

Proposition 84 Storm Water Grant Program: Overview of Comments on Draft Guidelines

Below is a table summarizing comments received on the Draft Proposition 84 Storm Water Grant Program (SWGPs) Guidelines (Guidelines) (dated November 14, 2008). The comment period was from November 18 - December 18, 2008. Comments were collected during three Draft Guidelines Workshops and 316 comment emails were received by the comment deadline. The comments presented below represent comments received via e-mail and during the workshops.

| Topic | Comment | Tally | Region | Response |
|---|--|-------|----------|---|
| Minimum & Maximum Grant Amounts Section VI.B (Pages 6-7) | The minimum grant amount seems too high. | 2 | 3, 4 | - No smaller grant amount was proposed by the stakeholders. Reducing the minimum grant amount of \$250,000/project is not recommended due to the increased project administration costs associated with many small projects (i.e., more small projects equals more staff time for project management). |
| | The maximum grant amount should be lowered to \$3 million. | 6 | 3, 4 | + The maximum grant amount has been changed to \$3 million/per project. The Proposition 40 Urban Storm Water Grant Program had a maximum grant amount of \$1 million per project. Having a lower maximum grant amount will allow the State Water Board to fund more projects and better equalize the projects competing for funds. |
| Match Requirements Section VI.B (Pages 6-7) | Match should be reduced for disadvantaged communities (DACs) that have a population greater than 20,000 persons. | 6 | 3, 5, 6 | + The Draft Final Guidelines have been updated to add an additional match category for DACs. There are now four different match categories: 1) Small Severely DACs, 2) Small DACs, 3) DACs, and 4) Others. |
| | Match should be based on the requested grant amount rather than project cost. | 3 | 6 | - Applicants should demonstrate an investment in the entire project, not just the grant portion. The match calculation method is consistent with other State Water Board, Division of Financial Assistance (Division) funding programs. Unlike many other grant programs, most of these grant funds will be used to help communities comply with their storm water requirements, while promoting innovation (e.g., low impact development). |
| | Applicants should be allowed to use grant funds as match. | 7 | 5, 6 | - The Draft Final Guidelines have been modified to reflect that grant funds cannot be used for the <u>required</u> match. However, grant funds may be used for all remaining project costs in excess of the <u>required</u> match. |
| Timing Section V.Figure 1 (Page 5) | The Full Proposal application period seems too short. Should be extended to 90 days. | 1 | 3 | +/- This was an initial comment made at a workshop and after further discussion about the application process, the requested extension did not seem necessary. The Full Proposal period has not been extended. |
| Concept Proposal Appendix E (now Appendix D) | Disadvantaged communities (DACs) should be given bonus points in the Concept Proposal. | 2 | 5, 6 | + Projects that provide a direct benefit to DACs / Environmental Justice (EJ) communities were allocated 2 points in the Concept Proposal according to Draft Guidelines. Based on this comment and feedback at the workshops, the Draft Final Guidelines allocate up to 5 bonus points in the Concept Proposal for projects that directly benefit DACs/EJ communities. This is consistent with the Full Proposal. |
| | Applicant track record scoring should simply be negative 5 points for an applicant who has prior experience of not performing adequately under a prior grant because the information available to score this criterion is insufficient and inconsistently recorded across grant awards, and therefore too subjective to support the gradations in the proposed scoring. | 2 | 8, CASQA | + The Draft Final Guidelines eliminate positive points for this criterion so that only applicants that have not performed adequately in the past are penalized. |
| | The Guidelines reflect the language in Assembly Bill 739 about program preferences and it is very important to storm water quality agencies that the language is not changed. Unfortunately, because of funding challenges, many storm water quality agencies have not been able to participate significantly in the often long and complicated processes of developing Integrated Regional Water Management Plans (IRWMPs). Therefore, the language "consistent with" is vital to storm water quality agencies having an opportunity to receive SWGP funds. | 2 | 2, CASQA | + This language comes directly from Assembly Bill 739 (Stats. 2007, Chapter 610), and therefore has not been changed. |

