



# NOTICE

## Development Services Department

CITY OF SAN DIEGO - 1222 FIRST AVENUE, M.S. 501, SAN DIEGO, CALIFORNIA 92101

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DATE: January 23, 2012  
TO: Distribution  
FROM: Jeffrey D. Strohming, Assistant Deputy Director  
SUBJECT: **Hydromodification Requirements: Guidelines For Determining Exemptions And Infeasibility**

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To ensure consistency with other copermittees of the local Municipal Storm Water (MS4) Permit in the application of the Regional Board's storm water standards, the City of San Diego revised Section 1.3 (Applicability of Updated Requirements ) of its Storm Water Standards Manual.

For projects with applications deemed complete prior to January 14, 2011 and construction not commenced by this date, clarifications are provided regarding compliance with current HMP requirements. This memo has been coordinated with the City Attorney and provides general guidelines to determine if projects with applications deemed complete prior to January 14, 2011 are subject to the current HMP requirements. All final determinations that a project may be allowed to proceed to completion without complying with the current HMP requirements must be approved by the Development Services Director, who will consult with the Office of the City Attorney as needed.

### Background

To reduce potential adverse impacts to the beneficial use of waters of the State and navigable waters caused by development, the City of San Diego was required by the California Regional Water Quality Control Board, San Diego Region, ("Regional Board") to develop a Hydromodification Management Plan ("HMP") for Priority Development Projects ("PDPs"). On January 24, 2007, the Regional Board adopted Order No. R9-2007-0001 to establish waste discharge requirements for municipal separate storm sewer systems operated by the City and other regional copermittees ("MS4 Permit"). In accordance with the MS4 Permit, the HMP was developed and subsequently approved by Regional Board Resolution No. R9-2010-0066 on July 14, 2010 (hereinafter "Resolution"). In accordance with the MS4 Permit and Resolution, the City amended its Storm Water Standards to implement the HMP requirements for PDPs. These new requirements became effective on January 14, 2011 in the City of San Diego.

The MS4 Permit allowed for a phased implementation of the HMP requirements by tightening the scope of PDPs subject to regulation over time. From about March 2008 until January 14, 2011, Interim Hydromodification Criteria generally defined PDPs as projects that disturb 50 acres or more. Effective January 14, 2011, the definition of PDPs was expanded to include most development projects that result in 5,000 or more square feet of impervious surface or 1 acre or more of land disturbance. The definition of a PDP is set forth in the City's Storm Water Standards and MS4 Permit.

Projects not yet complete before January 14, 2011, but under City review, oversight, or inspection at that time may, under certain circumstances, be eligible to be excused from complying with current HMP requirements. This could be because the project owner has obtained a vested right as a result of the operation of law or because of some exception authorized by the MS4 Permit or other implementing authority.

The intent of this memorandum is to outline some potential circumstances under which a project in process but not yet complete prior to January 14, 2011 may be excused from compliance with current HMP requirements applicable to PDPs. The memorandum is not a substitute for case-by-case analysis and should be used as a general guidance document only. Project specific determinations must be referred to the Development Services Director for final concurrence. DSD staff will consult with the Office of the City Attorney where legal input is deemed necessary.

## **Compliance**

As set forth more completely below, if a PDP does not comply with the current HMP criteria, the applicant must either:

1. Demonstrate that the PDP is exempt based on the HMP exemption criteria; or
2. Demonstrate that HMP is inapplicable to the project as a result of the commencement of grading or construction activities prior to January 14, 2011; or
3. Demonstrate the project has lawful prior approval and submit an infeasibility analysis for review and approval by the Development Services Director.

### **1. Project Exemption from HMP Requirements**

For a PDP to be deemed "exempt"<sup>1</sup> from HMP requirements after January 14, 2011, the project must demonstrate exemption based on the HMP exemption criteria (Storm Water Standards, pages 4-18 to 4-24, and Figure 4-1). The applicant must submit HMP exemption and supporting documentation in the Water Quality Technical Report (WQTR). The applicant must state the applicable exemption Node from Storm Water Standards Figure 4-1, "HMP Applicability Determination," and the Development Services Director must agree.

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<sup>1</sup> These exemptions are in conformance with Section D.1.g(3) of the MS4 Permit.

## **2. Commencement of Grading or Construction Prior to January 14, 2011**

Any PDP approved on or after January 14, 2011, is subject to final HMP criteria. All projects approved and for which grading or construction activities have commenced prior to January 14, 2011, are not subject to the final HMP criteria, although interim or pre-HMP requirements may apply. Any approved projects or phases of projects that did not begin grading or construction before January 14, 2011, must comply with the Municipal Code and final HMP requirements, unless compliance is found to be infeasible, as discussed further below.

## **3. Lawful Prior Approval and Infeasibility Analysis**

Under certain circumstances, implementation of final HMP criteria may be infeasible for a project that received lawful approvals prior to January 14, 2011, but where grading or construction did not begin until after that date. A "lawful prior approval" would include projects approved prior to January 14, 2011, or Projects with Vesting Rights from a VTM application that was deemed complete prior to January 14, 2011.

Applicants seeking consideration under this provision must submit a written infeasibility analysis that documents why HMP compliance is infeasible. Constraints such as technical, engineering, planning, etc. may be considered. Infeasibility determinations will be reviewed on a case-by-case basis.

Any modification in the project design that requires permits/plans to be re-opened for City review after January 14, 2011 are subject to new HMP requirements. Modifications are any change in the design, calculations, or footprint of a project plan. Ministerial non-substantive changes such as a name change, engineer change, text update, security/bond change are not considered modifications.

## **Project Scenarios and Applicability of final HMP Requirements**

1. Project received lawful prior approval and started grading or construction activities prior to January 14, 2011. - *Final HMP criteria do not apply to the project.*
2. Project did not receive lawful prior approval before January 14, 2011. - *The project must address final HMP criteria or show that it is exempt.*
3. Project processed a WQTR during the entitlement process and received lawful prior approval prior to January 14, 2011, but did not start grading or construction activities. - *The project must address final HMP criteria, show that it is exempt, or demonstrate that compliance is infeasible.*
4. Project had lawful prior approval and began grading prior to January 14, 2011; however, a different phase of development has not begun grading as of January 14, 2011. *The applicant may submit an analysis demonstrating infeasibility. Segments of projects (i.e.,*

*road, buildings) constructed prior to January 14, 2011, do not need to meet final HMP criteria.*

5. Project has lawful prior approval and started grading or construction activities prior to January 14, 2011; however, the project must revise the permit for a non-substantive change (i.e., contractor or ownership change). *Only an amendment page and a copy of the previously approved WQTR are required. The project does not need to meet final HMP criteria.*
6. Project has lawful prior approval; however, the project proposes a design modification and the WQTR must be re-submitted and evaluated for water quality impacts. *The project must address final HMP criteria, show that it is exempt, or demonstrate that compliance is infeasible.*
7. Project received lawful prior approval before January 14, 2011; however, permit or signed plans have expired so that a new permit is required. *The project must address the current HMP criteria, or show that it is exempt.*

If you have questions how this applies to your project you can contact Sr. Civil Engineers Julie Ballesteros (619)446-5098, or Don Weston (619)446-5281.



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