 782, *citing Cipollone v. Liggett Group, Inc*., 505 U.S. 504, 523 (1992) and *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). In the absence of express federal preemptive language, the presumption against finding federal	

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			preemption is even stronger: "In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation. *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707, 713 (1985).	
1.50			In addition, the question of whether federal preemption exists is purely a question of law. *See, e.g., Industrial Trucking Association v. Henry*, 125 F.3d 1305, 1309 (9th Cir. 1997), *citing Inland Empire Chapter of Associated Gen. Contractors v. Dear,* 77 F.3d 296, 299 (9th Cir.1996) and *Aloha Airlines, Inc. v. Ahue,* 12 F.3d 1498, 1500 (9th Cir.1993) ("The construction of a statute is a question of law that we review de novo…. Preemption is also a matter of law subject to de novo review."). It does not matter that federal preemption springs from express statutory language or from federal regulations promulgated under a statute. In either event, federal preemption is a question of law. *See Bammerlin v. >avistar International Transportation Corp.*, 30 F.3d 898, 901 (7th Cir. 1994) (meanings of federal regulations are questions of law to be resolved by the court).	See response to comments 1.25, 1.44, and 1.47.
1.51			Given that the existence and extent of federal preemption is properly as a question of law, the burden of demonstrating to a court that preemption exists rests with the party	See response to comments 1.25, 1.44, and 1.47.

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			asserting the preemption (here, the Board) – because federal preemption is an affirmative defense. *See Bronco Wine Co. v. Jolly*, 33 Cal.4th 943, 956-57 (2004) ("The party who claims that a state statute is preempted by federal law bears the burden of demonstrating preemption."); *see also United States v. Skinna,* 931 F.2d 530, 533 (9th Cir.1990) (stating that the burden is on the party asserting a federal preemption defense). Therefore, if the Board asserts (as the 4th Draft Permit suggests it will) that federal law preempts the consideration and application of the Porter- Cologne Act's factors, the Board would bear the burden of demonstrating, as a matter of law, that actions required of it under its enabling state law are preempted.	
1.52			Finally, the Board, its staff, and its counsel should know and recognize that any particular MS4 permit requirements are not mandated by federal law in such a way that the Burbank opinion would excuse compliance with California Water Code § 13241. This exact legal issue was addressed recently by the Commission on State Mandates in connection with the San Diego County MS4 permit. There, the water boards' attorneys took the same legal approach that is now reflected in the 5th Draft Permit, and the approach was rejected resoundingly by the commission. In a memorandum dated May 10, 2010 from the Chief Counsel of the State Water Resources Control Board to all regional board executive officers, the author of that letter stated that the water boards "will challenge these decisions in court."	Comment noted. See response to comments 1.25, 1.44, and 1.47.
1.53			We submit to the Board that the Commission on State	Comment noted. See response to

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			Mandates correctly ruled that ***the discretionary establishment of any particular MS4 permit conditions is not a federal mandate***. Armed with a proper understanding of the law (as explained above and further confirmed by the Commission on State Mandates), the Board should act here and now to stop shirking of its most basic State law obligations and stop compounding its legal errors. The Board cannot reasonably maintain that the federal law precludes application of the California Water Code § 13241 balancing factors to the weighty policy choices before it. As explained above and in the accompanying Technical Summary, many of the proposed permit conditions in the 5th Draft Permit would never survive a fair consideration of the section 13241 factors – especially those related to environmental characteristics, economic considerations, and the need for housing.	comments 1.25, 1.44, and 1.47.
1.54			**The permit requirements still need to be better integrated into the California Environmental Quality Act.** As we have noted before concerning earlier tentative draft permits, California law has long established CEQA as the procedural mechanism for evaluating – and mitigating – the environmental impacts of land development. The CEQA process evaluates all environmental impacts and provides a consistent process for the mitigation of the impacts that are foreseen, along with opportunity for input from a wide cross-section of agencies and public interests. Moreover, CEQA continues to evolve as science and policy imperatives drive it to do so. For example, several years	See response to comment 1.40. As noted in that response, *County of Los Angeles v. State Water Resources Control Board* (143 Cal.App.4th 985 (2006)) held that Water Code section 13389 provides a complete exemption from CEQA for issuing MS4 permits.

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			ago, green house gas emissions were never a focus of CEQA; now they certainly are.	
1.55			By establishing any fixed, inflexible numeric standards for low impact development – such as the generally-applicable 5% EIA standard or a hard-and-fast on-site retention mandate, the 5th Draft Permit trumps all other considerations (environmental and otherwise) and improperly shifts ultimate land use approval authority to the Board.	See response to comments 1.21, 1.22, 1.24, 1.40, and 1.47.
1.56			CEQA could – and we maintain should – be utilized to integrate low impact development and grading considerations into the project approval process in ways heretofore not applied. This would allow for the appropriate evaluation of water quality impacts in the context of all other environmental impacts. Perhaps more significantly, it would integrate the consideration of low impact development techniques into the land use planning process at the time of project design and development – rather than the all-too-common current occurrence where these techniques are evaluated after substantial approvals are in place and changes are difficult to retro-fit. Using CEQA as the tool to accomplish the integration of low impact development techniques would be achieved if the numeric standards were established as presumptive thresholds of environmental significance, which would significantly increase the level of analysis of water quality impacts – at the time when changes are most likely to be accommodated. We have previously offered more detailed analysis of this approach through our CEQA integration	See response to comment 1.40.

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			proposal that we have lodged before. The CEQA integration approach would achieve the Board's goals of appropriate attentiveness and reasonable consistency between jurisdictions and permits, while maintaining the ability to make local decisions appropriate for the jurisdiction's environmental circumstance.	
1.57			**The Board should put in place generous "grandfathering" implementation provisions in light of the severe economic recession and the need to respect dormant plans.** Since the Board adopted the present Ventura MS4 permit on May 7, 2009, the regulated community has been confused and consternated about how to implement its land use provisions in light of ongoing planning and existing plan. Adding to the confusion and concern were the delayed release of the final version of the permit (which took longer than 3 weeks), the amended permit (dated January 13, 2010 but revealed on January 29, 2010), and a March 2010 remanded permit with a new hearing date set for July 8, 2010. The May 7, 2009 permit also required a Technical Guidance Manual (TGM) be submitted no later than one year after the adoption, and set an effective date for the Land Development Requirements of 90 days after the Executive Officers approved the TGM.	The New Development/ Redevelopment Performance Criteria have been in place since May 7, 2009. Implementation of the requirements of this section is not required until 90 days after Executive Officer approval of the Technical Guidance Manual (TGM). The Tentative Order gives permittees an additional 120 days to revise and resubmit the TGM to the Executive Officer for approval. (The Draft TGM was submitted on May 6, 2010 under the requirements of the existing Order.) Therefore, project proponents will have approximately two years to get plans approved under the old requirements, since the first adoption of the new requirements.
1.58			Over the past year, the Ventura County Watershed Protection District has prepared a draft TGM – but with very little stakeholder participation. Stakeholder	The Tentative Order allows Permittees 120 days from adoption to resubmit the TGM. While

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			participation was truncated, in part, due to the voluntary remand of the permit which was announced in March 2010. This was acknowledged by the VCWPD in its transmittal of the TGM to the Board Executive Officer on May 6, 2010.	Permittees did submit the TGM under the requirements of the May 2009 Order, it is the Board's intent to allow the Permittees additional time (i.e. 120 days at the request of the Permittees) to revise and resubmit the TGM under the new 2010 Order.
1.59			Throughout this comment letter, we have indicated aspects of the 5th Draft Permit that should be changed before adoption. In addition to those, additional time to create implementation guidance must be provided. We are certain that the 120 days requested by the VCWPD would be insufficient for the level of outreach and education that must occur to implement any new low impact development requirements effectively. Furthermore, setting the effective date of the requirements "90 calendar days" after Regional Water Board Executive Officer approval of the TGM is vague and creates unnecessary uncertainty. Ninety days is also an extremely short time period for the significant level of redesign that could be required for projects to meet any new low impact development requirements, even if the final permit were to reflect the changes requested in this letter.	There is adequate time for outreach and education, given that the Permittees have had since May 2009 to solicit input on the TGM, and are provided another 120 days after adoption of the Tentative Order to revise and resubmit the TGM, and then will have at a minimum 3 months after that for additional outreach and education before the requirements of the New Development and Redevelopment section of the permit would become effective. In total, nearly two years will likely transpire since the initial requirement to update the TGM was put in place in May 2009 before the permit provisions of this section will become effective.
1.60			Moreover, significant actions that extend beyond the TGM must be taken by the Co-Permittees to implement the	Comment noted.

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			permit. As noted previously, significant barriers to implementing low impact development requirements remain; and Co-Permittees must amend zoning ordinances, building codes, and General Plans to reflect these changes. For example, to assist in reducing imperviousness in new residential developments, street widths should be narrowed. To facilitate reuse of captured stormwater, building codes should be updated to allow that water for non-potable building uses (e.g., toilet flushing). Conflicts with other policy goals must also be balanced. To our surprise and disappointment, none of these types of changes have been introduced during the past year within or concerning Ventura County, and the TGM does not even identify these types of changes as necessary strategies for successful low impact development.	
1.61			We note that the West Virginia permit that is cited in the findings of the 5th Draft Permit allowed the permittees there six months to develop their implementation manual. It goes on to recognize, however, that setting up long-term controls will "require changes to local codes and ordinances," and therefore "allows four years from the date of SWMP approval to being implementation of this standard." (Fact Sheet p. 14 at http://www.dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV%20MS4%20GP%202009%20FINAL%20Fact%20Sheet.pdf.)	Comment noted. See response to comment 1.59. Additionally, the Tentative Order provides Permittees the opportunity to apply to the Regional Board for approval of a Redevelopment Project Area Master Plan (RPAMP) for redevelopment projects within a defined regional area in consideration of exceptional site constraints that inhibit site-by-site implementation of post-construction requirements. The approved RPAMP may substitute in part or wholly for post-construction

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				requirements. Permittees with an approved RPAMP are allowed up to four years from adoption of the Tentative Order to implement the regional plan.
1.62			We encourage the Board here to provide similar implementation provisos, with a minimum of four years after the revised Technical Guidance Manual is approved. A generous implementation schedule is necessary particularly because our economy is broken. Now, more than ever, we need to protect not only "shovel-ready" plans but plans otherwise in the works.	Comment noted. See response to comment 1.61.
1.63			Since the first tentative draft was released, the BIA/SC and its affiliates have been active participants and contributors to the creation of new and improved MS4 permit. We continue to believe that rational, *implementable* permit requirements are critical to achieving great progress concerning water quality and our environment. We hope that these comments are received in the manner in which they are intended – to continue the discussion of how we can create a workable permit that improves water quality to the maximum extent practicable. We remain committed to a positive dialog with the Board and its staff – one that will result in an informed, balanced and effective permit.	Comment noted.
2.1	City of Camarillo		The City of Camarillo respectfully submits the following comments regarding the above referenced Tentative Order for your consideration. As stated in our October 12, 2007, May 29, 2008, and April 10, 2009 letters, the City of Camarillo has been a co-permittee under the Ventura	Comment noted.

