

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

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF JULY 11, 2008

Prepared July 1, 2008

ITEM NUMBER: 18

**SUBJECT: Status of Salinas Development Standards, Public Involvement,
and Future Growth Area**

COMMENTS

Several interested parties submitted comments on the Revised Salinas Stormwater Development Standards (Standards) on or around June 23, 2008. In this supplemental sheet, staff summarized all of the comments and then provided a collective response for consideration by members of the Water Board. All of the comment letters are attached. Staff is very interested in your perspective on these comments. Staff will be working closely with Salinas staff in the coming weeks to ensure your comments are addressed, before we bring the Standards back for your approval.

The **Salinas Valley Builders Exchange, Central Coast Residential Builders Inc., and Escobar & Escobar Concrete Construction** all submitted similar comments (Attachments 1, 2, 3, respectively). Each letter states, "At a minimum, any redevelopment with less net impervious surface should be exempt from the requirements." Two of these commenters assert that the building industry and redevelopment projects in the City of Salinas are "...being singled out with these excessive standards when no other jurisdiction on the Central Coast is currently required to meet these types of standards."

The **Community Housing Improvement Systems and Planning Association, Inc. (CHISPA)** is the organization that the Water Board recently recognized with a resolution of appreciation for implementing low impact development (LID) principles at a senior housing redevelopment project in Salinas. CHISPA's comment letter (Attachment 4) is directed towards Salinas' Stormwater Management Program (SWMP), but the comments are relevant to the Standards (which implement the subject portions of the SWMP). CHISPA states, "The application of several regulations contained in this draft plan will be so cost prohibitive, it will essentially prohibit us from providing affordable housing and clean up blighted areas. Additionally, with the current market condition, these regulations will bring a halt to economic development." CHISPA points out some sections of the SWMP they believe will have a negative impact and unfair burden on small in-fill and redevelopment projects. CHISPA recommends, "...the definition of "significant redevelopment" and section 4.6(L) be re-written to exclude infill and redevelopment projects. Additionally, the 5,000 square foot threshold should be changed to one acre...consistent with state law relative to storm water pollution prevention plans."

Catherine Kobrinsky Evans (Attachment 5), an active member of the Salinas business community, is concerned the Standards will adversely affect redevelopment and urban infill development. She states, "...the excessive nature of the proposed standards will have an unfair and destructive effect on existing and any proposed infill projects, and will further have a chilling effect on attracting new businesses and employment opportunities in Salinas." She asserts that Water Board staff "...has intentionally refused to engage in any analysis of the economic impact of the proposed standards,

and apparently feels no obligation to do so." Ms. Kobrinsky Evans concludes the development standards "...should be waived for all urban infill development projects, regardless of size."

The Builders **Exchange of the Central Coast, Inc.** (Attachment 6) requests that, "...redevelopment projects be exempt from the same storm water standards imposed on larger projects and new development."

The **Salinas Valley Chamber of Commerce** (Attachment 7) is concerned the Standards, "...will have a disproportionately onerous impact on small business owners," and requests the Standards not be applied to redevelopment. The Chamber asks Water Board staff to review the costs born by development for any new requirement issued by the Water Board.

Mog Cobatu of Ausonio, Inc. (Attachment 8), a Castroville-based design and construction firm, points out an apparent disparity between the NPDES permit requirement language that led to the Standards, and Water Board and Salinas staff's previous interpretations of the requirement. He states, "The definition of "significant redevelopment" appears to be that of redevelopment with a net addition of 5,000 square feet; however, RWQCB and City of Salinas staff have taken a conservative interpretation of this term's definition to be any replacement of 5,000 sq ft or more of impervious surface." Mr. Cobatu emphasizes the importance of considering development impacts on a watershed basis and encouraging redevelopment. He recommends Water Board staff provide clarification to the definition of the term "significant redevelopment" in the Salinas NPDES permit.

