Comment 136

Public Comment
Phase II Small MS4 General Permit
Deadline: 9/8/11 by 12:00 noon

TALLMAN COMMUNITIES
REAL ESTATE DEVELOPMENT AND ENTITLEMENTS

RECEIVED
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SWRCB Clerk

September 7, 2011

VIA ELECTRONIC MAIL ONLY

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: DRAFT General NPDES Permit for Storm Water Discharges From Phase II Small Municipal Separate Storm Sewer Systems (Small MS4s)

Dear Ms. Townsend,

Please present this letter to the members of the California State Water Resources Control Board as our comments to the above referenced draft document. Our company represents land owners, developers and builders with large master planned communities in the local state and federal entitlement process. We have reviewed the proposed permit for Small MS4's and have the following comments for the Board's consideration:

General Comment:

136.1 → Our overall impression of the propose General Permit (the "Permit") is that it takes a giant leap forward, imposing substantially higher standards for storm water quality while lacking specifics as to the means required to meet these standards. Further there is not analysis of the fiscal impact to local government and the overall state's economy of implementing the requirements of the Permit. We have heard estimates well into the hundreds of thousands of dollars for a single jurisdiction to meet the public outreach requirements without any identified funding source, further strapping local governments already struggling with budget shortfalls and cuts. **We urge the Board to delay action**

on the Permit until such time as the state's economy shows signs of recovery or at the very least phase in the implementation over a period of time (e.g. 5 to 7 years).

Exceptions:

136.2 → **Section E.12.b.3i(a)(4) –** This section provides for an exception to the Permit requirements for private projects "for which a planning application has been deemed complete", however the Permit fails to define this milestone. In discussion with Staff we have been informed that the intent of this language is to mean a small lot tentative map. If this is the case the implementation of the new Permit could have dramatic impacts to a projects entitlements, state and federal regulatory permits and put many Mello-Roos bond districts at risk. We encourage the Board to amend this section to read as follows:

(4) For any private development project in the categories specified above for which any of the following entitlements have been completed on or before the Permit effective date, the treatment standards shall not apply:

1. **The project shall have, or be a part of, an approved Specific Plan, for which an EIR has been certified, and has been approved by the local land use authority; and**

    a. **The project is subject to a Development Agreement vesting the entitlements of the approved Specific Plan to the land owner; and**

    b. **The project has applied for, or received, a 404 Permit from the US Army Corps of Engineers for the fill of wetlands on the property covered by the Specific Plan and Development Agreement.**

2. **Any project that is a part of a Community Facilities District for Infrastructure (Mello-Roos District), or other similar public financing district for infrastructure for which bonds have been sold, or taxes are collected for the purpose of construction public infrastructure facilities.**

3. **Any project for which a planning application has been filed with the local land use authority, and said authority has deemed the application to be complete and so long as the project applicant is diligently pursing the project. Diligence pursuance may be demonstrated by the project applicant's submittal of supplemental information to the original application, plans or other documents required for any necessary approvals for the project by the Permittee.**

Most large scale master planned communities were approved years ago and have committed to financial requirements, species and habitat mitigation or preservation and special tax districts that would be impractical, if not impossible, to undo or revise to be compliant with the Permit. It is our opinion that in cases where onsite species and habitat have been preserved in perpetuity and the boundaries of which cannot be modified would

require the take of land intended for development which in most cases is subject to Mello-Roos tax. It is likely that this scenario would result in bond default which would only have an impact on the local authority, but have a ripple effect on the use of this public financing tool in California. The Board's action on the Permit **must** consider how prior entitlement actions affect a landowner's ability to comply without seriously impacting the financial viability of the project. Even in robust economic times this impact is not lessened, we urge the Board to consider the language amendment proposed above.

We appreciate the opportunity to review the Draft Permit and look forward to the same opportunity to review the next draft following review of comments for all concerned parties.

Sincerely,

TALLMAN COMMUNITIES

John M. Tallman, Jr.
President

cc: Senator Ted Gains, California State Senate
Assemblywoman Beth Gains, California State Assembly
Kelye McKinney, City of Roseville