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			Countywide Municipal Permit since its adoption in 1994. Although our population of fewer than 66,000 classifies us as a Phase II municipality, Camarillo chose to join the countywide effort toward improving water quality in a proactive manner. We feel the collaborative countywide program has been very successful toward meeting that goal.	
2.2			We appreciate the Regional Board's staff efforts over the past year to meet and consider our interpretations with the currently effective permit, Order No. 09-0057. The City of Camarillo supports the comments submitted in the Ventura Countywide Stormwater Management Program letter dated June 4, 2010 signed by Gerhardt Hubner. As stated in the countywide comment letter, we encourage the Regional Board to carefully consider the implications associated with any future modifications to the Permit. As highlighted in the letter, those concerns include the modifications made to the following areas in the Tentative Order:	Comment noted.
2.3			Annual Reporting Program - We appreciate the Regional Board's consideration of an alternative reporting format rather than the Tentative Order's current recommended format in Attachment I.	Comment noted. Per the permit, changes to the reporting format may be approved by the Executive Officer. Because the alternative reporting format was submitted too late (on May 7, 2010) to be considered as a part of the proposed action (which was publicly noticed on May 5, 2010), Board staff will consider the alternative reporting format submitted by the Permittees separately from the Board's agenda item on the Tentative Order itself.

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2.4			Total Maximum Daily Loads (TMDLs) - Camarillo concurs with the Countywide letter recommended edits to this section of the Tentative Order that provides further clarifications that the Waste Load Allocations in the TMDLs will be achieved through Best Management Practices (BMPs) and to provide a mechanism for making adjustments to the BMPs to ensure their adequate performance. We also encourage the Regional Board to adopt the recommended edits to the TMDL section of the Tentative Order to bring it in line with the adopted TMDL Basin Plan Amendments	This comment is outside the scope of the hearing. The incorporation of the TMDL WLAs in the permit was previously noticed for public comment and considered by the Regional Board during the May 2009 hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."
2.5			**Monitoring Program** - Camarillo concurs with the Countywide letter recommendation to delete the duplicative language in Part 4.B.2 regarding the Southern California Regional Bioassessment Study since it also appears in	While the level of detail describing the bioassessment in the Order was not necessary, fundamentally there is not a problem with including it

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			Attachment F of the Order.	there.
2.6			As stated in the Countywide Program letter, the comprehensive nature of Order 09-0057 as well as the Tentative Order sets a high bar for our municipal stormwater program and it has significantly increased Camarillo's as well as our residents' cost to implement the program. We look forward to our continued work with the Ventura Countywide Stormwater Program and the Regional Board in implementing the requirements of the Permit and encourage the Regional Board to carefully consider the implications associated with any future modifications.	Comment noted.
3.1	Coalition for Practical Regulation (CPR)		We were surprised and disappointed in the Board's acceptance of the secretly negotiated agreement between a small group of city managers and environmental organizations. The Board disregarded its own staff's recommendations that had resulted from comprehensive, several-year stakeholder participation process and approved minute, convoluted changes developed by this closed group. This action ultimately resulted in the Regional Water Board's agreeing to a voluntary remand of Order No. 090057, as requested by the Chief Counsel of the State Water Board order to address procedural issues raised in a June 8, 2009 letter from the Building Industry Legal Defense Foundation (BILD), the Construction Industry Coalition on Water Quality (CICWQ), and the Building Industry Association of Southern California (BIA/SC).	Comment noted.
3.2			CPR was extremely disappointed that the changes to the permit recommended by staff in underline and strikeout, especially the new findings, did not incorporate an	LID is recognized as source control. See response to comment 1.2.

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			emphasis on true source control. A water quality improvement strategy that focuses on removal of pollutants from stormwater is not as efficient and cost-effective as a strategy that emphasizes preventing the pollutants from getting into the stormwater in the first place. In fact, the adopted by Order No. 09-0057 included a finding that recognizes research indicating that dry atmospheric deposition may account for a significant load of pollutants into surface water. However, the underlined staff addition of findings to support the NRDC/Heal the Bay/city manager group agreement did not support the need for true source control to prevent the pollutants from entering the atmosphere from where they are deposited on watersheds and then washed into the receiving waters. Instead, a net increase of 11 findings to support specific approaches advocated by the environmental organizations simply moved the finding from number B-20 to number B-31. Much of the treatment included in the permit measures being reconsidered would be unnecessary if the Regional Board were to support true source control	
4.1	Contech Construction Products, Inc.		**LID should not be limited to retention BMPs.** The tentative order contains a very limited definition of Low Impact Development (LID). In addition to the water retention BMPs listed, BMPs that filter stormwater runoff should also be allowed where runoff retention BMPs are infeasible or undesirable. **Specific change requested:** Allow filtration of the 85th percentile design storm by where on-site retention is infeasible.	Bio-filtration with off-site mitigation is allowed where there is a demonstration that on-site retention is infeasible. See section 4.E.III.1(d) and 4.E.III.2. Staff has developed revised language for Board consideration that revises the minimum on-site retention requirement so that the use of biofiltration is not precluded upon

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				demonstration of technical infeasibility to achieve less than 30% EIA.
4.2			**The Effective Impervious Area (EIA) compliance metric violates the LID principle.** Central to the goal of a green infrastructure or low impact development approach is retaining predevelopment or pre-project hydrology in the developed condition. The EIA standard blatantly ignores predevelopment hydrology and assumes that eliminating runoff from 85% of storms will replicate pre-project/development conditions. This approach ignores the actual water balance which is heavily weighted toward evapotranspiration in the natural condition. Infiltration is expected to be the dominant fate of stormwater runoff on new projects given the engineering, public health and plumbing code barriers to rainwater harvest systems. The potential to dramatically over-infiltrate compared to natural conditions on a local project level must not be ignored. This water does not go away. It may cause structural issues for existing slopes, buildings and roads, lead to unwanted seeps and springs and has great flushing potential for soluble contaminants. It can also change the flow patterns in downstream waters. **Specific change requested:** Remove the Effective Impervious Area references in Part 4, Section E.3. Replace with a requirement that on-site retention options be exhausted prior to the consideration of flow-through treatment BMPs, unless site runoff is	See response to comments 1.2, 1.7, 1.10, 1.11 and 4.1. Additionally, the Tentative Order already allows Permittees the option of developing alternative post-construction stormwater mitigation programs on a regional basis (Redevelopment Project Area Master Plans, or RPAMPs) in consideration of exceptional site constraints that would inhibit site-by-site implementation of permit requirements. See section 4.IV.3.

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			conveyed directly to a regional retention BMP with capacity to manage the 85th percentile runoff event. Such a regional facility must exist prior to completion of site development.	
4.3			**Broad conclusions about LID feasibility don't always apply to specific sites.** The tentative order would essentially prohibit new development where the 5% EIA standard can't be met on site and would prohibit redevelopment where the 30% EIA standard can't be met. Generally, it will be feasible to retain the design storm, provided that native soils are amenable to infiltration and/or significant recycled water demand exists on site. And, in many cases, development following an LID framework will produce some cost savings. However, there are many sites where infiltration is infeasible and without significant recycled water demand. There are likely to be situations where regional harvest or infiltration facilities are more feasible. Broad conclusions about the general practicality and benefits of LID BMPs don't necessarily hold true when applied to individual sites. When on-site retention is infeasible, a development should be allowed to proceed with the most effective BMPs that are feasible. The EIA standard should not be applied at the individual site level. Flexibility should also be given for utilizing regional approaches that may be more cost effective and where operation and maintenance activities can be managed more	The Tentative Order does not prohibit new development or redevelopment where the 5% EIA standard can't be met on site. Where it is demonstrated that on-site retention is infeasible, treatment of surface runoff may be accomplished using biofiltration or other treatment BMPs with off-site mitigation. Additionally, Board staff has developed alternative language that would eliminate the 30% EIA cap by allowing a demonstration of technical infeasibility not only between 5-30% EIA, but also above 30% EIA with additional off-site mitigation. See also response to comments 1.21, 4.1 and 4.2. The savings estimations in Finding 29 are largely regional savings.

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			actively. **Specific change requested:** Remove the Effective Impervious Area references in Part 4, Section E.3. Recognize in Finding 28 that the LID approaches described in the EPA LID document did not all include full retention of the design storm. Clarify savings estimations in Finding 29. Are these local or regional savings?	
4.4			**The design storm definition should be amended to require at least 80% annual runoff capture and/or treatment** As written, the "water quality mitigation criteria" allows a BMP to be sized to mitigate the volume produced from a 0.75" storm event. This design standard should be applied to rainwater harvest and infiltration systems with caution. Unlike filters, which have a short residence time, runoff may be detained for several days in an infiltration system and much longer in rainwater harvest systems. The longer it takes to drain a BMP, the more likely it is to be full when the next storm arrives, which results in bypass of the new storm volume. **Specific change requested:** In Part 4, Section E.III.4 require that at least 80% of the average annual runoff volume be retained or filtered where retention is infeasible.	The following is a direct citation of one of the criteria to disconnect EIA included in the Tentative Order, "The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures (July 2002 and its revisions)" (see section 4.E.III.1(c)(2)). See also response to comment 4.1.
4.5			I understand and respect the impulse to retain our leadership position regarding stormwater mitigation	Comment noted.

