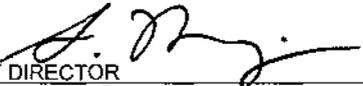
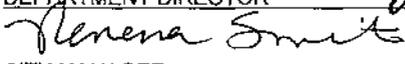


AGENDA ITEM NO.	IE
COUNCIL MEETING	04/24/14
APPROVED BY	
	
DEPARTMENT DIRECTOR	
	
CITY MANAGER	

April 24, 2014

FROM: SCOTT L. MOZIER, PE, Director
Public Works Department

BY: SCOTT KRAUTER, PE, Assistant Director
Public Works Department, Street Maintenance Division

SUBJECT: Approve a renewal of the Memorandum of Understanding (MOU) between the City of Fresno (City) and the Fresno Metropolitan Flood Control District (FMFCD) to implement a Storm Water Quality Management Program (Citywide)

RECOMMENDATION

Staff recommends the Council approve the attached MOU between the City and FMFCD to establish the roles and responsibilities of both agencies in administration of the United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) program.

EXECUTIVE SUMMARY

On May 31, 2013, the California Regional Water Quality Control Board, Central Valley Region issued Order No. R5-2013-008 to regulate storm water discharges by the FMFCD, the City, the City of Clovis, County of Fresno, and the California State University Fresno. One of the provisions of the order requires that the City and FMFCD update the previous MOU (adopted in 2001) to establish the responsibilities of FMFCD as the lead agency in administering the program, and the City for coordinating certain activities to support the implementation of regional Storm Water Quality Management.

BACKGROUND

The federal Clean Water Act, as implemented by the United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) in 1987 adopted regulation on November 16, 1990 that requires owners and operators of municipal storm drain systems to implement programs to reduce and control pollutants in urban storm water to the maximum extent practicable. On May 31, 2013, the California Regional Water Quality Control Board, Central Valley Region (Regional Board) issued Order No. R5-2013-008, NPDES, Municipal Separate Storm Sewer System (MS4) Permit No. CA0083500, regulating storm water discharges by the FMFCD, the City, the City of Clovis, County of Fresno, Caltrans, and the California State University Fresno (collectively, the co-permittees). The co-permittees in general, and the FMFCD and City in particular, seek to comply with all provisions of state and federal law and the NPDES permit by cooperatively implementing a Storm Water Quality Management Program as such program is defined in and required by the NPDES permit.

REPORT TO THE CITY COUNCIL

Approve an MOU with FMFCD for the NPDES program

April 24, 2014

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One of the provisions of the NPDES permit requires that the City and FMFCD approve an MOU to establish the responsibilities of FMFCD as the lead agency in administering the program, and the City for coordinating certain activities to support the implementation of Storm Water Quality Management. These activities include various Departments across the City including: a City representative to participate in Coordination Committee meetings (Public Works), assistance in identification and enforcement of Illicit Discharges, Illicit Connections, Industrial Controls (DARM and Public Utilities), providing requirements for, and inspecting Construction and Development controls (DARM and Public Works); and identification of projects that may require additional storm water requirements through Site Plan review (DARM).

The City and FMFCD have an existing MOU for the previous permit period (started in 2001) dated June 8, 2001. The new permit includes a provision to update the MOU of all the co-permittees

The City Attorney's Office has reviewed and approved the MOU as to form. Also, the FMFCD Board approved the MOU during their Meeting on April 9, 2014.

ENVIRONMENTAL FINDINGS

By the definition provided in the California Environmental Quality Act Guidelines Section 15378 this item does not qualify as a "project" and is therefore exempt from the California Environmental Quality Act requirements.

LOCAL PREFERENCE

Local preference was not considered because this MOU does not include a bid or award of a construction or services contract.

FISCAL IMPACT

The MOU states that FMFCD will pay all permit fees, so there is no direct cost to the City for the permit or program. However, there is a fiscal impact to the City in the requirements that staff in Public Works, DARM, and Public Utilities utilize staff time to coordinate Storm Water Quality Management activities. Most of these activities are integral to other City assignments in these departments, so the fiscal impact to each of these programs is considered minor.

Attachment:

-Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MUNICIPAL STORM WATER PERMIT IMPLEMENTATION

This Memorandum of Understanding (MOU) is made and entered into this _____ day of _____, 2014, by and among the Fresno Metropolitan Flood Control District (DISTRICT) and the City of Fresno (CITY).

