

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF JULY 6, 2007**

Prepared on June 11, 2007

**ITEM NUMBER: 9**

**SUBJECT: City of Salinas Phase I Storm Water Permit Status Report #3**

**SUMMARY**

The City of Salinas (City) continues to proceed slowly on producing acceptable Low Impact Development Design Standards, Storm Water Management Plan, and Quality Assurance Project Plan documents. The City is currently requiring some of the construction developments to include Low Impact Development techniques that treat all stormwater runoff from the sites. We have received and are reviewing the Draft Low Impact Development Standards Plan, and are finding it to be thorough in its LID design descriptions and recommendations, but lacking in specifics that define what an acceptable LID development must contain. This apparent lack of specifics will cause a delay in the City's adoption of LID Design Standards. Water Board staff recommend issuing a Cease and Desist Order with a time schedule that will address the need for revised Permit timelines for LID Design Standard adoption, as well as the additional missed document submittal deadlines.

**DISCUSSION**

The Water Board requested an update on multiple topics of concern regarding the City of Salinas stormwater permit and Low Impact Development issues. This staff report discusses key topics discussed at the February 9, 2007 Board meeting, which include the City's Storm Water Management Plan, Low Impact Development Standards, Water Quality monitoring, and other topics. This staff report summarizes main points raised at the February 2007 Board meeting, and describes relative post-Board meeting events on each key topic. Additionally, the City has provided a Memorandum (attached) which summarizes the City's Stormwater Permit-related activities since the October 2006 Annual Report.

**I. Low Impact Development (LID) - Development Standards Plan**

**I.a LID-Development Standards Plan Authority**

February 2007 Board meeting - Board members questioned the City staff on when and how Low Impact Development methods would be adopted. At the February 2007 Board hearing, Mr. Rob Russell, City Engineer, stated the City would revise Standard Specifications and Development Standards by December 2007, and that the City is now requiring Low Impact Development through a modified zoning code. Ms. Vallerta stated that new requirements would go into effect 30-days from City Council adoption of an ordinance or resolution.

Post-February 2007 Board meeting - At this time, the City engineering department verbally reports that they can and do require LID treatment of "large" developments, and are basing these

requirement on the Water Board staff's December 23, 2005 letter (attached). The City has drafted a Grading Ordinance, and a Stormwater Ordinance requiring Low Impact Development, both of which are due to be heard by the Salinas City Council on June 19, 2007. Water Board staff and legal council have reviewed and commented on both draft ordinances. The comments of highest concern include: 1) Requests for changes which will ensure that the Draft Stormwater Ordinance has the same type of requirements as the Kennedy/Jenks Consultants' model LID ordinance; 2) The Draft Stormwater Ordinance incorporates by reference the LID Design Standards which will be based on Kennedy/Jenks Consultants LID Development Standards Plan<sup>1</sup>; and 3) The Grading Ordinance include sufficient language to protect riparian corridors and waterways. Although Water Board staff has provided comments on the Draft, we have not seen the final ordinances. Several members of the public have expressed concern that the City is not providing adequate public notice and review time for the ordinances. Water Board staff agree with this concern, and will address this issue through either the Storm Water Management Plan review process, or through an enforcement action.

The City and Water Board staffs received the Draft Development Standards Plan from Kennedy/Jenks Consultants. The Development Standards Plan is posted to the Regional Board's website:

[http://www.waterboards.ca.gov/centralcoast/stormwater/municipal/phase\\_1/salinas\\_lid\\_index.htm](http://www.waterboards.ca.gov/centralcoast/stormwater/municipal/phase_1/salinas_lid_index.htm)

