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CITY OF PASO ROBLES

September 17, 2008

James App
Paso Robles - City Manager,
1000 Spring St
Paso Robles, CA 93446-2534

RE: Storm Water Management Plans

Dear James:

The Home Builders Association would like you to provide this letter to your staff working on your MS4 Permit and Storm Water Management Plan.

About 45 Central Coast city and county staff, Central Coast Regional Water Quality Control Board staff and Home Builders Association members had a good discussion on storm water management plans Aug. 1. We exchanged ideas on working together to create plans that will meet local government smart growth, affordable housing, economic development, and storm water management goals in an integrated manner that is both financially and geotechnically feasible.

The association raised eight issues and suggested solutions. Regional Water Board Executive Officer Roger Briggs and Municipal Stormwater Facilitator Dominic Roques urged the association and local government to work together to resolve the issues. The water staff said several times that its role would be to provide guidance and to allow the individual jurisdictions flexibility with how to comply.

The association wants to work as partners with our Central Coast governments. We have technical data and practical knowledge from our experiences building in this area and with storm water plan development in such other coastal areas as San Diego and Ventura. We have learned from officials there that it is not possible to develop an effective Hydromodification Management Plan (HMP) in less than two years and that Southern and Coastal California soils present substantially different infiltration challenges than those confronted when low impact development (LID) applications were used in places with significantly dissimilar climatic, soil, and geotechnical conditions such as Portland, Oregon, and the East Coast.

In addition, we know that you:

1. Face immediate and long-term staffing and fiscal limitations in developing and applying new storm water requirements during the transitional stage of moving to the new standards and in long-term monitoring of the standards implementation; and
2. Have potential conflicts within normal government operations when you must develop plans to treat and detain storm water onsite while your flood control requirements may differ.

Our goal is simple. We want to be part of the solution. We want to make sure that the upfront planning is thorough and that the proposed regulations are realistic, practical, and achievable in order to avoid unintended consequences later.

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We would like to arrange meetings with you as soon as possible to begin more detailed discussions on this or to work with you on developing and implementing your plan.

Here are some questions and concerns that we discussed with the water board and additional ideas and information we have added based on that discussion.

1. **Grandfathering certain project classifications.** 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.

It is our experience that LID must be designed into a project from the very start – when site design and planning begins – in order to achieve the full effect of low impact development.

We propose that your storm water plan state that projects whose application has been “deemed complete” prior to adoption of an interim HMP will be exempt from the new standards, but would be encouraged to comply with the regulations on a voluntary basis to the maximum extent practicable. Obviously, all projects in later stages of entitlement, design, or construction would be exempt from the application of the new regulations as well.

The water board staff has asked the cities and counties to quantify how many projects would likely be subject to a grandfathering exemption. We can also survey our members for you to determine if they have any additional projects likely to be proposed in your area in the immediate future.

The water board staff also asked for more information on the meaning of the “deemed complete” concept. We have provided our legal understanding of that immediately below.

Deemed complete defined: The regional board staff questioned if “deemed complete” has a common usage among the cities and counties. We thought this might help explain the term and process for the regional board staff.

The term 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 such legislative acts as general plan amendments and rezonings (or development agreements or specific plans) or to such ministerial acts as 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

2. **Phasing-in period to complete the Interim Hydromodification Management Plan** – Based on experience in Southern California, we believe you should strongly lobby the water board to allow two years to complete the Interim HMP (rather than one year).

This is a learning process for all involved. The water board documents acknowledge this fact and recognize a five-year “ramping up” period. In accordance with that, we suggest that your plan allow a two year gearing up period before implementing the regulations on applications or until you have an adopted an HMP. Projects that have not been “deemed complete” prior to adoption of the Interim HMP would comply with your plan. Projects “deemed complete” would be allowed to voluntarily comply with the regulations.

3. **Incorporating assessments from project geotechnical and soils consultants.** As you know, all sites throughout the Central Coast do not have the same soil conditions and many area soils are poorly suited to infiltration. Specific site conditions may preclude applying the new standards due to low infiltration capability of soils or have the potential to damage other infrastructure if infiltration is mandated. Applying the standards in those conditions could create a public safety hazard.

The water board staff acknowledged that development sites can only be expected to absorb as much storm water as is geologically possible and that local governments and project applicants should work out how to address this issue.

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

We also suggest that your storm water plan emphasize that you 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.

4. **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 suggest that your storm water plan state that normal maintenance of existing infrastructure by public agencies, project developers, and home owners associations will be exempt from the new standards.

5. **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 it as pre-development (as in the “natural condition”), regardless of current usage, would make the current developer responsible for fixing an “existing” problem and, even more importantly, be so cost prohibitive given the soils in this area that many desirable urban infill projects will become financially infeasible. That will result in discouraging the “smart growth” urban development principles city and county planners are promoting in order to reduce sprawl.

We recommend that your storm water plan define pre-development as the immediate pre-project condition.

6. **Impact on Insurance.** We are concerned about the potential impact a storm water plan may have on the home buyer’s ability to get home owners insurance, the builder’s ability to get an infrastructure bond, and who carries the liability if a government requires some new, locally untested technique that puts a structure at long-term risk.

We suggest that part of the process you use in preparing and implementing your storm water plan include a meeting with home builders, mortgage lender institutions, and the bonding and insurance industries. We can help provide contact information if you need it regarding whom to invite.

7. **Impact on Department of Real Estate, Home Owner Associations, and Realtor Associations.** We are also concerned regarding the impact of the storm water plan on the real estate sales process and home owner associations and believe you should make sure your legal counsel is certain that you will not be creating an irresolvable legal conflict.
8. **Economic balance:** Given the legal issues raised by the recent Orange County Court decision regarding the Los Angeles Regional Water Basin Plan and the requirement for “balance,” we recommend that your storm water plan include language that clearly states that the need to achieve “clean water” must be balanced with other factors in your General Plan and community goals. Maximum Extent Practicable will be a key factor in achieving an overall balance that a healthy community needs, along with housing affordability, General Plan goals promoting new urbanism (smart growth), economic development, market-place economics, local municipal economics, and local public acceptance.
9. **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 and explain how that involvement will be achieved..
10. **Countywide Technical Advisory Committee:** We recommend that all the municipalities submitting storm water management plans in the County form a Technical Advisory Committee that includes stakeholder involvement and focuses on making sure that storm water plans and implementation, including HMP’s, are usable by the development and engineering communities and in align, for example, with the statewide requirements of AB32 and local land use policies, such as smart growth. San Luis Obispo County could establish a Technical Advisory Committee through its existing SLO County Partners for Water Quality.

We look forward to your response so we may begin more detailed dialogue with you. You may reach me either by calling or e-mailing me at the contact information below.

Sincerely yours,



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