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			requirements in Ventura County. However, the tentative order runs the risk of fueling a serious backlash against the Regional Water Board if it is seen as more being restrictive than contemporary California Phase I NPDES permits without providing a far superior level of protection. Above all new requirements must have a strong technical basis and the permit must be sensible and implementable. To this end, please make the changes suggested in this letter. These changes will make this permit more consistent with the LID approach described in other new generation permits in California which are on the leading edge of LID implementation nationally.	
5.1	Doose, Ginn		P.3-4 item IV, It states that all identified material/ will be included. I take issue with that statement. During the April 9, 2010 public participation period my colleague Teresa Jordan, and myself filed timely comments, however staff never responded to our comments. * Will the staff response be made to that Public Hearing comments of April 9th, and will those response's be made available in the June 10, 2010 public participation segment?	All timely comments within the scope of the hearing notice that was circulated to interested persons on May 5, 2010, and the responses to those comments, will be included as part of the Board package and as part of the administrative record for the Permit. Timely comments submitted prior to the Board's May 2009 action adopting the Permit are a part of the administrative record for the 2009 Permit. As stated in the Administrative Record Index dated May 5, 2010, the administrative record for this action incorporates the entire administrative record for the Regional Board's adoption of

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				Order No. 09-0057 on May 7, 2009.
5.2			On p. 4, item V, item A, Staffs makes a statement in reference to; interested persons wanting to be made a party as provided in VI, may not present evidence. It would appear that the Regional Water Board is merely going through the motions of taking into account the public's comments. It sounds some what ambiguous if you ask me, what is the purpose of this wording, can you please clarify. " As I understand by being a resident of Ventura County, and having previously filed comments for the April 9,2009 report, and numerous other State Water Board Public Hearings I've already earned the right to comment	As stated in the Notice of Public Hearing dated May 5, 2010, participants in this proceeding are identified as either "Parties" or "Interested persons." Designation as a Party is not necessary to participate in this proceeding. Both Interested Persons and Parties have the opportunity to present written and/or oral comments about the proposed modifications to the permit. In addition, both Interested Persons and Parties may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board. Accordingly, the commenter's written comments will be provided to the board, as well as included in the administrative record for this matter. The commenter may also make oral comments at the hearing..
5.3			If other interested commenter's haven't had the opportunity to review the previous response to comments made for the April 9, 2010 public comment period. Wouldn't, not knowing staff's response prior to any decision made violate	All comments and the responses to the comments on the 2010 proposed Board action, and the 2009 Board action are available for public

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			the public participation process?	review by contacting the Regional Board at (213) 576-6600 to make an appointment for a file review at the Regional Board's office. Additionally, the responses to comments on the May 2010 public notice will be posted on the Regional Board's website.
6.1	Jensen Design and Survey, Inc.		We must make this permit reasonable and workable. Our business, and our profession are committed to cleaning and improving the environmental design throughout the world and that begins at home. We need to work together to address issues and remove or correct problems with the land development requirements in the permit. The permit should be modified to: • Eliminate Effective Impervious Area (EIA) as a compliance metric, it does not attain measurable value and is not a practical requirement. Good planning and site constraints can achieve the goals without forced onsite retention	An increasing body of scientific research, conducted in many geographic areas and using many techniques, supports the theory that impervious cover is a reliable indicator of stream degradation. Furthermore, impervious cover is a practical measure of the impact of development on watersheds because: • it is quantifiable; • it is integrative, meaning that it can estimate or predict cumulative water resource impacts; • it is conceptual, meaning that it can be easily understood by water resource scientists, municipal planners, landscape architects, developers, policy makers and citizens. For these reasons, impervious cover is emerging as a scientifically sound, easily

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				communicated, and practical way to measure the impacts of development on water quality. The EIA metric not only addresses the erosive effects of storm water but the water quality impacts resulting from development by preventing pollutant loads generated from the majority of a site from leaving the site through surface runoff. The National Research Council in its publication "Urban Stormwater Management in the United States" states that, "[f]low and related parameters like impervious cover should be considered for use as proxies for stormwater pollutant loading," stating that "[t]hese … have great potential as a federal stormwater management tool because they provide specific and measurable targets, while at the same time they focus regulators on water degradation resulting from the increased volume as well as increased pollutant loadings in stormwater runoff" (emphasis

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				added). In the Tentative Order, the EIA metric is translated into a volume based requirement (see section 4.E.III.1(c)). This volume based requirement is based extensive information that the majority of pollutants flow off a site during the "first flush" of a storm. Therefore, by requiring that the initial storm volume be retained on site, pollutants will not be mobilized off site by runoff and, thus, the water quality of downstream receiving waters will be improved. The use of the EIA metric in conjunction with a volume standard helps ensure that LID is implemented to the maximum extent possible on a site and that pollutants are abated throughout the majority of a project. A standard based solely on properly sizing retention measures to meet a design storm volume does not ensure that pollutants will be mitigated from the majority of a site. While this volume

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				standard may be appropriate for the purpose of abating hydromodification impacts, it is not sufficient for ensuring abatement of water quality impacts.
6.2			• Biofiltration and biotreatment must be encouraged as a preferred and allowable best management practice for low impact development, If a project provides filtration and treatment why should it be required to store water as well?	Numerous agencies including US EPA and local and regional agencies within Southern California have identified retention (infiltration, capture and reuse, evapotranspiration) as preferred alternatives when implementing LID. The US EPA commissioned the NRC report (2008), "Urban Stormwater Management in the United States" that concluded, stormwater control measures [SCMs] that focus on retention such as better site design, downspout disconnection, conservation of natural areas, among others can dramatically reduce the volume of runoff and pollutant load from a new development and that such SCMs should be considered first. The City of LA's Draft Stormwater

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				LID Ordinance (2010) states that sites "shall be designed to manage and capture stormwater runoff, in priority order of infiltration, evapotranspiration, capture and use, and/or treated through high removal efficiency biofiltration/biotreatment system of all of the runoff on site to the maximum extent feasible" (emphasis added). Similarly, MS4 Permits in other Southern California regions require on-site retention unless there is demonstrated infeasibility, in which case biofiltration may be used (see for example County of Orange MS4 Permits issued by the Santa Ana and San Diego Regional Boards).
6.3			• The permit must include flexibility so that good land use planning can be balanced with LID principles and soil consideration especially in the areas of onsite detention where infiltration is potentially harmful for any number of reasons (vector breeding, lack of existing outlet systems, Pathogen source, expansive soil conditions, impermeable sub grades, etc.)	The Tentative Order provides the flexibility to use biofiltration or even conventional treatment in conjunction with off-site mitigation, where there is demonstrated technical infeasibility.
6.4			If the LA RWQCB does not make these changes, the permit	It is widely recognized that the use

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			will: • Increase the cost of all new public and private infrastructure without any true improvement on the quality of the environment • Make infill and redevelopment projects nearly impossible to build, creating conflicts with the goals of SOAR, SB375, and use and reuse of the developed areas in our County • Further degrade the County's economy development ... business will continue to leave and job loss will continue as business expansion cannot afford unreasonable requirements • Remove local land use authority and mandate that unproven storm water controls, not good planning, will be the deciding factor in what is built in Ventura County	of LID-based site design often reduces the cost of new public and private infrastructure as described in the findings of the Tentative Order. The Tentative Order allows alternative compliance measures for individual sites under conditions where the density or nature of a smart growth or infill or redevelopment project would create significant difficulty for compliance with the on-site retention requirement. Additionally, the Order still allows a Permittee or a coalition of Permittees to apply to the Regional Water Board for approval of a Redevelopment Project Area Master Plan (RPAMP) for redevelopment projects within the Redevelopment Project Areas, in consideration of exceptional site constraints that inhibit site-by-site or project-by-project implementation of post-construction requirements. This provision applies to City Center areas, Historic District areas, Brownfield areas, Infill Development areas, and Urban

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				Transit Villages. Finally, in regards to the comment that the provisions of the Tentative Order remove local land use authority, it was the cities and the County who proposed the very provisions that the commenter deems to be an infringement on local land use authority.
6.5			Over the past year much work has been done on the Technical Guidance Manual (TGM). In review of the DRAFT TGM little has been done to address how good design can add flexibility in how the permit can be flexible and implemented. It is really a repeat of the existing well known BMPs and new language that will preclude the use of many of the BMP options. Without substantial change and clarity to the DRAFT TGM design problems without solution are inevitable. In spite of the claim that the new Ventura MS4 Permit is supposed to encourage Low Impact Development BMPS It does nothing to encourage this and adds unwarranted Volume based storage requirements. It appears to us that the only "sure way" to address the MS4 requirement is Onsite RETENTION or don't build. The DRAFT TGM also creates new restrictions on methods of computing storage requirements that are not in the permit by removing the 0.75 storm event capture measurement from sites that are over 5 acres in size. We sincerely hope you to incorporate these changes before	Staff disagrees. The Tentative Order's conditions regarding EIA and on-site retention provide strong support for LID. See also response to comments 6.2, 6.3 and 6.4. The Tentative Order provides Permittees with an additional 120 days to revise and resubmit the Draft TGM. Once submitted, Board staff will review the TGM for consistency with the requirements in the permit.

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			the July 8, 2010 hearing.	
7.1	Jordan, Teresa		I support the Board's decision to reconsider the May 7, 2009 Ventura Countywide MS4 Order No. 09-0057 (NPDES Permit No. CA9004002).	Comment noted.
7.2			The deadline dates given in the May 5, 2010 NOTICE of PUBLIC HEARING are confusing.	The general format of the notice and the deadlines therein are consistent with previous notices and are in accordance with applicable laws requiring public notice. However, the commenter's summary of the deadline dates is accurate, as outlined in the Notice of Public Hearing dated May 5, 2010.
7.3			I request that my letters of April 8, 9, 10, 13, and 14, 2009 be brought to the July 8, 2010 public hearing.	Written comments submitted by the comment deadline for the Board's May 2009 action adopting the Permit are a part of the administrative record for the 2009 Permit. As stated in the Administrative Record Index dated May 5, 2010, the administrative record for this action incorporates the entire administrative record for the Regional Board's adoption of Order No. 09-0057 on May 7, 2009. Per the commenter's request, staff will bring these letters to the July 8, 2010 public hearing. However, these

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				letters will not be given to the board as part of their agenda binder since they are outside the scope of the hearing as described in the May 5, 2010 Notice of Public Hearing.
7.4			I object to the narrow and limited scope of the May 5, 2010 NOTICE, and at the July 8, 2010 reconsideration's public hearing for the following reason. The Administrative Record submitted to the Regional Water Board for the May 7, 2009 public hearing was incomplete. Board staff never responded to my April 8, 9, and 10, 2009 letters. Board staff also never responded to Ginn Doose's April 2, 2009 letter. Response to these letters are nowhere to be found in the "April 30, 2009 Revised Tentative Ventura County MS4 Permit" Regional Water Board's website's "Response to Comments - Attachment A"; "Response to Comments ; "Response to Comments Legal", and "Response to Comments 13421"; as well as the "Change Sheet". This lack of Regional Water Board staff responses to these letters made the Administrative Record submitted to the State Water Board incomplete.	Staff did respond to the commenter's and Ginn Doose's April 2009 comment letters. Regional Board staff responded to multiple commenters with one response when the identical comment was stated. Your April 2009 comment asking if permit coverage was required for Recreation and Parks emptying pond water into a city sewer was responded to individually and is part of the 2009 Ventura County MS4 Permit administrative record.
7.5			Since it is stated on page 7 of the NOTICE OF Public Hearing that "Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed", I request Board staff responses to my April 8, 9, and	See response to comments 7.3 and 7.4. Since the April 2009 letters are outside the scope of the hearing as described in the May 5, 2010 Notice of Public Hearing, these letters will not be posted on the Regional

