

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

**STAFF REPORT FOR REGULAR MEETING OF DECEMBER 4-5, 2008**

Prepared November 14, 2008

**ITEM NUMBER: 22**

**SUBJECT: Required Revisions to the City of Salinas Stormwater  
Development Standards, Monterey County**

**SUMMARY**

On September 4, 2008, the Central Coast Water Board (Water Board) adopted Resolution No. R3-2008-0068, which approves the City of Salinas Stormwater Development Standards, contingent on the City of Salinas incorporating a list of required revisions into the Development Standards. On September 22, 2008, staff sent Resolution No. R3-2008-0068 with our Table of Required Revisions to the City of Salinas (see **Attachment 1**). The City of Salinas and Monterey Coastkeeper both dispute the Table of Required Revisions, particularly Required Revision No. 3. These disputes stem from various interpretations of the Water Board's action on September 4, 2008. Both parties have petitioned State Water Resources Control Board (State Water Board), but have asked their petitions be held in abeyance pending the outcome of this Water Board meeting.

Staff originally placed this item on the agenda to ask the Water Board to clarify its intent regarding Required Revision No. 3. If the Water Board's intent was to ensure the City of Salinas's Development Standards include effective hydromodification requirements, staff recommends including the language in Sections 1.5 and 1.5.3 of the Development Standards as outlined in the September 22, 2008 letter. Additionally, staff recommends revisions to language in Sections 1.5 and 1.5.3. Together, these changes are needed for the City of Salinas to meet the required Maximum Extent Practicable standard in the stormwater regulations.

**DISCUSSION**

This item is a continuation of the City of Salinas Stormwater Development Standards item the Water Board considered at its July 11, 2008 meeting in Watsonville and its September 4, 2008 meeting in San Luis Obispo. At those meetings, the Water Board heard and considered comments by the City of Salinas staff and several interested persons, including environmental organizations and members of the City of Salinas business community. Water Board staff also discussed its review of the draft Development Standards and recommended approval of the document with a list of required revisions. At the September 4, 2008 hearing, the Water Board adopted Resolution No. R3-2008-0068, which approved the City of Salinas Stormwater Development Standards, contingent on the City of Salinas incorporating a list of required revisions ("Table of Required Revisions") into the Development Standards.

Staff's report and all written comments, as well as the audio of the July 11 and September 4, 2008 hearings, are available on the Water Board website at:

[http://www.swrcb.ca.gov/centralcoast/board\\_info/agendas/2008/jul/item18/index.shtml](http://www.swrcb.ca.gov/centralcoast/board_info/agendas/2008/jul/item18/index.shtml)  
(July 11, 2008)

[http://www.swrcb.ca.gov/centralcoast/board\\_info/agendas/2008/sept/item08/index.shtml](http://www.swrcb.ca.gov/centralcoast/board_info/agendas/2008/sept/item08/index.shtml)  
(September 4, 2008)

### **Disputed Intent of Water Board Direction**

At the September 4, 2008 hearing, after considering the comments, the Water Board voted to adopt the Required Revisions with some changes. After the hearing, staff revised the Table of Required Revisions according to staff's understanding of the Water Board's direction and intent. Staff removed language that may be redundant with other sections of the Development Standards, while preserving the document's hydromodification controls. Staff sent the Table of Required Revisions to the City of Salinas and other interested persons in a September 22, 2008 letter (see **Attachment 1**).

The City of Salinas and Monterey Coastkeeper both dispute the September 22, 2008 Table of Required Revisions. These disputes stem from various interpretations of the Water Board's action on September 4, 2008, specifically removal of Sections 1.5.3.4.A and 1.5.3.4.B from Required Revision No. 3. Monterey Coastkeeper petitioned the State Water Board on October 3, 2008. Monterey Coastkeeper's petition is included here as **Attachment 2**. The City of Salinas petitioned the State Water Board on October 6, 2008. The City's petition is included as **Attachment 3**.

The Water Board's Executive Officer sent a letter explaining for the September 22, 2008 Table of Required Revisions to the City of Salinas and Monterey Coastkeeper on October 8, 2008 (**Attachment 4**). The letter states:

"In my September 22 letter and October 1 email to the City of Salinas, I explained that the Central Coast Water Board adopted a motion to remove certain sections of the proposed Required Revisions, but indicated that its intent was to remove any language in Development Standards Section 1.5.3 that may be redundant with other sections of the document, while preserving all the hydromodification control requirements staff proposed. The Central Coast Water Board wanted to be responsive to the City's request to eliminate redundancies - by unnecessarily added controls that restate requirements in a different way that may cause unneeded complexity and possible conflict or confusion (however, the Water Board did not direct us to eliminate hydromodification controls). The Water Board's motion included the directive to have the Executive Officer "make it so."

To address the Water Board's motion, I specifically removed the references to 18 inches of soil and 5 inches per hour application rate from Required Revision No. 3, to remove any potential redundancy with other sections of the document. I specifically retained the language requiring applicants for projects adding one acre or more of impervious surface to demonstrate post-project runoff rates and durations do not exceed pre-project runoff rates and duration, because that requirement is necessary to control hydromodification, and is not redundant with any other section

of the document. I invited Salinas staff to point out any language in the Final Table of Required Revisions that is redundant with other sections of the document, so that Water Board staff may resolve those redundancies.”