Tom Carvey of Common Ground Monterey County (Attachment 9) states the Standards, "...as currently proposed, would exacerbate the [affordable housing] problem by making it much more difficult to build infill housing in the City of Salinas. For example, the threshold for triggering the regulations is a mere 5,000 square feet in area, which would include nearly all infill development in the City." Mr. Carvey points out the unique geologic conditions in Salinas and the difficulty of maximizing infiltration on sites with clay soils. Common Ground, "...would appreciate your consideration of a more balanced Storm Water Runoff Management Plan, one that better balances human needs with the environment."

Traci Roberts of Monterey County Farm Bureau (Attachment 10), and member of the Salinas NPDES Stakeholder Committee, raises many of the same points as previous commenters. Ms. Roberts proposes that "additional engineering and studies for in-fill and redevelopment project" not be required, "since they begin with impervious (hardscape) surfaces and end with impervious surfaces." Ms. Roberts asks the Water Board to "...clarify the interpretation of "significant redevelopment" for use by City staff and community members seeking to conduct projects. "Significant redevelopment" should apply only to additional impervious surfaces of 5,000 square feet or more and not to replacements on already developed sites."

Ken Tunstall (Attachment 11), a registered civil engineer and member of the Salinas NPDES Stakeholder Committee, interprets the NPDES requirement language to mean only additions of 5,000 sq. ft. of impervious surfaces trigger low impact development (LID) requirements, not replacement of impervious surfaces. Mr. Tunstall then suggests "significant redevelopment" be defined as "redevelopment of any parcel in excess of one acre, at which point the entire project would be subject to full LID requirements."

Steve Shimek of Monterey Coastkeeper, a member of the NPDES Stakeholder Committee, submitted a detailed comment letter on June 23, 2008 (Attachment 12). Mr. Shimek concludes,

"The Salinas Design Standards must clearly articulate the goal of new development matching the pre-development hydrologic and pollutant discharge condition. The Standards must clearly require a study of pre-project hydrologic conditions. Infiltration of storm water must be stated as

the required preferred option for dealing with storm water. Percolation and soil boring testing must be fine-grained enough to identify infiltration opportunities. The Salinas Standards should be rewritten and formatted similar to Contra Costa – a proven success story. In the interim, until Salinas develops adequate LID standards of their own, Contra Costa standards should be imposed upon Salinas. In addition, any requirements found in the RWQCB's February 15 letter to Phase 2 MS4s not contained in the Contra Costa Standards (Effective Impervious Area not greater than 5%, hydrograph matching within 1%, drainage density and time of concentration matching pre-project) should also be required."

Natural Resources Defense Council (NRDC) submitted four detailed comments in a June 23, 2008 letter (Attachment 13):

1. Numeric sizing criteria should be applied to all site designs;
2. The City's hydromodification control criterion needs to address peak flow volumes and hydrograph matching;
3. The Stormwater Development Standards should include specific guidance of the City Engineer to use when determining the impracticability of meeting the 5% [Effective Impervious Area] limitation, and waivers or other exceptions should be subject to public review;
4. The Stormwater Development Standards should place more emphasis on encouraging capture and reuse technologies as a means of complying with the LID requirements.

NRDC concludes,

"While the City of Salinas's Stormwater Development Standards could impose some numeric, enforceable requirements on development projects—which were entirely lacking in previous submissions to the Regional Board—the document currently before the Board still needs critical changes to meet the Clean Water Act's MEP standard. As detailed above, the most important changes involve tightening and clarifying the General Performance Criteria because these criteria are the overarching, enforceable standards for stormwater management.

If these criteria are not sufficiently stringent and unambiguous, the document will fail to require the federally mandated level of pollution reduction and receiving water protection. We urge the Regional Board to take decisive action on these issues now as Salinas is already years late in implementing its NPDES permit and LID standards."

STAFF RESPONSE

First, the volume of comments indicates the level of public interest in this matter and the need for more time to find a good balance of the various factors affected by the Standards.

Second, staff would like to point out that none of the commenters expressed concerns about applying the Standards to new development. Most of the commenter's are concerned with how the Standards will affect redevelopment. Staff agrees with many of the commenters in that redevelopment is better for watershed health than development of previously undeveloped areas. The simple intent of the "significant redevelopment" language of *Order No. R3-2004-0135, NPDES Permit for City of Salinas Municipal Storm Water Discharges* (Permit) is to create an exception to the Standards for small redevelopment projects, in part to create an incentive for the development community to pursue redevelopment projects, rather than new development projects.