The City and Water Board staffs are currently conducting a 30-day in-house review, and will send comments to Kennedy/Jenks Consultants by June 21, 2007. Kennedy/Jenks Consultants plans a 2-week response/revision, and will return the Final Development Standards Plan to the Water Board and City staffs by July 9, 2007. At the time of this writing, Water Board staff is mid-way through reviewing the Draft Development Standards Plan. The Draft Development Standards Plan is a comprehensive and primarily descriptive document that explains the concepts and need for LID, and contains fact sheets which give: schematics of LID designs; guidelines on applications, advantages and limitations; performance data, criterion for siting, design, and construction; and inspection and maintenance requirements. The Draft Development Standards Plan also includes information necessary to calculate sizing criterion required by the City's Permit, and a mapped compilation of soil and groundwater data that are needed to correctly site LID features. While there is lots of necessary and useful information, Water Board and City staffs' review of the Draft Development Standards Plan has revealed that the Plan in its current form would be inadequate to adopt directly as a Design Standard (see footnote 1, page 2) for use by developers, planners, engineers and others who design projects. The reason lies primarily in the fact that the Draft Development Standards Plan is structured more like a teaching text which describes what might be, or should be done to apply LID principles, whereas the City's Stormwater Ordinance must reference a document (Design Standards) that definitively states requirements that a developer must meet. Water Board staff have requested Kennedy/Jenks staff identify more clearly where the definitive LID requirements lie in the Draft Development Standard Plan.

The City's Permit required the City to submit a Development Standards Plan to the Water Board Executive Officer, and posted for a 30-day public review by February 2006. The Development Standards Plan was to include proposed modifications to the City's Design Standards. The Permit allowed the City one year from approval of the Development Standards Plan to amend or adopt the revised Design Standards. Given the alleged inadequacy of the Draft Development Standards Plan to be converted directly into the City's Design Standards, Water Board staff is now considering issuing a Cease and Desist Order (CDO) with a timeline. Water Board staff have not drafted a CDO, but envision that the order would include updated submittal dates, and direct the City to submit a Design Standard with definite wording stating requirements on developments that will meet the

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<sup>1</sup> Development Standards Plan differs from a Design Standard (or "Development Standard"), in that the former provides the guidance and background information, while the Design (or Development) Standard provides the specifications of what must be built on-the-ground.

stormwater runoff-related requirements in the City's Permit, and consistent with standards used in other Phase I communities (see Conclusion section of this Staff Report). The CDO will also address the need for interim LID requirements for developments which are being reviewed and approved now, prior to formal LID Design Standards adoption. The goal of writing interim requirements will require research of other LID-communities' ordinances and standards, and gleaning appropriate requirements for the City of Salinas.

While the Design Standards are being developed and adopted, the City engineering department staff are borrowing LID engineering designs from Contra Costa County for lined bioswales, and requiring their implementation in new construction of commercial sites. The lined bioswales (liner is necessary for low percolation native soil areas) provide treatment for all rooftop and parking lot runoff on the sites that Water Board staff examined. The City's interim measures which require LID are a necessary bridge that indicate to developers the type of new design expected in the city. At this time, without adopted Design Standards that define when and where LID must be used, the City engineering and planning staff is making these decisions on a case-by-case basis. City staff agrees with Water Board members and staff that LID requirements must be referenced or included in an adopted City ordinance. Water Board staff intend to place requirements in the aforementioned CDO that will provide understanding to Water Board members and staff, and the public in understanding when and how the City is currently requiring LID.

### **I.b LID Construction Projects**

February 2007 Board meeting - During the February 2007 Board meeting, Board members emphasized the importance of the City requiring Low Impact Development techniques in the Future Growth area, as well as current in-city construction. Mayor Dennis Donohue, City Attorney Vanessa Vallarta, and Deputy City Manager Rob Russell assured the Board that LID methods are utilized in current commercial construction, and would be required in the Future Growth area.

Post-February 2007 Board meeting - Since the February 2007 Board meeting, Water Board staff met with City staff and conducted an in-depth review of LID-based plans and construction for Kohls, Home Depot, and Boronda Square (current in-City construction). Water Board staff found that all stormwater runoff from these sites is directed into vegetated swales with underdrains, which is an accepted LID stormwater treatment method in low-permeable soils. According to City staff, City engineers are requiring new construction projects include this type of LID-designs. Also see Section G in the attached Memorandum from the City for more details on LID construction projects.

