

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the matter of:)	
)	
CITY OF SAN DIEGO)	Order No. R9-2014-0017
Municipal Separate Storm)	
Sewer System, Failure to)	Settlement Agreement and Stipulation for
Implement Requirements in)	Entry of Order
Municipal Storm Water Permit)	
<u>Nos. 2001-01 and R9-2007-0001</u>)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Order”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board), on behalf of the San Diego Water Board Prosecution Team (Prosecution Staff), and the City of San Diego (“City”) (collectively, Parties) and is presented to the San Diego Water Board, for adoption as an order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The City owns and operates a municipal separate storm sewer system (MS4) through which it discharges urban runoff into waters of the United States/State within the San Diego Region.
2. On February 21, 2001, the San Diego Water Board adopted Order No. 2001-01, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District*. The City is a named Copermitttee to Order No. 2001-01.
 - a. Discharge Prohibition A.4 of Order 2001-01 provides:

“Applicable to New Development and Redevelopment
Post-development runoff containing pollutants loads which cause or contribute to an exceedance of receiving water quality objectives or which have not been reduced to the maximum extent practicable is prohibited.”

- b. Section F.1.b (2) of Order No. 2001-01 requires the City to develop and implement a Standard Urban Stormwater Mitigation Plan (SUSMP) so that priority development projects and significant re-development projects, through a combination of best management practices (BMPs), ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedence of water quality objectives, or which have not been reduced to the maximum extent practicable.
3. On January 24, 2007, the San Diego Water Board adopted Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*. The City is a named Copermitttee to Order No. R9-2007-0001.
 - a. Discharge Prohibition A.2 of Order R9-2007-0001 provides:

“Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.”
 - b. Section D.1.d of Order No. R9-2007-0001 updated the SUSMP requirements and required the City to develop a treatment control BMP (TCBMP) maintenance tracking system.
4. On January 20, 2010, April 5, 2010 and September 14, 2010 the San Diego Water Board inspected development projects within the City and found that permanent TCBMPs at various sites were either designed or installed incorrectly (i.e. storm water received little or no treatment before being discharged offsite).
5. The San Diego Water Board issued the City Notice of Violation No. R9-2010-0135 and request for a technical report pursuant to Water Code Section 13267 on October 1, 2010 for 1) failure to implement SUSMP requirements, 2) failure to enforce the MEP standard, and 3) failure to verify correct installation of TCBMPs.
6. On November 30, 2010, the City provided the required technical report. The report identified a total of 163 private and public development sites (some with multiple TCBMPs) that had either missing (137 sites) or ineffective (26 sites) TCBMPs, in violation of Order Nos. 2001-01 and R9-2007-0001. The technical report concluded that these violations were the result of a number of issues within the City’s storm water program. A discussion of program issues is included in Attachment A of this order.

7. After reviewing the technical report, San Diego Water Board staff routinely communicated with the City to assess the City's efforts to bring these private and public projects into compliance with the MS4 permit requirements. Updates provided by the City indicated that over time it had made progress in bringing a large percentage of private projects into compliance. However, by December 2012, the City had not made any substantial progress in bringing its own public Capital Improvement Program projects (CIP projects) into compliance.
8. In January 2013, based on the City's lack of progress in addressing the missing and ineffective BMPs in its own CIP projects, the Prosecution Staff met with City staff to inform the City that formal enforcement was pending for the violations. Subsequent discussions with City staff resulted in settlement negotiations aimed at bringing the City's SUSMP program and both private and public projects, into compliance with the MS4 permit requirements.
9. During the course of settlement negotiations, the City continued to inspect and investigate the status of all TCBMPs within its jurisdiction and refined its BMP status inventory. As of November 11, 2014, the City had determined that there were a total of 306 private development projects with deficient BMPs; 164 of those sites have had their issues resolved and 142 sites still had inefficient or missing BMPs. Additionally, the City determined that 13 CIP projects had missing or ineffective BMPs; 5 of these projects have since obtained compliance.
10. The Prosecution Staff alleges that the City violated San Diego Water Board Order Nos. 2001-01 and No. R9-2007-0001. Specifically:
 - a. **Violation 1-** The Prosecution Staff alleges that the City violated Discharge Prohibition A.4 of Order No. 2001-01 and Discharge Prohibition A.2 of Order R9-2007-0001 by failing to ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the MEP.

This violation constitutes multiple violations treated as a single violation. This is consistent with the guidelines provided in Step 4 of the State Water Board's *Water Quality Enforcement Policy* which states in part:

"For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations in the facility." (In this case the facility is the City's MS4).

- b. **Violation 2-** The Prosecution Staff alleges that the City failed to implement the SUSMP requirements in Order No. 2001-01, provision F.1.b.(2) and F.1.b.(2)(b), and Order No. R9-2007-0001, provision D.1.d.
11. To resolve the alleged violations of the California Water Code (“CWC”), set forth in Attachment A of this Order, without formal administrative proceedings, the Parties have agreed to the final imposition of **\$949,634** in liability against the City pursuant to Water Code section 13385 and Government Code section 11415.60. Prosecution Staff calculated the administrative civil liability penalty under Water Code section 13385 in accordance with the *Water Quality Enforcement Policy* as outlined in Attachment A to this Order. Further, consistent with the *Enforcement Policy*, up to 50 percent of the total adjusted monetary assessment (i.e. total amount assessed excluding investigative and enforcement costs) can be dedicated to an Enhanced Compliance Action (ECA). The Parties have agreed that **\$456,900** of the total liability will be allocated to an ECA, as described below. The City shall pay a total of **\$492,734** to the State Water Resources Control Board Cleanup and Abatement Account, consisting of approximately **\$35,834** in staff costs and the balance in stipulated penalties, no later than 30 days following the San Diego Water Board’s adoption of this Order. The remainder of the penalty shall be suspended and dismissed upon completion of the ECA as described below and in Attachment A.
12. The Prosecution Staff has determined based on the information in the record that the resolution of the alleged violations (i.e., assessment of penalties, a portion of which are approved for application to implementing the ECA) is fair and reasonable and fulfills its enforcement objectives of CWC sections 13000 et seq., and the *Water Quality Enforcement Policy*, and it satisfies the objectives and requirements of the Federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order; and that this Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

13. **Party Contact Information:**

For the San Diego Water Board:

- i) Designated Water Board Representative: The representative from the San Diego Water Board responsible for oversight of the ECA.

Mr. Christopher Means
2375 Northside Drive, Suite 100
San Diego, CA 92108
(619) 521-3365
cmeans@waterboards.ca.gov

- ii) Enforcement Coordinator: The person at the San Diego Water Board who is responsible for enforcement coordination.

Ms. Chiara Clemente
2375 Northside Drive, Suite 100
San Diego, CA 92108
(619) 521-3371
cclemente@waterboards.ca.gov

For the City of San Diego:

Scott Chadwick
Chief Operating Officer
202 C Street, 9th Floor
San Diego, CA 92101
(619) 236-5587
schadwick@sandiego.gov

Kris McFadden
Director, Transportation & Storm Water Department
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San Diego, CA 92101
(619) 236-6594
kmcfadden@sandiego.gov

James Nagelvoort
Director, Public Works Department
202 C Street, 9th Floor
San Diego, CA 92101
(619) 533-5100
jnagelvoort@sandiego.gov

Robert Vacchi
Director, Development Services Department
1222 First Ave.
San Diego, CA 92101
(619) 446-5423
ravacchi@sandiego.gov

Heather Stroud
Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
(619) 533-5872
hstroud@sandiego.gov

14. **Administrative Civil Liability:** The City hereby agrees to the imposition of an administrative civil liability totaling **\$949,634** as set forth in Paragraph 11 of Section II herein. Further, the City agrees that **\$456,900** of this administrative civil liability shall be suspended ("Suspended Liability") pending completion of an ECA as set forth in Paragraph 11 of Section II herein and Attachment B attached hereto and incorporated by reference. Failure to complete the ECA as set forth in this Stipulated Order will result in the payment of the Suspended Liability in full to the State Water Board Cleanup and Abatement Account fund.

15. **Payment and Costs:** The City shall pay the unsuspended portion of the total administrative liability amount (**\$492,734**) within 30 days of receipt of the Stipulated Order executed by the San Diego Water Board. Payment shall be made to the "*State Water Board Cleanup and Abatement Account*". The City shall indicate on the check the number of this Order (R9-2014-0017) and send it to:

State Water Resources Control Board
Accounting Office
Attn: ACL Payment
PO Box 1888
Sacramento, California, 95812-1888

The City shall send a copy of the check to the Designated Water Board Representative. The payment of San Diego Water Board staff costs incurred for overseeing the implementation of the ECA is addressed in paragraph 18, herein. Payment of any unexpended ECA funds is addressed in paragraph 24 of this Order. Payment in the event of failure to complete the ECA is addressed in paragraph 25 of this Order.

16. **ECA Description:** The Parties agree that this Stipulated Order includes the performance of an ECA that will mitigate the water quality impacts associated with the above violations. The ECA consists of retrofitting existing storm water treatment control BMPs at five of the City's facilities to a more effective type of TCBMP (than what would otherwise be required by SUSMP standards) and building a new TCBMP feature at a sixth facility of the City. Enhanced water quality treatment will be provided at these six sites by treating expanded drainage areas and by implementing bioretention TCBMPs. Bioretention TCBMPs provide better performance and a higher pollutant load reduction compared to vegetated swales or mechanical TCBMPs, which often satisfied the requirements of Order Nos. 2001-01 and R9-2007-0001. The City maintains that the implementation of these TCBMPs goes beyond what is otherwise required by law. The City further indicates that the total cost of this ECA is approximately \$1,454,120. The City Council approved \$1,250,000 of bond funding for this project in March 2013. The remaining cost will come from the City's general fund. A detailed description of the ECA is provided in Attachment B.
17. **Agreement of the City to Construct, Report, and Guarantee Implementation of ECA:** The City represents that: (1) it will construct the ECA described in this Order; (2) it will provide certifications and written reports to the San Diego Water Board consistent with the terms of this Order detailing the implementation of the ECA; and (3) it will guarantee timely implementation of the ECA by remaining liable for the entire cost of the administrative liability until the ECA is completed and accepted by the San Diego Water Board in accordance with the terms of this Order. The City agrees that the San Diego Water Board has the right to require an audit of the funds expended by it to implement the ECA.
18. **Oversight of ECA:** The City is solely responsible for paying for all oversight costs incurred by the San Diego Water Board to oversee the ECA. The ECA oversight costs are in addition to the total administrative civil liability imposed against the City and are not credited toward the City's obligation to fund the ECA. Reasonable oversight tasks include, but are not limited to, updating regulatory databases, reviewing and evaluating ECA progress, reviewing progress and final reports, verifying ECA completion with a site inspection and auditing appropriate expenditures of funds. The City will be enrolled in the Cost Recovery Program, part of the State Water Resources Control Board's Site Cleanup Program, and oversight costs will be assessed on a quarterly basis and shall be payable within 30 days of receipt of an invoice from the San Diego Water Board or State Water Board.

19. **ECA Progress Reports:** The City shall provide quarterly reports of progress to the Designated Water Board Representative, commencing 90 days after the effective date of this Order and continuing through submittal of the final reports described in Paragraph 21. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. Quarterly reports must be submitted in accordance with the following schedule:

ECA Reporting Period	Date Due Each Year
August - October	November 30
November - January	February 28
February – April	May 31
May – July	August 31

20. **ECA Completion Date:** The ECA shall be constructed and functional no later than August 15, 2016 (ECA Completion Date). If other circumstances beyond the reasonable control of the City prevent completion of the ECA by that date, the San Diego Water Board Assistant Executive Officer may, in writing, extend the ECA Completion Date by up to one (1) year, to August 15, 2017. The City must send its request for an extension in writing with necessary justification to the Enforcement Coordinator no later than July 15, 2016.
21. **Certification of Completion of ECA and Final Reports:** On or before the ECA Completion Date, the City shall submit a certified statement of completion of the ECA (Certification of Completion). The Certification of Completion shall be submitted under penalty of perjury, to the Enforcement Coordinator by a responsible corporate official representing the City. The Certification of Completion shall include the following:
- a. Certification that the ECA has been completed in accordance with the terms of this Order. Such documentation should include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the San Diego Water Board to evaluate the completion of the ECA and the costs incurred by the City.
 - b. Certification documenting the expenditures by the City during the completion period for the ECA. Expenditures may be external payments to outside vendors or contractors performing the ECA. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the San Diego Water Board for oversight. The City shall provide any additional information requested by the San Diego Water Board staff which is reasonably necessary to verify ECA expenditures.

- c. Certification that the City followed all applicable environmental laws and regulations in the implementation of the ECA including, but not limited to, the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.
22. **Compliance with CEQA:** To ensure compliance with CEQA where necessary, the City shall provide the San Diego Water Board with the following documents from the lead agency *prior to commencing ECA construction*:
 - i. Categorical or statutory exemptions relied upon;
 - ii. Negative declaration if there are no potentially "significant" impacts;
 - iii. Mitigated negative declaration if there are potentially "significant" impacts, but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - iv. Environmental Impact Report (EIR)
 23. **Third Party Financial Audit:** In addition to the certification, upon completion of the ECA and at the written request of the San Diego Water Board, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the San Diego Water Board staff, or its designated representative, providing such party's(ies') professional opinion that the City and/or an implementing party (where applicable) have expended money in the amounts claimed by the City. The audit report shall be provided to the San Diego Water Board staff within three months of notice from San Diego Water Board to the City of the need for an independent third party financial audit. The audit need not address any costs incurred by the San Diego Water Board for oversight.
 24. **San Diego Water Board Acceptance of Completed ECA:** Upon the City's satisfactory completion of its ECA obligations under this Order and completion of the ECA and any audit requested by the San Diego Water Board, San Diego Water Board staff shall send the City a letter recognizing satisfactory completion of its ECA obligations under this Order. This letter shall terminate any further ECA obligations of the City.

25. **Failure to Expend all Suspended Administrative Liability Funds on the approved ECA:** In the event that the City timely completes the ECA but is not able to demonstrate to the reasonable satisfaction of the San Diego Water Board staff that the entire ECA amount has been spent as described herein, the City shall pay the difference between \$456,900 and the amount the City can demonstrate was actually spent on the ECA. The City shall pay the additional administrative civil liability within 30 days of its receipt of notice of the San Diego Water Board's determination that the City has failed to demonstrate that the entire ECA amount has been spent to complete the ECA components.

26. **Failure to Complete the ECA:** If the ECA is not fully implemented within the ECA Completion Date required by this Order, the Enforcement Coordinator shall issue a Notice of Violation. As a consequence, the City shall be liable to pay the entire Suspended Liability. The City shall not be entitled to any credit, offset, or reimbursement from the San Diego Water for expenditures made on the ECA prior to the date of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a Motion for Payment of Suspended Liability before the San Diego Water Board or a hearing panel. Upon a final determination of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the San Diego Water Board serves its final determination on the City. The City shall be liable for the San Diego Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed Suspended Liability amount will satisfy the City's obligations pursuant to this Order to implement the ECA.

