



City of Malibu

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September 6, 2011

State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
PO Box 100
Sacramento, CA 95812-2000



RE: Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) (ORDER)

Dear Members of the State Water Resources Control Board:

The City of Malibu appreciates the opportunity to provide comments on the State Board's draft Phase II NPDES implementation order. The City's primary focus is the inclusion of new Non-Traditional entities that have not been part of the NPDES permit program to date.

The attached North Santa Monica Bay Watersheds map demonstrates the variety and complexity of parks spread throughout the Malibu Creek Watershed and the rural coastal watersheds, as well as 7 miles of public beaches along the Malibu coast and 15 public beach accessways owned or operated by State or County agencies. This region includes many overlapping jurisdictions and land management agencies, which complicates the regulatory framework. It is critical to note that the City of Malibu does not have regulatory jurisdiction over Federal, State or County parks and beaches or over public accessways.

In light of the many agencies and differing land management strategies in this region, the City respectfully submits the following comments for consideration:

- 1) Require all park and public beach agencies to obtain Phase II NPDES MS4 permits.**
The City of Malibu requests that all open space, beach and park agencies in the North Santa Monica Bay watersheds obtain Phase II NPDES MS4 permits. Specifically, no agency or site should be granted a Waiver Certificate by the Los Angeles Regional Water Quality Control Board (Regional Board) since the activities associated with the operation and management of these very popular parks and beaches have the potential to cause or contribute to water quality impairment of Santa Monica Bay or Malibu Creek. In its letter of August 22, 2011 to the Regional Board (copy attached), the City identified most but not all the sites and agencies that have an influence on water quality and may cause impairment without proper management within the North Santa Monica Bay watersheds and the critical coastal habitats that warrant special protection.

Specifically noted in that letter are the following jurisdictional agencies:

- A. California Department of Parks and Recreation
 - B. Santa Monica Mountains National Recreation Area
 - C. Santa Monica Mountains Conservancy / Mountains Restoration Conservation Authority
 - D. Universities
- 2) **Expand the proposed California Department of Transportation (Caltrans) NPDES Permit Municipal Coordination Plan provisions to include all agencies responsible for regulatory requirements within the Santa Monica Bay Watershed region, including Non-Traditional Phase II Permittees.** The City additionally recommends that the SWRCB expand the proposed Municipal Coordination Plan process called out in Caltrans recent NPDES permit requirements to include all responsible agencies in the North Santa Bay watersheds including New Non-Traditional Phase II permittees. This process can ensure consistent procedures and implementation of stormwater management plans, leveraging of education and outreach opportunities, and site-specific permit conditions will protect and preserve habitats.
- 3) **Provisions for construction outreach and education and construction site runoff control must be included in the requirements for all parks operated by any State or Federal agency, beach, historical area or park.** The City noted that the Table 1, Section E – Provisions of the Order did not include parks operated by any State agency, beach, historical areas (and presumably Federal parks), are requirements for: A) Construction Outreach & Environmental Education; and B) Construction Site Stormwater Runoff Control. Management of parks, historical sites and beaches includes the overseeing of construction projects on those sites. In fact, in the North Santa Monica Bay watershed open space agencies currently have active proposals for major projects at multiple sites including restoration projects, parking facilities, trails, administration buildings, restrooms, campgrounds, education facilities and roadways. These projects are being conducted in environmentally sensitive habitats or critical coastal areas that require extraordinary oversight of construction activities.
- 4) **All park and beach entities that discharge into an ASBS should be required to study any potential impact to the ASBS and participate in the State's exception process.** Attachment H – Phase II MS4 Entities Authorized to Discharge to Areas of Special Biological Significance (ASBS) – could use additional clarification. The draft provided in the section for the Los Angeles Water Board – Laguna Point to Latigo Point, indicates that the State Department of Parks and Recreation, with four public beaches in the ASBS with large parking lots (some impermeable and some permeable), impermeable roadways, stormwater discharge facilities, restroom facilities, a general store and campgrounds with well over 5,000 visitors per year for each site, is authorized to discharge without water quality impact studies and/or an application through the ASBS exception process.

The City of Malibu understands the problems that could be associated with a fragmented implementation of the Clean Water Act regulations. Malibu is a 22-mile long coastal city receiving runoff from 22 coastal watersheds before it reaches Santa Monica Bay. Malibu has fewer than 13,000 residents, a population density of only 650 persons per square mile, with predominately low residential and commercial development. On summer holiday weekends, the visitors swell to 750,000 and parks and beaches attract 20 million annual visitors to the Santa Monica Mountains region. Caltrans, also with a Phase I NPDES MS4 permit, is responsible for the Pacific Coast Highway corridor running through the entire length of Malibu that carries an average of 45,000 vehicles per day.