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			10, 2009 letters, and also the Ginn Doose's April 2, 2009 letter. I also request posting of these responses on the Regional Water Board's website by June 27, 2010.	Board's website. As stated above, the administrative record for this action incorporates the entire administrative record for the Regional Board's adoption of Order No. 09-0057 on May 7, 2009. In addition, the entire administrative record for the 2009 action is available for review by contacting the Regional Board office at (213) 576-6600 and scheduling a file review appointment.
7.6			I request inclusion of my April 13, 2009 and April 14, 2009 letters in the Administrative Record.	See response to comment 7.3
7.7			I request Regional Water Board staff responses to my April 13, 2009 and April 14, 2009 letters.	
7.8			Commenter identified typographical and formatting inconsistencies, stated her support for specific changes in terminology; and her opposition of changes to deadlines in the Tentative Order.	Comments noted. Staff has corrected errors as appropriate.
7.9			Page 54, "Appendix A. Economic Consideration of the Proposed Order 08-XXX" since to date the "Economic Considerations of the proposed Order (February 25, 2008)" has not been approved by the Regional Water Board, a new economic analysis must be undertaken. The May 7, 2009 Revised Tentative Order included a Mitigation Funding section (page 66 of 138). Section 4(a) stated "The Principal Permittee or a coalition of Permittees shall create a Mitigation Funding Plan… to fund regional or sub-regional	The "Economic Considerations of the Proposed Order 08-XXX" were considered and accepted by the Board prior to its adoption of the current permit. Additionally, this comment is outside of the scope of the July 2010 hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral

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			solutions to storm water pollution, where any of the following situations occur:…", and "The Permittees shall submit the Mitigation Funding Plan to the Executive Officer for approval 445 days after Permit adoption. The Mitigation Funding Plan shall be deemed in effect upon Executive Officer approval". The May 7, 2009 Final Corrected January 13, 2010 Tentative Order No. 09-0057 deleted the section on Mitigation Funding. The provisions stipulated in the May 7, 2009 Revised Tentative Order No. 09-xxx were out of line since none of the Permittees would have held public hearings for their respective citizenry to scrutinize the information in a timely manner. Already amendments to the 1992 Ventura Countywide NPDES Permit Implementation Agreement have been undertaken as nonpublic hearings, and require only a signature page instead of a resolution. This is why I have asked that the certification statement provision require signatures from the Chairperson for the County, and the watershed Protection District, and require signatures from the cities Mayors instead of "the appropriate authority of the local agency shall sign the document for "The Local SWPPP certification". The existing Ventura County Watershed Protection District Benefit Assessment Program fees back in 1992 did no go through the Permittees' public hearing processes. Thus, the Nava/Karnette bill now allows the District to levy property – related fees.	comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."
7.10			Under section G, number 3, of the Tentative Order it is stated "On April 5, 2007, September 20, 2007 and July 10, 2008, the Regional Water Board conducted workshops to	Comment noted. The July 10, 2008 date will be deleted.

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			discuss drafts of the NPDES Order and received input from the Permittees and the public regarding proposed changes". The July 10, 2008 workshop was cancelled.	
8.1	Landstone Communities, LLC		We are particularly concerned about the ambiguity surrounding the "grandfather" provisions of the Proposed Order. We ask you to consider including within the Proposed Order a "blue line" test which would allow those development projects which are, at the time of the adoption of the Proposed Order, within the unexpired term of a Development Agreement to be exempt from the provisions of Section E. While it is possible that the projects which are within the unexpired term of a Development Agreement may be "grandfathered" in any event because there are no discretionary approvals remaining, we believe that such a clear and unambiguous test will be enormously helpful to give guidance to existing, large scale development projects, and avoid the possibility of litigation that may result from the distinction the Proposed Order seeks to create between discretionary and non-discretionary approvals.	The comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."
9.1	City of Moorpark		As mentioned in the Ventura Program's letter, the City has committed significant resources towards permit compliance and has accomplished many tasks. The City completed its prioritization of catch basins by levels received through a map and table. The City has also developed its Integrated Pest Management Program and looks forward to implementing new practices to reduce its use of pesticides and fertilizers. Although the City's monitoring program is not scheduled to begin until FY 2010/11, it is our	Comment noted.

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			understanding that the City's monitoring station will be ready and the City looks forward to seeing the results.	
9.2			The City concurs with the Ventura Program's letter recommending revisions to the Tentative Order to provide a mechanism for making adjustments to the BMPs to ensure their adequate performance. As stated in previous comment letters, Moorpark is one of many stakeholders that have worked together collaboratively towards improving water quality, in the Calleguas Creek Watershed and it appreciates the Tentative Order's requirements being consistent with the adopted TMDLs for this watershed	Comment noted.
9.3			The City appreciates the Tentative Order's inclusion of a comprehensive approach for addressing trash in Ventura County. The City supports taking an aggressive approach to trash management. The Tentative Order provides the Permittees with the necessary flexibility to prioritize drainage systems for trash generation, and subsequent clean-up and removal. Furthermore, the Tentative Order allows the Permittees to develop alternative approaches that reflect the nature and composition of the municipality. The City supports the flexibility provided for in the Tentative Order and encourages the Regional Board to continue providing the flexibility needed to tailor municipal programs for relevant and identified water quality issues.	Comment noted.
10.1	Mursandy		The homeless should not be housed in R1 through R3 properties nor should they be housed in the downtown, beach or tourist areas of Ventura. Apartment buildings with greater than 4 units should be	This comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, “[a]ny written or oral comments, or evidence, relating to

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			used. And it would be preferable that no more than one unit for every 4 apartments be used for the homeless. What we don't want is to create more urban blight	reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."
11.1	Natural Resources Defense Council (NRDC)		Factual Background Notwithstanding past stormwater permit programs, including runoff volume control and erosion control measures, significant water quality problems persist in Ventura County. Indeed, Ventura County's own reports indicate that: Elevated pollutant concentrations were observed at all monitoring sites during one or more monitored wet weather storm events, as well as at all Mass Emission sites during one or more dry weather events.	Comment noted.
11.2			Procedural Background The Regional Board, in Order 09-0057, adopted the same substantive provisions now before it in the Draft Permit. The LID provisions adopted by the Regional Board, as well as details of other Draft Permit terms including those related to Municipal Action Levels ("MALs"), beach water monitoring, and BMP performance standards were	Comment noted.

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			presented to the Regional Board in a letter dated April 10, 2009 by the Environmental Groups and Ventura County Permittees, and represented a consensus agreement gained after a laborious negotiation process. Subsequent to a petition on the Order submitted to the State Water Resources Control Board ("State Board") by the Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and the Building Industry Association of Southern California ("BIA Petition"),10 the Regional Board has chosen, at the State Board's request, to accept a voluntary remand of Order 09-0057 to address "perceived" procedural issues associated with the Order	
11.3			Critically in this regard, the key issues identified by the State Board as grounds for requesting a voluntary remand of the Permit (which in reality represented breakdowns in the petition process), involved issues that arose only after the Permit's adoption. These issues largely involved regrettable clerical errors related to Section E.III of the Order made in issuing the final version of the Order for public release, after the Regional Board had voted to adopt Order 09-0057, or omissions of material made in preparing the administrative record in the BIA Petition for transmittal to the State Board. Though the State Board made mention of other "alleged irregularities in the hearing" in its request that the Regional Board accept a voluntary remand,12 the State Board fully acknowledged that this issue represented solely a claim that the BIA "Petitioners have argued." Both Environmental Groups and the Regional Board itself	Comment noted.

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			provided substantial evidence and citation to the record to demonstrate that all parties and stakeholders were given both proper notice of the Permit's provisions and adequate, or more accurately, ample opportunity for comment.13 As a result, at no point did the State Board's request for a voluntary remand call into question the Regional Board's substantive decision to adopt the Draft Permit terms, or the appropriateness of the provisions in the Draft Permit under the Clean Water Act or other applicable law. The Regional Board was correct to adopt the Draft Permit terms before it in 2009, and would be remiss in failing to adopt the Draft Permit before it now.	
11.4			Standards Governing the Adoption of the Tentative Order by the Regional Board In considering the Tentative Order, the Regional Board must not only ensure compliance with substantive legal standards, but it must also ensure that it complies with well-settled standards that govern its administrative decision-making. The Tentative Order must be supported by evidence that justifies the Regional Board's decision to include, or not to include, specific requirements. The Regional Board would be abusing its discretion if the Tentative Order ultimately fails to contain findings that explain the reasons why certain control measures and standards have been selected and others omitted. Abuse of discretion is established if "the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Cal. Code Civ.	Comment noted. Regional Board staff believes the findings in the tentative Order are legally adequate and supported by evidence.

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			Proc. § 1094.5(b); see also Zuniga v. Los Angeles County Civil Serv. Comm'n (2006) 137 Cal.App.4th 1255, 1258 (applying same statutory standard).) "Where it is claimed that the findings are not supported by the evidence, … abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (Phelps v. State Water Resources Control Bd. (2007) 157 Cal.App.4th 89, 98-99.)	
11.5			The administrative decision must be accompanied by findings that allow the court reviewing the order or decision to "bridge the analytic gap between the raw evidence and ultimate decision or order." (Topanga Ass'n for a Scenic Cmty. v. County of Los Angeles (1974) 11 Cal.3d 506, 515.) This requirement "serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision … to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." (Id. at 516.) "Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency." (Id. at 516.)	Comment noted.
11.6			The Draft Permit's LID Terms Were Properly Adopted in Order 09-0057, are Well Supported by Evidence Before the Regional Board, and are Legally Required Under the Clean	Comment noted.

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			Water Act A. The Low Impact Development Provisions and Other Permit Terms Represent a Fragile Consensus Agreement Between the Environmental Groups and Ventura County Permittees That Should be Supported by the Regional Board	
11.7			Since the Clean Water Act was extended to regulate stormwater, environmental groups and municipalities and other regulated parties seeking coverage under National Pollutant Discharge Elimination System ("NPDES") permits have often advocated and even litigated against one another. In a unique turn of evens, the LID language and language of other Draft Permit terms, including use of MALs and requirements for beach water quality monitoring, is the result of a rare and fragile consensus that two environmental groups, ten cities, and the County of Ventura formed over the course of almost a year. The Regional Board should do everything in its power to see that this consensus is not derailed by needless alteration the terms of the Draft Permit, terms it has previously and appropriately adopted.	Comment noted.
11.8			For a period of several months in 2008, the Regional Board halted work on the Ventura County Stormwater Permit due to proceedings in the Arcadia II lawsuit. During this lull, the Ventura County Permittees and Environmental Groups initiated conversations in an attempt to find common ground on the permit requirements. At the same time, the Permittees and the Environmental Groups retained experts to gain a better understanding of the technical merits of	Comment noted.

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			the permit provisions. The two sides then worked together with their respective experts during numerous meetings and conversations through the spring of 2009. On April 10, 2009, the groups submitted the consensus language that was ultimately adopted by the Regional Board in the form of a comment letter on the February 2009 draft of the permit. (Draft Permit, at Finding B.26.)	
11.9			The collaboration among these stakeholders on the issue of stormwater regulation was unprecedented. The negotiations were protracted, often tenuous, and ultimately, highly productive. Ventura City Manager Rick Cole said at the time the consensus language was to be considered by the Regional Board: "we stand together with a unitary proposal that we sincerely hope will be given serious consideration by your board." Mr. Cole later reflected that "[i]t took courage on the part of the environmental groups, public agencies, and the regional board to adopt the most stringent standards ever imposed on stormwater runoff . . . . But it also took a dose of common sense to find a fair and cost effective way of achieving clean water goals.	Comment noted.
11.10			This agreement and its included provisions represented just that, a commonsense and practical solution to stormwater control in Ventura County that the Regional Board has stated is "consistent with established LID doctrinal components articulated by USEPA and the State Water Board," and is "supported by substantial evidence." If the Regional Board determines now to alter any of the provisions of the agreement, the delicate consensus would likely unravel. In the April 10 Letter, the Environmental	Comment noted.