Many comments apparently stem from differing interpretations of the "significant redevelopment" definition in the Permit. The Permit language is,

"The term "significant redevelopment" is defined as the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site. Significant redevelopment includes, but is not limited to expansion of a building footprint, or replacement of a structure; replacement of impervious surface that is not part of a routine maintenance activity; and land-disturbing activities related to structural or impervious surfaces. Where significant redevelopment results in less than 50 percent of the impervious surfaces of a previously existing development, and the existing development was not subject to Development Standards, the BMP design standards discussed below apply only to the addition, and not the entire development." (emphasis added)

Staff agrees this Permit language is somewhat ambiguous, especially use of the word "replacement" in the second sentence. However, staff clarified this requirement in a July 2007 letter to Salinas staff (see Attachment 14). The letter states "...if a developer decides to replace one impervious surface with another and will increase the impervious cover on that site by 5,000 sq. ft., then the LID standards would apply (emphasis added)." In other words, the development standards only apply to redevelopment projects that result in a net addition of 5,000 sq. ft. of impervious surface. For example, if a project were to replace a ½ acre parking lot with a mixed use development and there was no net increase in impervious area, the Standards would not apply. This interpretation is consistent with that suggested by Mr. Cobatu and Mr. Tunstall. This interpretation provides a reasonable and fair exception for small redevelopment projects. The Standards are already clear in this regard (see excerpts from Section 1.4.1 and Appendix D in Attachment 15), so no changes are needed.

One commenter suggests Water Board staff is singling out projects in Salinas. This is not the case. Staff expects all communities in the Central Coast Region to develop standards that will lead to improved control of urban stormwater runoff. Recall staff's February 15, 2008 letter to Phase II communities (Attachment 16). Salinas is just slightly ahead of these communities because it is the only Central Coast community large enough to be subject to Phase I stormwater regulations.

Ms. Kobrinsky Evans asserts that Water Board staff "...has intentionally refused to engage in any analysis of the economic impact of the proposed standards, and apparently feels no obligation to do so." Water Board staff has in fact considered the cost of requiring LID. A December 2007 EPA study found that LID projects are generally less expensive than conventional development projects. The EPA study evaluated 17 LID projects throughout the United States and found that in the majority of cases, the developer realized significant savings due to reduced costs for site grading and preparation, stormwater infrastructure, site paving, and landscaping. The study identified other benefits of LID, including improved aesthetics, expanded recreational opportunities, increased property values due to the desirability of the lots and their proximity to open space, increased total number of units developed, increased marketing potential, and faster sales. See Attachment 17 for a summary of this study.

With regards to comments by Steve Shimek of Monterey Coastkeeper, staff shares Mr. Shimek's goal to ensure the Standards clearly require maintenance of pre-development hydrology. Mr. Shimek points out omissions and weaknesses in the document that staff intends to work with Salinas staff to correct in the coming weeks. Most noteworthy is that a requirement for developers to provide a study of pre-development hydrology is missing. The Standards state that mimicking pre-development hydrology is the "first tier" of stormwater management,¹ but the Standards do not clearly require a study of pre-development hydrology. The NPDES permit specifically requires such

¹ Salinas Development Standards Section 1.5 states, "Overall, stormwater management practices for development shall rely on a "tiered" approach. The first tier shall be planning and site design measures to avoid and preserve natural drainage features, minimize topography changes, maintain the same overall size of drainage areas that discharge to receiving waters, and to mimic natural pre-development hydrology."

a study because it is essential to establish a goal for a development to be designed to meet.² Staff will ensure Salinas revises the Standards to require a study defining pre-project hydrology.

