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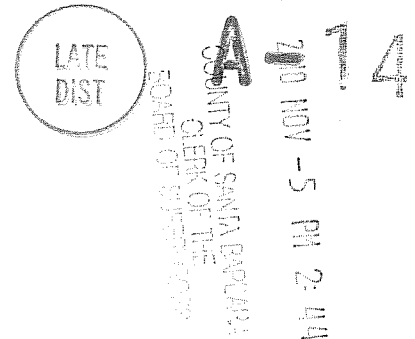
PROJECT  
CLEAN WATER  
Santa Barbara County

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August 16, 2010

Mr. Michael J. Thomas, Assistant Executive Officer  
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Subject: Addendum and Response to June 16, 2010 Water Board Staff Focused Review of Santa Barbara County's Stormwater Management Program Annual Report, Permit Year 2008-2009 (Year 3), WDID #342MS03024

This letter transmits the County's response to the Water Board staff letter dated June 16, 2010 related to the Santa Barbara County Stormwater Management Program Year 3 Annual Report, Permit Year 2008-2009. For ease of comparison, each response includes the comment identifier to which the information is a response.

#### A. BMP 4.2 – Grading Code Evaluation

*Action: Provide, as an addendum to the Annual Report, a discussion of all intended revisions to the Grading Ordinance, and in particular how the revised ordinance will address the issues listed above. The discussion must identify and describe each proposed revision to the ordinance in detail, and demonstrate that the Grading Ordinance, as revised, is adequate to protect water quality from construction-related activities (including vegetation removal, landscaping practices, and clearing and grubbing) near any drainage, either perennial or intermittent.*

**Response:** The County Grading Ordinance is revised to ensure that all drainages are adequately protected from pollutants and sediments caused by construction-related activities, vegetation removal, landscaping, and clearing and grubbing. The two main changes include expanding the scope of the ordinance to include land clearing disturbances and regulating activities within 50 feet of any watercourse or drainage way. Changes to permit requirements will ensure regulatory oversight and the application of best management practices for newly defined non-agricultural land disturbance. The ordinance revisions are currently undergoing public review and will be before the Board

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of Supervisors for final adoption in the fall of 2010. Specific proposed revisions are outlined below.

### Changes to Definitions (Section 14-7)

1. Watercourse- Add: "body of water" to the definition. This definition combined with "drainage ways", together meets the Water Board's requirement to protect all drainages.
2. Drainage Way – Expanded to include all drainages as follows: *Natural dDepression in the earth's surface such as swales, ravines, draws, gullies, arroyos and/or hollows in which surface waters collect and/or are conveyed as a result of rain or melting snow but at other times are destitute of water.*
3. Non-Agricultural Land Disturbance Added to regulate non-agricultural land clearing activities in addition to construction activities. The definition reads: *The exposure of soil caused by construction or non-agricultural land clearing activities. Construction activities can include road building, construction of residential buildings, office buildings, industrial sites or demolition.*
4. Non-Agricultural Land Clearing The definition for clearing has been changed to Non-Agricultural land clearing and reads as follows: *The removal of vegetation down to the duff or bare soil by any method; also see "Undisturbed Land Clearing".*
5. Undisturbed Land Clearing Added to address exempt permit activities such as mowing, pruning, trimming etc. This continues to allow a property owner to clear brush and vegetation for fire protection provided the soils and root systems are left undisturbed.
6. Non-Agricultural – Added for clarification on where the new regulations will apply and reads as follows: *Any size parcel of land with a zoning and/or land use designation of that other than agricultural or a parcel of land with a zoning and/or land use designation of agricultural where the parcel is less than twenty acres in size.*

### Changes to Erosion Control Permits (Section 14-9)

This section is revised to clarify that an erosion control permit including the incorporation of Best Management Practices applies to non-agricultural land disturbance (as newly defined). "Pollution, Sediment and Erosion Control permits" (Section 14-9.2) reads as follows:

*(a) No person shall perform any non-agricultural land disturbance which requires a pollution, sediment and erosion control permit as specified in this section and*

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*as defined in this chapter, without first obtaining a pollution, sediment and erosion control permit for such work from the Building Official.*

*(b) These regulations, including the incorporation of relevant Best Management Practices (BMP's), shall apply to all non-agricultural land disturbance, erosion and sediment control measures and drainage devices on privately owned land where, (I) the volume of earth moved is less than fifty (50) cubic yards; (II) no cut or fill exceeds three (3) feet in vertical distance to the natural contour of the land; (III) there are no elevation changes to the natural contour within fifty (50) feet of the top of the bank of any watercourse; and where the area of non-agricultural land disturbance meets or exceeds one or more of the following:*

- (1) One (1) acre or more of non-agricultural land disturbance;*
- (2) Five thousand (5,000) square feet or more of non-agricultural land disturbance occurs on slopes with a natural gradient over thirty (30) percent;*
- (3) Five thousand (5,000) square feet or more of land disturbance occurs within fifty (50) feet of any watercourse, drainage way or street, curb, gutter and/or storm drain conveyance system that discharges directly into a watercourse or drainage way.*