27. **Matters Addressed by Stipulation:** Upon adoption of this Order by the San Diego Water Board, this Order represents a final and binding resolution to settle, as set forth herein, all claims, violations, or causes of action as alleged in Attachment A (Covered Matters). The provisions of this paragraph are expressly conditioned on the payment of the administrative civil liability as provided herein by the deadlines specified in this Order, and the City's full satisfaction of the obligations described in this Order.

28. **Publicity:** Should the City or its agents or subcontractors publicize one or more elements of the ECA, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the San Diego Water Board against the City.

Section IV: Standard Stipulations

29. **Compliance with Applicable Laws:** The City understands that payment of the administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in this Order may subject it to further enforcement, including additional administrative civil liability.
30. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
31. In consideration of the City's compliance with this Stipulated Order, the Prosecution Staff and the San Diego Water Board hereby covenant not to bring any further administrative or judicial enforcement action against the City, whether under California or federal law, arising from or related to the specific violations contained in Attachment A.
32. **No Admission of Liability if Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because it is not approved by the San Diego Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the City's signature becomes void and, the City does not admit or stipulate to any of the findings or allegations in this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance.
33. **Public Notice:** The City understands that the San Diego Water Board will conduct a 30-day public review and comment period prior to consideration and adoption. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the San Diego Water Board. The City agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
34. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedures contemplated for adopting the Stipulation and Proposed Order by the San Diego Water Board and conducting review of this Stipulation by the public are lawful and adequate. In the event procedural objections are raised prior to the proposed Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.


35. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or San Diego Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
36. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
37. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board.
38. **If Proposed Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the San Diego Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board and/or a hearing panel to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree to re-initiate the hearing process in that new hearing procedures will be issued with scheduled due dates for a hearing within 90 days from the date the Proposed Order is deemed not accepted by the San Diego Water Board. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing pursuant to California Evidence Code section 1152. The Parties agree to waive any and all objections based on settlement communications in this matter, other than California Evidence Code section 1152 evidentiary objections, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Attachment A in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

39. **Waiver of Hearing:** The City has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of this Order by the San Diego Water Board, or its delegee.
40. **Waiver of Right to Petition:** The City hereby waives its right to petition the San Diego Water Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
41. **Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
42. **San Diego Water Board is Not Liable:** Neither the San Diego Water Board members nor the San Diego Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the San Diego Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
43. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of, and to bind the entity on whose behalf he or she executes the Order.
44. **Necessity for Written Approvals:** All approvals and decisions of the San Diego Water Board under the terms of this Order shall be communicated to the City in writing. No oral advice, guidance, suggestions or comments by employees or officials of the San Diego Water Board regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval required by this Order.
45. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
46. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board enters the Order.

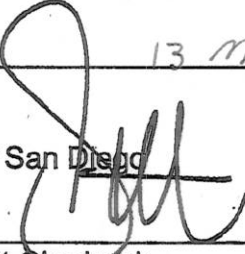
- 47. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
- 48. **Severability:** The provisions of this Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

It is so stipulated.

California Regional Water Quality Control Board Prosecution Team
San Diego Region

By: 
James Smith, Assistant Executive Officer

Date: 13 May 2014

The City of San Diego
By: 
Scott Chadwick
Chief Operating Officer

Date: 13 MAY 14

Approved as to Form:
Jan I. Goldsmith, City Attorney

By: 
Heather Stroud
Deputy City Attorney

Date: May 13, 2014

Section V: Findings of the San Diego Water Board

49. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the San Diego Water Board.
50. The San Diego Water Board finds that the Recitals set forth herein are true.
51. The proposed settlement was noticed to receive public comment for a minimum of 30 days prior to San Diego Water Board consideration.
52. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
53. In adopting this Stipulated Order, the San Diego Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the San Diego Water Board's staff in investigating the allegations herein or otherwise provided to the San Diego Water Board or its delegate by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Diego Water Board for this matter.
54. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321 (a)(2), Title 14, of the California Code of Regulations.
55. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under the Order.
56. Fulfillment of the City's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

Pursuant to CWC section 13323, 13385, and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, San Diego Region.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on **August 13, 2014**.



DAVID W. GIBSON

Executive Officer

Date: 14 August 2014

ATTACHMENTS:

- Attachment A. Discussion of Penalty Calculation Factors
- Attachment B. Description of Enhanced Compliance Action
- Attachment C. Summary of Penalty Methodology Decisions

ATTACHMENT A to Order No. R9-2014-0017

CITY OF SAN DIEGO Municipal Separate Storm Sewer System Discussion of Penalty Calculation Factors

The following provides factual and analytical evidence to support the proposed Administrative Civil Liability (ACL) penalty against the City of San Diego (City) for the following alleged violations:

- 1) **Discharge Violation:** The City violated Discharge Prohibition A.4 of Order No. 2001-01 and Discharge Prohibition A.2 of Order No. R9-2007-0001 failing to ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the maximum extent practicable (MEP).
- 2) **Non-Discharge Violation:** The City failed to implement the Standard Urban Stormwater Mitigation Plan (SUSMP) requirements in violation of provisions F.1.b.(2) and F.1.b.(2)(b) of Order No. 2001-01, and provisions D.1.d-f of Order No. R9-2007-0001.

1.0 Discharger Information and Background

Introduction

The City owns and operates a municipal separate storm sewer system (MS4) through which it discharges urban runoff into waters of the United States/State within the San Diego Region. On February 21, 2001, the San Diego Regional Water Quality Control Board (San Diego Water Board) adopted Order No. 2001-01, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District*. The City is a named Copermittee to San Diego Water Board Order No. 2001-01. On January 24, 2007, the San Diego Water Board adopted Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*. The City is a named Copermittee to Order No. R9-2007-0001.

Urban development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, municipal sewage, sediment, nutrients, pesticides, household hazardous wastes, pet wastes, trash, etc. which can either be washed or directly dumped into the MS4. As a result, the runoff leaving the developed urban area is significantly greater in pollutant load than the pre-development runoff from the same area. These increased pollutant loads must be controlled to protect downstream receiving water quality.

Municipal Storm Water Permit Nos. 2001-01 and R9-2007-0001 (MS4 Permits) issued by the San Diego Water Board specify the requirements necessary for the City to reduce the discharge of pollutants in urban runoff to the MEP, which is a dynamic performance standard which evolves over time. As urban runoff management knowledge increases, the City's urban runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. in order to achieve the evolving MEP standard.

The MS4 Permits require the development and implementation of a SUSMP to reduce the negative impacts of storm water runoff to receiving waters. The City's SUSMP identifies a number of site design BMP, source control BMP, and permanent post-construction treatment control BMP (TCBMP) requirements which apply to public and private new development and significant redevelopment projects. The MS4 Permits require that urban runoff generated by the 85th percentile storm event from specific development categories be infiltrated or treated to meet the MEP standard. TCBMPs, such as detention basins and grass swales, refer to any engineered system designed and constructed to remove pollutants from urban runoff. Pollutant removal is achieved by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process.

In order to comply with the SUSMP requirements in the City of San Diego, applicants for applicable private development projects are required to submit a project specific Water Quality Technical Report (WQTR), subject to approval by the City, which identifies the pollutants of concern generated by the project, the receiving waters potentially affected, and which BMPs have been incorporated into the project to conform with SUSMP requirements.

Likewise, for public projects, City project managers are required to ensure that SUSMP requirements are incorporated into the project design and bid specifications prior to putting the project out for bid. The SUSMP requirements must be shown in drawings and plans before the project is allowed to proceed into the grading and/or construction phase.

MS4 Permit Prohibitions and Requirements

The MS4 Permits contain nearly identical discharge prohibitions which state that:

“Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.”

Order No. R9-2007-0001 required the City to develop and implement a program for public and private priority development projects to track and verify that approved TCBMPs are operating effectively and have been adequately maintained, including an annual inventory of all approved TCBMPs within the City’s jurisdiction.

In 2007 the City established a TCBMP Inspection and Verification Program to comply with the requirements of Order No. R9-2007-0001. This program included building a database to inventory and track all public and private development projects and their associated BMPs that had been approved by the City since 2001. This program required City staff to retroactively research and review development project records approved and implemented under Order 2001-01. The City also hired an outside consultant to perform the annual maintenance inspections required by the MS4 Permits.

Storm Water Review Process

Three City departments currently share the responsibility to implement the SUSMP requirements of the MS4 Permits for both private and public development projects:

- a. **Transportation and Storm Water Department (TSW)** is the asset owner of the City’s storm water system and oversees coordination of the City’s storm water program. The TSW is tasked with the creation of the storm water development standards, staff training and public education programs, watershed management, and enforcement.
- b. **Development Services Department (DSD)** is the department responsible for the review and inspection of private development projects, with the exception of the inspection of grading and public improvement projects.
- c. **Public Works Department (PWD)** is responsible for the design and construction of Capital Improvement Program (CIP) projects. PWD is also responsible for the inspection of grading and public improvements for private development projects.

San Diego Water Board Oversight and Inspections

In September 2007, the San Diego Water Board and U.S. EPA conducted a cursory audit of the City’s SUSMP program. The audit report finding stated that:

“There were no findings or deficiencies identified with this program element. The City appeared to have a comprehensive and effective SUSMP program in place and the program appeared to be equally implemented for both private and public development projects... Based on the results of the inspection, continued routine compliance activities consisting of annual report reviews and periodic inspections appeared warranted.”

On January 20, 2010, April 5, 2010, and September 14, 2010, the San Diego Water Board conducted routine compliance inspections of priority development Projects within the City of San Diego. The purpose of these field inspections was to verify the findings of 2007 audit and verify the functionality of treatment control BMPs installed in the previous years. San Diego Water Board inspectors found that TCBMPs at various sites were either designed or installed incorrectly and that storm water runoff appeared to receive little or no treatment before being discharged offsite. The findings of these inspections seemed to contradict the findings of the 2007 audit, and San Diego Water Board staff concluded that further investigation into the adequacy of the City’s SUSMP program was warranted.

As a result of these inspections, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2010-0135 dated October 1, 2010 for 1) failure to implement the MS4 Permits’ SUSMP requirements, 2) failure to enforce the MEP standard, and 3) failure to verify correct installation of TCBMPs. The San Diego Water Board concurrently issued a Water Code Section 13267 Request for Technical Report (RTR) for the City to address five related topics:

- a. A description of how the deficiencies noted at the inspected priority development projects (PDPs) had been or will be corrected by the City;
- b. A list of TCBMPs approved by the City, including dates of approval;
- c. A description of the City’s inspection status including the number of PDPs inspected, scheduled for completion, and any findings that TCBMPs were not designed and/or installed correctly to remove to MEP standard;
- d. Where deficiencies in BMPs were identified, a description of how the City would correct the deficiencies, including a time table for corrective actions; and
- e. Verification that all permanent TCBMPs were being maintained annually in accordance with MS4 permit requirements.

On November 20, 2010, the City provided the RTR response to the San Diego Water Board. As required by the RTR, the City provided a list of all permanent TCBMPs approved by the City. At the time, the inventory included 628 projects with at least one BMP. At the time of the technical report submittal the City’s consultant had inspected a total of 474 projects (75 percent) and anticipated completing the additional inspections of 154 sites over the next two years. Results of the inspections noted 112 sites with missing drainage insert BMPs, 25 sites missing a BMP other than a drainage insert, and 26 sites where the BMP installed was ineffective in treating storm water discharges to the MEP.

Additionally, the City's response identified issues in the SUSMP program that had contributed to the violations of the MS4 permit requirements, and process improvements the City had instituted to remedy these issues. These issues and the City's corrective actions included:

- a. **Poor Record Keeping**: Files that preceded the TCBMP Verification and Inspection Program (Projects completed under Order 2001-01) remained at decentralized locations at DSD. To remedy this issue the City required all plans and maintenance agreements to be sent to the Storm Water Pollution Prevention Division on a monthly basis.
- b. **Discrepancy of BMP Information Between Project Plans and Final Agreement**: Changes occurring during the construction of a project affecting the initially-proposed BMPs were not reviewed for adequacy with permit requirements and were not reflected in final maintenance agreements processed. The City and its consultants reviewed the project plans and corrected the TCBMP inventory. The City also developed improved standards for BMP attachments to the maintenance agreements, including a detailed site map showing BMP locations and BMP specific maintenance requirements.
- c. **Construction Inspection Deficiencies**: A lack of BMP inspections was discovered for private projects that only required building permits and were therefore assigned to landscape inspectors from DSD. Training on TCBMP inspection was provided to those landscape inspectors by DSD.
- d. **Private BMP Owner Awareness Level**: Owners of private BMPs lacked awareness of the existence and responsibilities for BMPs on their property. The City created "BMP Factsheet" and "Frequently Asked Questions" documents and mailed these to individuals with the annual maintenance verification form, and provided this information on the City's website.
- e. **Lack of Staff Training**: The level of training varied among City staff (including Resident Engineers, Project Managers, Plan Checkers, Building Inspectors and Landscape Inspectors). The City provided training to staff on TCBMPs and general SUSMP requirements.

The RTR response also described the City's progressive enforcement for private sites that were found to be in violation of MS4 permit SUSMP requirements. The City utilized an Administrative Civil Penalty Enforcement process in accordance with San Diego Municipal Code Section 12.08. The Code Enforcement Section of DSD issues Civil Penalty Notice and Orders to private property owners for permanent BMP violations. The property owner is given 60 days to comply with the Civil Penalty Notice and Order for violations that require minor corrective actions (e.g. drainage inserts deficiencies). Some BMP deficiencies that may require major corrective action, such as structural retrofit or modifications of the site and may therefore require a design approval and new permit issuance from the City, are typically given 180 days to comply.

Once corrective actions are taken, an inspection is conducted to verify compliance. If the property owner fails to comply within the given time, the City has the right to take the property owner to a hearing process. A penalty rate of \$100/day has been established with a maximum of \$250,000. The penalty is waived upon voluntary compliance.

Settlement Discussions

After reviewing the RTR response, San Diego Water Board staff routinely communicated with the City to assess the City’s efforts to bring private and public projects into compliance with the MS4 permit requirements. Updates provided by the City indicated that over time it had made progress in bringing a large percentage of private projects into compliance. However, by December 2012 the City had not made any substantial progress in bringing its own CIP projects into compliance.

Based on this lack of progress with CIP projects, the San Diego Water Board Prosecution Staff met with the City to inform the City that formal enforcement was pending for the violations. Subsequent discussions with the City resulted in settlement negotiations aimed at bringing the City’s SUSMP program and both private and public projects into compliance with the MS4 Permit requirements.

During the course of settlement negotiations, the City continued to inspect and investigate the status of all TCBMPs within its jurisdiction and refined the BMP status inventory. Table 1 below shows the summary of the City’s final inventory of TCBMPs as of March 2014. Detailed summaries of all public and private projects in violation of the MS4 Permits’ requirements are contained in Exhibits 1-3 of this analysis.