Many of Mr. Shimek's other comments apparently stem from a belief that Salinas is setting up the Standards so they will not apply to future development (e.g., "Salinas does not want these informative maps included in the Standards and instead prefers the Standards to default to a requirement for underdrains as noted above"). Staff believes Salinas is properly balancing the need to maximize infiltration with other important considerations. For example, Salinas has shallow groundwater in some areas and is concerned that infiltrating stormwater in these areas could exacerbate flooding or threaten structures, so the Standards discourage infiltration BMPs where seasonally high groundwater is less than 10 feet below ground surface. Likewise, Salinas is concerned standing water could cause vector control problems (e.g., mosquitoes and West Nile Virus), so the Standards require best management practices to be designed to drain completely within 72 hours. These types of city-specific considerations are why the NPDES permit requires Salinas to develop their own standards. Staff cannot possibly anticipate all unique conditions in each municipality and prescribe detailed standards for each of them. This is also why staff cannot require Salinas to adhere to Contra Costa County's standards until the Standards are promulgated, as Mr. Shimek suggests. The Contra Costa County standards are based on a different NPDES permit and are specific to hydrology, soils and development unique to Contra Costa County.

Mr. Shimek suggests that Salinas be held to the interim hydromodification control criteria contained in staff's February 15, 2008 letter to the communities subject to Phase II stormwater regulations. The primary purpose of the February 15, 2008 letter is to direct the Phase II communities is to develop their own hydromodification control criteria in the coming years. Interim criteria are only necessary until the Phase II communities develop their own criteria. Salinas is presently developing its own hydromodification control criteria, so interim criteria should not be necessary. The Salinas Standards are based on requirements set forth in the 2005 NPDES Permit and have been in development for over three years. Staff's comments on the standards and direction to the city have been consistent with the intent and expectations on Phase II communities as articulated in the February 15 letter. Staff believes the changes to the Standards directed by staff and public input will meet the intent of these expectations. There is still a lot of debate surrounding the interim hydromodification criteria presented in staff's February 15 letter. In fact, staff is currently preparing a follow-up letter to the February 15 letter that will provide Phase II communities with additional time and flexibility to develop their own interim criteria. Staff agrees with Mr. Shimek in that control standards must be numeric and measurable wherever possible, but disagrees that Salinas must be required to use the interim hydromodification control criteria of the February 15 letter.

With regards to NRDC's comments, staff generally agrees with all four of NRDC's specific comments, especially that both peak flow rates and volumes should be controlled to prevent hydromodification impacts. Staff will ensure Salinas revises the Standards to address NRDC's comments.

RECOMMENDATION

These comments emphasize why more work must be done before the Standards are ready for Water Board approval. Staff recommends the Water Board delay consideration of the Standards and direct Water Board staff to make them available for consideration at the Water Board's regular meeting in September 2008.

² NPDES Permit Attachment 4, Section III.a.i.5 states the development standards must, "Require developers to prepare and submit studies analyzing pre- and post- project pollutant loads (including sediment) and flows resulting from projected future development. Require incorporation of structural and non-structural BMPs to mitigate the projected increases in pollutant loads in runoff."

ATTACHMENTS

1. Salinas Valley Builder's Exchange letter dated June 20, 2008
2. Central Coast Residential Builders letter dated June 20, 2008
3. Escobar & Escobar Concrete Construction letter dated June 20, 2008
4. CHISPA letter dated June 20, 2008
5. Catherine Kobrinsky Evans letter dated June 20, 2008
6. Builders Exchange of the Central Coast letter dated June 19, 2008
7. Salinas Valley Chamber of Commerce letter dated June 17, 2008
8. Ausonio Inc. letter dated June 23, 2008
9. Common Ground Monterey County letter dated June 20, 2008
10. Monterey County Farm Bureau letter dated June 23, 2008
11. Ken Tunstall email dated June 24, 2008
12. Monterey Coastkeeper letter dated June 23, 2008
13. Natural Resources Defense Council letter dated June 23, 2008
14. Water Board letter w/ NPDES permit clarification dated July 27, 2007
15. Salinas Stormwater Development Standards excerpt re: redevelopment
16. February 15 letter to Phase II Municipalities re: SWMP expectations
17. EPA Fact Sheet, "Reducing Stormwater Costs through Low Impact Development Strategies and Practices," dated December 2007