The City of Salinas did not respond to staff’s request to point out any language in the Revisions that is redundant with other sections of the document. The City of Salinas and Monterey Coastkeeper continue to dispute the Table of Required Revisions.

During the September 4, 2008 hearing, Water Board members, Water Board staff, and City of Salinas staff discussed the proposed Table of Required Revisions at length. During deliberation, the Water Board indicated its intent was to remove any language that was redundant with other sections of the document. The Water Board then directed the Executive Officer to “make it so” in regards to the precise wording of the Table of Required Revisions. The Water Board’s motion to adopt Resolution No. R3-2008-0068 with the Table of Required Revisions included removing Section 1.5.3.4.A and 1.5.3.4.B from Required Revision No. 3. The Water Board apparently believed that 1.5.3.4.A and 1.5.3.4.B contained language that was redundant with, and equivalent to, Sections 4.4.2 and 4.4.3 of the Development Standards. In order to specify that the perceived equivalent Sections 4.4.2 and 4.4.3 were a required section of the Development Standards, the Water Board’s motion also included adding a reference to Section 4 in Section 1.5.3.3. In theory, these two changes would clarify the document, but be functionally equivalent by preserving hydromodification controls.

Water Board staff’s position is that Sections 1.5.3.4.A and 1.5.3.4.B are not redundant with Sections 4.4.2 and 4.4.3, because the Sections have different objectives. The objective of 1.5.3.4.A and 1.5.3.4.B is hydromodification control while the objective of 4.4.2 and 4.4.3 is storm water quality treatment. Eliminating 1.5.3.4.A and 1.5.3.4.B completely and only referencing Section 4.4 would eliminate the requirement for applicants for projects adding one acre or more of impervious surface to demonstrate post-project runoff rates and durations do not exceed pre-project runoff rates and duration. This would remove hydromodification control from the Development Standards for all but the smaller, more frequent flows associated with the 85<sup>th</sup> percentile storm event. Staff believes the Water Board did not intend to remove this requirement. Additionally, staff determined that with or without the September 22, 2008 language in Sections 1.5.3.4.A and 1.5.3.4.B, the Development Standards do not require control of channel-forming flows nor do they require control measures for potential impacts of these flows. Channel-forming flow is the flow or range of flows that cumulatively transport the majority of sediment in a channel over a long period of time, and so control the size (cross-sectional area) of the channel through erosion and deposition. Controlling these flows protects stream channels from accelerated erosion and deposition. Staff finds that the omission of these post-construction controls for larger projects to prevent hydromodification from larger storm events fails to meet the Maximum Extent Practicable (MEP) standard of the Phase I Storm Water regulations.

#### **Options for Revising the Approved Development Standards**

Originally, Water Board staff was preparing to only present the Water Board with justification for keeping Sections 1.5.3.4.A and 1.5.3.4.B in the Development Standards. However, in preparing for the December Board Meeting, staff re-reviewed the language of Required Revision No. 3 as well as the Development Standards. This further review resulted in staff preparing a modified recommendation. Staff believes that not only are

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Sections 1.5.3.4.A and 1.5.3.4.B necessary, but they need to be modified for the City of Salinas to meet the MEP standard.

Staff presents three options for the Water Board's consideration regarding the City of Salinas Development Standards. None of these options includes rescission of the approved Development Standards:

1. Remove Sections 1.5.3.4.A and 1.5.3.4.B from Required Revision No. 3. This option, based on the City of Salinas' interpretation of the Water Board's September 4, 2008 action approving the Development Standards, would leave the Development Standards with minimal hydromodification control and without requirements for control of channel-forming flows. In addition, this option would leave Sections 1.5 and 1.5.3.3 with confusing language.
2. Keep Sections 1.5.3.4.A and 1.5.3.4.B as shown in the Table of Required Revisions in the September 22, 2008 Water Board letter. This option provides for hydromodification control of large sites (sites with an increase of an acre or more of impervious surfaces). However, as currently written, Sections 1.5.3.4.A and 1.5.3.4.B are only a small step toward hydromodification control and contain a loophole that could result in the requirements of the Development Standards being met by conventional pond BMPs. Additionally, this language would not provide requirements for control of channel-forming flows. This option would also leave Sections 1.5 and 1.5.3.3 with confusing language.
3. Modify the language in Sections 1.5 and 1.5.3 to provide clarity and to establish an effective hydromodification control requirement. This option modifies the language of Sections 1.5, 1.5.3.3, 1.5.3.4.A, and 1.5.3.4.B to require the City of Salinas to control hydromodification for large sites. Water Board staff finds that the City of Salinas cannot meet the MEP standard without controlling hydromodification through these, or equivalent, modifications to the Development Standards. Attachment 7 contains the proposed modified language for this option. The modified language requires large projects to match post-project runoff peaks and durations with pre-development runoff peaks and durations up to the 10-year storm event unless the applicant can demonstrate that the project flows will not detrimentally affect the downstream channel. Water Board staff does not profess to know with certainty that this is the appropriate upper limit of storm events from which protection is needed. Throughout their permit term, the City of Salinas will need to assess the effectiveness of the requirements and propose modifications to tailor the requirement to protect beneficial uses in the City of Salinas.