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			Groups and Permittees warned that "if the Board were to eliminate or alter the approach we describe below, the consensus we have reached would lose its character and the signatories would no longer be in agreement. In that scenario, our individual positions on the matters described [in the letter] would thus remain intact as detailed in our respective comment letters	
11.11			At the May 7, 2009 adoption hearing for Order 09-0057, Simi Valley City Manager Mike Sedell voiced similar concerns: "Based upon this carefully and delicately crafted and constructed agreement, we mutually agreed that if any piece of the agreement needed to be modified, the give and take that transpired in our negotiations would be weighted differently and neither side would then support the outcome." To this end, Environmental Groups believe that should any of the substantive LID provisions be altered, that the Draft Permit's onsite retention requirements would appropriately be rendered more stringent than those contained in the Draft Permit, not less. Further, provisions calling for: compliance with MALs; expanded beach water quality monitoring; and, strengthened BMP performance standards would be requisite for the Draft Permit to be lawfully adopted. (See Section IV.D.4., infra.) To avoid this outcome, and to avoid undoing the good that has arisen from the consensus, it is critical that the Draft Permit remain intact with respect to the provisions encompassed by the agreement.	Comment noted.
11.12			The LID and Onsite Retention Provisions in the Draft Permit were Previously Adopted in Order 09-0057 and All	Comment noted. As stated in the Notice of Public Hearing dated May

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			Stakeholders had Opportunity for Comment and Extensive Input to the Draft Permit's LID and Related Provisions At That Time To the extent that the Regional Board has been motivated in ordering a reconsideration of Order 09-0057 by a concern that its previous adoption of the Draft Permit and its onsite retention requirements was procedurally improper, the Board's well-intentioned concern is misplaced. In adopting the provisions and requirements of Order 09-0057, which are contained again in the Draft Permit, the Regional Board properly complied with all state and federal procedural requirements regarding the adoption of NPDES permits when it previously adopted these provisions, including the Draft Permit's LID requirements and EIA standards. (See Cal. Water Code § 13377; 40 C.F.R. § 124.1 et seq. See also In the Matter of National Steel and Shipbuilding Company (1998) State Board Order No. WQ 98-07, at 6.) The Regional Board should feel comfortable with its earlier decision to adopt Order 09-0057, and in repeating this decision to adopt the Draft Permit here.	5, 2010, the Regional Board proposes to reconsider adoption of Order No. 09-0057 to address the perceived procedural concerns related to incorporation of the agreement into the adopted permit.
11.13			In Point of Fact, prior to the adoption of Order 09-0057 the Draft Permit had a long history and included a retention standard from the start. The first draft of the permit, for instance, was released in 2006 and would have mandated that Permittees adopt a program requiring all new development and redevelopment projects to: "[m]inimize pollutants emanating from impervious surfaces by reducing the percentage of Effective Impervious Area to less than 5 percent of the total project area" and to "[m]inimize the	Comment noted.

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			percentage of impervious surfaces on development lands to support the percolation and infiltration of storm water into the ground" (Dec. 27, 2006 Draft Permit, at ¶¶ 4.E.1.(b)-(c).) All subsequent public drafts of the permit included infiltration and retention requirements stemming from this original requirement. (See, e.g., August 28, 2007 Draft Permit, at ¶ 5.E.III.; April 28, 2008 Draft Permit, at ¶ 5.E.III.)	
11.14			Indeed, the onsite retention requirements formed the center point of discussion in public dialogue concerning the permit. In response to the first draft permit, for instance, NRDC submitted a comment letter in March 2007 that included a study that a national stormwater expert, Dr. Richard Horner, had conducted. The study extensively discussed the viability of, and need for, a strict EIA standard to protect water quality in Ventura County. Similarly, when the Regional Board held a hearing on the second Permit draft in September 2007, NRDC gave a PowerPoint presentation that hit on the importance of retention. The next month, NRDC and Heal the Bay submitted formal comments that again stressed the need for retention: "In order for surfaces to be rendered truly 'ineffective,' all rainwater falling on them must be infiltrated or captured and reused."	Comment noted.
11.15			Further, discussion of the retention standards was occurring between the stakeholders. In addition to negotiations between the Environmental Groups and Permittees, discussed in section IV.A., supra, on March 24, 2009, the Permittees and Environmental Groups spoke with	Comment noted.

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			representatives of the BIA and Construction Industry Coalition on Water Quality – Andrew Henderson and Dr. Mark Grey – about the Ventura Permit consensus language. NRDC attorney Bart Lounsbury emailed that language to Mr. Henderson and Dr. Grey. The following week, on April 1, 2009, the Permittees and environmental NGOs again spoke with Petitioners' representatives about the consensus language, and Petitioners responded specifically to the onsite retention requirement.	
11.16			Further, stakeholders BIA (of Southern California and of the Los Angeles and Ventura Chapter) and the Construction Industry Coalition on Water Quality had frequent, ongoing, and substantive communications with the Regional Board regarding the Permit. In fact, these stakeholder organizations had at least five official meetings with Regional Board staff between May 31, 2007 and May 22, 2008. Board staff member Samuel Unger was invited to speak on the permit at a meeting of the Building Industry of America's Ventura County chapter at a Westlake law firm in January 2009.	Comment noted.
11.17			The Adopted LID Provisions Were a Logical Outgrowth of Prior Drafts of the Permit Further, a "final [order] that varies from the proposal, even substantially, will be valid so long as it is 'in character with the original proposal and a logical outgrowth of the notice and comments.'" (Environmental Defense Center, Inc. v. U.S. EPA (9th Cir. 2003) 344 F.3d 832, 851.) Thus, in stating that "[a]gencies, are free – indeed, they are encouraged – to modify proposed rules as a result of the	Comment noted.

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			comments they receive," (Northeast Maryland Waste Disposal Authority v. U.S. EPA (D.C. Cir. 2004) 358 F.3d 936, 951), courts have held that an "[a]gency's change of heart . . . only demonstrates the value of the comments it received." (Arizona Public Service Co. v. U.S. EPA (D.C. Cir. 2000) 211 F.3d 1280, 1300.)	
11.18			Courts determine the adequacy of notice through application of a "logical outgrowth" test. The test concerns "whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule." (Environmental Defense Center, 344 F.3d at 851 (emphasis added).) This test was more than satisfied by the circumstances surrounding the adoption of Order 09-0057. First, previous versions of the Draft Permit included similar requirements and concepts to those the Regional Board ultimately adopted. Consider the subtle and evolutionary change from the February 2009 Draft Permit to the final Permit. The February 2009 Draft Permit stated: (b) The goal of the New Development and Redevelopment standards shall be to reduce the effective impervious area (EIA) to 5% or less. (c) All features structured constructed [sic] to render impervious surfaces "ineffective" as described in provision (b), above, shall be properly sized to infiltrate or store for beneficial reuse at least the volume of water that meets the criteria in subpart 5.E.III.3 [referring to the 85th percentile 24-hour storm]	Comment noted.

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12.1	Nordman, Cormany, Hair & Compton, LLP		Potential Significant Environmental Impacts Over the years in Ventura County numerous wetlands have actually been created as a result of urban runoff. The habitat consequences of now requiring all new and expanded projects to capture, treat, retain and infiltrate runoff from storm events was never evaluated by the Board. Although this permit has been touted as improving water quality and the environment, it also has the potential for degrading and potentially eliminating existing environmental habitat. This potential adverse environmental impact should be evaluated by the Board before imposing the permit. The Board should be fully informed of all positive and negative consequences before full implementation is required. I urge the Board to have a thorough and complete review of the impacts associated with the implementation of this permit.	See response to comment 1.40. As noted in that response, County of Los Angeles v. State Water Resources Control Board (143 Cal.App.4th 985 (2006)) held that Water Code section 13389 provides a complete exemption from CEQA for issuing MS4 permits.
12.2			Economic Impacts on Public Entities As general counsel for various special districts, I know input was never requested from these special districts in the development of this permit. The cost associated with permit compliance is extremely high. In the current economic climate of the State of California and all of the respective public entities in Ventura, the staff costs associated with implementation of this permit, the infrastructure costs for public capital construction projects, redevelopment projects and affordable housing projects associated and imposed on public entities to comply with the permit cannot be afforded. For example a transit district,	This comment concerning costs associated with compliance is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any

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			by its vary nature, is required to have impervious surfaces to withstand the weight of buses. The cost associated with the development of a new transit facility to comply with the permit has increased exponentially. In California, statutes such as A.B. 32 and S.B. 375 seek to promote clean air and comprehensive transportation. The great capital cost increases that will result from MS4, will mean that the public entities cannot afford to build new transit facilities since the cost of the capital improvements associated with MS4 will be prohibitive. I believe everyone agrees we should have clean air and water but we need to develop a logical, rational and stepped process to reaching the goal. MS4 has had a chilling impact upon creation of affordable housing in Ventura County. The costs associated with compliance with this permit will prevent redevelopment agencies from being able to fully fund affordable housing projects and even private developers cannot fund such needed affordable housing projects. Creation of affordable housing is a State mandated goal. This permit has frozen implementation of this goal. The Board must consider the costs associated with imposition of this permit and its detrimental impact upon affordable housing. It would be significantly better if there were a stepped and progressive approach to implementation of this permit.	comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter." Nevertheless, the Regional Board did consider costs when it adopted the May 2009 permit. Also, staff has developed revised permit conditions to address infeasibility concerns. See response to comment 1.21.
12.3			Financial Impacts Since the Board's adoption of the MS4 permit last year, development in Ventura County has almost come to a halt because lending institutions will not fund new development	Staff has developed revised permit conditions to address infeasibility concerns. See response to comment 1.21.