Table 1. March 2014 Summary of City’s TCBMP Inventory

Project Type	Total Number of Projects in Inventory	Total Number of TCBMPs in Inventory	Total Projects Found Out of Compliance with SUSMP Requirements	Resolved Projects	Projects Remaining Out of Compliance
Private	724	3029	306	164	142
Public	53	204	13	5	8
Totals	777	3233	319	169	150

Summary of Settlement Agreement

To resolve the violations of the MS4 Permits, without formal administrative proceedings, the Parties have agreed to the final imposition of **\$949,634** in liability against the City pursuant to Government Code section 11415.60. Prosecution Staff calculated liability in accordance with the *Water Quality Enforcement Policy*¹ as outlined below. Further, in accordance with the *Enforcement Policy*, up to 50 percent of the total adjusted monetary assessment (i.e. total amount assessed excluding investigative and enforcement costs) can be dedicated to an Enhanced Compliance Action (ECA). The Parties have agreed that **\$456,900** of the total liability will be allocated to an ECA, which is described in Attachment B of this Order. The City shall pay a total of **\$492,734** to the State Water Resources Control Board Cleanup and Abatement Account, consisting of approximately **\$35,834** in staff costs and the balance in stipulated penalties, no later than 30 days following the San Diego Water Board's adoption of the Stipulated Order. The remainder of the penalty shall be suspended and dismissed upon completion of the ECA as described in Stipulated Order No. R9-2014-0017.

The Parties have also agreed to the issuance of Time Schedule Order (TSO) No. R9-2014-0034. The TSO addresses the outstanding private and public projects identified that are still in violation of the MS4 Permits and the continuing discharges of polluted runoff not treated to the MEP. The TSO will prescribe a time schedule for the City to correct all identified public and private projects that continue to be out of compliance with MS4 Permit requirements. The City will have until August 15, 2016 to bring these sites into compliance.

The City is also in the process of implementing a number of improvements in its project review, inspection, and verification processes that will ensure that further violations of the City's SUSMP program requirements do not occur (see Section 2.0, Step 4 "Cleanup and Cooperation" Adjustment factor for a detailed discussion of the City's efforts).

The Prosecution Staff has determined based on the information in the record that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives of California Water Code (CWC) sections 13000 et seq. and the *Enforcement Policy*, and it satisfies the objectives and requirements of the Federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and the TSO; and that this agreement is in the best interest of the public.

¹ The Enforcement Policy is available on-line at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

2.0 Application of the Water Quality Enforcement Policy

The State Water Board's *Enforcement Policy* establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under CWC sections 13327 and 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score.

The City is alleged to have committed two violations, which are analyzed separately using Steps 1 - 3 of the *Enforcement Policy*, to determine total initial liability for each violation. Steps 4 – 10 of the *Enforcement Policy* are applied to the total initial liability to determine the final liability.

Violation 1- Failure to ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objective or which have not been reduced to the MEP.

Step 1: Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: 1) the potential for harm to beneficial uses; 2) the degree of toxicity of the discharge; and 3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses = 3

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5). In this case the potential harm to beneficial uses is determined to be **Moderate** (i.e. a score of **3**), which is defined as “impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects.”

Urban runoff contains waste, as defined in the CWC, and pollutants that adversely affect the quality of the waters of the State. The most common categories of pollutants in urban runoff include total suspended solids, sediment (due to anthropogenic activities), pathogens (e.g. bacteria, viruses, protozoa), heavy metals (e.g. copper, lead, zinc and cadmium), petroleum products and polynuclear aromatic hydrocarbons, synthetic organics (e.g. pesticides, herbicides, and PCBs), nutrients (e.g. nitrogen and phosphorus fertilizers), oxygen-demanding substances (decaying vegetation, animal waste), and trash.

The discharge of pollutants from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.

Beginning May 6, 2003, the City failed to ensure that required TCBMPs were either installed, or installed effectively, at hundreds of priority development sites within its jurisdiction. These missing and ineffective TCBMPs (both public and private projects) were spread out over numerous watersheds within the City including Los Penasquitos Creek, Pueblo San Diego, Otay River, San Diego River, Tijuana River and Mission Bay. It is reasonable to assume that every time there was a rainfall event of a sufficient size to generate runoff requiring treatment, the missing and ineffective TCBMPs discharged pollutants to the region's receiving waters on a widespread, diffuse, and diverse manner. It is also reasonable to assume that the widespread discharge of pollutants not reduced to the MEP had a general negative impact on the beneficial uses of all the receiving waters exposed to the episodic nature of the discharges. The discharge of pollutants not reduced to the MEP would in all likelihood have been attenuated over time due to natural ecological processes and the assimilative capacity of the receiving waters impacted.

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge = 2

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case, a score of **2** is assigned. A score of 2 means that the chemical and/or physical characteristics of the discharged material “poses a moderate risk or threat to potential receptors (i.e. the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).”

The degree of toxicity in the urban runoff discharged over time by the missing and inefficient TCBMPs is indeterminate due to the widespread, diffuse, and diverse nature of the pollutant discharges and lack of specific monitoring. Even so, some general toxicity information is known about potential pollutants discharged from impervious surfaces including parking lots, landscaped areas, and roads. Pollutants in runoff can threaten human health and the environment. Pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans. The pollutants in urban runoff often contain pollutants that cause toxicity to aquatic organisms (i.e. adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies).

Pollutants in urban runoff impact the overall quality of aquatic systems and beneficial uses of receiving waters. Heavy metals can be toxic to aquatic life. Humans can be impacted from contaminated groundwater resources and bioaccumulation of metals in fish and shellfish. Organic compounds found in pesticides, solvents, and hydrocarbons can indirectly or directly constitute a hazard to environmental life or health. Nutrients may include the un-ionized ammonia form of nitrogen that can be toxic to fish. Oil and grease includes a wide array of hydrocarbon compounds, some of which are toxic to aquatic organisms at low concentrations.

While it is impossible to quantify the extent and magnitude of all the discharges of pollutants from the missing and ineffective TCBMPs over the course of the years the City was in violation of the MS4 Permits' conditions, it is reasonable to assume that pollutants in the urban runoff generated by rainfall events in the region pose a moderate risk to potential receptors exposed to these discharges.

Factor 3: Susceptibility to Cleanup of Abatement = 1

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, less than 50 percent of the discharge was susceptible to cleanup or abatement.

Final Score: Potential for Harm = 6

The scores of the three Step 1 factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of **6** was calculated (3 + 2 + 1). The total score is then used in Step 2 below.

Step 2: Assessments for Discharge Violations

This step addresses a per-gallon and per-day assessment for discharge violations. However, due to the complexity of attempting to accurately calculate the gallons discharged for this case, Violation 1 will be assessed on a per-day basis only.

Per Gallon Assessments for Discharge Violations

Not applicable to this matter.

Per Day Assessment for Discharge Violations = \$1,500 per day

When there is a discharge, the San Diego Water Board determines the initial liability factor per day based on the Potential for Harm score (**6**, determined above) and the extent of Deviation from Requirement of the violation (below). These factors are used in Table 2 of the *Enforcement Policy* (pg. 15) to determine a Per Day Factor for the violation.

Deviation from Requirement = Moderate

The intended effectiveness of the requirement has been partially compromised (i.e. the requirement was not met, and the effectiveness of the requirement is only partially achieved).

As of March 2014, the City reports that its inventory of priority development projects with TCBMPs consists of a total of 777 project (724 private and 53 public) with a total 3,233 individual BMPs (3,029 private and 204 public) on the ground. The intended effectiveness of the MS4 Permits' requirement to ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the MEP has, therefore, been partially compromised. On the private project side, the City found a total of 306 projects (42 percent of the total) in violation of the MS4 Permits' requirements. For public projects 13 of the 53 sites (25 percent of the total) were found to be in violation. The diffuse discharges from projects spread throughout the City's jurisdictional boundaries partially compromised the effectiveness of the requirements and prohibitions contained in the MS4 Permits.

The Potential for Harm score from Step 1 is **6** and the Extent of Deviation from Requirement is considered to be **Moderate**. Therefore, the "per day" factor is **0.150** as determined from Table 2 (page 15) in the *Enforcement Policy*.

Water Code Section 13385(c) states: "Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed...(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs."

Violation 1 occurred over the course of multiple days, calculated based on the days where one or more sites were not in compliance, and rain fall exceeded 0.10 of an inch² (i.e. qualifying rain events). The first qualifying rain event was on November 1, 2003. To complete the settlement process, the penalty calculations stopped accruing with the February 7, 2014 qualifying rain event. The number of days from November 1, 2003 to February 7, 2014, which had qualifying rain events is 188. Rainfall data was compiled from the National Weather Service chronological precipitation data for the Lindbergh Field weather station.

The Per Day Liability = ("per day factor") x (number of days in violation) x (maximum penalty per day).

² In consultation with San Diego Water Board Storm Water Staff, 0.1 inch of rainfall was determined to be the minimum precipitation amount constituting a day of storm water discharge. The USEPA concludes in 40 CFR 122.26(d)(2)(iii)(A)(2) that a measurable storm event for monitoring purposes is a rain event greater than 0.1 inches.

Violation 1 – Calculation of Total Initial Liability

The initial liability amount for the discharge violations resulting from the City's failure to ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the MEP is as follows:

- a) Per Gallon Liability: Not Applicable
- b) Per Day Liability: $0.150 \times 188 \text{ days} \times \$10,000 = \$282,000$

Total Initial Liability (a+b) = **\$282,000**

Violation 2- Failure to Implement SUSMP Requirements

Step 1: Potential for Harm for Discharge Violations

This is not a discharge violation, thus this step is not applicable to this violation.

Step 2: Assessments for Discharge Violations

This is not a discharge violation, thus this step is not applicable to this violation.

Step 3: Per Day Assessments for Non-Discharge Violations

Per the *Enforcement Policy*, the San Diego Water Board calculates an initial liability factor for each non-discharge violation, considering Potential for Harm and the Extent of Deviation from applicable requirements.

Potential for Harm to Beneficial Uses = Moderate

The *Enforcement Policy* defines a moderate potential for harm to beneficial uses as "The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm".

The City failed to adequately implement the MS4 SUSMP requirements by:

- a. Failure to implement an updated local SUSMP which reduces PDP discharges of pollutants from the MS4 to the MEP in violation of Order No. R9-2007-0001, provision D.1.d
- b. Failure to develop an adequate database to track and inventory approved TCBMPs within its jurisdiction, in violation of Order No. R9-2007-0001, provision D.1.e (1-2).
- c. Failure to verify the correct installation of TCBMPs in violation of Order No. R9-2007-0001, provision D.1.f.

These failures resulted in missing and ineffective TCBMPs spread throughout the City's jurisdiction. The discharge of pollutants to receiving waters contributed to an overall degradation of water quality and continue to present a substantial potential for threat and harm to beneficial uses of those receiving waters. While exact harm cannot be determined, consistent with the *Enforcement Policy's* guidance, the Prosecution Staff has determined that this violation's potential for harm is moderate.

Deviation from Requirement = Moderate

The *Enforcement Policy* defines a moderate deviation from the requirement as "The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved)". The City's failure to ensure that all priority development projects implemented appropriate TCBMPs in compliance with the SUSMP requirements partially compromised the effectiveness of this requirement.

Per Day Factor for Non-discharge Violation 2 = 0.35

Table 3 of the *Enforcement Policy* (pg. 16) is used to determine the initial penalty factor for the violation. Here, a Potential for Harm to beneficial uses value of **Moderate** and a Deviation from Requirement of **Moderate** results in a Per Day Factor of 0.35.

Again, Water Code Section 13385(c) states that the maximum penalty is an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

Violation 2 was calculated based on the failure of the City in implementing its SUSMP program requirements. The number of days from May 6, 2003 (the date the first BMP was not installed or was insufficient) to February 7, 2014 is 3,931 days. To complete the settlement process, the penalty calculations stopped accruing with the February 7, 2014 qualifying rain event.

Per the *Enforcement Policy* (page 18), for violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. The Prosecution Staff chose to use the *Enforcement Policy's* suggested alternate approach to calculating multiple day violations, because it found that the violation was not causing daily detrimental impacts to the environment since it did not rain during the majority of the 3,931 days of violation. Using the alternative method of calculation, Violation 2 accrued 137 days of violation.

The Per Day Liability = ("per day factor") x (number of days in violation) x (maximum penalty per day).

Violation 2 – Calculation of Total Initial Liability

The total initial liability amount for the City's failure to implement the SUSMP requirements is as follows:

- a) Per Gallon Liability: Not Applicable
- b) Per Day Liability: $0.35 \times 137 \text{ days} \times \$10,000 = \$479,500$

Total Initial Liability (a+b) = **\$479,500**

Step 4: Adjustment Factors: Violator's Conduct Factors

Violator's Conduct Factors

There are three additional factors that must be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup and cooperate towards returning to compliance and correcting environmental damage, and the violator's compliance history.

A. Culpability = 1.2

The multiplying factor range is 0.5 to 1.5, where a higher multiplier is for intentional or negligent behavior.

The City is a municipal government entrusted with protecting the public and environment. The City was highly involved since 2001 in developing the original Model SUSMP requirements in compliance with Order No. 2001-01. Additionally, the City has extensive experience and knowledge in the construction of public works projects and should have the expertise necessary to comply with applicable government regulations related to such projects, including storm water regulations. The City-wide failure to ensure that the SUSMP requirements were met on both public and private projects elevates culpability for the violations due to a failure to exercise the ordinary care that other municipalities have applied under similar circumstances.

The City's culpability is further increased by failure to take timely and sufficient actions to address the CIP projects' violations after becoming aware of them. An elevated adjustment for the City's culpability in this matter is warranted, but does not rise to the level of intentional negligence or a willful disregard for regulatory requirements (for which in the Prosecution Team would have recommended a culpability score of 1.3 to 1.5).

B. Cleanup and Cooperation = 1

The multiplying factor range is 0.75 to 1.5 where a lower multiplier is for a high degree of cleanup and cooperation.

The adjustment factor for Cleanup and Cooperation is left neutral with a score of 1. Upon receiving the initial NOV and RTR the City was slow to address what was eventually determined to be a much larger problem with the storm water program and SUSMP compliance. While periodic updates from the City showed that in the time period between issuance of the NOV in 2010 and the initiation of settlement discussions in early 2013, the City had made substantial progress in addressing private project non-compliance, the City still failed to demonstrate progress towards getting its own CIP non-compliant projects in order.

Upon initiation of formal enforcement discussions in 2013, the City began the process of reviewing its existing SUSMP program to make the institutional changes necessary to ensure that the program would, in the future, comply with SUSMP requirements in the MS4 Permits. This review showed that a number of factors had led to the violations. These factors included:

- 1. Design Phase Issues:** Private and public development projects were either approved and permitted without treatment BMPs incorporated into the design, or the projects' initial designs were flawed resulting in ineffective BMPs, or the project plans had inadequate design details which caused construction defaults.
- 2. Construction Phase Issues:** Projects were constructed without BMPs even though they were shown on the plans, or the BMP was altered during construction resulting in ineffective BMPs.

The City's review also identified factors such as budget cuts during the economic down turn, loss of institutional knowledge due to staff reductions and a surge of retirements, increased workloads, complex regulation, and changing BMP technologies.

As a result of the City's internal investigation, the City has worked diligently to make improvements and implement changes to processes to resolve the program deficiencies that led to the violations addressed by this Order and to prevent similar violations from occurring in the future. The process improvements the City has identified are as follows:

CIP Program Improvements

Staffing: The PWD has assigned a Senior Civil Engineer to oversee the quality assurance of CIP contract documents during the design and preconstruction process. This will assure that appropriate BMPs are included on plan sheets and that all proposed CIP projects comply with MS4 permit requirements.

