



August 22, 2008

Dominic Roques
Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Phase II MS4 Storm Water Management Plan – City of Lompoc

Dear Dominic Roques:

The Home Builders Association appreciates the opportunity to comment on the City of Lompoc Storm Water Management Plan published on your web site, with public comment due by August 22, 2008.

As you know, time limits for the Aug. 1 meeting between the HBA, many local municipalities, and the Water Board staff precluded discussion on many of the issues raised in this letter and the letter we presented at that meeting. The Home Builders Association believes that there are sufficient issues and concerns raised by this process to warrant a public hearing on Lompoc's plan before the Water Board.

Please accept the following comments on behalf of the Home Builders Association.

1. **Time to complete Interim Hydromodification Management Plan (“HMP”)**. We believe that it would be prudent that the City of Lompoc be allowed two (2) years to complete the plan, rather than the one (1) year proposed by the Regional Water Quality Control Board (the “Water Board”). Several Central Coast cities have expressed concern to us regarding the HMP one (1) year deadline. In addition, our members experience in Southern California has indicated that a one-year time limit is not realistically achievable.

It is important that the HMP be well researched, carefully studied, practical, and reflect site characteristics such that future liability issues are minimized to the greatest extent possible. We do not want a HMP created in a “hurried” manner to meet an artificially restrictive deadline. Most Central Coast jurisdictions have small staffs, thereby lacking the human and financial resources to realistically comply with the one (1) year deadline. In such cases, complying with the one year deadline could result in a one-size-fits-all approach which is not the desired result.

2. **SWMP Post-Construction Application Cut-Off Point**. The most appropriate approach to implementing hydro modification/LID methods is at the beginning of the project design phase. The later in the process that the post-construction storm water methods are attempted to be applied to a project, the greater the cost and timing burdens that are placed on the jurisdiction and the project and the least likely that an efficient, less expensive, and effective solution will be achieved.

A Tentative Subdivision Map cut-off point for the application of the new standards, as proposed by the Water Board is much too late in the design process. A better approach for cut-off is to use the “deemed complete” point in the project entitlement process. Projects that have not been “deemed complete” would be best able to implement the more desirable LID solutions without unnecessary hardship on the applicant or jurisdiction. A project application that has been accepted by a jurisdiction (“deemed complete”) as ready for processing and a public hearing should not have to be re-designed to meet the new standards. By that time, both the applicant and jurisdiction have expended significant time and funds on the project. During the transition process, projects should be encouraged to voluntarily use LID methods during their pre-application stage.

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We propose that projects whose application has been “deemed complete” by the City of Lompoc be exempt from the new post construction standards, but would be encouraged to comply with the regulations on a voluntary basis. Obviously, all projects in later stages of the entitlement, design, or construction process would be exempt from the application of the regulations as well.

The term “deemed complete” comes from the Permit Streamlining Act. It requires public agencies (including charter cities like Santa Barbara and San Luis Obispo) to follow standardized time limits and procedures for specified types of land use decisions. The act applies to development projects that need adjudicatory approvals such as tentative maps, conditional use permits, and variances. It does not apply to legislative acts, like general plan amendments and rezonings (or development agreements or specific plans), or to ministerial acts, like lot line adjustments, building permits, or certificates of compliance.

Public agencies must establish one or more lists specifying the information an applicant must submit for a development project to be deemed complete. For instance, San Luis Obispo requires an application to include a vicinity map, statement on zoning, site development, description of any common areas and open space, CC&Rs, setbacks, drainage, faulting, slope analysis, technical reports like biological, cultural, noise, traffic, soils, engineering geology, and noise, archaeological recourse inventory, endangered species survey, preliminary title report, school site, environmental assessment, and an affordable housing plan. Some of these studies and reports will not be needed for each application, but it is obvious that getting a project to be "deemed complete" takes extensive work. In addition, once the agency receives the application (with fees), the agency has 30 days to either deem the application complete or notify the applicant what needs to be done to be deemed complete. If the city does not respond within 30 days, the application is deemed complete.