WHEREAS, the 1987 amendments to the federal Clean Water Act, as implemented by the United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) regulations adopted November 16, 1990, make it necessary for owners and operators of municipal storm drain systems to implement programs to reduce and control pollutants in urban storm water to the maximum extent practicable; and

WHEREAS, on May 31, 2013, the California Regional Water Quality Control Board, Central Valley Region (Regional Board) issued Order No. R5-2013-008, NPDES Municipal Separate Storm Sewer System (MS4) Permit No. CA0083500 regulating storm water discharges by the DISTRICT, and the City of Clovis, CITY, County of Fresno, Caltrans, and California State University Fresno (collectively, the co-permittees); and

WHEREAS, the co-permittees in general, and the DISTRICT and CITY in particular, seek to comply with all provisions of state and federal law and the NPDES permit by cooperatively implementing a Storm Water Quality Management Program as such program is defined in and required by the NPDES permit.

NOW, THEREFORE, the DISTRICT and CITY mutually agree that the responsibilities of each party with respect to said program generally shall be as follows:

I. DUTIES OF THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

The DISTRICT shall:

A. Be the lead agency in administering the Storm Water Quality Management Program, as it is defined in the NPDES permit, and in coordinating with the Regional Board. As lead agency, the DISTRICT shall compile and submit the annual report required by the permit and shall prepare and submit the compliance documents specifically identified in the permit. The DISTRICT shall designate a program manager responsible for overseeing DISTRICT implementation of the program.

B. Upon request of CITY, share the expertise of DISTRICT staff in storm water regulatory compliance and provide training to the managers and staff of CITY.

C. Manage and staff the following committees created to advise the co-permittees with respect to the storm water quality management program: Public Involvement and Education Committee, Construction and Development Committee, and Program Coordinating Committee.

D. Fund, manage, and staff the required storm water quality Monitoring Element.

E. Fund, manage, and staff the required Public Involvement and Education element.

F. Design and construct public storm water pollution control structures and facilities and investigate the practicability of any modifications to standard designs and existing structures for the purposes of controlling storm water pollutants.

G. Operate and maintain the DISTRICT's public storm water pollution control structures and facilities and investigate the practicability of any modifications to those operation and maintenance

practices for the purposes of controlling storm water pollutants. The DISTRICT shall also coordinate required analyses of the practicability of modifications to the operations and maintenance practices of the co-permittees for the purposes of controlling storm water pollutants.

H. Fund annual NPDES municipal storm water permit fees and make timely payment of said fees to the Regional Board.

I. Implement the Urban Storm Water Quality and Discharge Control Ordinance as follows:

1. Serve as the lead agency in response to complaints from citizens and co-permittees, conduct inspections, and proceed with enforcement measures to control illicit connections and illicit discharges to the storm drain system.

2. In consultation with the Construction and Development Committee, develop guidelines to be used by the co-permittees in preventing storm water pollution related to construction and development. The DISTRICT shall include storm water quality controls in its California Environmental Quality Act (CEQA) comments, Notice of Requirements, and other appropriate development application reviews.

3. Serve as lead agency in ensuring the compliance of industries subject to NPDES storm water regulations and providing storm water pollution prevention information to other high-priority commercial and industrial sources.

4. Designate appropriate personnel as authorized enforcement agent(s) to implement and enforce the DISTRICT's Urban Storm Water Quality Management and Discharge Control Ordinance.

5. Coordinate enforcement with CITY, as described in Section III of this Agreement.

II. DUTIES OF CITY

The CITY shall:

A. Designate a representative responsible for overseeing implementation of the Storm Water Quality Management Program plan within its agency. Said representative shall attend Program Coordinating Committee meetings; compile information from the various departments and divisions within the agency throughout a fiscal year, and prepare and submit to the DISTRICT's the agency's annual report data; facilitate plan implementation within the agency, including reviewing and distributing reports and other documents and coordinating training and workshop sessions; and participate in cooperative community education and public information activities.

B. Annually compile information from the various departments and divisions within the agency throughout a fiscal year, and submit to the DISTRICT data summarizing the agency's participation and progress in implementing the program, such data to be submitted in accord with the format and content and compliance certification required by the NPDES MS4 Permit.

C. Designate representatives to the Public Involvement and Education and

Construction and Development committees.

D. Implement a municipal operations program in accordance with the NPDES Permit and associated Storm Water Quality Management Plan.

E. Implement the Urban Storm Water Quality and Discharge Control Ordinance as follows:

1. Identify field and/or inspection personnel to assist while in the course of their normal duties in the detection of potential illicit discharges and illicit connections to the DISTRICT storm drain system; said personnel shall be trained to identify such discharges and connections and to refer them to the DISTRICT as necessary.