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			projects. The costs involved with compliance with the MS4 permit and the proposed technical manual requirement cannot be quantified and are in such a state of flux that lenders are refusing to fund new projects for both private and public development. This too has had a serious impact upon public entities since many public entities source of funding is development permit fees. This permit discourages redevelopment and infill projects. Since many redevelopment and infill area are located within large impervious surfaced areas and consist of small parcels. To develop sufficient pervious surfaces or develop percolation is almost impossible. Even if the redevelopment or infill project is deemed technically infeasible, it is virtually impossible to achieve the required 30% effective impervious area (EIA) on site. Thus, no development occurs. The lack of development impacts the whole County fiscally. There is loss of jobs, business migration and lack of business expansion. When one sees the economic statistics associated with this lack of economic expansion it is stifling on the Ventura County economy. The imposition of such restrictive conditions may cause the collapse of potential development in the County.	
12.4			Recommended Suggestions • Remove the EIA metric compliance requirement • Continue to allow bio-filtration and bio-treatment as best management practices as permitted by the Board under the preceding permits. • Do not usurp the planning and land use authority	See response to comments 6.1 - 6.4 as well as those to 1.19 - 1.21. Furthermore, the permit does provide a staged and progressive approach to implementation. With regard to Section 4.E, Permittees

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			and allow flexibility for the designated land use authorities to use and implement good and balanced planning principles. • Allow a permit that is less restrictive as has been approved in other permits more recently granted by the Board. • Develop a staged and progressive approach to implementation of this permit. For example, provide first a set time period for public entities to develop alternative compliance programs that can be utilized by both public and private developers before implementation of the permit. This will allow a thoughtful and progressive approach within each community to address compliance. The development of these alternative compliance projects should actually assist in obtaining better water quality and less environmental and economic impacts. • Extend the time period for Alternative Compliance Project to be completed. The existing time period is not realistic for public capital projects. • Clearly define all terms within the permit, especially who and what is exempt. • Consider and adopt many of the very technical engineering changes suggested by experts in their fields. (I incorporate these suggested technical and engineering revisions herein). • Toll implementation of the permit until all of the following has occurred: 1) potential environmental	were provided one year after the initial adoption of the Order in May 2009 to update and submit the Technical Guidance Manual (TGM). The Tentative Order provides Permittees with an additional 120 days to revise and resubmit the TGM under the 2010 Order. Once the TGM is approved by the Executive Officer, there is still a 3-month period before the Permit provisions go into effect for new and re-development. Finally, costs of permit implementation were analyzed and considered by the Board as part of the initial adoption of the Permit in May 2009.

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			impacts have been reviewed and addressed; 2) the economic costs upon the public entities, private developers and the Ventura County economy as a result of this permit have been evaluated and considered, and 3) the Board has developed a progressive, staged and tiered approach to implementation of this permit.	
13.1	Oxnard Chamber of Commerce		Even though we believe the Chamber's environmental values mirror those of the Los Angeles Regional Water Quality Control Board (Board), the current MS4 Permit, Order No. 09-0057 is very troubling to us. Although we recognize its intent is sound, the Permit's particular version of Low Impact Development (LID) and Best Management Practices (BMPs) and tactics are largely measures that are unproven when applied to a region as large and diverse as Ventura County. As our population grows, Ventura County can anticipate many different situations where the development of public or private improvements on undeveloped areas or the proposed redevelopment of urbanized areas is necessary to serve its population's needs. Our needs include the development of agricultural lands within the Save Open Space and Agricultural Resources (SOAR) boundaries, areas designated for redevelopment, and residential development patterns ranging from low density single family detached dwellings to proposed high-rise condominiums within the county's and the city's boundaries. We also need to provide places for employment.	Staff has developed revised permit conditions to address infeasibility concerns. See response to comment 1.21.

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13.2			The City of Oxnard provides a very significant portion of the employment base for the County of Ventura. Providing for additional employment areas within the county is not merely an economic goal but also an environmental goal. We must reduce the significant percentage of our population who commute out of the county for work. The result is a potentially avoidable increase in vehicle miles traveled and the production of greenhouse gases, contrary to the goals of both Assembly Bill 32 and Senate Bill 375. From our prospective, the stormwater strategies adopted by this Board's MS4 clearly affect not only water quality, but where they impact the design of development that may occur; they affect our region's ability to achieve other goals, such as enlarging our employment base.	See response to comments 13.1 and 1.21.
13.3			Although the draft Permit recites numerous "Findings of Fact," the study (See Horner, 2007, Finding No. 23-25) cited in support of the current MS4's ability to achieve its claimed goals throughout the diversity of the use of land in the City of Oxnard, including employment centers are not adequate in our opinion to justify the reliance presented by the MS4's particular LID and its mandated, limited, and prioritized palette of BMPs. The current MS4's limited but mandated BMPs are problematic where either redevelopment, high density, mixed-use or employment centers are proposed.	See response to comment 13.1 and 1.21.
13.4			Employment centers generally follow patterns of single story buildings with a low building site coverage required by city zoning for a Floor Area Ratio ranging from .4 to .5 (40-50%) lot coverage; yet land uses of this type are clearly	Comment noted.

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			a key element in the City of Oxnard's efforts (with full support of the Chamber of Commerce) to accommodate population growth into a more sustainable and economically prosperous community.	
13.5			Our concerns with respect to the existing MS4 include the proposed deletion of Findings of Fact No. 19 from the approved Permit, which provide a clear "warning bell" that the adoption of these particular LIDs and limited BMPs has not been established in Ventura County as providing a reliable approach to assuring clean stormwater runoff. Such "Findings" include, for example, prior Finding No. 19 (Page 11 of the draft Order): "Staff finds … [a]t the heart of this controversy is a dispute regarding the feasibility and effectiveness of requiring a fixed volume of stormwater to be captured and retained on site for infiltration, reuse, and evapotranspiration, as opposed to permitting a portion of the stormwater to be released off site after it is treated, when it is infeasible to retain the required stormwater on site due to site specific conditions." "… Factors that affect the feasibility of a fixed volume capture standard include, but are not limited to: soils infiltration capacity, subsurface pollution, and locations in urban core centers." … " This [BMP approach] may result in ponded water on site with attendant health and safety risks, saturation of the near surface soils, and reduction of water resources in Regional	See response to comment 1.32.

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			waterbodies. These effects could damage site structures, increase groundwater pollution by forcing enhanced pollution spreading, or destroy aquatic habitat. Staff finds these reasonably potential effects are not well evaluated scientifically."	
13.6			The Draft Order and Permit has three major features which we believe individually or in combination are flawed. First, the Permit's 5% limitation of "Effective Impervious Area" ("EIA") on any site when applied to a very wide range of development activities found in Section E. III.1.(b) appears to ignore many factors that may seriously impede the reliability of this storm water tactic's reliability to enhance water quality while allowing reasonable and needed development to proceed.	See response to comments 1.10 and 1.11.
13.7			Second, the Permit as noted above requires specified BMPs for development sites such as infiltration, rainwater capture and reuse and evotranspiration be used to address the rainwater capture standards related to a 85th percentile storm rather than allow a broader palette of BMPs that may provide more effective in their performance be used. The unanswered question is, "What will happen to stormwater if these approaches do not work?"	See response to comment 1.21.
13.8			Third, the Permit as noted above requires 95% of impervious areas to achieve storm water treatment through retention methods, while also requiring treatment of pervious areas such as landscaping, found in Section E. III.1.(c). This will result in the unintended consequences of separate and duplicative treatment systems for the pervious	The permit does not require treatment of pervious areas.

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			and impervious areas or the retention of the entire storm water treatment volume for the entire site, not just the impervious areas.	
13.9			In lieu of the draft features of this Permit, we suggest that the Regional Board adopt what is popularly known as "Version 4" of the MS4 dated April 29, 2009, referenced in the Notice of Public Hearing as presented to the Board on May 7, 2009. This Permit provides a more conventional approach to LID design considerations, but it is also better understood and is proven as an effective approach. One feature of the Version 4 MS4 Permit, however, remains objectionable. That feature is the proposal that the cities within the County be subject to what are known as Municipal Action Levels (MALs), Part 2 of the April 29, 2008 draft. These are perceived by the cities as a source of litigation, and the potential award of attorney's fees. Given the accomplishments of the Ventura County cities, those threats are hardly necessary to motivate the Ventura County cities (and Oxnard) to comply with an MS4.	Comment noted.
13.10			MALs generally relate to requirements of the cities to address in many cases through retrofitting of existing impervious services such as streets, parking lots, etc., but also constitute "Unfunded Governmental Mandates" as that term is used in California Constitutional Article XIII	This comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the

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				Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter." Provisions relating to MALs were previously subject to a notice and comment period outside of the hearing.
13.11			As recently found by the Commission of Governmental Mandates 1, various types of MS4 requirements, many of which are found in the existing Ventura County MS4 constitute "Unfunded Governmental Mandates" and thus are suspect under the California Constitution's Article XIII B.	Comment noted. The decisions mentioned by the commenter directly affect only the MS4 permits identified by the two test claims. That is, the effect of the decisions is limited to certain provisions of the LA MS4 permit and the San Diego MS4 permit identified by the Commission of State Mandates as reimbursable state mandates. No other MS4 permits in California, including the Ventura County MS4 permit, are directly affected by the decisions, even if those permits contain similar provisions.

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13.12			The Draft Order No. XX-XXXX, Finding No. 7, Page 17 makes the direct claim that this MS4 does not impose Unfunded Governmental Mandates on the City of Oxnard or other Ventura County cities.	Staff agrees that Finding 7 states that the tentative Order does not constitute an unfunded local government mandate.
13.13			We disagree and feel such mandates should be inapplicable to Ventura County Cities without adequate state funding, and in any event, are proven unnecessary given the track record of Ventura County cities in their efforts to achieve clean water and stormwater discharges.	Comment noted. See response to comment 13.11.
13.14			We therefore urge, for these reasons, the earlier Version 4 Permit MALs be stricken from Version 4 of the Permit under contemplation by this Board, and it be adopted in replacement of Order No. 09-0057, NPDES Permit No. CAS004002.	Comment noted.
13.15			The mission statement of the Ventura Countywide Stormwater Quality Management Program is as follows; "Enhance, protect and preserve water quality in Ventura County water bodies using proactive and innovative ideas for preservation of biodiversity, ecological viability and human health. Work as a countywide team with public agencies, private enterprise, the environmental community and the general public to locally implement Clean Water Act requirements, balancing the actions taken with social and economic constraints". The current Permit limits these proactive and innovative ideas by requiring only retention as a means to treat stormwater and does not balance the actions taken within the Permit with the social or economic constraints by not recognizing economic infeasibility. We	Comment noted.

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			agree with and support the mission statement of the Ventura Countywide Stormwater Quality Management Program; however, we do not feel that the land development section of this permit (Order No. 09-0057) supports the goals of this statement.	
14.1	Pardee Homes		Pardee Homes supports site-appropriate low impact development that promotes storm-water infiltration in locations over groundwater recharge areas and more appropriate biofiltration and biotreatment of runoff using best management practices in other areas.	Comment noted.
14.2			We strongly oppose the proposed use of Effective Impervious Area as a compliance approach with very high costs and more negative public policy impacts than water quality benefits. The Board should remove the Effective Impervious Area requirements from the final MS4 permit.	See response to comment 1.7.
14.3			As we attempt to balance the need for housing in Ventura County with the requirements of AB 32, SB 375 and the Clean Water Act, the LA RWQCB should adopt an MS4 permit that provides greater flexibility to land owners and local governments to ensure good land use planning while improving water quality.	See response to comment 1.11 and 1.21.
14.4			As currently proposed, the permit would: • impose stormwater requirements as a higher priority than any other land use planning objective • increase the cost of new public infrastructure	See response to comment 6.4.