The PWD has added a new section dedicated to storm water oversight during construction. This section consists of four positions, of which three have been filled. These staff will be responsible for the development of policies, standards publications and training materials for Public Works staff. They will evaluate all treatment during construction and prior to final acceptance.

Training: In November 2013, the City completed the development of an updated mandatory training plan for design and field staff. The training is specific to the roles and responsibilities within the various Public Works sections.

Review Process Improvements: In order to assure that appropriate TCBMPs are included in project plans and are identifiable by contractors, inspectors, and code enforcement staff, the City has implemented improvements to the review process. WQTRs will now have a stand-alone TCBMP sheet as part of the report. The WQTRs will now contain a standard note prohibiting modifications to the proposed BMPs without approval of the Engineer of Work (EOW). WQTRs will now require signed and stamped certification by the EOW to ensure that the design complies with all applicable MS4 Permit requirements. The submitted WQTR will now be reviewed by the Public Works Design Section Head to ensure that BMPs are properly incorporated into the design of all applicable CIP projects.

Inspection Improvements: To ensure that TCBMPs are installed and functioning as designed and to provide clear documentation for operation and maintenance of the TCBMPs the Public Works and Field Engineering Division (FED) has implemented a number of improvements to the inspection process. The City will now provide FED inspection staff with tablet PCs. This new hardware will allow staff more time in the field doing inspections and improve documentation and tracking of TCBMPs. The City has clarified inspection responsibilities between Building, Landscape, and Engineering inspectors.

The City has provided additional training to FED Inspectors to ensure that TCBMPs are constructed in compliance with approved plans certified by the EOW. The City has implemented automated tracking of inspections of all projects with TCBMPs and added specific inspection types for all inspections in the City's project tracking system to provide better documentation and prevent final sign-off on a project without proper TCBMP inspection. And lastly, the City has awarded a contract to provide as-needed construction management services to quickly augment City staff in response to peak workloads thus ensuring adequate inspection staffing at all times.

Private Development Project Process Improvements

Staffing: The DSD has added a dedicated Senior Civil Engineer and Associate Civil Engineer to provide oversight to the review and inspection of private projects. These staff will serve in the same capacity as the additional staff added to oversee the City's public projects as described above. The department has also filled additional review and inspection staff vacancies to handle the increasing workload.

Training: The Civil Engineering Review Section is updating its training program. Revisions will address how to provide adequate training while the City is facing high staff turn-over rates. Inspectors will also receive training on the current TCBMP technology trends.

Review Process/Inspection Improvements: A number of review process improvements, similar in nature to those described above for the public project review process have been implemented by the City. To improve communication and coordination between departments, regularly scheduled meetings between City Storm Water staff and DSD staff have been expanded to include Building, Landscape, and Engineering inspectors for feedback on plans and TCBMP constructability, as well as keeping inspectors up to date on policy decisions in the design process. Dedicated DSD Storm Water staff will perform regular audits of staff reviews on priority projects to assure compliance with storm water requirements.

Storm Water Division Improvements

The Storm Water Division serves as a technical resource to PWD, DSD, other City departments, consultants, and project applicants by providing technical guidance, project consultation and training related to storm water regulations.

Initiation of TCBMP Audits: The Storm Water Division is now working with an outside consultant to develop a TCBMP audit protocol for public and private development projects to be utilized during different phases of the development process. These audits will provide additional assurance that public and private projects are incorporating TCBMPs into designs and that TCBMPs are built in accordance with the plans and specifications prepared for the project. The results of these audits will be communicated quarterly to Public Works and DSD management.

Enhanced Outreach: The Storm Water Division is expanding its outreach efforts to include TCBMP specific education programs. These efforts will include conducting seminars geared toward professional staff, working with other copermittees, consultant engineers, and building industry representatives to convey the City's broad institutional knowledge on TCBMPs.

Upon initiation of settlement discussions, the City has been highly cooperative with Prosecution Staff in working to address systemic shortcoming and compliance related deficiencies. It has made a strong commitment to improving its overall storm water program to ensure these types of violations do not occur in the future. While budgetary and staffing problems encountered during the economic downturn may have slowed its initial response to the NOV issued by the San Diego Water Board, the work the City has performed to reassess and improve its program warrants a neutral adjustment factor of 1.0 for Clean-up and Cooperation.

C. History of Violations = 1

Where there is a history of violations, a minimum multiplier of 1.1 should be used. There is not a significant history of storm water violations against the City so a neutral value of 1 was assigned.

Step 5: Determination of Total Base Liability Amount = \$913,800

The Total Base Liability is determined by multiplying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.
Total Base Liability = (Total Initial Liability) X (Culpability) X (Cleanup & Cooperation) X (History of Violations)

Violation 1 Total Initial Liability Amount: \$338,400

$\$282,000 \times 1.2 \times 1 \times 1 = \$338,400$

Violation 2 Total Initial Liability Amount: \$575,400

$\$479,500 \times 1.2 \times 1 \times 1 = \$575,400$

Violation 1 and 2 Combined Total Base Liability Amount

Total Base Liability = $\$761,500 \times 1.2 \times 1 \times 1 = \$913,800$

Steps 6 through 10 are applied to the Total Base Liability Amount.

Step 6: Ability to Pay = yes

The *Enforcement Policy* provides that if the San Diego Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward. Similarly, if a violator's ability to pay is greater than similarly situated discharges, it may justify an increase in the amount to provide a sufficient deterrent effect.

Based on settlement discussions between the City and Prosecution Staff, the City is able to pay the recommended liability. Accordingly, this penalty factor in this step is neutral and does not weigh either for or against adjustment of the Total Base Liability.

Step 7: Other Factors as Justice May Require = \$35,834 (Staff Costs)

The *Enforcement Policy* provides that if the San Diego Water Board believes that the amount determined using the above factors (Steps 1-6) is inappropriate, the liability amount may be adjusted under the provision for “other factors as justice may require,” if express, evidence-supported findings are made.

In addition, the costs of the San Diego Water Board’s investigation and enforcement are “other factors as justice may require”, and should be added to the liability amount. The Prosecution Team has incurred \$35,834 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 377.5 hours of staff time devoted to investigating and drafting the stipulated order, using staff-specific hourly pay rates. In accordance with the *Enforcement Policy*, this amount is added to the Combined Total Base Liability Amount. No other factors are being considered in determining the proposed liability amount.

Step 8: Economic Benefit = \$353,570

The *Enforcement Policy* directs the San Diego Water Board to determine any economic benefit derived from the violations based on the best available information and suggests that the amount of the assessed penalty should exceed this amount whether or not economic benefit is a statutory minimum. Further, liability assessed pursuant to CWC section 13385 must, at a minimum, be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Prosecution Staff has determined that the City did derive an economic benefit from failure to implement and maintain adequate TCBMPs at its non-compliant public projects and the overall failure to implement its SUSMP program (lack of adequate staffing to implement the program effectively).

Utilizing the U.S. EPA BEN Model, which calculates a discharger’s economic savings from delaying or avoiding pollution control expenditures, the approximate economic benefit the City derived was calculated to be **\$353,570**. A detailed breakdown of the economic benefit by violation type is provided in Exhibit 4 to this analysis.

Step 9: Maximum and Minimum Liability Amounts = \$388,927- \$41,180,000

Minimum Liability Amount = \$388,927

The *Enforcement Policy* requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the San Diego Water Board Prosecution Staff’s estimate of the City’s economic benefit obtained from the violations is estimated at \$353,570. Therefore, the minimum liability amount is \$388,927.

Total Maximum Liability Amount: \$41,180,000

The Maximum Liability Amount, pursuant to Water Code Section 13385(c) is not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. Accordingly:

Maximum liability amount for Violation 1: **\$1,880,000.**

The maximum liability amount for violation 1 is calculated by multiplying 188 days of discharge by the maximum allowable liability of \$10,000/day.

Maximum liability amount for Violation 2: **\$39,310,000.**

The maximum liability amount for violation 2 is calculated by multiplying 3,931 days of non-compliance by the maximum allowable liability of \$10,000/day.

The proposed liability falls within these maximum and minimum liability amounts.

Step 10: Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

Total Base Liability + Staff Costs = Final Liability Amount

$\$913,800 + \$35,834 = \$949,634$

3.0 EXHIBITS

- **Exhibit 1:** City of San Diego Summary of Resolved Private Deficient Projects
- **Exhibit 2:** City of San Diego Summary of Unresolved Private Deficient Projects
- **Exhibit 3:** City of San Diego Summary of Public Deficient Projects Status
- **Exhibit 4:** Economic Benefit Summary Sheet

4.0 DOCUMENTS RELIED UPON

[California Water Code](#)

[Clean Water Act](#)

[Water Quality Control Plan for the San Diego Basin](#)

[San Diego Water Board Order No. 2001-01](#)

[San Diego Water Board Order No. R9-2007-0001](#)

U.S. EPA Audit Findings (ECM document handle #1374721)

San Diego Water Board Inspection Report for 1/20/2010 and 4/5/2010 (ECM document handle #1374729)

San Diego Water Board Inspection Report for 9/14/2010 (ECM document handle #1374730)

Notice of Violation No. R9-2010-0135 and 13267 RTR (10/1/10) (ECM document handle #196525)

City Response to RTR (11/30/10) (ECM document handle #206468)

[NOAA Historic Rainfall Data \(San Diego Lindbergh Field\)](#)

City of San Diego-Private Deficient Projects
Resolved

Project ID	Project Name	Address	Public/ Private	Private Project Agreement Date	Status	Research Concluded	Deficiency Resolved	CPN List	ResolutionDate	Insufficient Drawings	Missing Inserts	Missing Veg Swale/Strip	Missing Bioretention	Missing DS Filter	Missing Det Basin	Missing Filtration System	Missing Flow- Through Planter	Missing HDS	Missing Infiltration Basin	Ineffective Inserts	Ineffective Veg Swale/Strip	Ineffective Bioretention	Ineffective DS Filter	Ineffective Det Basin	Ineffective Filtration System	Ineffective Flow- Through Planter	Ineffective HDS	Ineffective Infiltration Basin	Ineffective Interceptor	Ineffective Baffle Box	Ineffective Pervious Pavement
291	Hegedus Residence	4185 Rancho Las Brisas Trail	Private	4/14/2005	Deficient		Yes	2011	3/30/2011		1																				
237	Fiesta Pacific Products, Inc.	1488 Corporate Center Drive	Private	4/22/2005	Deficient		Yes	2011	2/17/2011		1																				
327	Jensen	5826 MEADOWS DEL MAR DR	Private	4/28/2005	Deficient		Yes	2011	11/10/2011		1																				
828	Wu Residence	5722 Meadows Del Mar Drive	Private	4/28/2005	Deficient		Yes	2011	9/6/2011		2																				
538	Pacific Bell Telephone Co	7847 LINDA VISTA RD	Private	5/9/2005	Deficient		Yes	2011	5/8/2012		1																				
574	RanRoy Printing Co.	4650 Overland Ave.	Private	5/13/2005	Deficient		Yes	2011	11/5/2012		1																				
280	Hall Residence	7511 Miramar Avenue	Private	5/23/2005	Deficient		Yes	2011	5/26/2011		3																				
503	Oakland Furniture	1510 Corporate Center Dr	Private	5/24/2005	Deficient		Yes	2013	9/24/2013											1											
709	Stingaree Gaslamp Quarter	454 6th Ave	Private	5/25/2005	Deficient		Yes	2013	4/30/2013					2																	
306	Homesite #7	4880 RANCHO DEL MAR TRL	Private	5/26/2005	Deficient		Yes	2011	3/30/2011		1																				
294	Herring Residence	4280 Rancho Las Brisas Trail	Private	5/31/2005	Deficient		Yes	2011	3/30/2011		1																				
49	A-1 Self Storage Midtown Grading	3911 Pacific Hwy	Private	6/3/2005	Deficient		Yes	2011	10/26/2011		1																				
746	Tommy's Restaurant	7415 Clairemont Mesa Blvd	Private	6/30/2005	Deficient		Yes	2011	3/29/2011		2																				
71	Anchorage Lane II, LLC	1055 Shafter St.	Private	7/22/2005	Deficient		Yes	2011	5/31/2011		2									1											
517	Otto Plaza Center	3570 National Avenue	Private	7/27/2005	Deficient		Yes	2011	3/23/2011		2																				
301	Holland Motors Expansion	7550 Copley Park Place	Private	7/28/2005	Deficient		Yes	2011	10/5/2011		1																				
812	Washington Mutual	4627 College Ave	Private	8/9/2005	Deficient		Yes	2011	2/21/2013		7																				
585	Rancho Pacifica Homesite # 28	4592 Rancho Del Mar Trail	Private	8/19/2005	Deficient		Yes	2011	3/16/2011		1																				
539	Peerbolte Residence	8195 Doug Hill	Private	8/24/2005	Deficient		Yes	2011	3/18/2011		1																				
287	Hawley Residence	7403 Hillside Drive	Private	8/30/2005	Deficient		Yes	2011	6/28/2012		9																				
364	Leinenweber Res	5475 Rutgers Road	Private	9/20/2005	Deficient		Yes	2011	7/6/2011		1																				
739	Three Canyons - Lot 1	12830 Three Canyons Point	Private	9/22/2005	Deficient		Yes	2013	5/31/2013		2																				
740	Three Canyons - Lot 2	12835 Three Canyons Pt	Private	9/22/2005	Deficient		Yes	2011	6/5/2013		1																				
418	Maplebridge Row Homes (04)	2710 1st Ave	Private	10/5/2005	Deficient		Yes	2011	8/10/2011											1											
1023	Maplebridge Row Homes (03)	2714 1st Ave	Private	10/5/2005	Deficient		Yes	2011	8/10/2011											1											
1024	Maplebridge Row Homes (02)	2718 1st Ave	Private	10/5/2005	Deficient		Yes	2011	8/10/2011											1											
1025	Maplebridge Row Homes (01)	2722 1st Ave	Private	10/5/2005	Deficient		Yes	2011	8/10/2011											1											
18	2234 Brant Street	2234 Brant Street	Private	10/13/2005	Deficient		Yes	2013	5/13/2013		1																				
467	Morris Residence	13880 Rancho Capistrano Bend	Private	10/17/2005	Deficient		Yes	2011	3/30/2011		1																				
800	Villa Paraiso	3840 Via De La Valle	Private	11/16/2005	Deficient		Yes	2011	2/28/2011		1																				
50	A-1 Self Storage-Hotel Circle	2245 Hotel Circle South	Private	11/28/2005	Deficient		Yes	2011	10/26/2011		2																				
298	Highland Skypark	3702-3710 Ruffin Road	Private	12/15/2005	Deficient		Yes	2011	4/25/2012												3										
797	Via Frontera Corp Center	10920 Via Frontera St	Private	1/10/2006	Deficient		Yes	2011	2/28/2011											3											
468	Mossy Toyota	4555 Mission Bay Drive	Private	1/19/2006	Deficient		Yes	2013	5/29/2013		2																				
808	Walgreens University Ave Imp	3222 University Ave	Private	2/6/2006	Deficient		Yes	2011	3/1/2013		3																				
686	Sigsbee Row	1702-1710 National Avenue	Private	2/7/2006	Deficient		Yes	2013	7/1/2013											1											
433	McKnett Residence	8170 Doug Hill	Private	2/8/2006	Deficient		Yes	2011	3/20/2013		1																				
222	Duck Pond Ranch Lot #6	6659 Duck Pond Trail	Private	2/16/2006	Deficient		Yes	2011	3/22/2012		4																				
719	Sunstate Warehouse Building	5590 Eastgate Mall	Private	4/6/2006	Deficient		Yes	2011	4/11/2012		1																				
73	Anuskiewicz Residence	8136 Entrada de Luz East	Private	4/19/2006	Deficient		Yes	2011	3/22/2011		1																				
128	Britannia Industrial Park	NE corner of Britannia Blvd and Siempre Viva Rd	Private	4/25/2006	Deficient		Yes	2011	7/6/2011		9																				
1039	Bayview Park G/PI - Parcel 1	2830 Fallbrook Ln	Private	5/1/2006	Deficient		Yes	2013	6/24/2013		2																				
469	Mr. Copy Office Facility	5657 COPLEY DR	Private	5/3/2006	Deficient		Yes	2013	7/17/2013											1											
450	Mission City Corporate Center	2355 Northside Drive	Private	5/4/2006	Deficient		Yes	2011	11/29/2011		3																				
250	Front and Cedar Apartments	1551 Union St	Private	5/9/2006	Deficient		Yes	2011	3/7/2011					1																	
401	Lot 8, Lusk Mira Mesa Business Park E. Unit 1, Map No. 12642	6625 Top Gun Street	Private	5/22/2006	Deficient		Yes	2011	8/23/2011												1										
722	SYR Residence	8101 Doug Hill	Private	6/1/2006	Deficient		Yes	2011	3/30/2011		1																				
386	Lot 145	4215 Rancho Las Brisas Trail	Private	6/14/2006	Deficient		Yes	2011	6/1/2011		1																				
246	Francis Parker School	6501 Linda Vista Road	Private	6/15/2006	Deficient		Yes	2011	5/21/2011		2																				
326	Jay Residence	8073 ENTRADA DE LUZ EAST	Private	6/26/2006	Deficient		Yes	2011	3/30/2011		1																				
447	USD: Mission Apartments	1611 Santa Anita Drive	Private	6/28/2006	Deficient		Yes	2011	1/24/2011		1																				
614	Ross Residence	14950 ENCENDIDO	Private	6/30/2006	Deficient		Yes	2011	4/22/2013		1																				
243	First United Methodist Church Chapel and Music Building	2111 Camino Del Rio South	Private	7/13/2006	Deficient		Yes	2011	3/4/2011											2											
1368	Doug Hill Residence (30)	8068 Doug Hill	Private	7/20/2006	Deficient		Yes	2013	4/16/2013		1																				
550	Plaza de las Californias	2489 Roll Drive	Private	8/3/2006	Deficient		Yes	2011	5/3/2012												1										
577	Rancho Pacifica #130	13840 Rancho Capistrano Bend	Private	8/4/2006	Deficient		Yes	2011	3/4/2011		1																				
255	Valero and Rolando Mart	6385 University Avenue	Private	8/17/2006	Deficient		Yes	2011	4/25/2013		2																				
554	Poon Residence	8179 Doug Hill	Private	10/7/2006	Deficient		Yes	2011	8/11/2011		1																				
182	Contractors Warehouse Site No. 004	1601 Precision Park Lane	Private	10/9/2006	Deficient		Yes	2011	4/4/2011		2																				
741	Three Piper Ranch Business Park	1210 & 1320 Air Wing Road	Private	10/16/2006	Deficient		Yes	2013	10/30/2013											1											
338	Kosakoski Residence	8367 Sendero de Alba	Private	10/17/2006	Deficient		Yes	2011	3/4/2011		1																				
429	Mashayekan Residence	2745 Costebelle Drive	Private	11/7/2006	Deficient		Yes	2013	5/21/2013		1																				
760	Union Lofts	1945-1961 B Street	Private	11/8/2006	Deficient		Yes	2011	7/6/2011		1																				
195	De Cristo Residence	7356 Country Club Drive	Private	11/14/2006	Deficient		Yes	2011	8/10/2011		1																				
365	Lekven Residence	8046 DOUG HILL	Private	12/13/2006	Deficient		Yes	2011	2/24/2011		1																				
583	Rancho Pacifica Homesite # 32	4552 Rancho Del Mar Trail	Private	1/16/2007																											

