

Draft Municipal Alternative Compliance Model Ordinance: Description

1. The Draft Alternative Compliance (AC) Model Ordinance establishes a basic AC Program to support compliance with the Central Coast Regional Board's Post-Construction Requirements. The AC Ordinance needs to be integrated into the municipalities' Stormwater Code or equivalent.
2. The Draft AC Model Ordinance establishes a basic AC Program for the City and address policy, regulatory and legal considerations. As such, this Draft AC is consistent with current AC legal and regulatory parameters including acceptable locations for the AC project, timing, and determination of equivalency. In the future, this basic framework can be further evaluated to identify flexibility that might be possible within an AC program to address broader watershed priorities.
3. Two key resources used to develop this Draft AC Model Ordinance and supporting information are "An alternative compliance framework for stormwater management in the Central Coast Region" (Violetta Pristel, CSU Monterey Bay, 2013) and "Guidance For Developing an Off-Site Stormwater Compliance Program in West Virginia" (Center for Watershed Protection, 2012).
4. How to review and finalize the Draft AC Ordinance:
 - a. **Yellow Highlight** indicates where text needs to be inserted.
 - b. **Gray Highlight** indicates text that is optional to include; notes are provided to describe the option.
 - c. Because each municipality uses terms differently, make sure to review all text and edit as necessary to meet your specific needs. Delete the footer reference.

Model Ordinance for Alternative Compliance for Post-Construction Stormwater Control

1. Every Applicant shall use and/or construct post-construction stormwater control measures that treat and manage on-site the required volume as described in the (insert reference to Code Section that describes PCR requirements) unless off-site compliance is approved by [INSERT MUNICIPALITY NAME].
2. [INSERT MUNICIPALITY NAME] may not waive the minimum requirements for stormwater management of water quality protection.
3. The application for off-site compliance for stormwater management must include:
 - a. A review fee in the amount of [\$X] for review of the off-site compliance application
 - b. Stormwater management concept plan
 - c. Applicant information
 - d. Site information
 - e. Documentation of infeasibility of on-site compliance
 - f. Documentation of Mitigation Requirement for off-site compliance: including any water quality, retention, and/or volume calculations to show the required mitigation for the project as per the post-construction control requirements.
 - g. Type of off-site compliance sought: If the Alternative Compliance request is approved, indicate whether the Project Applicant will seek to implement the Alternative Compliance project or, seek a fee-in-lieu with the [INSERT MUNICIPALITY].
4. Where off-site compliance is approved, the Applicant shall satisfy stormwater management requirements by accomplishing an approved Off-Site Mitigation project or opting in to the Payment-in-Lieu program.
5. Off-site mitigation projects must meet the following conditions:
 - a. The off-site mitigation project must be located in the same [sewershed/watershed] as the original project, as approved by the [INSERT MUNICIPALITY].
 - b. The [INSERT MUNICIPALITY] shall, at its discretion, identify priority areas within the [sewershed/watershed] in which off-site mitigation projects can be completed.
 - c. Off-site projects must mitigate the water quality, retention, and/or volume requirement (defined in 3.f) of an existing impact (i.e. retrofits of existing impacts).

- d. Off-site mitigation cannot be applied to projects or portions of projects that where a water quality, retention, and/or volume control requirement is already in place.
- e. In all cases, land rights, access agreements or easements, and a maintenance agreement and plan shall be provided to ensure long-term maintenance of any off-site mitigation project prior to approval of the off-site mitigation proposal.
- f. Installation of the off-site mitigation project shall be completed: (a) within four (4) years from the date that the stormwater management design plan is approved [insert appropriate timeline starting point].

6. All requirements in Sections X [insert reference to appropriate sections from corresponding portion of Stormwater Code that contains the PCR requirements] for on-site stormwater management shall also apply to off-site mitigation projects. These requirements include but are not limited to a stormwater management design plan, inspections, and long-term maintenance.

7. The [INSERT MUNICIPALITY] shall inspect all off-site mitigation projects to ensure that they are properly installed to manage the required volume of stormwater.

- a. The applicant shall grant [INSERT MUNICIPALITY] the right to enter the property of the off-site project for the purposes of making inspections and ensuring compliance with this Section.
- b. The applicant must notify the [INSERT MUNICIPALITY] before the commencement of construction. In addition, the applicant must notify the [INSERT MUNICIPALITY] in advance of construction of critical components of the stormwater practices on the approved stormwater management design plan. [INSERT MUNICIPALITY] may, at its discretion issue verbal or written authorization to proceed with critical construction steps, such as installation of permanent stormwater practices based on stabilization of the drainage area and other factors.
- c. [INSERT MUNICIPALITY] or its representatives shall conduct periodic inspections of the stormwater practices shown on the approved stormwater management design plan, and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. Additional information regarding inspections can be found in Section [INSERT APPROPRIATE REFERENCE]. A final inspection by the [INSERT MUNICIPALITY] is required before any performance bond or guarantee, or portion thereof, shall be released.
- d. At its discretion, the [INSERT MUNICIPALITY] may authorize the use of private inspectors to conduct and document inspections during construction. Such private inspectors shall submit all inspection documentation in writing to the [INSERT

Comment [WC1]: Section 7 provides an example of additional detail regarding inspection and maintenance of the AC project that can be included in the ordinance. The Municipality may decide that the language and reference included in Section 6 above is sufficient in which case, Section 7 can be deleted.

MUNICIPALITY. All costs and fees associated with the use of private inspectors shall be the responsibility of the applicant.

- i. If the use of private inspectors is authorized, the **[INSERT MUNICIPALITY]** shall, at its discretion, maintain a training and certification program, or authorize another entity to maintain such a program. If such a certification program exists, all private inspectors shall be certified prior to conducting any inspections or submitting any inspection documentation to the **[INSERT MUNICIPALITY]**.
 - ii. If private inspectors are utilized, then inspections by the **[INSERT MUNICIPALITY]** or its representatives, as provided in Section **[X]**, may be reduced in frequency. However, the **[INSERT MUNICIPALITY]** shall remain the responsible entity for ultimate inspection, approval, and acceptance of all stormwater BMPs, and for issuance of the Certificate of Completion in accordance with Section **[Insert appropriate code reference]**.
- e. The applicant shall prepare an as-built plan for all off-site projects. The plan must show the final design specifications, materials, and elevations for all stormwater management facilities and clearly show deviations from the approved storm water management design plan. The as-built shall be sealed by a registered professional engineer or other design professional approved by **[INSERT MUNICIPALITY]**.
- f. Subsequent to final installation and stabilization of all stormwater BMPs shown on the stormwater management design plan, submission of all necessary as-built plans, and final inspection and approval by the **[INSERT MUNICIPALITY]**, **[INSERT MUNICIPALITY]** shall issue a Stormwater Certificate of Completion for the project. In issuing such a certificate, the **[INSERT MUNICIPALITY]** shall determine that all work has been satisfactorily completed in conformance with this Ordinance.

8. Payment-in-Lieu Contribution for Off-Site Projects:

- a. Payment-in-lieu contributions to the public stormwater project fund established by **[INSERT MUNICIPALITY]** shall be at a rate **[\$X – per cubic foot of stormwater requiring mitigation- SEE ATTACHED FEE SCHEDULE AND EITHER INTEGRATE INTO ORDINANCE TEXT OR REFER FEE SCHEDULE]**, as amended from time to time by **[INSERT MUNICIPALITY]** to account for inflation and new data that provides improved actual costs for similar projects.
- b. The **[INSERT MUNICIPALITY]** shall maintain a publicly accessible database of payment-in-lieu contributions and projects funded by payment-in-lieu contributions.