

Workshopping the CII Permit

Topic 4: Mixed Use Exemption

On November 20th the Los Angeles Regional Water Quality Control Board (RWQCB) held a workshop to consider improvements to the draft CII Permit. After receiving a briefing from RWQCB staff and comments from stakeholders, the Board asked staff to engage with stakeholders to consider possible improvements to the Permit. Some of the provisions that the Board directed staff to focus on included:

- Who should be the permittee -- the facility owner or operator?
- What should be in the Option 1 contract between the permittee and the Watershed Management Groups?
- Permit implementation timing
- Exemptions for residential properties identified as mixed use
- Sampling requirements

As an initial matter, Los Angeles County has a severe affordable housing shortage, needing nearly 500,000 affordable units to meet demand, which is a primary driver of homelessness. Despite some recent positive trends in decreasing homelessness, the underlying crisis stems from decades of underbuilding housing, especially for low- and middle-income residents. Mixed use projects play a major role in addressing this need, particularly for low and middle-income residents.

While the draft Permit Fact Sheet and the draft Permit state that: “This Order does not apply to residential facilities of any type and therefore has no impact on the development of housing in the watersheds subject to the Order” as described below the draft Permit must be construed to do exactly the opposite as it pertains to mixed use projects.

The draft Permit remains ambiguous as to the status and requirements for mixed use parcels. Moreover, the permit fails to provide any rationale as to why mixed-use parcels should be treated differently than any other residential parcel and appears to exacerbate the homeless crisis.

The draft Permit attempts to define mixed use parcels in Attachment A as follows: “For parcels with land use code 1210 (mixed use commercial and residential) and 1720 (mixed use office and residential), the term CII Site only applies to the commercial, institutional, or industrial portion of the mixed land use parcel”. The definition goes on to state: “This Order does not apply to residential facilities of any type, including those located within a parcel assigned the land use category of mixed use”.

The problem with this definition is that it fails to define what constitutes a residential facility. Is a building with commercial on the first floor and residential on the upper floors a residential facility? What about shared parking facilities or common areas? This ambiguity likely makes the application of the draft Permit to mixed use parcels to be determined through citizen suits by groups who may not want mixed use development in their neighborhood. (Not In My Back Yard.)

The draft permit goes on to provide that: "Conversion to residential use (full or partial) of an existing permitted parcel with commercial land use is an acceptable basis for termination of coverage under this Order". However, this provision appears to conflict with previous definition as it seems to imply that a currently regulated facility that converts even a partial foot print to residential provides for a total exemption of the parcel.

Finally, the land areas that are defined to be mixed use are de minimus. The draft Permit fact sheet indicates that approximately 9% of the land uses in the Alamitos Bay/Los Cerritos Channel Watershed Management Area are identified as mixed use as compared to 59% residential, 15% commercial and 9% industrial. The draft Permit fact sheet does not provide an estimate for the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed. However, it appears likely that it is no greater than that of the Alamitos Bay/Los Cerritos Channel Watershed as compared to 39.9% residential, 19.9% commercial, and 17.7% industrial. Moreover, it appears likely that the areas in question are smaller and less likely to contribute pollutants to the watershed than the industrial and commercial activities occurring on publicly owned land such as airports, sea ports, public schools, and hospitals.

Given the above, the author suggests that the draft Permit be amended to require that parcels greater than five acres with land use codes 1210 or 1720 be allowed to file a Notice of Non-Applicability. There may be limited circumstances in which the Regional Board would reject the NONA. (Such as a small guard house residence on a ten-acre industrial site.) However, in general this approach would simplify and clarify the enrollment process, protect water quality, and encourage the development of mixed-use projects to help meet the desperate need for low and middle-income housing.