City of San Diego-Private Deficient Projects Resolved

Project ID	Project Name	Address	Public/Private	Private Project Agreement Date	Status	Research Concluded	Deficiency Resolved	CPN List	ResolutionDate	Insufficient Drawings	Missing Inserts	Missing Veg Swale/Strip	Missing Bioretention	Missing DS Filter	Missing Det Basin	Missing Filtration System	Missing Flow-Through Planter	Missing HDS	Missing Infiltration Basin	Ineffective Inserts	Ineffective Veg Swale/Strip	Ineffective Bioretention	Ineffective DS Filter	Ineffective Det Basin	Ineffective Filtration System	Ineffective Flow-Through Planter	Ineffective HDS	Ineffective Infiltration Basin	Ineffective Interceptor	Ineffective Baffle Box	Ineffective Pervious Pavement
75	Arbor Terrace	3701-3741 Florida St	Private	2/13/2007	Deficient		Yes	2011	4/5/2012		4			1																	
480	Navy Federal Credit Union	4365 Imperial Ave	Private	2/22/2007	Deficient		Yes	2011	5/26/2011		2																				
210	Diamond at Mission Parcel 05	723 Diamond St	Private	2/28/2007	Deficient		Yes	2011	8/19/2011			1																			
763	University City Village Phase B & C	4641 Pavlov Ave	Private	2/28/2007	Deficient		Yes	2013	10/30/2013		1																				
323	Islandia Hyatt Reg Tenant Improvement	1441 Quivira Rd	Private	3/13/2007	Deficient		Yes	2013	4/10/2013		1																				
253	G & B Dev New SDU Lot 13	14936 ENCENDIDO	Private	3/14/2007	Deficient		Yes	2011	3/2/2011		1																				
321	IRE Parking Lot	2297 Niels Bohr Court, Suite 210	Private	3/27/2007	Deficient		Yes	2011	3/9/2011		1																				
48	A-1 Self Storage Downtown	2235 Pacific Highway	Private	3/28/2007	Deficient		Yes	2011	3/13/2012		1			4																	
147	Carmax Kearney Mesa	7766 Balboa Ave	Private	4/2/2007	Deficient		Yes	2011	5/29/2012												2										
342	La Jolla Commons	4757 Executive Drive	Private	4/2/2007	Deficient		Yes	2011	11/30/2011		4																				
145	Caraciolo Residence	14926 Encendido	Private	4/24/2007	Deficient		Yes	2011	6/1/2011		1																				
109	Bishop High School	7607 La Jolla Blvd	Private	5/29/2007	Deficient		Yes	2011	3/17/2011									1													
1073	Rosecrans St, 1221	1221 Rosecrans St	Private	10/25/2007	Deficient		Yes	2013	7/1/2013											1											
1092	Caufield Residence	8055 Doug Hill	Private	1/29/2008	Deficient		Yes	2013	5/1/2013		1																				
1098	Med-Impact Office Bldg	10181 Scripps Gateway Ct	Private	2/26/2008	Deficient		Yes	2013	4/30/2013		1																				
1105	Torrey DelMar Daycare	13770 Carmel Valley Rd	Private	4/2/2008	Deficient		Yes	2013	4/18/2013		9																				
1251	Strata	969 MARKET ST	Private	7/10/2008	Deficient		Yes	2013	4/30/2013					1																	
1187	Sendero Angelica (7857)	7857 SENDERO ANGELICA	Private	9/15/2008	Deficient		Yes	2013	8/19/2013		1																				
1212	Serenata Townhomes	6410-6433 COLLEGE GROVE DR	Private	9/15/2008	Deficient		Yes	2013	8/27/2013																					1	
1216	Francis Parker School - Phase 3	6501 LINDA VISTA RD	Private	9/15/2008	Deficient		Yes	2013	5/13/2013									1													
1220	ARC Training Center	3030 MARKET ST	Private	9/15/2008	Deficient		Yes	2013	5/14/2013		4																				
1227	St. Gregory Catholic	15315 STONEBRIDGE PKWY	Private	9/15/2008	Deficient		Yes	2013	6/4/2013											4											
1240	Del Mar National	5300 Grand Del Mar Ct	Private	9/15/2008	Deficient		Yes	2013	5/7/2013		3																				
1128	Church of Jesus Christ of Latter-Day Saints	3705 Tennyson St	Private	10/2/2008	Deficient		Yes	2013	8/1/2013											1											
1130	Mormon Battalion Visitor Center	2510 Juan St	Private	11/18/2008	Deficient		Yes	2013	5/2/2013		1																				
1148	Palm Oil Investment Inc	1881 Palm Ave	Private	4/24/2009	Deficient		Yes	2013	3/29/2013		2																				
1165	North Park Retail Grading	3201,3223, 3231 & 3245 University Avenue	Private	4/29/2009	Deficient		Yes	2013	5/15/2013		2																				
1354	Meadows Del Mar Residence (15)	5801 Meadows Del Mar	Private	11/10/2009	Deficient		Yes		11/15/2013		1																				
1305	Veterans Village of SD Phase IIIB	3650 Courts Street	Private	12/2/2009	Deficient		Yes		12/3/2013		1																				
536	Parke Ivy	2245-2255 3rd Avenue	Private	5/26/2011	Deficient		Yes	2011	12/1/2011		5																				
714	Studio 15	1475 Imperial Avenue	Private	7/15/2011	Deficient		Yes	2011	8/2/2011									1													
194	Holiday Inn Express Hotel & Suites San Diego Otay Mesa	2296 Niels Bohr Court	Private	8/5/2011	Deficient		Yes	2011	7/25/2011					4																	
522	Pacific Corporate Cntr Phase II (B3)	10160 Pacific Heights Blvd	Private		Deficient		Yes	2011	5/12/2011		2																				
882	Emerald Cove Lot 120	1312 Caminito Arriata	Private		Deficient		Yes	2011	9/28/2011		3																				
1172	Torrey Del Mar	North and South of Carmel Valley Rd between Mona Ln and Torrey Del Mar Apartments	Private		Deficient		Yes	2011	8/31/2011						1																

City of San Diego-Private Deficient Projects
Unresolved

Project ID	Project Name	Address	Public/Private	Private Project Agreement Date	Status	Research Concluded	Deficiency Resolved	CPN List	Resolution Date	Insufficient Drawings	Missing Inserts	Missing Veg Swale/Strip	Missing Bioretention	Missing DS Filter	Missing Det Basin	Missing Filtration System	Missing Flow-Through Planter	Missing HDS	Missing Infiltration Basin	Ineffective Inserts	Ineffective Veg Swale/Strip	Ineffective Bioretention	Ineffective DS Filter	Ineffective Det Basin	Ineffective Filtration System	Ineffective Flow-Through Planter	Ineffective HDS	Ineffective Infiltration Basin	Ineffective Interceptor	Ineffective Baffle Box	Ineffective PerVIOUS Pavement
	Boys and Girls Club	4635 Clairemont Mesa Blvd. San Diego, CA 92117	Private	7/10/2012	Audit		No																								
	Casa Del Sol Mobile Home Park	2272 Smythe Ave, San Diego, CA 92173	Private	7/13/2012	Audit		No																								
	Kaiser Medical Office Building Carmel Valley	3851 Shaw Ridge Rd. San Diego, 92130	Private	8/22/2012	Audit		No																								
	Kearny Mesa Volkswagen	8040 Balboa Ave, San Diego, CA 92111	Private	8/10/2012	Audit		No																								
	New Seasons 52 Restaurant	4505 La Jolla Village Dr., San Diego, CA 92122	Private	8/8/2012	Audit		No																								
	San Diego Chinese Mandarin Church	3441 Clairemont Mesa Blvd, San Diego, CA 92117	Private	8/15/2012	Audit		No																								
	Sandy Lane	13551 Rancho Santa Fe Farms Rd., San Diego, CA	Private	10/17/2012	Audit		No																								
	SDG&E Admin Building	4848 Santa Fe St. San Diego, CA	Private	9/12/2012	Audit		No																								
	Sea World San Diego Attraction 2014	500 Sea World Drive, San Diego, CA 92109	Private	3/15/2013	Audit		No																								
	Smith Family Residence	8182 Doug Hill Rd., San Diego, CA 92127	Private	8/17/2012	Audit		No																								
	Sunroad Centrum 12	Spectrum Center Blvd., 1/4 mile east of Kearny Villa Rd.	Private	6/29/2012	Audit		No																								
82	Aviation Drive	6673 & 6677 Aviation Drive	Private	8/8/2003	Deficient		No	2013			9																				
1348	Atlas Self Storage	4511 Riviera Shores St	Private	9/11/2003	Deficient		No					1																			
820	White Horse Estates	Del Mar Mesa Rd between Loriet Ct and Aquitaine Ct	Private	10/21/2003	Deficient		No	2013																							
278	Dicopel Inc	8695 Avenida Costa Blanca	Private	10/31/2003	Deficient		No	2013																							
423	Market Creek Plaza	~300-404 Euclid Avenue	Private	11/17/2003	Deficient		No	2013			2																				
267	Golden Oak at Piper Ranch Business Park	1578 Air Wing Rd	Private	11/21/2003	Deficient		No	2013																							
767	Unknown Title, Agrmnt 2003-1452158	750 11TH AVE	Private	12/8/2003	Deficient		No							1								1									
816	Westgate Friends Center	3850 Westgate Place	Private	12/10/2003	Deficient		No				1																				
315	Inn La Jolla	5410-5490 La Jolla Blvd	Private	4/5/2004	Deficient		No	2013								1															
1357	Remington Hills	Otay Mesa Rd and Remington Hills Dr, east of Remington Hills Dr	Private	7/8/2004	Deficient		No	2013			4																				
1359	Stonebridge Estates	Stonebridge Pkwy and arterial roads between Pomerado Rd and Via Santa Pradera	Private	7/13/2004	Deficient		No	2013				7																			
605	Riviera Drive Townhomes	3949-3967 Riviera Dr	Private	10/4/2004	Deficient		No	2013			4																				
1360	Talmadge Senior Village	5252 El Cajon Blvd	Private	10/13/2004	Deficient		No																								
410	2919-2921 E Street	2919, 2921 E Street	Private	11/1/2004	Deficient		No	2011																							
198	Del Mar Clubhouse	5200 Grand Del Mar Way	Private	11/17/2004	Deficient		No	2013			5																				
228	Evening Creek Plaza	13522 Sabre Springs Pky	Private	12/7/2004	Deficient		No	2013			1																				
1361	The Preserve at Del Mar	Rancho Toyon Place and The Preserve Way	Private	12/9/2004	Deficient		No									1															
651	Schloss New SDU	5860 Meadows Del Mar	Private	12/13/2004	Deficient		No	2011			1																				
137	Cal-Mex Truck Parking	7921 Airway Road	Private	2/18/2005	Deficient		No	2013			1																				
330	Johnson Residence (59606)	8037 ENTRADA DE LUZ EAST	Private	3/8/2005	Deficient		No	2013			1																				
461	Monde	3970, 3986 9th Ave.	Private	4/4/2005	Deficient		No							1																	
733	The Shop @ Spectrum, Grading, PI	9187 Clairmont Mesa Blvd	Private	5/13/2005	Deficient		No	2013																							
506	Ocean View Grading	6021 & 6051 Business Center Ct	Private	6/9/2005	Deficient		No	2013																							
620	Safdie Residence	7555 Miramar Ave	Private	6/22/2005	Deficient		No	2013			2																				
1350	Cantare	7651 St. Andrews Ave	Private	7/5/2005	Deficient		No					1																			
155	CC La Jolla Inc.	8515 Costa Verde Blvd	Private	7/18/2005	Deficient		No	2011			1																				
801	Villa Starlight	7785 Starlight Dr	Private	7/19/2005	Deficient		No	2013				2																			
414	Lytton Street Entrance - Liberty Station	Historic Decatur Rd from Lytton St to Sims Rd	Private	10/4/2005	Deficient		No																								
134	Cabrillo Point Loma	Kenyon Street and Fordham Street	Private	10/13/2005	Deficient		No	2013			3																				
156	Cereza Street Apartments	4777 Cereza St	Private	10/25/2005	Deficient		No	2011																							
611	Roman Catholic Bishop Of San Diego	3390 Glencolum Drive	Private	11/7/2005	Deficient		No	2013																							
655	Scientific Research LJ Commons	4755 Nexus Center Drive	Private	12/6/2005	Deficient		No				1																				
761	University C/V Phase Z2	6133 Kantor St	Private	1/5/2006	Deficient		No	2013																							
516	Otay Mesa Repackers	8620 Avenida Costa Blanca	Private	2/28/2006	Deficient		No	2013			6																				
353	US Concrete	2735 Cactus Road	Private	3/22/2006	Deficient		No	2013																							
382	Lot 1 and 2 Booth Business Park	5055 Ruffin Road	Private	3/22/2006	Deficient		No	2011				1																			
392	Lot 3 Three Canyons-Arroyos Del Mar, 6640 Three Canyons Court	6640 Three Canyons Court	Private	4/5/2006	Deficient		No	2013			2																				
817	West Cluster	Artesian Road and Artesian Spring Rd	Private	5/15/2006	Deficient		No																								
495	North Park Condos PI	3950 Ohio St	Private	6/5/2006	Deficient		No	2013																							
153	Casa Sueno Dorado	6915 The Preserve Way	Private	6/9/2006	Deficient		No	2013				1																			
799	Villa Di Buon Vista	6930 The Preserve Way	Private	6/9/2006	Deficient		No	2011			4	1																			
1355	Ocean View Hills Corporate Center - Phase 3	property on the east and west sides of Exposition Way	Private	8/7/2006	Deficient		No																								