Water Board staff attended an on-site tour and pre-planning meeting with the Bardin Ranch development consultants. Bardin Ranch is one of the three Future Growth Area proponents. The Bardin ranch representative presented their draft plans which include LID practices, 401 Certification mitigation plans, and other environmentally-related mitigation features to Water Board and US Fish and Wildlife staff. Water Board staff was pleased with the efforts to incorporate LID into the Bardin Ranch draft plans, and avoid unnecessary impacts at this site.

As described in the previous section, Water Board staff commend the City on requiring LID prior to the LID Design Standards adoption, but we are still concerned that the City's policy on when, where, and how LID required is not clearly defined. Staff will include provisions in the Cease and Desist Order (described in Section 1.a, above) to obtain written clarification of these questions from the City, and/or to provide directive on how the City must meet the Permit's "Development Standards Component" (Permit Attachment 4, section III a, b, and c).

## II. Storm Water Management Plan (SWMP)

February 2007 Board meeting – At the time of the Board meeting, Water Board staff had just received a revised version of the SWMP, but had not yet reviewed the entire document. Steve Shimek, The Otter Project, commented that the SWMP needed more direct language that detailed requirements to implement low impact development Design Standards to the “maximum extent practicable,” and not to other arbitrary benchmarks such as “to the extent economically viable.”

Post-February 2007 Board meeting – Water Board staff reviewed the entire SWMP, provided written comments to City staff, and met with City staffs in April and May 2007 to discuss the need for more direct language and more specifics on certain items in the SWMP. City staff is currently revising the SWMP and expects to have a final version on June 18, 2007. While reviewing and commenting on the SWMP, Water Board staff considers the proposed stormwater program as a whole (the expected net effect of the Best Management Practices), the City’s 2005 Phase I permit requirements, the known and suspected urban pollutants of concern, background information gained from the 2004 program audit, current Central Coast Ambient Monitoring Program (CCAMP) and stormwater staff inspections of City sites, and recently adopted Phase II SWMPs. Water Board staff engages in numerous ongoing discussions with City staff to learn about various aspects of the SWMP, including methodology in choosing Best Management Practices, strategies, and lessons learned from past actions.

While the SWMP is being reviewed and revised, the City is proceeding with the Best Management Practices in the SWMP. As City Attorney Vanessa Vallerta stated at the February 2007 Board meeting, the Best Management Practices listed in the tables in each SWMP Element (chapter) are considered by the City to be the Work Plan. The City is proceeding with this Work Plan to the extent possible, with some exceptions that are outside of the City’s influence (such as incorporating the Design Standard Plans by a particular date). Any discrepancies between the Work Plan and the actual work performed by the City must be explained in the Annual Report, which is due to Water Board staff each October.

## III. Water Quality Monitoring

### III.a Illegal Discharges, and Water Quality Exceedances

The CCAMP staff monitored two locations on the Reclamation Canal, Airport Road (309ALU) and Boranda Road (309ALD). As a result of water quality issues observed at the Airport Road site, samples are also collected from the storm drain pipe upstream of this site (309AXX). Multiple exceedances of water quality objectives (as defined in the Central Coast Basin Plan), and toxic waters have been documented at these sites. Water Board staff brought these issues to the City’s attention. The City conducted dye and smoke tests to identify which smaller storm drains lead to the 309AXX drain. The drains leading to 309AXX originated in an industrial area, which contained industries suspected of being the pollutant source(s). The City inspected the industrial sites, found illegal discharges and pollutant sources, and required the sites to make appropriate changes to eliminate the discharges and contain pollutant sources. The industrial sites have complied. This work has been on-going since the fall of 2006. Please refer to the City’s Memorandum, Sections F and H for more details. The City has found that there are multiple dischargers, and is continuing to search for additional sources of illegal discharges (see second to last paragraph, City memorandum).

When toxicity is discovered, as described above, the City’s Permit requires the City to conduct a Toxicity Reduction Evaluation which includes taking all reasonable steps to identify the source(s) of toxicity and eliminate the toxicity. The City’s actions in identifying and removing sources of illegal

discharges meet with the intent of the permit. The City has recognized that not all the pollution sources in this area have been identified, and they will continue to search for the sources and eliminate them.