## COMMENTS AND RESPONSES

In the announcement of this hearing, staff invited the City of Salinas and Monterey Coastkeeper staff to submit any further written comments, evidence, or legal arguments for the Water Board's consideration by October 31, 2008. Both parties submitted comments regarding Sections 1.5.3.4.A and 1.5.3.4.B of Required Revision No. 3. It is anticipated that both parties will have further comments regarding option 3 above.

### City of Salinas's Comments

The City of Salinas's letter is included as **Attachment 5**. The City of Salinas presents five arguments regarding Sections 1.5.3.4.A and 1.5.3.4.B of Required Revision No. 3:

1. The Water Board may not properly reconsider its original action two months after the fact;
2. Water Board staff may not arbitrarily amend or “clarify” the Water Board’s September 4, 2008 action;
3. The proposed hydromodification requirement exceeds the requirements of the City of Salinas’s NPDES permit and exceeds regulatory requirements;
4. The City of Salinas and its residents should not be used by the Water Board staff as leverage in their attempt to impose hydromodification requirements on other jurisdictions;
5. The Salinas City Council has considered and adopted Final Stormwater Development Standards consistent with the Water Board’s September 4, 2008 final action.

Staff’s responses to these arguments are as follows. Regarding comments 1 and 2, we do not agree that it is not appropriate to ask the Water Board to reconsider its original action with regards to Required Revision No. 3. The Water Board made clear at the hearing on September 4 that it intended to retain hydromodification controls but agreed with the City of Salinas that it was appropriate to eliminate redundancies. As apparent from the comments on the Executive Officer’s letter specifying the changes needed to implement the Water Board’s action, reconsideration is necessary to assure that the Required Revisions reflect the Water Board’s action. Given the lack of clarity evident by the various interpretations of the Water Board’s actions, it is appropriate to provide an opportunity for the Water Board to clarify its decision.

Regarding comment 3, we do not agree that the hydromodification controls of Sections 1.5.3.4.A. and 1.5.3.4.B exceed the requirements of the permit. Hydromodification control is required by the City of Salinas’s NPDES permit (e.g., Attachment 4, Section II.a. states the City of Salinas’s Development Standards shall, “Require developers to prepare and submit studies analyzing pre- and post- project pollutant loads (including sediment) and flows resulting from project future development,” and “Control the post-development peak stormwater run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.”), and is necessary for the City of Salinas to meet the Water Board’s Maximum Extent Practicable (MEP) standard.

Regarding comment 4,, we are not using the City of Salinas as leverage to impose hydromodification control requirements on other jurisdictions, as all municipal separate storm sewer systems (MS4s) are expected to control hydromodification to meet the Clean Water Act’s MEP standard, regardless of whether the MS4s are subject to Phase I or Phase II stormwater regulations.

Regarding comment 5, in their report to City Council on October 21, City of Salinas staff note the Development Standards proposed for approval by the City Council do not contain language specified in the Water Board’s September 22 letter.

### **Monterey Coastkeeper’s Comments**

Monterey Coastkeeper’s letter is included as **Attachment 6**. In short, Monterey Coastkeeper argues that removing 1.5.3.4.A and 1.5.3.4.B in Required Revision No. 3 would remove the NPDES Permit requirement for studies detailing pre- and post project pollutant loads and flows and the requirement for LID. Sections 4.4.2 and 4.4.3 of the Storm Water Development Standards are neither equivalent in implementation nor equivalent in effect to 1.5.3.4.A and 1.5.3.4.B in Required Revision No. 3.

Staff agrees that removing 1.5.3.4.A and 1.5.3.4.B in Required Revision No. 3 would remove hydromodification controls from the Development Standards. Sections 4.4.2 and 4.4.3 of the Development Standards are not equivalent to 1.5.3.4.A and 1.5.3.4.B in Required Revision No. 3.

### **RECOMMENDATION**

Staff recommends the Central Coast Water Board require the City of Salinas to modify the language in Sections 1.5 and 1.5.3 of the Development Standards as shown in **Attachment 7** to provide clarity and to establish an effective hydromodification control requirement (option 3 above).

### **ATTACHMENTS**

1. Central Coast Water Board letter dated September 22, 2008
2. Otter Project/Monterey Coastkeeper Petition for Review dated October 3, 2008
3. City of Salinas's Petition for Review and Request for Evidentiary Hearing dated October 6, 2008
4. Central Coast Water Board letter dated October 8, 2008
5. City of Salinas comment letter dated October 31, 2008
6. Monterey Coastkeeper comment letter dated October 31, 2008
7. Revised Table of Required Revisions dated November 14, 2008