2. Include storm water quality controls in its CEQA mitigation measures, conditions of approval, and other appropriate development permits. The CITY shall inspect construction and development projects within its jurisdiction to determine compliance with the storm water quality controls required in its permits.

3. CITY shall incorporate recommended storm water pollution prevention practices and storm water regulatory compliance information into its commercial and industrial compliance assistance activities.

4. Designate appropriate personnel as authorized enforcement agent(s) to implement and enforce the CITY's Urban Storm Water Quality Management and Discharge Control Ordinance.

5. Coordinate enforcement with the DISTRICT as described in Section III of this Agreement.

III. COORDINATION OF IMPLEMENTATION AND ENFORCEMENT DUTIES RELATED TO THE URBAN STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL ORDINANCE

The DISTRICT and CITY desire that the above duties, particularly as they relate to implementation and enforcement of the parties' overlapping Urban Storm Water Quality Management and Discharge Control Ordinance authorities, shall be performed in a cooperative and efficient manner, with minimal redundancy and duplication of effort. Therefore, the DISTRICT and CITY hereby agree:

A. In the course of performing CITY's normal duties (i.e., duties CITY performs which are not mandated by, nor the result of, the NPDES municipal permit nor this MOU), CITY shall identify if potential violations of said ordinance exist; inform the responsible person, business, or entity, of the potential violation and necessary corrective measures; and refer the case to the DISTRICT for further evaluation,

follow-up, and enforcement as necessary; and

B. In the course of performing DISTRICT's and CITY's normal development application reviews, CITY shall inform the applicant of basic storm water quality control requirements and guidelines; DISTRICT shall identify applicable standard controls, site-specific controls, regulatory compliance requirements, and storm water quality control guidelines; and CITY shall incorporate DISTRICT's recommended control measures into its recommendation and staff report to the decision making authority.

C. The aforementioned responsibilities and interagency coordination are depicted schematically in Exhibit I, "Illicit Discharges, Illicit Connections, Waste Disposal, Commercial and Industrial Controls: Inspection and Enforcement," and Exhibit II, "Construction and Development Controls: Permit Approvals, Inspection, and Enforcement," and Exhibit III, "Site Plan Review" attached to and incorporated herein.

IV. LIMITATIONS

This MOU is solely for the purpose of coordinating the actions of the parties hereto in meeting their responsibilities under the NPDES municipal permit. This MOU does not create any additional responsibilities, nor does it create any contractual obligations between the parties hereto. Further, it shall not be deemed to inure to the benefit of any person or entity not a party hereto and does not confer any rights to such non-party, whether such right be claimed to arise from any action or inaction of any party hereto.

V. TERM OF THE MOU

This MOU is effective upon execution by the duly authorized parties and shall continue until superseded, or as long as the parties continue to be named co-permittees to the NPDES municipal storm water discharge permit, as it may be amended, revised, or reissued over time.

VI. AMENDMENTS TO THE MOU

This MOU may be amended by consent of both parties; however, each party's duties as defined in this MOU may be substantively amended only upon approval by the Regional Board of an amendment or revision of the Storm Water Quality Management Program Plan. No amendment to this MOU shall be effective unless it is in writing and signed by the duly authorized representatives of the parties.

VII. AUTHORIZED SIGNATORIES

The General Manager-Secretary of the DISTRICT, and his or her duly authorized representative, shall be authorized to submit to the Regional Board annual reports and other documents required by the NPDES permit, and to submit permit renewal applications prior to permit expiration.

VIII. EXECUTION OF THE MEMORANDUM OF UNDERSTANDING

This MOU may be executed in counterpart and the signed counterparts shall constitute a single instrument.

IX. INDEMNIFICATION

DISTRICT shall indemnify, defend, and hold harmless the CITY, its elected or appointed officials, officers, and employees in connection with any claims, imposition of penalties, or any enforcement or other actions whatsoever, including but not limited to those brought by federal, State, or local agencies having regulatory jurisdiction over the subject matter of this Memorandum of Understanding, which may arise as a result of the DISTRICT's failure to comply with the provisions set forth herein. Nothing herein shall constitute a waiver by DISTRICT of governmental immunities including California Government Code section 810 et seq..