State and Federal park agencies provide many great services and facilities to meet visitors' expectations and needs. In addition to the ongoing traffic to access these sites, trash generated by visitors and other pollutants of concern associated with a wide-range of recreational and commercial activities, the park agency's physical improvements and management practices can be pollutant-generating and impair water quality. Low impact development principals are not currently and consistently incorporated into the design of new, redeveloped or retrofitted park facilities. A consistent regulatory strategy applied to all agencies within the region is necessary to protect and preserve the highly valued natural resources in this area. A collaborative effort is required to meet the regulatory requirements with so many overlapping jurisdictions with varying priorities.

Currently, in the North Santa Monica Bay watersheds, only the municipal entities and Caltrans have a Phase 1 NPDES permit guiding the land use and management actions to conform to the regulations. There are wide gaps where there is no oversight of non-municipal agencies because municipal entities have no or limited permitting authority over the everyday actions of many entities sharing the same geographic boundaries. State agencies rarely scrutinize the activities that trigger water quality impairments at the watershed level. There is inconsistent interpretation of "development" that would trigger a stormwater or construction permit and a wide berth is given to institutional, park and roadway agencies, allowing those agencies to define development as "maintenance" in order to avoid a State or local project permit.

The City of Malibu, with a certified Local Coastal Program, issues the Coastal Development Permits for projects within the City. However, some agencies may bypass this process. The California Coastal Commission retains jurisdiction in some cases and has not applied the strictest standards that are enforced by local government. In other cases, park agencies (and Caltrans) make improvements they believe are regular maintenance but which are, in fact, permanent new development that alters permeable surfaces and/or the hydraulic connectivity and thereby not fully protect natural streams or the ocean. All development within these jurisdictions should use Best Management Practices to control pollution before it enters a waterway.

The primary problem in the current process results in inconsistent application of regulations. Unlike local government, baseline studies and monitoring are not part of the development permit requirements for these agencies, so these tasks must be addressed in the Clean Water Act NPDES MS4 General Permit for Phase II Non-Traditional entities. Perhaps the use of "Municipal" in MS4 has led to a misinterpretation of applicable entities.

Naming agencies as responsible parties in TMDLs without assigning or establishing a clear regulatory and enforcement framework has proven to be less than effective. There has been no regular participation by any park agency in the Santa Monica Bay Beaches Bacteria TMDL, the Malibu Creek Bacteria and Nutrient TMDL, the Malibu Creek Trash TMDL or the developing Santa Monica Bay Marine Debris TMDL. All entities within a watershed must abide by the same monitoring and compliance requirements of every TMDL or the regulatory objectives will never be achieved.

Natural areas inherently improve and protect natural resources if they are kept in their pristine state; however, development in parklands and intensive use can cause both short- and long-term resource damage and impair human health and aquatic habitats.

To date, the agencies charged with regulatory and implementation oversight in the NPDES MS4 permit process for non-traditional agencies have been the Coastal Commission, the State Architect, the State Lands Commission, the Housing and Community Development Department for mobilehome parks and the Regional Board. Inadequate resources have been dedicated to ensuring proper pollution prevention for water quality protections being met by agencies over which the City has little or no authority. As directed by the United States Environmental Protection Agency, now is the time to enroll all responsible agencies in Clean Water NPDES permit programs so that a comprehensive watershed management plan can be implemented.

Finally, the Non-Traditional entities must be brought into the Phase II program because the specificity of the provisions will provide clear direction with timelines to meet objectives and, if not followed, enable the State Water Resources Control Board and the Regional Board to enforce the MS4 permits to protect highly valued natural resources.

Thank you for this opportunity to share our concerns. If you have questions, please do not hesitate to contact Jennifer Brown, Senior Environmental Programs Coordinator, at (310) 456-2489 extension 275 or jbrown@malibucity.org.

