

# Offsite Alternative Compliance Requirements and Guidance

This page was left intentionally blank

# Appendix J Offsite Alternative Compliance Requirements and Guidance

## J.1 Background

The 2013 MS4 Permit lowers the minimum threshold necessary to trigger classification of projects as Priority Development Projects (PDPs) and sets forth more stringent onsite requirements for stormwater pollutant control and hydromodification management. It also allows the County and other Copermittees to establish programs under which project applicants may satisfy applicable PDP requirements through the completion of offsite Alternative Compliance Projects (ACPs).

The MS4 Permit provides two potential pathways in which participation in an offsite alternative compliance program may be determined necessary or allowable. The first pathway is when an applicant has determined that the PDP cannot meet all of the onsite pollutant control obligations via retention and/or biofiltration. This pathway requires performing feasibility analyses for retention and biofiltration BMPs prior to participation in an offsite alternative compliance program. The County may also allow for an applicant to proceed directly to an offsite alternative compliance project without demonstrating infeasibility of retention and/or biofiltration BMPs onsite.

The County Watershed Protection Ordinance (WPO) incorporates the MS4 Permit requirements and provides the policies for implementation with the unincorporated county.

- Section 67.811(b)(4)(C) establishes the requirements for the flow-thru treatment control BMPs to be implemented onsite by the PDP; and
- Section 67.811(b)(6) establishes the ability to utilize offsite alternative compliance projects in lieu of complying with pollutant control and hydromodification BMP performance requirements onsite.
- Offsite ACPs are considered an extension of the PDPs to which they correspond. They must be designed, constructed and maintained consistent with all applicable requirements of Provision E.3.e of the 2013 MS4 Permit and WPO Section 67.812.

This Appendix introduces the types and varieties of ACPs that may potentially be allowed by the County, conditions and restrictions applicable to them, and requirements for obtaining approvals and implementing offsite ACPs in the unincorporated County of San Diego.

### J.2 Key Concepts

#### IMPLEMENTATION SCENARIOS

In accordance with the 2013 MS4 Permit, the December 2015 *Water Quality Equivalency (WQE) Guidance for Region 9* (WQE Guidance) establishes two ACP implementation scenarios that may be included in Copermittee programs, (1) Applicant-implemented ACPs, and (2) Independent ACPs.

- **Applicant-implemented ACPs** are those for which a project applicant owns or proposes to construct an ACP that will be functional<sup>23</sup> prior to the final release of the proposed PDP. The defining feature of Applicant-implemented ACPs is that the same party is legally responsible for ensuring that all applicable requirements (e.g., design, construction, operation and long term maintenance) are satisfied for both the ACP and the PDP. Because only a single applicant is involved, ACPs can be approved in the absence of a Credit System to track and trade associated Water Quality Impacts and Water Quality Benefits.
- **Independent ACPs** are projects initiated independently of specific PDP impacts. In most instances, they are owned, constructed, or otherwise under the control of a party other than the PDP applicant. Because the completion and approval of Independent ACPs involves more than one legally responsible party, these projects can only be used to mitigate for PDPs within a RWQCB-approved credit system.

At this time, Independent ACPs cannot be approved in the unincorporated County of San Diego. Until such time as the County establishes an in lieu fee structure and/or RWQCB-accepted credit system, Independent ACPs are not allowed under the MS4 Permit. However, please note that Applicant-implemented ACPs providing treatment control or hydromodification benefits in excess of impacts associated with a corresponding PDP may be able to “bank” this additional capacity for future use in the event that a qualifying credit system is established. Applicants are therefore encouraged to fully document excess benefits for potential future application.

#### ACP TYPES

There are two primary types of ACP: Structural BMPs and Natural System Management Practices (NSMPs). **Structural BMPs** are a subset of BMPs which detain, retain, filter, remove, or prevent the release of pollutants to surface waters from development projects in perpetuity, after

---

<sup>23</sup> For ACPs implemented under an in lieu fee structure, a 4-year time frame for completion of the ACP is allowable. However, applicable treatment or hydromodification performance standards must be met through temporal mitigation of the PDP impacts until the final ACP controls are fully functional.

## Appendix J: Offsite Alternative Compliance Requirements and Guidance

construction of the project is completed. These can be further subdivided according to the following project categories:

- A **Retrofit BMP** adds or modifies structural BMPs in areas of existing development where practices do not already exist, are ineffective, or can be significantly enhanced.
- A **Regional BMP** treats stormwater from a tributary consisting of more than one development. Its primary purpose is to improve water quality, protect downstream channels, reduce flooding, or to meet other specific jurisdictional water quality objectives.
- A **Water Supply BMP** captures stormwater and infiltrates, pumps, or otherwise replenishes groundwater, surface water reservoirs, or other water supply systems.

**NSMPs** are practices that are implemented to restore and/or preserve predevelopment watershed functions in lieu of providing direct management of stormwater pollutant control and hydromodification flow control. NSMPs include projects that either reduce the release of pollutants through the reduction of runoff volume (e.g.; removal of impervious surfaces) or provide hydromodification management through the restoration of a sensitive stream segment to address impacts caused by the PDP and legacy impacts. They can include structural or engineered elements as part of the system, but non-engineered elements also provide some level of pollutant control and/or hydromodification management benefits. NSMPs include the following project categories:

- **Land Restoration** permanently restores currently developed land back to a stabilized, predevelopment condition. Land Restoration may provide quantifiable stormwater pollutant control and hydromodification flow control benefits by restoring the predevelopment stormwater runoff volumes, peak flows, and pollutant concentrations of a tributary.
- **Land Preservation** permanently preserves undeveloped land in its current state. In limited scenarios, Land Preservation may provide quantifiable stormwater pollutant control and hydromodification flow control benefits by preventing increases in stormwater runoff volumes, peak flows, and pollutant concentrations associated with the future built out condition of a tributary.
- **Stream Rehabilitation** restores a stream to a natural, stabilized condition that can accommodate both legacy and future hydromodification impacts. Stream Rehabilitation may provide quantifiable hydromodification flow control benefits through permanent stabilization of streams. In limited scenarios, Stream Rehabilitation may also provide quantifiable stormwater pollutant control benefits by reducing impervious channel surfaces.