### **III.b Data Integration**

February 2007 Board meeting – Water Board members discussed the need for integrating water quality monitoring data from the Agriculture waiver program, with the City's stormwater data for a more complete picture of water quality in the region.

Post-February 2007 Board meeting – Water Board staff from the Agriculture waiver, stormwater, CCAMP, NPDES and WDR programs have met on several occasions and discussed this aptly identified need. Staff recognize the benefits of cross-program data integrations, and have been discussing ways to coordinate the water quality data sets. Staff has determined that data integration among the programs will require a significant investment of time and planning and is worthy of further consideration for possible execution.

### **III.c Quality Assurance Project Plan (QAPP)**

February 2007 Board meeting – The City submitted a revised QAPP the last week of January, 2007, which Water Board staff needed to review.

Post-February 2007 Board meeting – Water Board staff reviewed the January 2007 QAPP. There are a few items that need to be revised, one of which is the need for the QAPP to meet recently adopted statewide protocols for Rapid Bioassessment. Water Board staff will continue to interact with the City and the City's consultant on this issue.

## **IV. OTHER ITEMS FROM THE FEBRUARY 2007 BOARD MEETING**

February 2007 Board meeting – Steve Shimek, Executive Director of The Otter Project, requested the Water Board members 1) send a letter to the Local Agency Formation Commission (LAFCO) requesting that Low Impact Development methods be required in the Future Growth area; 2) approve the draft Development Standards Plan; 3) require more direct language in the City's Storm Water Management Plan, and 4) pursue formal enforcement.

Post-February 2007 Board meeting – Water Board staff sent a letter to LAFCO (attached) regarding the need for Low Impact Development.

Items 2 and 3 of Mr. Shimek's have been discussed earlier in this staff report. Item 4, formal enforcement, was discussed at the February 2007 Board meeting. Water Board staff recommended against taking formal enforcement action at that time because the City is slowly coming into compliance with Permit requirements. Board members concurred with staff's recommendation to proceed with the current course, rather than levying penalties.

## **CONCLUSION**

There are two items of greatest concern to monitor and address in Water Board staff's opinion: Measurable water quality exceedances; and the lack of Low Impact Development Design Standards. The City has been tracking down and removing pollutant sources that have contributed to the water quality exceedances. Water Board staff will continue to require updates and will review the city's monitoring data to assess progress. Regarding the lack of LID Design Standards, we consider this item to be high priority because any development that is approved or built without LID, becomes a permanent source of excessive, urban-pollutant laden stormwater runoff. The implications of not

applying LID are long-term and virtually irreversible. To address the LID Design Standard need, staff plans to issue a Cease and Desist Order (CDO) with a compliance timeline. We envision that the order will include submittal dates for a publicly-reviewed Design Standard that contains definite requirements so that development/redevelopment will meet the stormwater runoff-related requirements in the City's Permit, and will be consistent with standards used in other similar communities. Although the Design Standards are a priority, Water Board stormwater staff will also continue to work with the City and its consultants on finalizing the QAPP, and with City staff on finalizing the SWMP. The CDO timeline may address these two items, in addition to the Design Standards component.

### **RECOMMENDATION**

Staff recommends the Water Board approve proceeding with a Cease and Desist Order with time schedule order for the primary purpose of requiring Design Standards which meet the City's Permit requirements, and which are consistent with similar communities.

### **ATTACHMENTS**

1. City of Salinas Memorandum, "City of Salinas Stormwater Progress Report", May 23, 2007
2. Water Board staff's December 23, 2005 letter
3. Water Board staff's letter to Local Agency Formation Commission (LAFCO)

The Draft Development Standards Plan is posted to:

[http://www.waterboards.ca.gov/centralcoast/stormwater/municipal/phase\\_1/salinas\\_lid\\_index.htm](http://www.waterboards.ca.gov/centralcoast/stormwater/municipal/phase_1/salinas_lid_index.htm)