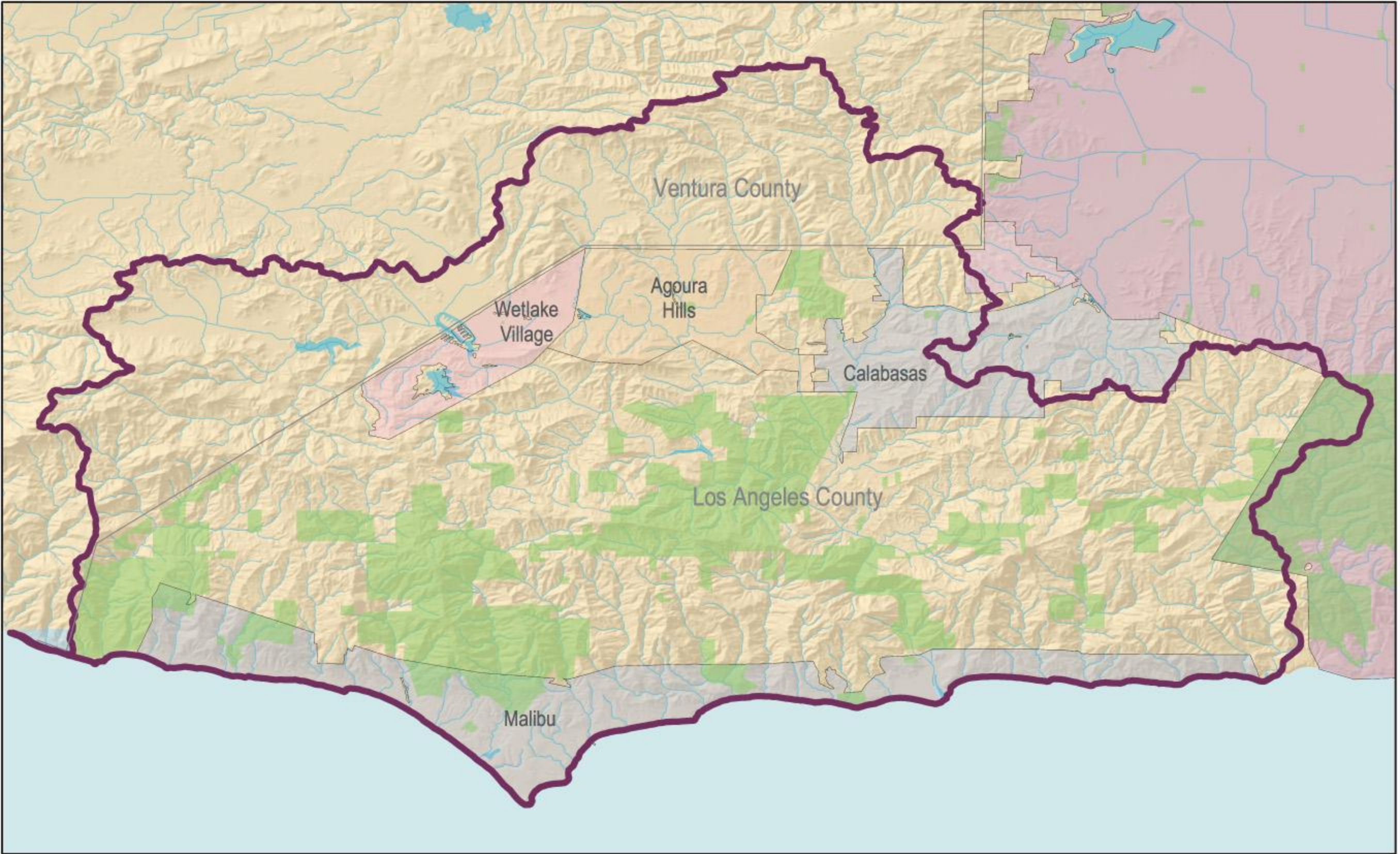
Sincerely,



Jim Thorsen
City Manager

Enclosures

cc: Mayor Sibert and Honorable Members of the Malibu City Council
Vic Peterson, Environmental Sustainability Director
Bob Brager, Public Works Director
Jennifer Brown, Senior Environmental Programs Coordinator
Sam Unger, Executive Officer, Los Angeles Regional Water Quality Control Board



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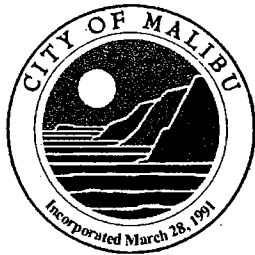


- Park
- Sub Region

Cities

North Santa Monica Bay Sub Region

Integrated Regional Water Management Plan



City of Malibu

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August 22, 2011

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RE: State Water Resources Control Board – Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (ORDER)

Dear Sam:

I know this is a little late, but we would appreciate you taking the following under consideration. The City has developed a list of designated agencies and sites that should be added to the list of new Non-Traditional permittees in the NPDES MS4 draft documents in Attachment C in Region 4 – Los Angeles Regional Water Quality Control Board (LARWQCB). Malibu is a very small city with fewer than 13,000 residents and is a Phase 1 NPDES permittee in the Los Angeles County NPDES MS4 permit. The City will be providing additional comments regarding the proposed new order for Phase II MS4s in a subsequent letter and looks forward to working with these open space and park agencies in order to develop an effective watershed-based stormwater and non-stormwater program.