City of San Diego-Private Deficient Projects
Unresolved

Project ID	Project Name	Address	Public/ Private	Private Project Agreement Date	Status	Research Concluded	Deficiency Resolved	CPN List	Resolution Date	Insufficient Drawings	Missing Inserts	Missing Veg Swale/Strip	Missing Bioretention	Missing DS Filter	Missing Det Basin	Missing Filtration System	Missing Flow- Through Planter	Missing HDS	Missing Infiltration Basin	Ineffective Inserts	Ineffective Veg Swale/Strip	Ineffective Bioretention	Ineffective DS Filter	Ineffective Det Basin	Ineffective Filtration System	Ineffective Flow- Through Planter	Ineffective HDS	Ineffective Infiltration Basin	Ineffective Interceptor	Ineffective Baffle Box	Ineffective Pervious Pavement
80	Auburn Park	5085 University Avenue	Private	9/20/2006	Deficient		No	2013			8																				
165	Chollas Creek Villas	49th St. and Nogal St.	Private	10/3/2006	Deficient		No	2013				1																			
667	Seabreeze at Old El Camino Real	13684-13712 Old El Camino Real	Private	12/18/2006	Deficient		No				2	13																			
687	Silberstein Residence	2727 Inverness Drive	Private	1/18/2007	Deficient		No				1																				
464	Montoro	8578 Ruelle Monte Carlo	Private	2/2/2007	Deficient		No	2013				1																			
518	Our Lady of Mt Carmel Grading	13541 Stoney Creek Rd	Private	2/20/2007	Deficient		No							3																	
459	MJK 54th & El Cajon Blvd.	5404-5420 El Cajon Blvd	Private	3/26/2007	Deficient		No	2013																							
764	University City Village-Phase K	5824 Kantor Street	Private	4/30/2007	Deficient		No	2013				1																			
3	1061 Saturn Blvd	1061 Saturn Blvd	Private	5/15/2007	Deficient		No				2	1																			
781	Evangelical Formosan Church	13885 EL CAMINO REAL	Private	7/20/2007	Deficient		No	2013																							
782	KFC Restaurant # Y450071	2829 UNIVERSITY AVE	Private	7/23/2007	Deficient		No	2013																							
783	Allred Collins Business Park East - Lot 4 & 5	7620 COPLEY PARK PL	Private	7/27/2007	Deficient		No				1																				
1076	Cassimatis Residence	6653 Mulberry St	Private	11/1/2007	Deficient		No	2013				3																			
1082	Children's Hospital	8105 Birmingham Way	Private	11/19/2007	Deficient		No	2013			5																				
1059	USD: University Center Grading	5880 Marian Wy	Private	1/2/2008	Deficient		No	2013																							
1060	Liva Distributor	3171 Iris Ave	Private	1/7/2008	Deficient		No	2013				1																			
1062	Wong New Duplex / Genesee Center	4441 Clairemont Mesa Blvd	Private	1/8/2008	Deficient		No	2013					8																		
1087	Greater Apostolic Church Grading	138 28th St, 2754 Imperial Ave & NE corner of 28th & L St	Private	1/11/2008	Deficient		No	2013			2																				
1089	Aguirre Residence Grading	18616 Aceituno St	Private	1/25/2008	Deficient		No	2013				1																			
1155	Eads Ave Grading	7541 Eads Ave	Private	2/15/2008	Deficient		No				2			11																	
1160	Summit Rancho Bernardo G/EA	16620 W Bernardo Dr	Private	6/17/2008	Deficient		No	2013			2				1																
1194	7-Eleven (5102 Waring)	5102 WARING RD	Private	8/14/2008	Deficient		No	2013			1																				
1188	Wong Duplex	4439 CLAIREMONT MESA BL	Private	9/15/2008	Deficient		No	2013					8																		
1223	Averil Apartments	139 AVERIL RD	Private	9/15/2008	Deficient		No	2013			2																				
1125	Clews Land & Livestock, LLC	11600 Clews Ranch Rd	Private	9/16/2008	Deficient		No					11			1																
1126	Del Mar Windmill Estates, LLC	Lansdale Ct and Lansdale Dr	Private	9/19/2008	Deficient		No	2013				2																			
1127	Andrew Scull	918 Muirlands Dr	Private	9/23/2008	Deficient		No	2013								1															
1131	Thomas Jefferson School of Law	1155 Island Ave	Private	11/24/2008	Deficient		No							2																	
1110	El Pedregal Apartments	104 Averil Rd	Private	12/4/2008	Deficient		No	2013			5																				
1115	St. Vincent De Paul Church	4080 Hawk St	Private	1/5/2009	Deficient		No	2013			3	1		1																	
1135	Simpson Parkview, LP	3540 Aero Ct	Private	2/2/2009	Deficient		No	2013			1																				
1136	Davis Trucking, LLC	2451 Siempre Viva Ct	Private	2/4/2009	Deficient		No	2013			1																				
1166	Baywood Homes	7895 Entrada De Luz East	Private	5/11/2009	Deficient		No	2013			1	1																			
1152	Minto Investment Group, LLC	800-828 Broadway and 1018 9th ave	Private	6/5/2009	Deficient		No	2013			2																				
1168	Murphy's Market	3596 Fairmount Avenue	Private	6/8/2009	Deficient		No	2013																							2
1262	Three Canyons Pt Private Roads	N/S and E/W Private Roads north of Del Vino Ct	Private	9/1/2009	Deficient		No	2013			2																				
1163	MJK 30th & El Cajon Grading	3001 El Cajon Blvd.	Private	10/6/2009	Deficient		No	2013			3																				
1304	Osprey St Residence (32)	4343 Osprey Street	Private	11/23/2009	Deficient		No				1																				
1249	City Heights Square	4300 University Av	Private	5/3/2010	Deficient		No									19															
1276	Altamirano Wy Residence (03)	4340 Altamirano Way	Private	9/24/2010	Deficient		No					1																			
1279	Adesa San Diego Cactus Rd	2241 Cactus Rd	Private	11/24/2010	Deficient		No	2013			4																				
1282	Village Lindo Paseo	5565-5633 Lindo Paseo	Private	12/20/2010	Deficient		No																								
1283	CA Proton Treatment Center	9730-9790 Summers Ridge Road	Private	12/23/2010	Deficient		No																								
1288	Scripps Oncology Bldg	10670 John Jay Hopkins Drive	Private	5/6/2011	Deficient		No																								
1289	Euclid Family Health Center	950 S. Euclid Ave	Private	5/6/2011	Deficient		No																								
1290	Sea World Entertainment Park (Manta Roller Coaster)	500 Sea World Drive	Private	5/13/2011	Deficient		No				14																				
1291	Market and 26th Retail	2611 Market St	Private	5/27/2011	Deficient		No					1																			
1292	Westwood Shell	16998 West Bernardo Dr	Private	6/8/2011	Deficient		No				2	2																			
1294	Mission Apartments (Hancock)	1815 Hancock St	Private	6/15/2011	Deficient		No				5																				
1328	La Esquina	2222 Logan Ave	Private	6/24/2011	Deficient		No				1																				
1319	Ascension Church	11292 Clairemont Mesa Blvd	Private	7/1/2011	Deficient		No				1																				
1321	First Unitarian Universalist Church	4190 Front St	Private	8/12/2011	Deficient		No					2		2																	
362	Las Americas Phase 1B1	4211 Camino De La Plaza	Private		Deficient		No	2011			5																				
66	Allegro Towers	1455 Kettner Blvd.	Private	6/20/2003	Research	No	No			X																					
1379	Entrada Apartments	453 13th St	Private	7/23/2003	Research	No	No			X																					
728	The Egyptian	University Ave and Park Blvd	Private	2/25/2004	Research	No	No			X																					
187	Creekside Villas	Creekside Village Way & Creekside Village Square	Private	4/23/2004	Research	No	No			X																					
183	Copart Auto Storage	7847 Airway Rd	Private	10/11/2004	Research	No	No			X																					
2	'G' Lofts West Seventh Ave., 'G' Street & Eight Ave.	703 G Street	Private	12/5/2004	Research	No	No			X																					
630	Santa Barbara - MBO	5405-5595 VALERIO TRL	Private	1/26/2005	Research	No	No				2																				
314	Industrial Shell	8560 Siempre Viva Road	Private	2/9/2005	Research	No	No			X																					
1179	Pacific Highlands Ranch Unit 11	13505-13545 Zinnia Hills Pl	Private	2/24/2005	Research	No	No				1																				
543	Pepper Tree Villas	Lots 21-23, Block O, Imperial Gardens, Map No. 1978	Private	3/24/2005	Research	No	No			X																					
513	Otay Commercial	9925 AIRWAY RD	Private	5/6/2005	Research	No	No			X																					
962	13164 Chambord Way	13164 Chambord Way	Private	5/18/2005	Research	No	No				1																				
965	13167 Sunstone Pt	13167 Sunstone Pt	Private	5/18/2005	Research	No	No				1																				

EXHIBIT 2

City of San Diego-Private Deficient Projects
Unresolved

Project ID	Project Name	Address	Public/Private	Private Project Agreement Date	Status	Research Concluded	Deficiency Resolved	CPN List	Resolution Date	Insufficient Drawings	Missing Inserts	Missing Veg Swale/Strip	Missing Bioretention	Missing DS Filter	Missing Det Basin	Missing Filtration System	Missing Flow-Through Planter	Missing HDS	Missing Infiltration Basin	Ineffective Inserts	Ineffective Veg Swale/Strip	Ineffective Bioretention	Ineffective DS Filter	Ineffective Det Basin	Ineffective Filtration System	Ineffective Flow-Through Planter	Ineffective HDS	Ineffective Infiltration Basin	Ineffective Interceptor	Ineffective Baffle Box	Ineffective Pervious Pavement
969	13183 Sunstone Pt	13183 Sunstone Pt	Private	5/18/2005	Research	No	No				1																				
975	13188 Sunstone Pt	13188 Sunstone Pt	Private	5/18/2005	Research	No	No				1																				
976	13180 Sunstone Pt	13180 Sunstone Pt	Private	5/18/2005	Research	No	No				1																				
571	Rachal Residence Grading	5275 Cromwell Ct	Private	6/24/2005	Research	No	No			X																					
546	Pino Apartments	6496 LANSTON ST	Private	7/26/2005	Research	No	No			X																					
47	9706 La Jolla Farms Rd	9706 La Jolla Farms Road	Private	9/20/2005	Research	No	No			X																					
380	Lot #6 Rancho Pacifica	4840 RANCHO DEL MAR TRL	Private	11/2/2005	Research	No	No			X																					
74	Aqua View Condos	3445-3449 Bayside Walk	Private	11/30/2005	Research	No	No			X																					
167	City Heights Square Senior Housing	4065 43rd Street	Private	2/14/2006	Research	No	No			X																					
332	Kassen Residence	13150 Camino Ramillette	Private	3/2/2006	Research	No	No			X																					
449	Mission Blvd Office	4263 Mission Blvd.	Private	3/20/2006	Research	No	No			X																					
813	WCPC	8801 KENAMAR DR	Private	5/25/2006	Research	No	No			X																					
363	Lees Auto Repair	6140 Mission Gorge Road	Private	8/23/2006	Research	No	No			X																					
415	MacDonald Residence	5725 MEADOWS DEL MAR	Private	10/31/2006	Research	No	No				1																				
230	Fairway House	6906 Fairway Road	Private	6/13/2007	Research	No	No			X																					
1078	Minh Houg Supermarket	4029 Euclid Ave	Private	11/19/2007	Research	No	No			X																					
1081	Santa Monica Ave Grading	4689 Santa Monica Ave	Private	11/19/2007	Research	No	No			X																					
1083	Bonair St, 377-383	377-383 Bonair St	Private	11/21/2007	Research	No	No			X																					
1182	1220 Grand Avenue Duplexes	1220-1226 GRAND AV	Private	12/14/2007	Research	No	No			X																					
1094	Los Vientos	1629-68 National Ave	Private	2/5/2008	Research	No	No			X																					
1101	Sorrento Gateway Grading	4930 Directors Pl	Private	3/14/2008	Research	No	No			X																					
1193	Family Health Centers of San Diego	3514 30TH ST	Private	8/14/2008	Research	No	No			X																					
1201	Villa Nueva Community Ctr	1901 DEL SUR BL	Private	8/14/2008	Research	No	No			X																					