CITY shall indemnify, defend, and hold harmless the DISTRICT, its elected or appointed officials, officers, and employees in connection with any claims, imposition of penalties, or any enforcement or

other actions whatsoever, including but not limited to those brought by federal, State, or local agencies having regulatory jurisdiction over the subject matter of this Memorandum of Understanding, which may arise as a result of the CITY's failure to comply with the provisions set forth herein. Nothing herein shall constitute a waiver by CITY governmental immunities including California Government Code section 810 et seq..

IN WITNESS WHEREOF, this MOU has been executed as of the day and year first above written.

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a subdivision of the State of California

CITY OF FRESNO, a municipal corporation

By: Bob Van Wyk
Bob Van Wyk
General Manager-Secretary

By: _____
Bruce Rudd
City Manager

ATTEST
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collect Deputy Date 4/1/14

Attachments: Exhibit I
Exhibit II
Exhibit III

Exhibit I

ILLICIT DISCHARGES, ILLICIT CONNECTIONS, WASTE DISPOSAL, COMMERCIAL AND INDUSTRIAL CONTROLS: INSPECTION & ENFORCEMENT

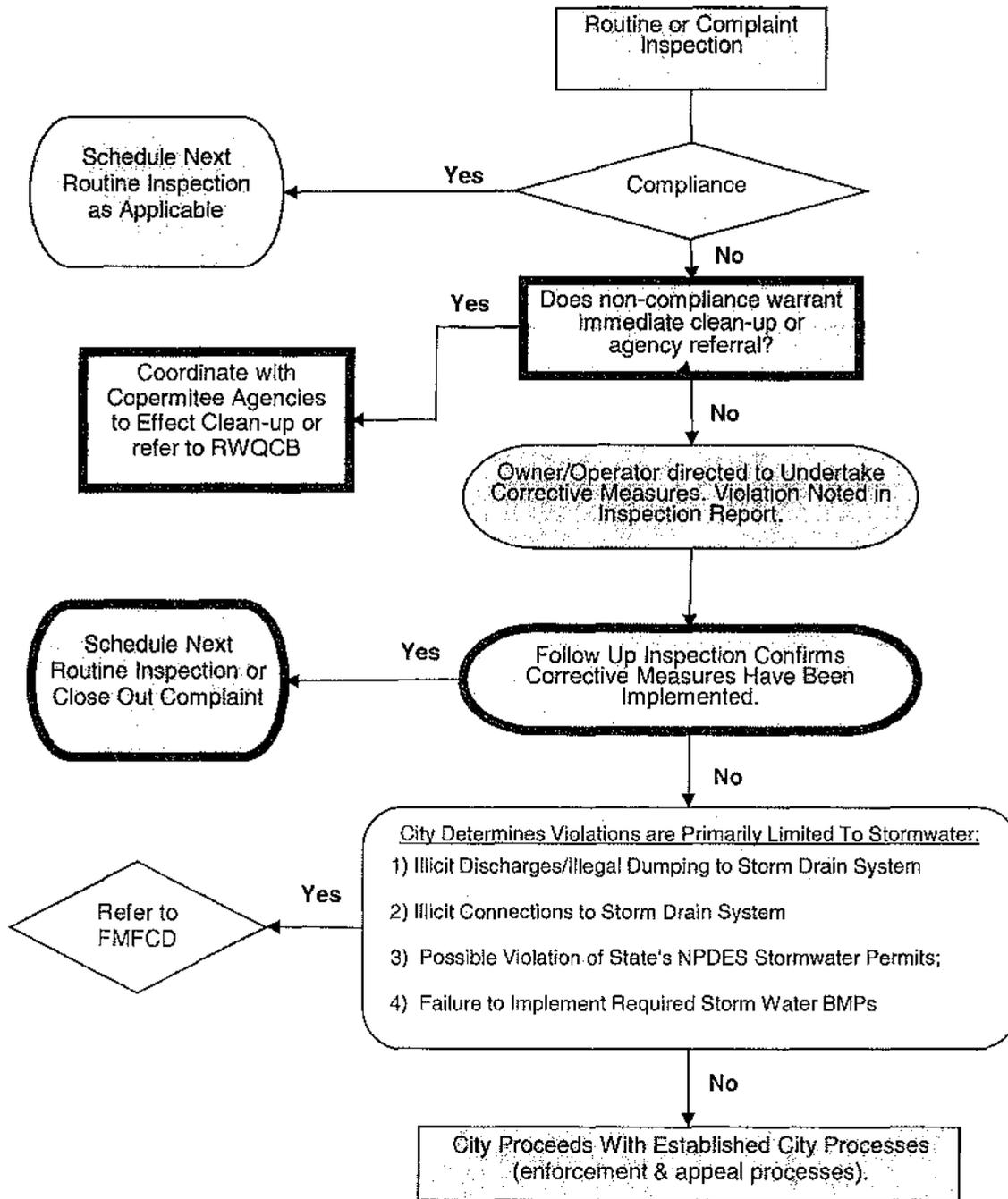


Exhibit II

CONSTRUCTION & DEVELOPMENT CONTROLS: PERMIT APPROVALS, INSPECTION & ENFORCEMENT

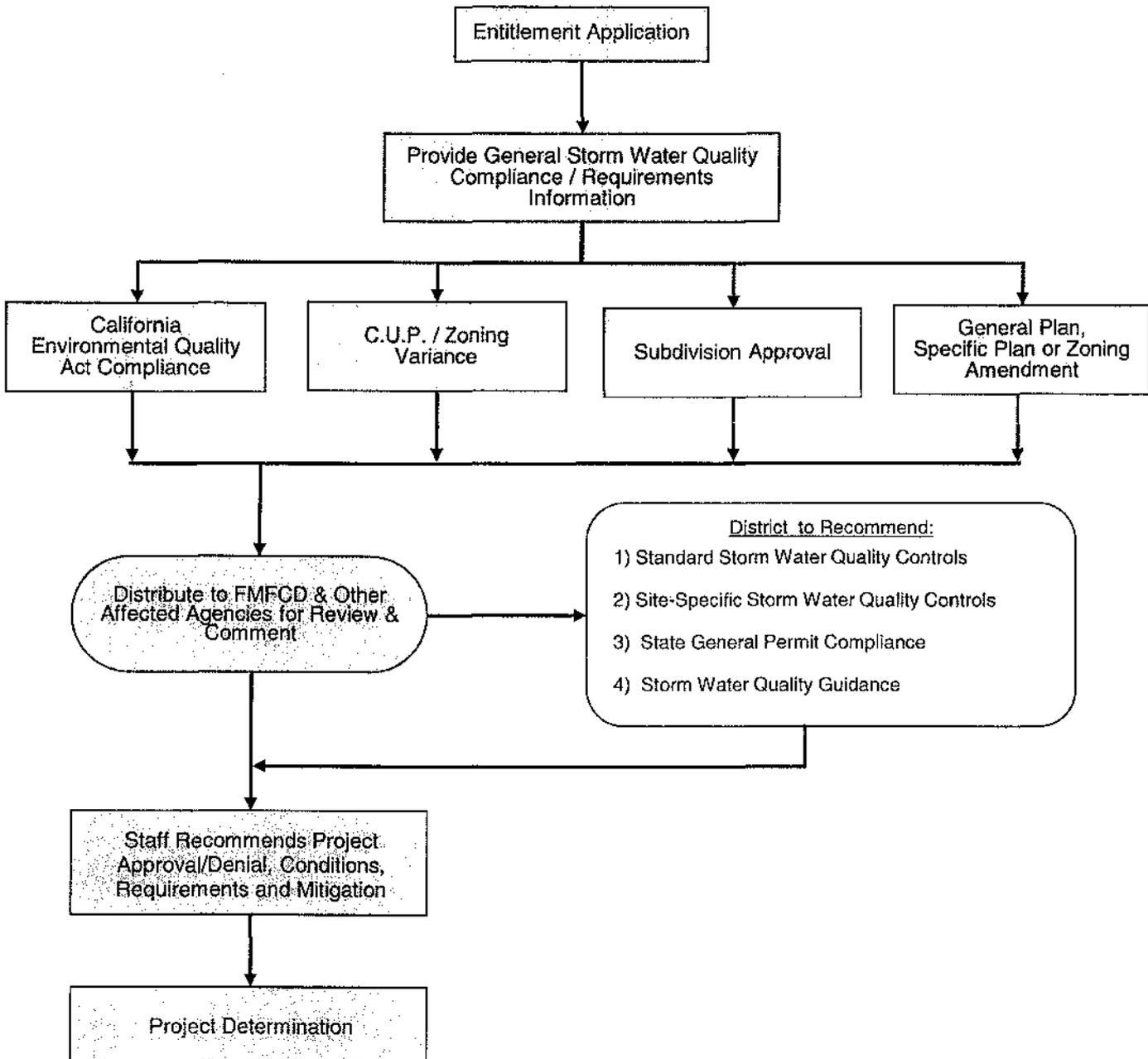


Exhibit III

SITE PLAN REVIEW