Once the application is deemed complete, then the environmental review process begins. Once that environmental document is approved, the city or county has 60 days if the environmental document is a negative declaration or 180 days if the project required an EIR to approve or deny the project. Cities and counties generally approve the environmental document at the same hearing as they approve/deny the project

3. **Project Phase-In Period Clarification.** Although it is not necessarily spelled out in the current plan, it should be clarified that the application of the new post-construction regulations to projects in the entitlement process would begin at the adoption of the City’s Interim HMP (proposed at two (2) years in item 1 above) and would be applied to all projects that have not been “deemed complete” (item 2 above) at that time.
4. **Incorporating assessments from project geotechnical and soils consultants.** All sites throughout the Central Coast do not have the same soils/site conditions. Specific site conditions may preclude applying the new standards due to low infiltration capability of soils or the potential for damage to other infrastructure. Applying the standards in those conditions can result in a public safety hazard.

We recommend that the city’s storm water plan include a communitywide analysis by a geotechnical engineer to determine which areas within the boundary are suitable for infiltration and at what rate.

We also suggest that the city’s storm water plan emphasize that it will rely on the applicant’s geotechnical/soils consultant’s analysis as part of the decision-making in determining when and where infiltration/low impact development BMP’s are practical, how much is achievable, and what other best management practices should be used when infiltration is not usable.

5. **Normal maintenance of existing infrastructure by public agencies, project developers, and home owners associations be exempted from the new standards.** When maintaining existing infrastructure, existing site conditions may preclude applying the new standards. For example, when resurfacing an existing roadway that has no “extra” land available, it will not be possible to provide additional land for filtration purposes.

We propose that normal maintenance of existing infrastructure by public agencies, project developers, and home owners associations be exempt from the new standards.

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6. **The “pre-development” definition is critical.** How pre-development is defined is critical as the baseline for determining the increase in storm water volumes and rates for new development on a site. Defining pre-development as the original natural condition, regardless of current usage, would make many urban infill, smart growth projects infeasible. The Water Board’s approach seems counter productive to the current sustainability and new urbanism planning concepts.

We believe pre-development should be defined as the immediate pre-project condition.

7. **Economic balance:** As previously mentioned, most Central Coast municipalities have small staffs and very limited financial resources. We urge the Central Coast Regional Water Quality Control Board to allow local governments to use housing affordability, their General Plan goals promoting new urbanism (smart growth), market-place economics, local municipal economics, and local public acceptance as factors in determining what are the best methods to implement the MS4 Storm Water Management Plans.
8. **Storm water management plans and HMP’s should include stakeholder involvement:** Each storm water management plan should state that the city or county will involve stakeholders, including the HBA in the development of the community’s HMP and criteria.
9. **Countywide Technical Advisory Committee:** The RWQCB should encourage and assist the various jurisdictions of each county in the formation of a Technical Advisory Committee to provide advice on the preparation of the HMP’s. In some counties, there may already be a format for such collaboration, but in others there may be none. In those cases where there is not a collaboration vehicle, we urge that the RWQCB take the proactive approach of helping organize such a group. The County of San Diego is successfully using such an approach.

The technical committee can help provide guidance and share information in various technical specialties. The result should be HMP’s that are feasible, practical, and usable, and achieve the intended objectives of the MS4 permit.

As you know, time limits for the Aug. 1 meeting between the HBA, many local municipalities, and the Water Board staff precluded discussion on many of the issues raised in this letter and the letter we presented at that meeting. The Home Builders Association believes that there are sufficient issues and concerns raised by this process to warrant a public hearing on Lompoc’s plan before the Water Board.

We appreciate your consideration of our comments.

Sincerely yours,

Jerry Bunin
Government Affairs Director
Home Builders Association

cc: Stacy Lawson, Lompoc Senior Environmental Coordinator

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