EXHIBIT 3

City Of San Diego -Public Deficient Projects Status

	Project ID	BMP ID	Project Name	BMP Type	Deficiency	As-built Date	Deficiency Resolved
1	1351	4783	Carmel Valley Road Improvements - BMR	Drainage Insert	Ineffective	1/05' Planning Date	Yes
2	989	3220	Fire Station #12	Drainage Insert	Missing	12/05'	Yes
		3275		Drainage Insert	Missing		
		3280		Downspout Filter	Missing		
		3829		Downspout Filter	Missing		
		3830		Downspout Filter	Missing		
		3831		Downspout Filter	Missing		
		3832		Downspout Filter	Missing		
		3833		Downspout Filter	Missing		
		3834		Downspout Filter	Missing		
3	990	4179	Fire Station #31	Drainage Insert	Missing	12/05'	Yes
4	858	3200	Lisbon Street Roadway and Utility Improvements	Drainage Insert	Missing	1/07'	Yes
		3877		Drainage Insert	Missing		
5	855	2396	N Chollas Community Park Phase 1B	Drainage Insert	Missing	2/04'	Yes
6	1011	4928	Central Police Facility - K-9 Facility	Detention Basin	Ineffective	2/04' Date WQTR was Signed	No
7	1367	4924	Central Police Facility - Vehicle Maintenance	Filtration Systems	Missing	2/04' Date WQTR was Signed	NO

	Project ID	BMP ID	Project Name	BMP Type	Deficiency	As-built Date	Deficiency Resolved
8	982	3213	George L Stevens Senior Center	Vegetated Swale	Ineffective	no as-built	No
9	857	2398	Breen Park Site - Development	Vegetated Swale	Ineffective	10/05'	No
		3080		Vegetated Swale	Ineffective		
		3081		Vegetated Swale	Ineffective		
		3082		Vegetated Swale	Ineffective		
10	140	1343	Camino Ruiz Neighborhood Park	Vegetated Swale	Ineffective	8/04' Planning Date	No
11	1001	3231	Hilltop Community Park Development	CDS	Missing	3/07' Planning Date	No
12	984	3215	Memorial Skateboard Park	Unknown	Missing	2/04'	No
13	859	2399	Otay Mesa/Nestor Library Expansion	Vegetated Swale	Ineffective	4/06'	No
		2826		Vegetated Swale	Missing		

Exhibit 4

City of San Diego Benefits of Non-Compliance (Order No. R9-2014-0017)

Compliance Action	One-Time Nondepreciable Expenditure		Annual Cost		Date of		Penalty Payment	Benefit of Noncompliance
	Amount	Date ¹	Amount	Date ¹	Non-Compliance	Compliance		
Implement standard urban storm water mitigation plan.	\$0	N/A	\$200,000	1/1/2014	1/9/2013	5/13/2014	8/13/2014	\$276,261
Fire Station #31	\$800	12/1/2005	\$178	12/1/2005	12/1/2005	2/15/2013	8/13/2014	\$1,908
Fire Station #12	\$12,100	12/1/2005	\$706	12/1/2005	12/1/2005	2/15/2013	8/13/2014	\$9,200
Lisbon Street Roadway and Utility Improvements	\$1,600	1/1/2007	\$356	1/1/2007	1/1/2007	2/15/2013	8/13/2014	\$3,115
N Chollas Community Park Phase 1B	\$800	2/1/2004	\$178	2/1/2004	2/1/2004	2/15/2013	8/13/2014	\$2,575
Central Police Facility - K-9 Facility	\$23,040	2/1/2004	\$3,960	2/1/2004	1/9/2013	5/13/2014	8/13/2014	\$7,784
Central Police Facility - Vehicle Maintenance	\$44,800	2/1/2004	\$16,000	2/1/2004	1/9/2013	5/13/2014	8/13/2014	\$29,695
George L Stevens Senior Center	\$76,620	3/1/2007	\$1,400	3/1/2007	1/9/2013	5/13/2014	8/13/2014	\$4,757
Breen Park Site - Development	\$13,260	10/1/2005	\$4,000	10/1/2005	1/9/2013	5/13/2014	8/13/2014	\$7,094
Camino Ruiz Neighborhood Park	\$187,740	8/1/2004	\$1,000	8/1/2004	1/9/2013	5/13/2014	8/13/2014	\$8,407
Hilltop Community Park Development	\$220	3/1/2007	\$178	3/1/2007	1/9/2013	5/13/2014	8/13/2014	\$291
Otay Mesa/Nestor Library Expansion	\$5,750	4/1/2006	\$1,400	4/1/2006	1/9/2013	5/13/2014	8/13/2014	\$2,482
Total								\$353,570

Source: USEPA BEN Model:

Version 5.3.0

4/8/2014 16:57

Income Tax Schedule: Municipality, which pays no taxes

Cost Index for Inflation: ECI Employment Cost Index

Discount/Compound Rate: 4.3%

¹ Date of the cost estimate.

ATTACHMENT B

City of San Diego Enhanced Compliance Action Order No. R9-2014-0017

Project Description:

The City of San Diego (City) proposes to implement a Storm Water Treatment Control BMP Project (Project) as an Enhanced Compliance Action (ECA). The Project consists of retrofitting existing Storm Water Treatment Control Best Management Practices (BMPs) at five City facilities to a more effective type of BMP and building a new BMP feature at a sixth City facility. The Project provides enhanced BMPs beyond applicable regulatory requirements. The five facilities to be retrofitted were originally permitted with BMPs under the 2001 or the 2007 Municipal Storm Water Permit. The proposed enhanced BMPs exceed the 2007 storm water treatment requirements and will provide improved water quality treatment. The sixth facility does not currently have any treatment control BMPs because its construction pre-dated those requirements. The proposed BMPs collectively will treat 6.9 acres utilizing biofiltration techniques.

To expedite the design and construction of the Project, the City is combining these sites into one design-build contract in which a design firm and a construction contractor team up to design and build the BMPs. The City Council approved \$1.25 Million of bond funding for the Project in March 2013. The remaining cost of \$450,000 will come from the City's general fund.

Water Quality Benefits:

Enhanced water quality treatment will be provided at these six sites by treating additional drainage areas and by implementing bioretention Low Impact Development (LID). Bioretention LID provides better performance and a higher pollutant load reduction compared to the vegetated swale or mechanical BMPs that satisfied the 2001 and 2007 storm water treatment requirements.

Bioretention LIDs are shallow vegetated depressed areas with engineered soil media. Storm water runoff flows vertically through the bioretention soil layers where storm water treatment occurs via physical, chemical and biological processes. Bioretention LIDs provide consistent and high pollutant removal for sediment, metal and organic pollutants. They also promote removal of bacteria through photolysis and predation processes and are efficient at sequestering microbes by sedimentation and sorption processes. Pollutant removal efficiency is greatly enhanced by runoff volume reduction via infiltration and evapotranspiration.

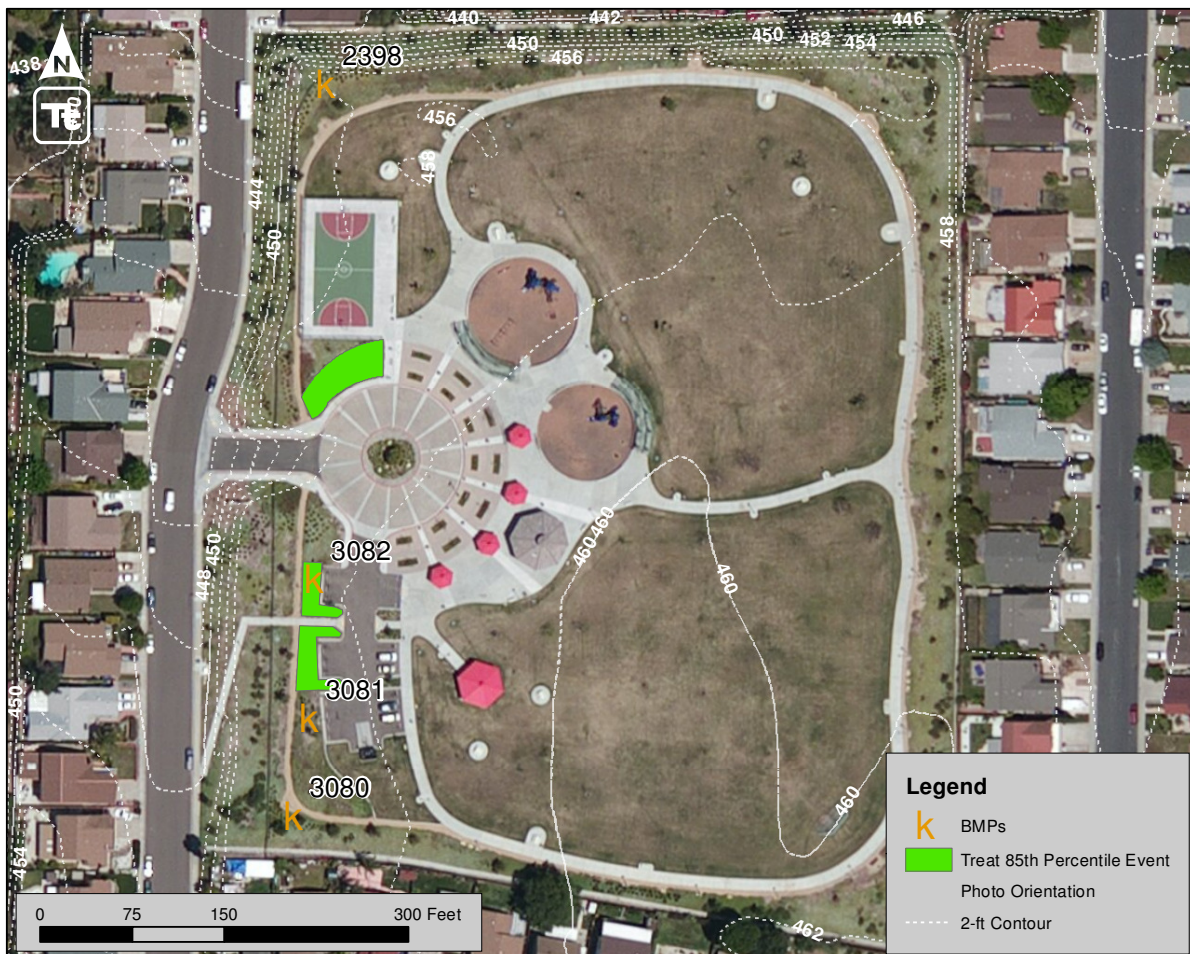
Vegetated swales, on the other hand are shallow open channels. They remove pollutants through physical processes by straining and filtering runoff through the vegetation in the channel. Storm water runoff flows laterally through the open channel where some pollutants settle and get filtered in the vegetation layer. Vegetated swales primarily remove coarse sediment and are not effective at removing fine sediment or metals due to minimal contact time between runoff and the treatment surface. The chemical and biological processes are absent in vegetated swales due to the lack of the engineered soil layer. Some studies concluded that swales, in some instances, export (produce) heavy metals and pathogens.

ATTACHMENT B

Project Details:

The City of San Diego has identified the following six City facilities to be retrofitted with enhanced BMPs:

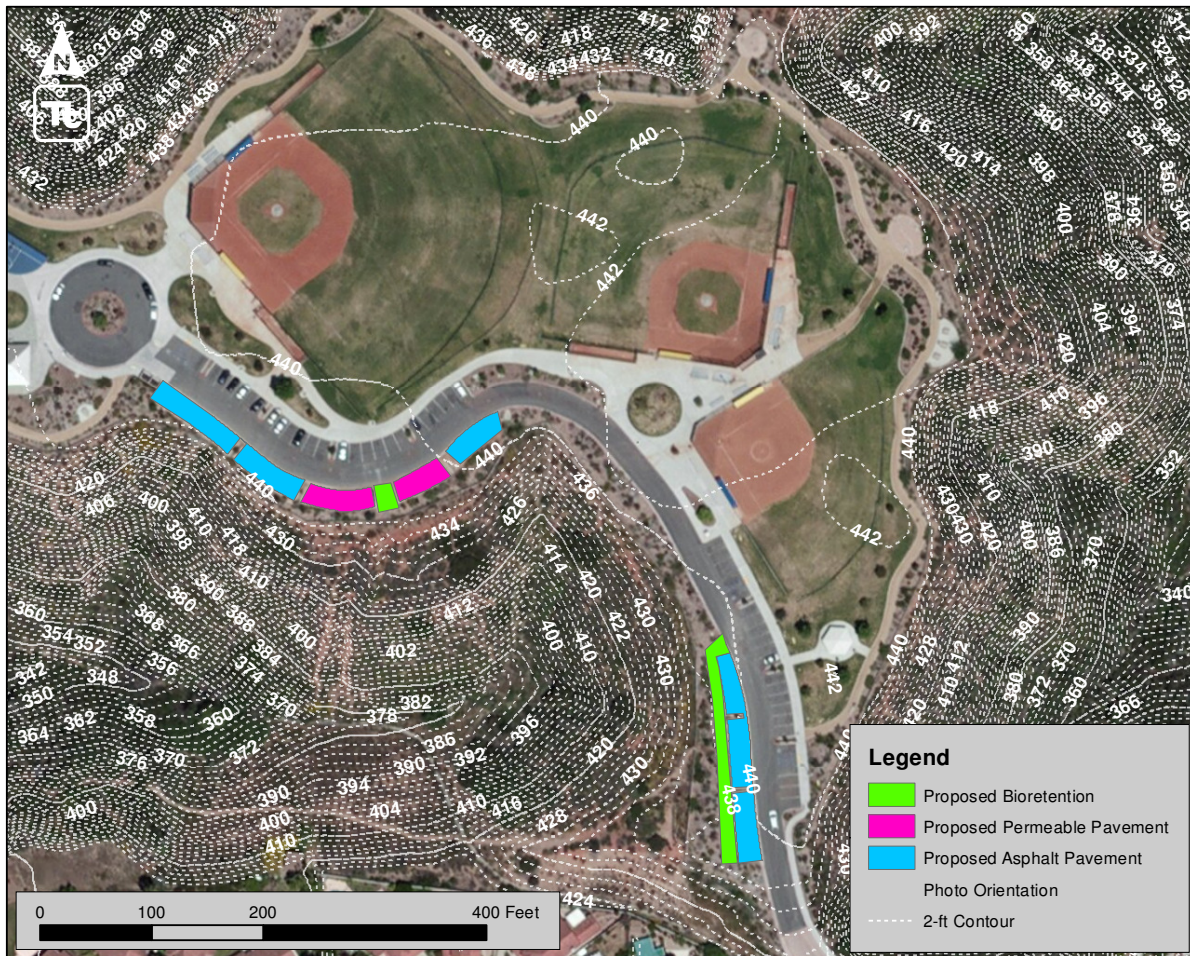
Breen Park - Breen Park is located on Polaris Street in a residential area of the Mira Mesa community. The park, which is located in the Los Penasquitos watershed, includes a mixture of pervious and impervious surfaces, recreational facilities, and a parking lot. Current vegetated swales treat only a portion of the existing site impervious area of approximately 58,000 square feet. To provide for treatment of the 85th percentile runoff and to exceed applicable water quality requirements, landscaped areas in the park are proposed to be converted to bioretention areas to provide a level of treatment above that required at the time the water quality technical report (WQTR) was approved. Swales adjacent to the parking lot are proposed to be converted into bioretention areas to provide treatment for the runoff generated by the 85th percentile storm. The landscaped area on the north side of the park entrance is proposed to be converted to a bioretention area to provide additional treatment of existing impervious area that currently discharges from the site with no treatment. The retrofit exceeds applicable regulatory requirements by treating runoff from 50,377 more square feet of impervious surface than the initial site design and providing enhanced pollutant removal through bioretention and treatment of the 85th percentile storm.