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| Concept Proposal Appendix E (now Appendix D) | Currently, applicants can get 0-20 points for how well the project reduces and prevents storm water discharges. While this may be appropriate for a low impact development (LID) project, it may not be appropriate for total maximum daily load (TMDL) projects and may disqualify them. | 1 | 8 | + The Draft Final Guidelines were modified, as follows, to be consistent with language in Proposition 84: "How well does the proposed project appear to reduce and prevent storm water contamination of surface waters?" The reference to "discharges" is removed. |
| | Number 2 for the scoring criteria should be revised to say, "How well does the proposed project appear to reduce or prevent storm water discharges, or if infeasible to reduce or prevent flows at the source, how well does the proposed project capture and treat storm water discharges?" | 1 | 2 | |
| | The language in question 34 of Appendix E – Concept Proposal Application and question 46 in the Appendix F-1 Full Proposal Application does not match the "Waiver of Litigation Rights" Section on page 16. If the intent of the language is to simply ensure that the applicant is aware that even if, due to litigation, a legal permit requirement is no longer required, the terms of the grant agreement would still be in effect, then the question should be reworded to clearly show this intent. The way it is worded seems like the State Board would not fund projects in which the applicant is involved in a legal challenge to the Board. | 1 | 9 | - As noted in Section VIII.E of the Draft Final Guidelines, it is not appropriate or legal for grant funds to be used for litigation against the Water Boards. Therefore, the Draft Final Guidelines requests information regarding whether or not we are potentially funding an entity that is currently suing or planning to sue the Water Boards. Question 46 in the Full Proposal is reworded in the Draft Final Guidelines to match Question 34 in the Concept Proposal application. This question/language is consistent with the criteria used in other Division funding programs. |
| | Should incorporate language in Q.13 (now Q.14) that allows project proponents to "begin to solve..." or "devise a proposed solution..." | 1 | 2 | + The Draft Final Guidelines read, "How does the project address and <u>help</u> solve the identified water quality and other problem(s) identified in Question 11?" |
| | Number 5 in the scoring criteria should be revised to include water supply benefits, and community enhancement benefits (for example, where LID can combine with urban greening projects) - to be consistent with the language in Appendix F-1 (now Appendix E-1), Q.28. | 1 | 2 | + Urban greening / green infrastructure principles were added as a source of points for Multiple Benefit Projects. |
| | The two-step grant process is liked because it is a big time saver. | 1 | 3 | + Comment noted. No change requested. |
| Full Proposal Appendix F (now Appendix E) | Question 4a should give additional guidance on how the applicant can determine whether the project "achieves the pre-development/post-development hydrograph requirements for the site. The issue is resource-related. To make a determination of this type, one would normally hire a hydrologist to help make this determination. | 1 | 2 | +/- More information / guidance will be provided during Full Proposal workshops, and made available on our website. The Division of Financial Assistance staff will work with the Division of Water Quality staff to determine the best approach for applicants to provide this information. |
| | Number 4a and 5 should be reconciled. Facilitating the infiltration of water into the ground may inadvertently cause (as alluded in Q21), "positive or negative impacts to other pollution problems." | 1 | 2 | + Both of these questions are important for different reasons, as they provide explanations of benefits / impacts associated with the project. However, the scoring criteria now clarifies that points are to be given to projects that infiltrate water without causing negative impacts. |
| | For the "Planning" scoring criteria, other plans and programs that are related to the management of water and land use should be allowed to qualify for funding under the IRWM plan section. | 1 | 2 | - This language is a program preference taken from Assembly Bill 739 and therefore has not been updated. Applicants can receive points for other planning under the "Planning" section (e.g., General plans, etc...) of the Full Proposal. |
| Project Types Section VI.C (Page 8) | Support low impact development (LID) as the program focus. | 1 | 6 | + Comment noted. No change requested. |
| | Support complying with total maximum daily load (TMDL) requirements as a project type because low impact development (LID) is not the best management practice for some pollutants of concern (e.g., litter/trash), so the clause: "Preference will be given to TMDLs that cannot be addressed through an LID approach." is an important aspect to include in the definition of eligible projects. | 1 | CASQA | + Comment noted. No change requested. |