*Exception: Pollution, sediment and erosion control permits are not required for, (I) undisturbed land clearing or (II) non-agricultural land disturbance within fifty (50) feet of a drainage way or street, curb, gutter and/or storm drain conveyance system between April 15th and October 31<sup>st</sup> provided the area of disturbance is less than one (1) acre and the area has been re-stabilized by October 31<sup>st</sup>.*

*Note: These are minimum requirements. If the Director or the Building Official determines that additional controls and/or lower thresholds for non-agricultural land disturbance are required to meet specific water quality regulatory requirements in watersheds that drain to impaired receiving waters (as defined by the Central Coast Regional Water Quality Control Board), additional requirements may be imposed due to the project's proximity to the watercourse, steepness of the slopes, soil type, sensitive habitats, etc.*

*(c) Notwithstanding these regulations, no person shall cause or allow a significant environmental impact to occur as a result of non-agricultural land disturbance as defined herein, including non-agricultural land disturbance that is otherwise exempt from these regulations. In the event that the Director determines that a significant environmental impact is likely to occur or has occurred as a result non-agricultural land disturbance, the Director may deny or revoke the pollution, sediment and erosion control permit. If necessary, the Director may require a pollution, sediment and erosion control permit for work that is otherwise exempt from these regulations in order to address the significant environmental impact identified.*

## Changes to Violations and Penalties (Section 14-33)

This section is revised to reference Chapter 24A of the Santa Barbara County Administrative Fines Code. This code allows for up to \$500 per day in administrative fines and includes the ability to issue an on the spot \$1000 fine for one time offenses, such as washing a concrete truck out in the street.

### B. BMP 4.4 – Plan Review, Site Inspection, and Enforcement

#### *Action:*

1. *Correct this violation and demonstrate compliance in future annual reports.*
2. *Provide the following item, as an addendum to the Annual Report:*
  - *A strategy the County will implement to ensure that County staff inspects all construction sites disturbing an acre or more of ground at least twice per month during the rainy season in future years.*

**Response:** Measurable Goal 4.4.1 of the County Storm Water Management Program requires the County to conduct a minimum of two inspections per month during the rainy season (November 1 to April 15) on projects with one acre or more of land disturbance. As noted in the June 16, 2010 letter from Water Board staff, the County did not meet its minimum inspection quota during the 2007-08 or the 2008-09 rainy seasons. Additionally, an internal review of inspection records for the 2009-10 rainy season indicates that the required two monthly inspections for 25 active construction sites were not completed during the month of November. It is unlikely that any discharges occurred as a result of missed inspections since the area received very little rainfall in November 2009. County rainfall records indicate that most stations throughout the County received no rain in November while some received trace amounts of .01 and .02 inches for the month. Prior year inspections were not completed due to staff reductions caused by significant budget issues, an unplanned lengthy staff absence, and insufficient management controls.

With full knowledge and a heightened awareness of the need to comply with our Storm Water Management Program, the County has developed and is implementing the following strategy to ensure that County staff inspects all construction sites disturbing an acre or more of ground at least twice per month during the rainy season in future years:

1. **Staffing:** Sufficient staffing currently exists and will be maintained in the Building and Safety Division, Grading Section, to ensure that adequate staff resources are available to perform all required construction site inspections.
2. **Cross-training of staff and/or use of specialized contractors:** If unforeseen circumstances limit staff availability, the County building inspectors can be cross-trained in grading and erosion control requirements and can be made available to complete construction site grading inspections. Specialized contractors are also available for grading inspection services if necessary.

3. **Improvements to the permit tracking and reporting system capability:** The County's automated permit tracking system will be utilized to provide notification of required inspections for all projects with erosion control or grading permits, prescheduling of all inspections, and automatic notification to both the assigned inspector and their manager in the event of a staff absence.
4. **Management review and tracking of inspections:** Oversight of the program has been improved through the review of data reports and other appropriate management review of program components.

#### **C. BMP 4.6 – Evaluate Land Use Permit Program Efficiency**

*Action: Provide, as an addendum to the Annual Report, a detailed discussion of how the County will address the potential areas of weakness in the County's stormwater program described above. The discussion must either a) demonstrate (through detailed reference to existing policies, codes, plan review procedures, and inspection and enforcement procedures) that the County's program avoids the weaknesses listed above; or b) list concrete actions the County will take to ensure that the County's program avoids these weaknesses, including a schedule for implementation of these actions.*

#### **Response:**

##### **Adequate Protection of All Creeks and Drainages**

As discussed above under Grading Code Evaluation, the County Grading Ordinance is revised to ensure that all drainages are adequately protected from construction and non-construction related activities. Changes to erosion control permit requirements will ensure regulatory oversight and the application of best management practices for non-agricultural land disturbance near watercourses and drainage ways. By addressing land clearing activities, especially those close to the top of bank of watercourses and drainage ways, actions such as that which occurred at Via Tranquila in Hope Ranch would be regulated by the Grading Ordinance. The ordinance revisions are currently undergoing public review and will be before the Board of Supervisors for final adoption in the fall of 2010. Implementation of these actions will occur 30 days after final adoption.