Breen Park

ATTACHMENT B

Camino Ruiz Neighborhood Park - Camino Ruiz Neighborhood Park is located at the terminus of Camino Ruiz on the south side of Los Penasquitos Canyon in the Mira Mesa community. The park includes a mixture of pervious and impervious surfaces, rooftops, recreational facilities, and a parking lot. Only a minimal percentage of the site runoff is graded toward the current BMPs. Thus, the majority of the site runoff discharges untreated to the adjacent canyons. Two bioretention areas are proposed to provide treatment of runoff generated by the 85th percentile storm from the parking lot area. These facilities are proposed to be installed within existing landscaping areas. Additional storage is required to capture the 85th percentile runoff volume from the north side of the parking area and is proposed to be provided in permeable pavement parking stalls adjacent to the proposed bioretention area. The retrofit exceeds applicable regulatory requirements by treating runoff from impervious surfaces through bioretention to capture the 85th percentile storm runoff.



Camino Ruiz Neighborhood Park

ATTACHMENT B

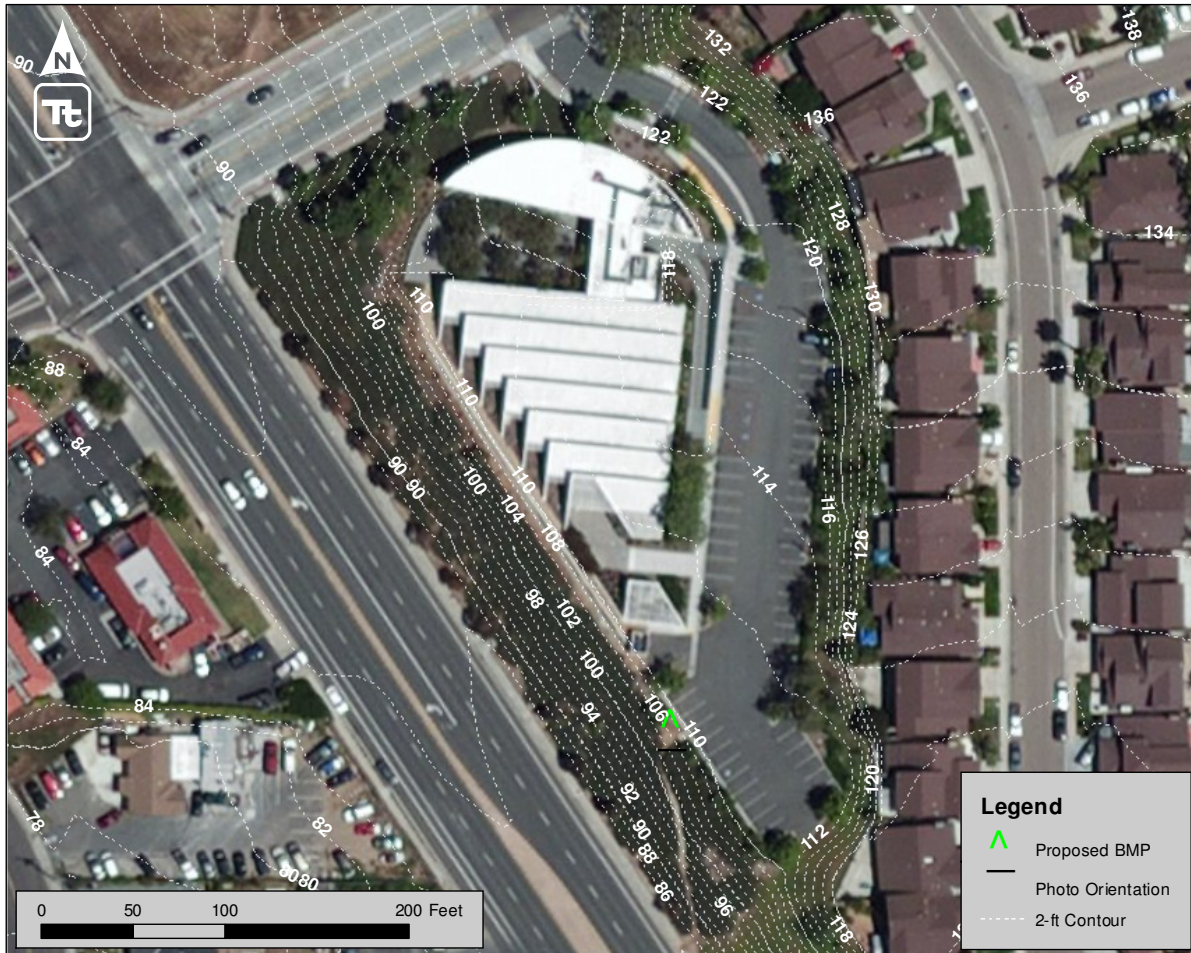
Hilltop Community Park - The Hilltop Community Park is located at the terminus of Oviedo Way in the Rancho Penasquitos community. The park, which is part of the Los Penasquitos watershed, includes a mixture of open vegetated area, impervious surfaces and rooftops, recreational facilities, and a parking lot. No BMPs are present in the parking lot expansion area of the site which is the focus of the retrofit. Proposed BMPs recommended for this site are proposed to provide treatment of the 85th percentile storm, well above the treatment requirements specified in the WQTR. Two bioretention facilities are proposed to provide for treatment of the majority of the study area. An existing landscaped area near Oviedo Way is proposed to be converted to a bioretention area along with the conversion of three landscaped areas within the existing parking lot area to bioretention areas. The parking lot bioretention areas are proposed to be linked by a narrow bioswale between parking stalls. Additional treatment is proposed to be provided through the conversion of 5 parking stalls to permeable pavement. The retrofit exceeds applicable regulatory requirements by treating runoff from impervious surfaces through bioretention to treat the 85th percentile storm runoff.



Hilltop Community Park

ATTACHMENT B

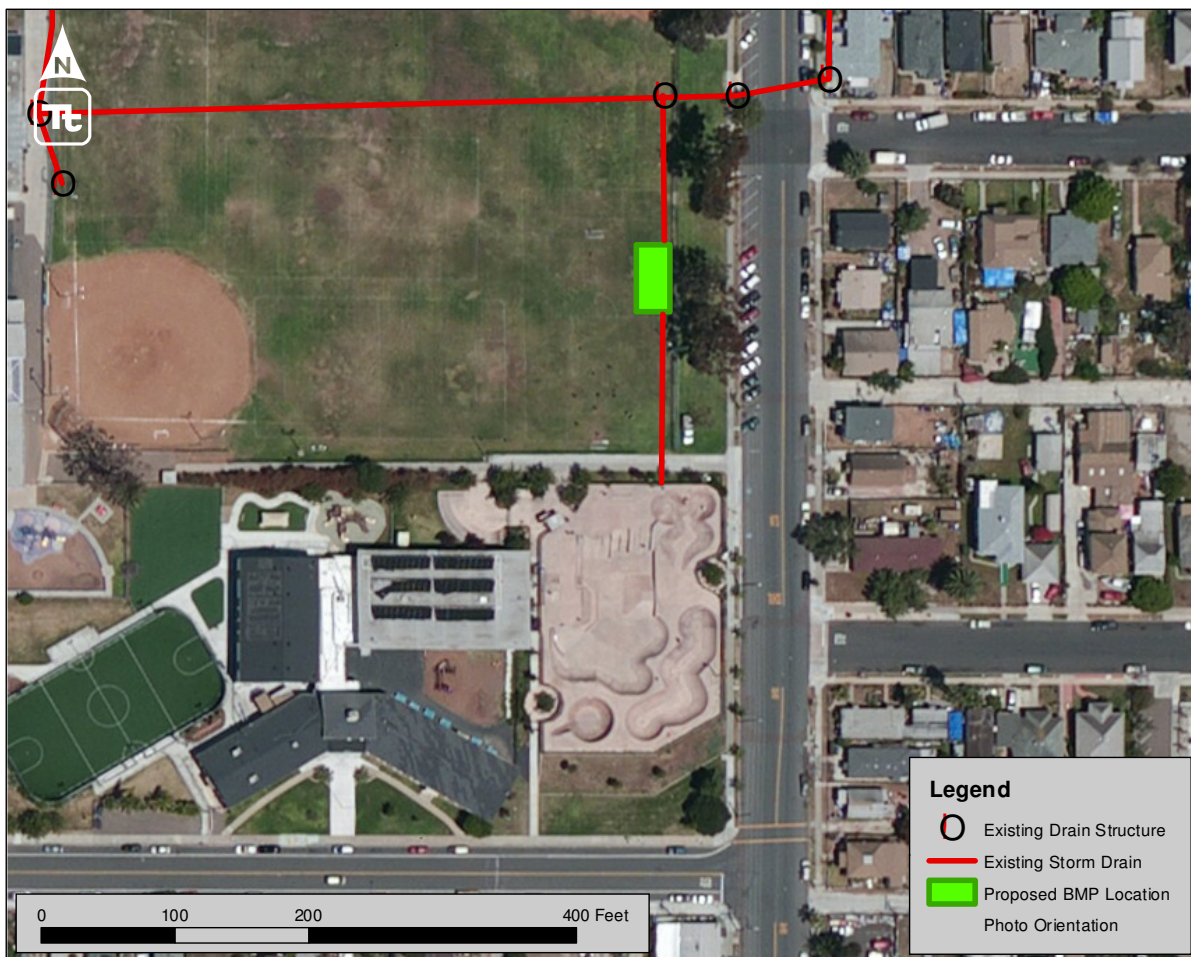
Otay Mesa / Nestor Library - The library project site consists of a 5,000 square foot building expansion and a 4,600 square foot parking lot expansion. The composite site consists of 24,100 square feet of parking space and 28,100 square feet of additional building and sidewalk impervious areas. Because the building addition and additional parking was an expansion to an existing site, stormwater treatment was only required for the 9,600 square feet of additional impervious surfaces. Currently, there is a vegetated swale along the perimeter of south end of the parking lot for a large portion of the overall parking lot runoff to be treated. Because of the limited space available at the site and geotechnical issues associated with the proximity to steep slopes, it is recommended that a Filterra type or approved equivalent treatment unit be retrofitted to treat flows from the 85th percentile storm. The retrofit exceeds applicable regulatory requirements by treating runoff from 11,800 more square feet of impervious surface than the initial site design and by treating flows from the 85th percentile storm.



Otay Mesa/Nestor Library

ATTACHMENT B

Memorial Skateboard Park - The Memorial Skateboard Park is located at 702 30th Street and consists entirely of impervious surfaces. There are currently no BMPs on site. The skate park is surrounded by Memorial Park, which includes open vegetated areas that could be utilized for stormwater treatment. Runoff from the site is currently routed to a 12-inch PVC pipe, which conveys flows to the north and connects to an 18-inch RCP pipe that flows west to east through Memorial Park. A subsurface detention vault is proposed to be installed in line with the existing 12-inch PVC pipe to capture the runoff generated by the 85th percentile storm. Detained runoff is proposed to be reused to irrigate the athletic fields at Memorial Park. Runoff volume in excess of the detention vault capacity is proposed to overflow into an adjacent subsurface infiltration gallery for additional volume reduction and treatment. This project was initially constructed prior to the 2007 Municipal Storm Water Permit, so implementation of the BMP retrofit recommendations exceeds applicable treatment requirements by treating runoff from 30,000 square feet of impervious surface to the 85th percentile storm.



Memorial Skatepark

ATTACHMENT B

Cesar Chavez Community Center – Cesar Chavez Community Center is located at 455 Sycamore Road, San Diego, CA, 92173. This facility was constructed prior to the 2001 storm water requirements and was not subject the storm water treatment requirements when it was built; therefore this project is proposed for additional water quality mitigation. The City proposes to retrofit the site by adding a hydromodification BMP in the grass and shrub area adjacent to the northwest corner of the parking lot extending west behind the baseball field and using the open space in the northwest corner of the park. The BMP is intended to divert storm water runoff from approximately 3.31 acres of drainage area, encompassing the community center parking lot, the north half of the building, and the multi-family residential units near the northeast corner of the parking lot. This BMP is proposed to be a hydromodification basin to exceed water quality and flow control standards. The retrofit will treat runoff from 144,184 square feet of impervious surface.



Cesar Chavez Community Center

ATTACHMENT B

Project Schedule:

The Design-Build contract to design and construct the LIDs at the six facilities named above will be implemented as follows:

Item	Task	Approximate Date
1.	Contract Award	June 2014
2.	Begin Construction	December 2014
3.	End Construction	August 15, 2016

Project Budget:

Project Name	Total Cost
Breen Park	\$220,720.00
Camino Ruiz Neighborhood Park	\$368,720.00
Hilltop Community Park Expansion	\$192,150.00
Memorial Skateboard Park	\$231,320.00
Otay Mesa/Nestor Library Expansion	\$39,510.00
Cesar Chavez Community Center	\$401,700.00
Total	\$1,454,120.00

It is anticipated that this estimate will vary when actual bids are received from the design and construction teams. This estimate is at conceptual level and is based on field observation and review of project records.

Attachment C- City of San Diego- Stipulated order R9-2014-0017
Summary of Penalty Methodology Decisions

Step 1: Potential for Harm for Discharge Violations
Step 2: Assessments for Discharge Violations
 Steps 1 and 2 do not apply to non-discharge violations

Step 3: Per Day Assessment for Non-Discharge Violations					
Violations	Per Day Factors				Statutory Maximum Per Day
	Potential for Harm <small>[minor, moderate, major]</small>	Deviation from Requirement <small>[minor, moderate, major]</small>	Per Day Factor	Days of Violation	
Discharge	moderate	moderate	0.15	188	\$10,000
Non-Discharge	moderate	moderate	0.35	137	\$10,000

Initial Liability Amount From Step 3	
Discharge	$(0.15) \times (188) \times (\$10,000) = \$282,000$
Non-Discharge	$(0.35) \times (137) \times (\$10,000) = \$479,500$

Step 4: Adjustment Factors			
Violator Conduct Adjustments			
Culpability	Cleanup and Cooperation	History of Violations	
<small>[0.5 - 1.5]</small>	<small>[0.75 - 1.5]</small>		
1.2	1	1.0	

Multiple Day Violation Adjustments			
Violations	Total Days of Violation	Reduced Days of Violation	Justification for Reduction
Discharge	188	None	
Non-Discharge	3,931	137	

The violations are not causing daily detrimental impacts to the environment.

Step 5: Adjusted Base Liability Amounts	
Violations	
Discharge	$(0.15) (188) \times (\$10,000) \times (1.2) \times (1.0) \times (1.0) = \$338,400$
No BMPs	$(0.35) \times (137) \times (\$10,000) \times (1.2) \times (1.0) \times (1.0) = \$575,400$

Step 6 : Ability to Pay/Continue in Business = Yes

Step 7: Other Factors as Justice May Require = \$35,834 (Staff Costs)

Step 8: Economic Benefit		Step 9: Maximum and Minimum Liability Amounts		
Violations	Economic Benefit	Violations	Minimum	Maximum
1 & 2	\$353,570	1 & 2	\$388,927	\$41,180,000

Mandatory Penalties = None

Step 10: Final Liability Amount = \$949,634