



County of San Diego

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DATE: August 7, 2020

TO: Development Project Applicants

FROM: County of San Diego DPW Watershed Protection Program

**RE: PRIORITY DEVELOPMENT PROJECT PRIOR LAWFUL APPROVAL EXCEPTION
DEADLINE OF FEBRUARY 16, 2021**

This notice is to inform you that the use of the Prior Lawful Approval exception of stormwater development planning requirements under the previous permit will be ending on February 16, 2021. Applicants with excepted projects must have obtained all subsequent project permits or approvals that are needed to implement the design initially approved in conformance with the 2007 Municipal Separate Storm Sewer System (MS4) Permit, Standard Urban Stormwater Mitigation Plan (SUSMP). After February 16, 2021, any portion or phase of an excepted Priority Development Project (PDP) for which subsequent approvals have not been obtained will be required to meet the updated requirements of the 2013 Regional MS4 Permit and BMP Design Manual. Previously excepted PDP Projects may include multi-phased projects with future grading permits or those that constructed on-lot Structural BMPs that will come back for a building permit. Under these scenarios, no additional permits (Grading, Building, etc.) will be issued under the SUSMP stormwater requirements after **February 16, 2021** and permits will be required to comply with the BMP Design Manual.

Background:

The San Diego Regional Water Quality Control Board (Regional Board), approved the current Regional MS4 Permit on May 8, 2013. The Regional MS4 Permit included significant changes to the Development Planning section. In accordance with the MS4 Permit, the County created the BMP Design Manual, which replaced the SUSMP, to comply with the 2013 Regional MS4 Permit Development Planning requirements as defined in Provision E.3.

Provision E.3.e.(1)(a) of the 2013 MS4 Permit allowed projects that meet specified criteria to be excepted under the requirements of the 2007 MS4 Permit. Under this provision, the County allowed previous land development requirements to apply to a Priority Development Project if the conditions of Provision E.3.e.(1)(a)(i) are met, which includes Provision E.3.(1)(a)(i)[d]:

“Issued all subsequent private project permits or approvals, or functional equivalent for public projects, that are needed to implement the design initially approved in conformance with Provision E.3.e.(1)(a)(i)[a] within 5 years of the effective date of the BMP Design Manual. The storm water drainage system for the Priority Development Project (PDP) in its entirety, including all applicable structural pollutant treatment control and hydromodification management BMPs must remain in substantial conformity with the design initially approved in conformance with Provision E.3.e.(1)(a)(i)[a]”.

The County's Watershed Protection Ordinance (WPO) Section 67.811(c)(2) provides the effective date of the 2013 MS4 Permit as February 26, 2016. The ordinance states that within five years of the effective date of the current MS4 Permit provision (i.e. prior to February 16, 2021), the applicant must have obtained all subsequent project permits or approvals that are needed to implement the design initially approved in conformance with WPO Section 67.811 (c)(2)(A)i. After that time, any portion or phase of a Priority Development Project for which subsequent approvals have not been obtained is required to meet the updated requirements of WPO Section 67.811(a) and (b).

Additional Guidance:

[Appendix L - Prior Lawful Approval Requirements and Guidance](#) of the BMP Design Manual provides guidance to meet the County's Prior Lawful Approval (PLA) requirements for exception under PLA Option 2, which is the most common option to claim exception for implementing SUSMP requirements. In general, an applicant must satisfy all of the following conditions to meet PLA Option 2:

- **Condition A:** Initial approval must be obtained prior to the effective date of the 2013 Permit (i.e. February 26, 2016)
- **Condition B:** Construction activities commenced within 365 days prior, or 180 days after the effective date of the 2013 Permit.
- **Condition C:** Prior to February 16, 2021, the applicant must have obtained all subsequent project permits or approvals that are needed to implement the design initially approved.
- **Condition D:** All applicable structural BMPs must remain in substantial conformity with the design initially approved.

The figure below summarizes the deadlines for complying with the 2013 MS4 Permit exception provision (PLA Option 2):



Please contact your [PDS Project Manager](#) for more information and assistance in complying with these updated requirements.