### POTENTIAL ACP BENEFITS

Water quality equivalency for stormwater pollutant control is demonstrated when the stormwater pollutant control benefits provided by the ACP are greater than or equal to the stormwater pollutant control impacts generated by the PDP. These benefits may include either of the following:

## Appendix J: Offsite Alternative Compliance Requirements and Guidance

- **Stormwater Pollutant Control (pollutant or volume reduction), and**
- **Hydromodification Flow Control**

Both structural BMPs and NSMPs can provide pollutant control or hydromodification management benefits, or a combination of both. Regardless of the proposed implementation scenario, applicant options will vary depending both on the ACP type and benefit under consideration. **Figure J-1** summarizes the current availability of different ACP type-benefit combinations. The availability of specific options is largely dependent on the current state of science regarding the demonstration of each benefit type. Because the availability of options is likely to change over time, applicants are advised to consult with staff to make sure they are fully aware of their current availability.

**Figure J-1: Current Availability ACP Options by Type and Benefit (Source: *Water Quality Equivalency Guidance for Region 9*)**

 ACP Category	 Stormwater Pollutant Control Benefits			 Hydromod Flow Control Benefits	
	Pollutant Reduction				Volume Reduction
	Retention	Biofiltration	Flow-Thru		
 BMP	Retrofit	Available	Available	Limited Availability	Available
	Regional	Available	Available	Limited Availability	Available
	Water Supply	Available	Available	Limited Availability	Available
 NSMP	Land Restoration	Not Available	Not Available	Not Available	Available
	Land Preservation	Not Available	Not Available	Not Available	Limited Availability
	Stream Rehabilitation	Not Available	Not Available	Not Available	Limited Availability

### J.3 Requirements for ACPs in the County of San Diego

The requirements below are applicable if participating in an offsite alternative compliance program. Section 1.8 of the County BMP Design Manual describes policy and procedural requirements for development projects in greater detail. Applicants should also check with County staff for additional information on the availability of, and requirements pertaining to, specific ACP options. As previously noted, all ACP projects are required to utilize the WQE Guidance. This guidance provides additional detail on the general concepts associated with implementing an ACP along with methodologies for calculating the ACP benefits, example calculations and Water Quality Equivalency Worksheets which can be found at [Projectcleanwater.org](http://Projectcleanwater.org).

#### **PDP REQUIREMENTS**

A PDP wishing to utilize offsite alternative compliance must apply the following requirements to the PDP:

- Determine the portion of the design capture volume or total impervious area not managed on the PDP site;
- Provide onsite flow-thru treatment control BMPs that provide a medium to high pollutant removal efficiency to treat runoff leaving the site consistent with the guidance in Section 5.5.4 of the BMP Design Manual and the methodology for selecting and sizing BMPs described in Appendix B.6; and
- Provide temporal mitigation if the ACP is constructed after the completion of the development project that ensures equivalent or better pollutant removal and/or hydrologic control (as applicable) as compared to the case where the ACP is completed at the same time as the PDP.

#### **ACP REQUIREMENTS**

A PDP wishing to utilize offsite alternative compliance must apply the following requirements to the ACP:

- The ACP must demonstrate the water quality benefits generated are greater than or equal to the impact of the PDP that is not treated onsite;
- The benefits generated by ACP must be determined utilizing the water quality equivalency metrics established in the *December 2015 Water Quality Equivalency (WQE) Guidance for Region 9* (WQE Guidance), or any other WQE Guidance Document subsequently accepted by the RWQCB;
- The ACP must be located within the same watershed management area (WMA) as the PDP project;

## Appendix J: Offsite Alternative Compliance Requirements and Guidance

- The ACP must implement all applicable site design and source control BMPs in accordance with the requirements Section 4 of BMP Design Manual;
- ACPs that are Structural BMPs must be designed in accordance with the requirements in Sections 5 and 6 of the BMP Design Manual;
- ACPs designed to manage hydromodification flow control must meet the location requirements defined in the WQE Guidance; and
- The ACP applicant must ensure effective operation and maintenance in perpetuity consistent with the requirements in Section 7 of the BMP Design Manual.

In addition to the above requirements, any ACP that is partially or wholly located in the County Right-of-way must obtain approval from the Authorized Enforcement Officer.

### J.4 Submittal Requirements for Offsite Alternative Compliance Projects

The ACP must be documented using an ACP SWQMP Template provided in Appendix A of the County BMP Design Manual and consistent with the submittal requirements in Section 8. Any time a design change to the PDP site layout and/or features occurs that requires the PDP SWQMP to be updated; the ACP SWQMP must be reviewed to ensure that the ACP still provides a greater or equal water quality benefit consistent with the requirements of this Manual and the MS4 Permit.

Based on the nature of the project proposal, the County has the discretion to request the submittal of additional information above and beyond the minimum the information listed in the ACP SWQMP Template.