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			• make infill and redevelopment projects harder to build, creating conflicts with the goals of SOAR, SB375, and the principles of compact development • stifle economic development, encourage business out-migration and increase job losses in Ventura County.	
14.5			Over the past year much work has been done on the Technical Guidance Manual and it is clear that, without changes to the permit as proposed above, these problems are inevitable. In fact, every MS4 permit adopted since May 2009 has rejected the Ventura MS4 permit approach. These permits, adopted in areas with more severe water quality problems than those in Ventura County, advance low impact development and will improve water quality without the inherent problems of the Tentative Permit. I urge you to incorporate these recommended changes before the July 8, 2010 hearing.	Comment noted. See also response to comment 1.20.
15.1	City of Port Hueneme		We would first like to express our gratitude to Board staff for the significant effort that has been put into interpreting the currently effective permit, Order No. 09-0057.	Comment noted.
15.2			Since the Order's adoption on May 7, 2009, Port Hueneme has been part of the substantial countywide program effort in moving forward with implementing various programs and tasks associated with permit compliance. We believe that the Tentative Order offers a positive step in dealing with urban runoff within our jurisdiction. However, this effort has required a significant investment of City resources and we encourage the Board to carefully consider	Comment noted.

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			the effects of any potential modifications.	
15.3			We also wish to express our support of all comments submitted in a letter dated June 4, 2010, on behalf of the Ventura Countywide Stormwater Quality Program.	Comment noted.
16.1	Pulte Homes/ Centex/Del Webb		The letter below is a form letter prepared by the BIA and I am sure you are going to receive many of these from the builders in the area. I also want to add a personal note to the technical data below. I certainly hope that you can apply some reasonableness to this process and back off the draconian steps that are being considered that will cause an onerous burden to be placed on home builders.	Comment noted.
16.2			These draconian measures being considered are proposed mostly by people that are just looking to close the door to further home building in our communities. This is not fair to the folks who don't already own homes, it is not fair to the thousands of people that the home building industry employs and it is not fair to the good work that folks have done to clean up our water.	Comment noted.
17.1	Submitted by: Perry, Steve Lumley, Robert Tash, Debra Kinney Steven L. Franklin, John Mittlestadt, Jacqueline Bruce, Lori Mitchell, Jim Breiner, Matthew J. Lappin, Steven A.		We have a second chance to make this permit reasonable and workable, and I urge you to fix the problems the problems with the land development requirements in the permit. Specifically, I ask that the permit be modified to: • remove Effective Impervious Area as a compliance metric • allow biofiltration and biotreatment as allowable best management practice for low impact development • add flexibility so that good land use planning can be	See response to comments 6.1, 6.2 and 6.3.

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	Bianchi, Rick Vander Velde, John Horn, Ronald R.		balanced with LID principles	
17.2			If the LA RWQCB does not make these changes, the permit will: • usurp local land use authority through rigid stormwater requirements. The lack of flexibility in the permit means that stormwater controls, not good planning, will be the deciding factor in what is built in Ventura County • increase the cost of new public infrastructure such as fire stations, libraries, and parks • make infill and redevelopment projects hard to build, creating conflicts with the goals of SOAR, SB375, and the principles of compact development stifle economic development causing g business migration and job loss because of added costs to business expansion	See response to comment 6.4.
17.3			Over the past year much work has been done on Technical Guidance Manual and it is clear that, without changes to the permit, these problems are inevitable. In fact, every MS4 permit adopted since May 2009 has rejected the Ventura MS4 permit approach. These permits, adopted in areas with more severe water quality problems than those in Ventura County, advance low impact development and will improve water quality without the inherent problems of the Tentative Permit. I urge you to incorporate these changes before the July 8,	See response to comments 1.15, 1.19 and 1.20.

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			2010 hearing.	
18.1	US EPA Region IX		EPA supports adoption of the permit as proposed in the Tentative Order. In particular, we support the permit's New Development Performance Criteria (Section 4.E.III.), portions of which are being reconsidered. We have been advocating for clear, measurable, and enforceable Low Impact Development (LID) requirements, such as those included n the Tentative Order, in MS4 permits throughout California.	Comment noted.
18.2			Public Notice No. 10-035 states "the Regional Board may adopt the draft permit originally presented to the Regional Board at the May 7, 2009 hearing." EPA would not be supportive of such an action.	Comment noted.
18.3			As background, on April 9, 2009 EPA provided comments on the February 24, 2009 draft permit. We noted several concerns with this draft permit's LID provisions. These included the absence of clear permit provisions regarding alternative compliance if LID was determined infeasible, and a lack of clarity over how the LID revisions applied to redevelopment projects. Our April 9, 2009 comments provided specific suggestions for how these deficiencies could be addressed. When the revised permit to be considered for LARWQCB adoption was posted n the days prior to the May 7, 2009 hearing, we were disappointed to see that our comments had not been satisfactorily addressed. In testimony at the May 7, 2009 hearing, we pointed to potential loopholes in the proposed LID language which we believed needed to be remedied in order to avoid misinterpretations over compliance with the permit	Comment noted.

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			As an alternative, we endorsed the LID provisions suggested by the Permittees, Natural Resources Defense Council, and Heal the Bay in their April 10, 2009 comment letter. Although we were not involved in the reparation of the alternative suggestions from the Permittees and these non-government organizations, nor did we directly receive a copy of the April 10, 2009 letter, we encountered the April 10, 2009 letter on the LARWQCB's website and concluded that the proposed LID provisions met our criteria as a clear, measurable, and enforceable approach.	
18.4			Should the LID provisions initially presented for adoption at the May 7, 2009 hearing be proposed today, we would be more opposed than we were in our testimony last May. Since May 2009, we have worked closely with four other Regional Water Boards in California, and have seen their success in renewing six MS4 permits. Each of these six permits include clear, measurable, and enforceable LID provisions that steer clear of the uncertainties in the LID provisions initially presented to the LARWQCB o May 7, 2009.	Comment noted.
18.5			In conclusion, we are supportive of the Tentative Order posted o May 5, 2010, and recommend prompt adoption of the Ventura MS4 permit without further diverting the LARQCB staff resources away from other stormwater permitting priorities.	Comment noted.
19.1	Ventura County Public Works Agency		The District appreciates the effort Regional Water Board staff has made over the past years to work the stakeholders and develop this permit. In addition to the comments previously submitted by the Ventura County Public Works	Comment noted.

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			Agency, the Agency supports the comments on this tentative order made by the Ventura Countywide Stormwater Quality Management Program in their June 4, 2010 letter and attachments.	
20.1	Ventura County Watershed Protection District		In addition to the comments previously submitted by the Ventura County Watershed Protection District, the District supports the comments on this tentative order made by the Ventura Countywide Stormwater Quality Management Program in the June 4, 2010 letter and attachment.	Comment noted.
21.1	Ventura Countywide Stormwater Quality Management Program		We wish to first express our appreciation of the Regional Water Board's staff efforts over the past year to meet and consider our interpretations with the currently effective permit, Order No. 09-0057. These efforts have aided in obtaining mutual understandings of the Permit requirements that are protective of water quality and build upon an award winning stormwater management program. The Permit, as you know, is comprehensive and addresses many relevant water quality issues within our watersheds.	Comment noted.
21.2			Since the May 7, 2009 adoption of the Order the Permittees have committed significant resources towards permit compliance and have accomplished many tasks. Most significantly was the submittal of the Revised Technical Guidance Manual for New and Re-Developments. This manual was updated to help the development community understand and interpret the complex land development permit requirements. Other program elements submitted to the Regional Water Board were a Youth Outreach Plan to communicate the stormwater message to school-aged children, this plan was also implemented last year. The	Comment noted.

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			Permittees also provided a prioritization of catch basins by levels of trash received through maps or tables with GIS coordinates.	
21.3			Improvements have been made in every aspect of the program. A special training session was held for Permittee construction inspectors and capital improvement project managers on the new requirements for construction sites. New inspection forms were developed for both construction sites and business inspections along with focused educational materials. Also new this year is a Retail Partnership Program to communicate specific BMPs through pet stores, automotive supply stores and home improvement/nurseries.	Comment noted.
21.4			Most costly to the Program has been the increase in monitoring. The largest part of that were the design, construction and installation of the eleven new monitoring sites. Four new flow weighted composite monitoring stations were installed to capture the first flush rain event of this permit year, and seven more new stations are very close to completion. The increase in required flow weighted composites samples required a large investment in automation and communication equipment to make sample collection possible with current staffing levels. However, increased staff time was needed to complete the first year of the Regional Bioassessment Study; sampling for the second year begins this June. Also starting this June is the new requirement for dry weather grab samples from each Permittees' storm drain system. Finally, a Quality Assurance Project Plan required for the new sediment	Comment noted.

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			pyrethroid monitoring has been drafted	
21.5			Before setting forth our comments on the Tentative Order, which is in fact our current Permit, we would like to highlight a couple of significant observations. First, the Tentative Order remains, in every sense of the word, a ground breaking permit. From the development requirements, to establishing performance standards for treatment control best management practices (BMPs), to specifying specific BMP requirements for businesses, industries, and construction sites; the Tentative Order sets a high bar for California's municipal stormwater programs. Because of the ground-breaking nature of this Tentative Order, the Permittees have had to substantially revise the existing Stormwater Management Program in Ventura County. As a result, costs associated with implementation of the Stormwater Management Program have increased substantially. Please be assured, the Permittees have all revised their programs to ensure compliance with the Permit. However the uncertainty caused by the Building Industry Association petition of the Permit to the State Water Resources Control Board, the release of subsequent versions of the Permit, and the voluntary remand of certain provisions within the Permit have created practical difficulties in being able to fully commit sufficient resources to implementation of the programs. Because of this uncertainty, we appreciate the fact that the due dates in the Tentative Order allow us the opportunity to address many of these program requirements with a renewed commitment and energy.	Comment noted.

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21.6			Furthermore, the Tentative Order as proposed will protect existing high quality water and will lead to real water quality improvements. The Permittees take pride in the fact that we have some of the cleanest waterbodies and beaches in Southern California. This Tentative Order will continue to build on our existing efforts to protect these waters.	Comment noted.
21.7			Our specific comments are organized around some of the overriding approaches acknowledged in this Tentative Order.1 They include: I. Reporting Program II. Total Maximum Daily Loads (TMDLs) III. Monitoring Program While the Permittees recognize that some of the comments submitted below may be outside of the Regional Board's notice for this hearing, the comments are intended to make the Tentative Order, Monitoring Program, TMDL and Annual Reporting requirements correct with previous Board action, better and more efficient, and are not necessarily substantive changes to the Tentative Order.	See below for specific responses.
21.8			I. Reporting Program Over the past year the Permittees and Regional Water Board staff worked together to develop a reporting program to address inconsistencies with Permit and Attachment H under Order No. 09-57 (now Attachment I of the Tentative Order). A working group was formed and a consultant hired to develop an example reporting format for the	As the commenter specifically recognizes in comment 21.7, this comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration

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			Industrial/Commercial Facilities Program. During a December 2009 meeting with Regional Water Board staff this format was determined acceptable and we were requested to continue. Work proceeded on the other Annual Report program elements and these were also submitted to the Regional Water Board staff.	of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter." Nevertheless, Regional Board staff did not receive the reporting program elements in time to include in the public notice; however, the permit delegates authority to the Executive Officer to make changes to the reporting program. Therefore, Regional Board staff will consider the Permittees' submittal separately from the proposed adoption of the Tentative Order.
21.9			Having gone through this effort we find reverting to the format of Attachment I a frustrating and costly endeavor. Outlined below are some examples of why we have difficulties with Attachment I, and why we wish to continue with an alternative reporting format. The Permittees look	See response to comment 21.8.