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| Project Types Section VI.C (Page 8) | The focus on approved total maximum daily loads (TMDLs) is too restrictive. Either the existing TMDL-based criterion should be expanded to include pollutants on the State's 303(d) list or "watch" or monitoring lists, or that a separate criterion be developed and a maximum amount of additional funds be set aside for projects addressing high priority pollutants for which a TMDL has not yet been adopted. The TMDL should only have to have approval by the Regional Water Boards, and not all the way through Environmental Protection Agency (EPA) approval. | 6 | 2, 8, CASQA, BASMAA | - According to California law, an "established" TMDL is one that has been adopted by both the applicable Regional Water Board and the State Water Board, has been approved by the Office of Administrative Law and paid the appropriate fees to the Department of Fish and Game. Since Assembly Bill 739 specifically identifies "established" TMDLs as the eligible project type, 303(d) listed waters do not qualify. |
| | More funds should address urban storm water pollution needs like structural trash controls and treatment solutions for current runoff problems (e.g., vortex separators or catch basin inserts). A large portion of water pollution comes from urban runoff in largely built-out areas of California. | 303 | 1 (12 people) 2 (276 people) 3 (6 people) 5 (6 people) 8 (2 people) 9 (1 person) | - This SWGP's focus is on low impact development (LID), with a limited amount of funds available for established total maximum daily loads (TMDLs). Structural trash controls are eligible for funding if part of an established TMDL (see above). As outlined in the Vision of the Guidelines, TMDLs and LID are identified as key objectives and actions in the <i>Water Boards Strategic Plan: 2008-2012</i> . Further, both the State Water Board (in adopting Resolution No. 2008-0030) and the Storm Water Advisory Task Force recognize the importance of promoting this storm water management practice. While we recognize the need for traditional storm water treatment solutions, due to the limited amount of available funding and desire to promote LID, the Draft Final Guidelines have not been updated to include structural trash controls and treatment solutions that are not a LID or established TMDL project. |
| | A third project type should be added, as allowed by the Public Resources Code § 75050.2: "Implementing best management practices, and other measures, required by municipal storm water permits issued by a California Regional Water Quality Control Board or the State Board." | 1 | 2 | |
| | Funds for the two project types should be more evenly divided. | 3 | 2, BASMAA | - The program focus is LID. Many TMDL projects may be approached through LID. |
| | Outreach funding should be available, as part of an implementation project, because it has been proven to be integral to the success of Municipal and communities storm water programs. | 2 | 1 | + The Draft Final Guidelines have been updated to require that projects include an education and outreach piece, which is directly related to the project. Education and outreach costs directly related to an eligible project type may be funded with up to 10% of the grant amount, and as part of the grantee's match. |
| | | | | |
| Public Resources Code (PRC) § 75072 Planning & Monitoring Projects Appendix G (now Appendix F) | Supported because it makes funds available for projects that are critical to storm water quality and help achieve the purpose of the storm water funds identified in Proposition 84 "for the reduction and prevention of storm water contamination of rivers, lakes, and streams." | 1 | CASQA | + Comment noted. No change requested. |
| | A "local assistance" model for small communities should be utilized to overcome regulatory bias. | 1 | 1 | + Local assistance is a possible project type that may be funded through Public Resources Code § 75072 Planning and Monitoring Projects. Applicants are encouraged to work with their Regional Water Board staffs. |
| | The wide range of possible projects listed is supported. | 1 | 2 | + Comment noted. No change requested. |
| | It is unclear why the second half of the project list is prefaced by the "Other projects" designation. | 1 | 8 | + To avoid confusion, "other projects" has been removed from the Draft Final Guidelines. |
| Definitions Appendix C (now Appendix J) | Define disadvantaged communities. Can the community be an unincorporated area or does it have to be a defined block group neighborhood? What census information must be used? Will maps need to be provided? How will "direct benefit" be defined? Can a pocket of substandard housing, for example a trailer park, be considered a "disadvantaged community"? | 1 | 6 | + The following definition was added to Appendix J (Definitions): "Disadvantaged Community – a community with a median household income less than 80% of the statewide average (PRC § 75005[g])." More information on disadvantaged communities may be found in Appendix C of the Draft Final Guidelines. |
| | Definition appendix should be the very last thing in the Guidelines. | 1 | 4 | + The Definitions appendix (Appendix J) now appears at the end of the Draft Final Guidelines. |