The City of Malibu requests that all open space or park agencies in the North Santa Monica Bay Watershed obtain Phase II NPDES MS4 permits and no agency/site be granted a Waiver Certificate since the activities associated with the operation and management of these very popular parks could cause or contribute to water quality impairment of Santa Monica Bay or Malibu Creek.

One or more of the following criteria are justification for adding these agencies and preclude the LARWQCB and State Water Resources Control Board from granting a waiver from the proposed Phase II NPDES MS4 Permit Order:

- 1) Annual public attendance is very high – well over 5,000 people, and/or
- 2) Site discharge flows directly or indirectly into one or more of these critical coastal habitats with flows comprising greater than 10% of the combined flows from other MS4 facilities:
 - Area of Special Biological Significance (ASBS)
 - Marine Protected Area (MPA)
 - Santa Monica Bay with adopted bacteria and pending marine debris TMDLs (SMB)

- Beaches that have attendance exceeding 50,000 annual visitors from April 1 – October 31 (AB411)
- Malibu Creek with adopted bacteria and trash and pending nutrient TMDLs (MC)
- Creeks that are critical habitat for the Federal endangered species – Southern California steelhead trout (FES)

NEW Phase II Non-Traditional Attachment C list dated June 7, 2011 excluded these agencies and sites, which need to be specifically designated:

A. California Department of Park and Recreation

- Leo Carrillo State Park/Beach (ASBS, SMB, AB411, FES)
- El Pescador State Beach (ASBS, MPA, SMB)
- La Piedra State Beach (ASBS, MPA, SMB)
- El Matador State Beach (ASBS, MPA, SMB)
- Point Dume State Beach (ASBS, MPA, SMB)
- Point Dume Nature Preserve (ASBS, MPA, SMB)
- Malibu Lagoon State Beach (Surfrider Beach) (SMB, AB411, FES)
- Adamson House State Historic Site (SMB, AB411, FES, MC)
- Malibu Pier (SMB, AB411)
- Malibu Creek State Park (Tapia Park, Stunt Ranch) (SMB, AB411, FES, MC)

B. Santa Monica Mountains National Recreation Area

- Decker/Encinal Canyon Park (AB 411, SMB)
- Trancas/Zuma Canyon Park (MPA, SMB, AB411, FES)
- Upper Ramirez Canyon parcels (MPA, SMB, AB411)
- Solstice Canyon Park (SMB, AB 411, FES)
- Paramount Ranch (MC, FES)
- Peter Strauss Ranch (MC, FES)

C. Santa Monica Mountains Conservancy / Mountains Restoration Conservation Authority

- Lechuza Beach (MPA, SMB)
- Ramirez Canyon Park (MPA, AB411, SMB)
- Latigo Canyon parcels (SMB)
- Escondido Canyon Park (SMB)
- Corral Canyon Park (AB 411, SMB)
- Malibu Bluffs open space (SMB)
- Tuna Canyon Park (SMB)
- King Gillette Ranch (MC, FES, AB411)
- Triunfo Creek Park (MC, FES, AB411)

- Las Virgenes View Park (with Calabasas and Las Virgenes MWD) (MC, FES, AB411)
- Upper Las Virgenes Open Space Preserve (formerly Ahmanson Ranch) (MC, FES, AB411)

D. Universities

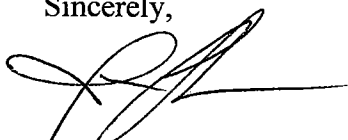
- Pepperdine University – over 6,000 students (SMB, FES)

Voluntary participation in existing TMDL Implementation Plan processes has not been successful, even when an agency is listed as a “responsible” agency. The agencies are also not participating in the Integrated Regional Water Management Program process that could be a resource for shared stormwater and non-stormwater pollutant management and project and program funding. There are many overlapping activities in close proximity to MS4 facilities in the North Santa Monica Bay watersheds where flows are combined. As noted in the SWRCB Fact Sheet, water quality can be examined and improved on a larger, consolidated scale rather than on a piece-meal, site-by-site basis when all agencies are part of the NPDES MS4 permits.

There is no enforcement mechanism to provide incentive and region-wide consistency to meet the Clean Water Act regulations and California Ocean Plan objectives if certain Phase II responsible entities are granted waivers.

We look forward to the opportunity to bring all stakeholders to the same table as Malibu helps develop a Municipal Coordination Plan with local municipalities, the new Non-Traditional entities and the California Department of Transportation.

Sincerely,



Jim Thorsen
City Manager

Enclosures

cc: Vic Peterson, Environmental Sustainability Department Director
Eric Bernsten, State Water Resources Control Board