

# Jackson|DeMarco|Tidus Peckenpaugh

A L A W C O R P O R A T I O N

July 29, 2013

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File No: 2294-00206

Mr. Arne Anselm  
Water Quality Manager  
Ventura County Watershed Protection District  
800 South Victoria Avenue  
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**Re: Preliminary Comments On The “Ventura County Draft Hydromodification Control Plan” For The Stakeholder Meeting of July 30, 2013**

Dear Mr. Anselm:

Thank you for notifying me of the July 30th Stakeholder Meeting on the above Draft Control Plan. My comments are preliminary since I do not have the appropriate “technical” background to evaluate the methodology used or various determinations made on the criteria referenced, my focus on issues of “process” and the practical feasibility of the alternatives available for addressing hydromodification control.

I am encouraged by the commitment of the Ventura County Permittees to address the objective minimizing hydromodification impacts in a “cost effective manner”. However, it appears that a significant analysis of the means by which hydromodification control may be achieved and the activities involved will require further study, especially with respect to the regulatory processes and parties whose participation will be required for strategies such as subregional hydromodification control, PMPs and stream measures (discussed further below).

Ventura County Watershed may make its Draft Control Plan more readily understandable to a lay-person audience by labeling some of the numerous Figures contained in the Plan with known points of references that would assist property owners to readily identify their property and whether or not its development may affect streams or water bodies that are susceptible to hydromodification.

V.C. Watershed may also wish to carefully review the provisions of the Plan found in Section 3.1 with respect to “Exemptions to the Hydromodification Management Standard” and Section 3.2 with respect to the “HCP Effective Date”. In particular, I think Section 3.2 on the “Effective Date” should be rewritten or clarified so that it may be readily understood by third parties who may review or be involved in various land development projects and have reasons to consider whether or not the HCP Plan applies to a particular project. Section 3.2(1) appears to be self-defining but the phrase “deemed complete for processing” may vary widely from agency to agency.

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We would be pleased to work with you on an examination of this type of language. Section 3.1 "Exemptions to the Hydromodification Management Standard" may have other unintended ambiguities that, if possible, should be clarified.

Of the basic strategies for hydromodification control, I assume that onsite BMPs and LID strategies are, in most cases, the only approach available to private project proponents. If there are "subregional control plans" underway or "stream restoration measures" under consideration, it would be helpful to know where such projects may or are hoped to exist in the future.

As a result, the "Volume Retention BMPs" may result in the setting aside of additional land beyond those required by the current MS-4 LID control measures, resulting in yet lesser developable area within any project.

The in-stream restoration measures are, from my perspective as a regulatory attorney, problematic due to the numerous overlapping state, federal and local agencies which may have control over streams or rivers. The viability of this type of approach can only be assured by a careful analysis of the "critical path" required for obtaining all permits in order to proceed with stream restoration measures. A similar comment may be made with respect to "regional and subregional hydromodification" controls to the extent that numerous agencies are involved. The nature of the "assurances of financing" for such projects should be identified early to determine their feasibility.

Unaddressed are questions of whether the requirements of the Draft Plan appropriately address the issues of "nexus" and "proportionality" of the HCP in all cases. This is a basic issue of fairness as well as a legal standard. There are undoubtedly circumstances where creeks, streams, rivers and their tributaries in this county are currently impacted by drainage from many sources under prior authorizations that may result in project applicants being required to cure the "past deficiencies" in addressing hydromodification.

Please also address what choices private property owners have in areas where the applicable City has not provided V.C. Watershed with information on the "susceptibility" of various areas to hydromodification effects.

We appreciate the opportunity which the Ventura County Watershed District has offered to involved parties or "Stakeholders" during the proceedings. We are pleased to discuss any of the above matter with you further.

I remain,

Very truly yours,

Craig K. Beam

CKB:bab