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| Definitions Appendix C (now Appendix J) | Eligible applicants should be extended to include regional or statewide organizations comprising or representing individual local agencies defined as eligible in the guidelines. This would include Joint Powers Authorities (JPAs), Councils of Government (COGs), and non-profits whose members comprise local public agencies and that represent local public agencies. | 4 | 2, 8, CASQA, BASMAA | + If the entity is a JPA, comprised entirely of local public agencies, then the organization itself would be considered a local public agency. Many JPAs would fall under this category, but the applicant will need to explain what entities comprise the JPA in the application to demonstrate that the JPA is eligible. Reference to JPAs as an eligible entity has been added to Section VI.A of the Draft Final Guidelines. |
| | Support the current definition of low impact development (LID) in the Guidelines because it addresses nuances while keeping the focus of LID techniques on the goal of maintaining or restoring natural hydrologic functions, rather than on the exact best management practices to achieve that goal. | 1 | CASQA | + Comment noted. No change requested. |
| | Define overhead and indirect costs because agencies may describe these terminologies different. | 1 | 8 | - Overhead and indirect costs are general principles and concepts. Grantees should only invoice for direct costs and include backup documentation. Grantees are encouraged to work with their Project Manager during the grant agreement process and throughout their project's implementation to address questions related to overhead and indirect costs. The Draft Final Guidelines have not been updated. |
| | Define "restore" (used as part of the low impact development definition). | 1 | 4 | + The following definition, which is consistent with Public Resources Code § 75005, was added to Appendix J (Definitions) of the Draft Final Guidelines: "Restore – to improve physical structures or facilities." |
| Clarification Requested | The paragraph about the 5% set-aside for disadvantaged communities is confusing. Is it disadvantaged or small disadvantaged? It also refers readers to Appendix D for more detail on disadvantaged community eligibility requirements, but Appendix D does not provide guidance in eligibility requirements for defining what a disadvantaged community (DAC) is. (Section III). | 2 | 6 | + Originally the 5% set-aside was for small DACs and small severely DACs, but now it is for any DACs (MHI < 80% of Statewide MHI), with preference given to small DACs. |
| | Examples of acceptable documentation should be provided to grantees in advance (grantee handbook). | 1 | 1 | + There is a Project Director's Resource Guide online: (www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/docs/pd_resource_guide.pdf) that describes the grant process from start to finish. |
| | The Guidelines should suggest steps to follow (similar to those in the General Plan Guidelines, which strictly apply to local agencies in adopting and revising their General and Specific Plans) for notifying California Native American Tribes if that tribe has traditional lands located within the area of the proposed project. Appendix H (now Appendix G) references the General Plan Guidelines at the Office of Planning and Research (OPR), but they are written for a different purpose. | 1 | 5 | - The Guidelines include contact information for the agencies (e.g., OPR and the Native American Heritage Commission) that can provide assistance. |

KEY

- + Comment addressed in Draft Final Guidelines
- Requested change not incorporated in Draft Final Guidelines
- BASMAA Bay Area Stormwater Management Agencies Association
- CASQA California Stormwater Quality Association