Section 5.2 of the County's Storm Water Management Program provides a detailed discussion of existing County land use policies and interpretive guidelines, plan review procedures, and inspection and enforcement procedures. During Year 3, Water Board staff completed a focused program audit and determined that water quality controls are being effectively integrated into development projects. Water Board staff reported to the Regional Board that they were pleased with the progress the County has made to ensure that water quality is not further degraded through development.

Section 5.2.1 of the Storm Water Management Program addresses the Water Board's specific concern that the County's land use permit program needs to include provisions for adequate protection of all creeks and drainage ways regardless of classification as

environmentally sensitive, including appropriate setbacks. The relevant text reads as follows:

*Existing Comprehensive Plan riparian and wetland protection policies also address water quality protection through preservation and restoration of riparian corridors and vegetation. In December 2000, P&D issued a policy paper to staff on creek and riparian protection clarifying the intent and application of these policies. This paper addresses appropriate application of riparian buffers, when encroachment into buffers may be permitted, requirements for offsetting measures when encroachment is permitted, appropriate measures to physically delineate protected areas and other requirements for ensuring consistency with creek protection policies. Guidance material published by EPA in support of the Phase II regulations encourages controls such as buffer strips and riparian zone preservation to improve water quality. This P&D riparian policy paper combined with the additional policy guidance provided by the adopted interpretation guidelines is part of achieving compliance with the Phase II regulations.*

The Planning & Development (P&D) Policy Paper on Creek and Riparian Protection (attached) states that text and policies in the Comprehensive Plan require creek and riparian protection and identify protection methods. These standards require development to be located outside of the riparian corridor and a prescribed buffer area except under certain circumstances, preclude removal of riparian vegetation, and require protective fencing. Policy applies to all streams, whether perennial or intermittent. Streams are defined as watercourses, drainage ways and small lakes, ponds and marshy areas through which streams pass, whether or not the area has been formally identified as environmentally sensitive habitat. Comprehensive Plan policies require a minimum buffer of 50 feet for streams in urban areas and 100 feet for streams in rural areas.

The County has a comprehensive land use permit program in place that includes existing policy, interpretive guidelines such as the policy paper cited above, codes, detailed plan review procedures, and inspection and enforcement procedures. These, combined with the proposed revisions to strengthen and shore up the Grading Ordinance, ensure that the County has a program in place to protect all creeks and drainage ways.

#### **Exemptions for Landscaping and Clearing and Grubbing**

As discussed above under Grading Code Evaluation, the County Grading Ordinance is revised with a new definition of non-agricultural land disturbance that includes vegetation removal, landscaping, and clearing and grubbing activities. Changes to erosion control permit requirements will ensure regulatory oversight and the application of best management practices for these land disturbing activities from impacts associated with development, construction and land clearing practices. There are no exemptions for non-agricultural landscaping, clearing, and grubbing.

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### **Adequate Protection of Non-Environmentally Sensitive Areas**

As discussed above under Grading Code Evaluation, the County Grading Ordinance is revised to ensure that all drainages are adequately protected from construction and non-construction related activities. Regulations apply everywhere regardless of mapped environmentally sensitive habitat. See the discussion above under Adequate Protection of All Creeks and Drainages.

### **Adequate Inspection Procedures**

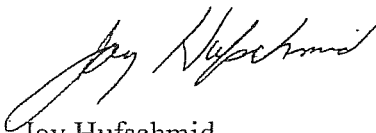
County grading inspectors have the authority to inspect all regulated land disturbing activities on private property and to require an applicant to include all applicable areas of disturbance on project plans. Implementation of the strategy outlined above to ensure that County staff inspects all construction sites disturbing an acre or more will further strengthen Building and Safety's inspection program as it relates to land disturbance and water quality.

### **Adequate Enforcement Procedures**

The County Building and Safety Division has the authority to issue and enforce stop-work notices whenever grading, construction or other work is being done contrary to the provisions of any approval, rule, regulation, law or ordinance, or whenever approval was based upon misinformation or misrepresentation, or whenever the public health, safety or welfare is endangered (see Grading Ordinance section 14-20). In addition to having the authority to stop a project and to issue a notice of violation, the proposed Grading Ordinance revisions now include reference to Chapter 24A of the Santa Barbara County Administrative Fines Code. This code allows for up to \$500 per day in administrative fines and includes the ability to issue an on the spot \$1000 fine for one time offenses, such as washing a concrete truck out in the street.

The County looks forward to working with Water Board staff to achieve a program that fully complies with the General Permit and our Storm Water Management Program and is effective at protecting water quality. If you have any questions or need additional information, please contact me at (805) 568-3373.

Sincerely,



Joy Hufschmid  
Project Clean Water Manager

Attachments:

2010 Revised Draft Grading Ordinance

Policy Paper on Creek and Riparian Protection.