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			forward to building on the work already accomplished and the opportunity make the reporting format as practicable as possible The Tentative Order addresses the Annual Report requirements in three provisions. These are listed below: • Part 4, Provision I. This provision essentially requires the Permittees to (1) develop in consultation with the Regional Water Board an electronic reporting program, (2) submit the Annual Report by December 15th of each year, and (3) document the status of the Municipal Storm Water Program, including an integrated summary of Part 1 - Monitoring Program and Part 2 – Program Report	
21.10			Part 7, Provision T. This Standard Provision establishes requirements for the Annual Report consistent with 40 CFR 122.42(c). These requirements are as follows: (1) The status of implementing the components of the storm water management Program that are established as permit conditions; (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 40 CFR 122.26(d)(2)(iii) of this part; (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v) of this part; (4) A summary of data, including monitoring data that is accumulated throughout the reporting year; (5) Annual expenditures and budget for year following each annual report;	See response to comment 21.8.

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			(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and (7) Identification of water quality improvements or degradation	
21.11			Attachment I - Reporting Program Requirements. This attachment has four parts: Part 1 Monitoring Report, Part 2 Program Report, Part 3 Storm Water Quality Management Program Implementation, and Part 4 Special Provisions. The attachment includes a comprehensive list of questions that support the Regional Water Boards' effort to assess whether the MS4s are complying with the Tentative Order. The attachment is intended to be consistent with the requirements of the Tentative Order.	Comment noted.
21.12			The Permittees have fundamental concerns with the current Tentative Order and Attachment I. First, the format established by the Tentative Order/Attachment I provides little information for the Permittees to use to assess the effectiveness of our program and how we might want to modify the program to make it more effective. Instead, the Tentative Order/Attachment I includes multiple questions that serve only as a check list of permit provisions and does little to help our efforts to protect water quality. Second, our review of the reporting requirements shows that Attachment I is inconsistent, and many times, in conflict with the Tentative Order. As a case in point, we compared the requirements in Attachment I with the requirements in the permit and found that there are numerous inconsistencies/conflicts, especially in the Planning and	See response to comment 21.8.

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			Land Development and Development Construction Programs. Some of these conflicts are summarized below: Part 4, Provision B.2 and Attachment I, Part 4, Watershed Initiative Participation, Question 1. The Tentative Order requires more participation than identified in Attachment I. • Part 4, Provision 0.2 (4) and Attachment I, Part 4, Industrial/Commercial, Question 3 regarding inspection requirements for nurseries. Attachment I requests more information than required in the Tentative Order. • Part 4, Provision E and Attachment I, Part 4, Planning and Land Development Program, all questions. The Planning and Land Development Program is intended to be an integrated program for new development projects that provides for the planning, design and implementation of BMPs to protect water quality. Attachment I on the other hand is a series of questions that do not relate to the overall program and taken separately do not provide the necessary insights into how the Planning and Land Development Program is functioning. More specifically questions 1, 2, 6 and 7 relate to each other and should be addressed together and evaluated as an entire program not separate tasks. It is also worth noting that in some cases (e.g., questions 10-12) do not track the organization of the Tentative Order.	
21.13			As noted in Attachment A, there are a number of inconsistencies and unnecessary questions that do not provide the information that the Permittees need to assess	See response to comment 21.8.

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			the effectiveness of their overall program and to make modifications when necessary. Instead, the questions create an extensive reporting requirement that may or may not adequately address the Tentative Order provisions. Thus, the Permittees are in an unenviable position of not knowing whether they are potentially in violation of the Tentative Order although they completed the questions noted in Attachment I. While we have concerns with the current Tentative Order and Attachment I, we believe that our concerns with the reporting requirement can be addressed relatively easily by adding a statement in Attachment I that allows the Permittees to submit their own reporting format in lieu of Attachment I as long as the proposed format meets the following objectives: (1) Conveys the status of implementing the components of the storm water management program that are established as permit conditions; (2) Includes proposed changes to the storm water management programs that are established as permit conditions or that have been identified by the Permittees as necessary to provide for more efficient stormwater management programs; (4) Includes a summary and assessment of monitoring data collected throughout the reporting year as established as permit conditions; (5) Conveys necessary information regarding annual expenditures and budget for year following each annual report; (6) Includes a summary describing the number and nature	

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			of enforcement actions, inspections, and public education programs implemented; and (7) Identifies water quality improvements and/or degradation.	
21.14			Further, we suggest that the alternative report format be approved by the Executive Officer. Once approved, the alternative format would be applied to subsequent annual reports, unless a different alternative format is proposed for Executive Officer approval.	See response to comment 21.8.
21.15			TMDLs Consistent with 40 C.F.R. § 122.44(d)(1)(vii)(B), the Tentative Order incorporates waste load allocations (WLAs) for effective TMDLs as permit limits. As required by 40 C.F.R. § 122.44(d)(1)(vii)(B), the permit limits in the Tentative Order have been modified from previous drafts of the permit to be "consistent with the assumptions and requirements of available WLAs" by being incorporated as receiving water limits in the permit. Additionally, the WLAs have appropriately been expressed in the form of BMPs consistent with EPA's 2002 Memorandum Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. As stated in that memorandum: • Water Quality-Based Effluent Limits (WQBELs) for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. (See 33 U.S.C. §1342(p)(3)(B)(iii); 40	As the commenter specifically recognizes in comment 21.7, this comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."

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			C.F.R. §122.44(k)(2)&(3).) If BMPs alone adequately achieve the WLAs, then additional controls are not necessary. • EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances. • When a non-numeric WQBELs is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to achieve the WLA in the TMDL. (See 40 C.F.R. §§ 124.8,124.9 & 124.18.) • The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations (See 40 C.F.R. § 122.44(i)). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data). • The permit should also provide a mechanism (e.g. iterative, adaptive management BMP approach) to make adjustments to the required BMPs as necessary to ensure their adequate performance.	
21.16			In accordance with U.S. EPA's Guidance, the BMPs included in the permit will be sufficient to implement and achieve the WLAs in the TMDLs. Further, the specified monitoring program is sufficient to determine compliance load reductions resulting from BMP implementation. This combined with the incorporation of the "iterative process"	See response to comment 21.15.

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			is consistent with U.S. EPA's Guidance.	
21.17			While the Permittees believe that the language in the Tentative Order meets the requirements of 40 C.F.R. §122.44(d)(1)(vii)(B) and is consistent with EPA's Guidance, we recommend the following revision to provide further clarification that the WLAs will be achieved through BMPs and to provide a mechanism for making adjustments to the BMPs to ensure their adequate performance. Our suggested revisions to the findings and to Part 6 of the Tentative Order are as follows: Finding F.3 The permit provisions and BMPs implementation of measures set forth in this Order are reasonably expected to reduce the discharge of pollutants conveyed in storm water discharges into receiving waters, and to achieve meet the TMDL WLAs for discharges from MS4s that have been adopted by the Regional Water Board.	See response to comment 21.15.
21.18			Part 5 - Total Maximum Daily Load Provisions Provision (b)(2) under each TMDL, to read as follows: If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL Special Studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for further enforcement action. Exceedances of the WLAs at the receiving water compliance locations will initiate the implementation of additional BMPs identified in the permit and modification of the SMP to include additional BMPs to	See response to comment 21.15.

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			further reduce discharges of pollutants to achieve compliance with the WLAs. With these modifications, the Tentative Order will clearly achieve the TMDL in accordance with EPA's 2002 memorandum.	
21.19			In addition, at the May 7, 2009 hearing on Order No. 09-057, I (representing the Ventura County Permittees) included in my PowerPoint presentation, and provided in written copies to the Board, proposed edits to Part 5 - TMDL Provisions. These edits are not substantive changes but rather corrections to the Tentative Order in line with previous Regional Board adopted TMDL Basin Plan Amendments. We request the edits included here as Attachment B be incorporated into a Revised Tentative Order.	See response to comment 21.15.
21.20			VIII. Monitoring Program The Tentative Order reflects tremendous amount of work that has been done to resolve many past technical issues with the Monitoring Program, while ensuring the collection of useful water quality data for the Ventura County Permittees. In fact, this past wet weather season we utilized these stations, and the data collected added to our understanding of the Permittees' urban outfall discharges. The adoption of Order No. 09-057 last year, and the proposed Tentative Order include additional special studies, outfall monitoring and beach water quality monitoring doubling the cost of the monitoring program, all in addition to a significant amount of other monitoring occurring within the County: TMDLs, Ocean outfall, SWAMP, inland wastewater treatment plants and AB 411 (beach water	Comment noted.

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			quality) Programs.	
21.21			One monitoring program that has been expanded in the Tentative Order is the Southern California Regional Bioassessment Study, in cooperation with the Southern California Coastal Water Research Project (SCCWRP). The Permittees acknowledge the value of this study and do not object to the additional requirement of fixed sites that are not a part of the current study design. However, the Tentative Order contains duplicative language with respect to this requirement. The requirement appears in both Attachment F - Monitoring Program, but also under the Watershed Initiative Participation in the body of the Tentative Order (Part 4. B. 2.). It is important that a requirement to participate in monitoring program, such as this one designed and managed by a third party, be written to allow flexibility to adjust to changes in the study's design. Since Attachment F can be modified by the Executive Officer, while a Part 4 revision requires action by your Board, we request deleting the requirement described in Part 4. B. 2 (but remaining in Attachment F).	As the commenter specifically recognizes in comment 21.7, this comment is outside the scope of the hearing. As stated in the Notice of Public Hearing dated May 5, 2010, "[a]ny written or oral comments, or evidence, relating to reconsideration of the permit are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the administrative record in this matter."
21.22			Summary The Permittees recognize that the Tentative Order is a significant step forward in addressing urban runoff in Ventura County. We would submit that the Tentative Order, when viewed in the whole and not as individual parts, is comprehensive and protective of water quality. However, the comprehensive nature of the Tentative Order will significantly increase local agency and citizen costs to implement the program. In light of these increased costs,	Comment noted.

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			we encourage the Regional Water Board to carefully consider the implications associated with any future modifications as such modifications to one program element would likely come at the expense of another. Again, we thank you and your staff for the time and effort in meeting with the Ventura County Permittees to work through the many issues in the previous draft orders.	