THE CITY OF SAN DIEGO

MEMORANDUM

Date: May 29, 2012

To: Distribution

From: James Nagelvoort, City Engineer

Subject: HYDROMODIFICATION REQUIREMENTS: GUIDELINES FOR DETERMINING EXEMPTIONS AND INFEASIBILITY FOR CITY OF SAN DIEGO CAPITAL IMPROVEMENT/PUBLIC PROJECTS

Overview and 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"). 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 is revising this provision of its Storm Water Standards.

This memo provides clarification for Capital Improvement or other Public Projects that may be affected by the current HMP requirements that took effect on January 14, 2011. The memo provides general guidelines to determine if projects that did not commence construction activities (i.e., land acquisition, bid and award and construction) 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 City Engineer, who will consult with the Office of the City Attorney as needed.

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.

When the HMP first took effect on January 14, 2011, Capital Improvement or Public Projects that had completed 30% design phase were grandfathered and were therefore not subject to the new requirements. The City has since revised the HMP applicability timeline. Therefore, those projects may now be subject to the HMP requirements and need to be evaluated.

The intent of this memorandum is to outline some potential circumstances under which a previously grandfathered project 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 City Engineer for final concurrence. Public Works – Engineering and Capital Projects staff will consult with Storm Water staff for guidance and with the Office of the City Attorney for legal input where necessary.

Project Exemption from HMP Requirements

For a PDP to be deemed "exempt"[1] from HMP requirements after January 14, 2011, the project must demonstrate exemption based on the final HMP exemption criteria (Storm Water Standards, pages 4-18 to 4-24, and Figure 4-1).

1. The project manager must submit final HMP exemption and supporting documentation in the Water Quality Technical Report (WQTR).

2. The project manager must state the applicable exemption Node from Storm Water Standards Figure 4-1, "HMP Applicability Determination," and the City Engineer must agree.

Commencement of Construction Activities Prior to January 14, 2011

Any PDP for which construction activities had not commenced prior to January 14, 2011, is subject to final HMP criteria. All projects approved and for which 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 projects or phases of projects that had lawful prior approval and did not begin construction activities 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.

Lawful Prior Approval and Infeasibility Analysis for Capital Improvement/Public Projects

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 the construction

[1] These exemptions are in conformance with Section D.1.g(3) of the MS4 Permit.

activities did not begin until after that date. A "lawful prior approval" would include Capital Improvement or other Public Projects which received a final, signed environmental document (Environmental Impact Report, Mitigated Negative Declaration, Negative Declaration, Addendum or Notice of Exemption) from the Development Services Department prior to January 14, 2011.

Project Managers 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 environmental review and recirculation of the environmental document after January 14, 2011 are subject to new HMP requirements. Modifications are any change in the design, or scope of a project plan which would not be considered as being in substantial conformance by Development Services Department staff. Non-substantive changes such as a name change, engineer change, text update, or mitigation changes are not considered modifications.

Capital Improvement/Public Project Scenarios and Applicability of final HMP Requirements

1. Project received lawful prior approval and started 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 received lawful prior approval prior to January 14, 2011, but did not start construction activities. *The project manager may submit an infeasibility analysis demonstrating infeasibility or the project must show that it is exempt.*

4. Project has lawful prior approval and previous phases began construction activities prior to January 14, 2011; however, a different phase of development has not begun construction activities as of January 14, 2011. *The project manager may submit an analysis demonstrating infeasibility, or the remaining project phase(s) must show that they are exempt. Segments of projects which commenced construction activities prior to January 14, 2011, do not need to meet final HMP criteria.*

5. Project has lawful prior approval; however, the project proposes a design or scope 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.*

Process

1. Project Manager (PM) fills out Submittal Form (attached) and submits, along with supporting documentation, to the Environmental and Permit Support (EPS) Section Manager for evaluation. Please allow two weeks for the EPS evaluation in the project schedule.

2. EPS Section Manager assigns to appropriate EPS staff for evaluation and consultation with Storm Water staff and City Attorney for legal input as necessary.

3. EPS Section Manager forwards the evaluation to the City Engineer (CE), or designee, for consideration. Please allow one week for the CE determination.

4. CE considers the EPS evaluation and provides written approval or denial of the infeasibility determination with a cc: to the EPS Section Manager. *If the infeasibility determination is denied, the PM must ensure that final HMP criteria are addressed in the project design prior to commencement of construction activities.*

5. EPS Section Manager tracks the infeasibility determinations and provides reporting to Storm Water as part of the Annual Jurisdictional Urban Runoff Management Plan (JURMP) Report.

If you need any additional information, or have any questions regarding this process, please contact Kerry Santoro, EPS Section Manager at (619) 533-5406.

Sincerely,

James Nagelvoort
City Engineer

JN:KS/SH

Attachment: Request for HMP Exemption or Infeasibility Submittal Form

Distribution: Tony Heinrichs, Public Works Director
Chris Gonaver, Environmental Services Director

Kelly Broughton, Development Services Director
Kip Sturdevan, Transportation and Storm Water Director
Marnell Gibson, Deputy Director, PW – ECP Right of Way Division
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Dave Zoumaras, Deputy Director, PW – ECP Field Division
Myrna Dayton and Mark Nassar, Acting Deputy Directors, PW – ECP Project Implementation and Technical Services Division
Kerry Santoro, Environmental and Permitting Support Section Manager, PW – ECP Project Implementation and Technical Services
Sumer Hasenin, Senior Civil Engineer, Transportation and Storm Water
PW – ECP Design Seniors and Project Managers

REQUEST FOR HMP EXEMPTION OR INFEASIBILITY FOR PRIORITY DEVELOPMENT PROJECT SUBMITTAL FORM

DATE OF SUBMITTAL: _____ REQUEST FOR: ___ EXEMPTION ___INFEASIBILITY

PROJECT NAME: _____ WBS: _____

PROJECT ENGINEER: _____ SENIOR: _____ DCE*? ___yes ___no

1. Have you completed the Storm Water Requirements Applicability Checklist (Form DS-560)? ___yes ___no

If the answer is "no," <u>STOP</u> – Checklist must be completed prior to submittal (See EPS staff for assistance).

2. Is the Project a Priority Development Project? ___yes ____no

If the answer is "no," <u>STOP</u> – you are *exempt*. If the answer is "yes," please answer questions below:

3. Do you have a Final Environmental Document (Exemption, ND, MND or EIR) signed with a date prior to January 14, 2011? ___yes ___no

If the answer is "no," <u>STOP</u> – you do not have *prior lawful approval*; <u>you must comply with HMP Requirements</u>.

4. Did construction activities (including right of way/equipment acquisition, bid/award, etc.) start before January 14, 2011? ___yes ___no (Note: this must be documented in the Primavera Schedule)

If the answer is "yes," <u>STOP</u> – the project is *grandfathered* and not subject to HMP Requirements.

5. Has a Storm Water Quality Technical Report been prepared? ___yes ___no

If the answer is "no," <u>STOP</u> – SWQTR must be completed. If the answer is "yes," please answer questions below:

6. Are there technical, engineering, planning or other project constraints that make implementation of the HMP Requirements infeasible? ___yes ___no

If the answer is "no," <u>STOP</u> – if it is feasible to implement the HMP Requirements, <u>you must comply</u>.

7. Please identify the feasibility constraints, specifically identifying which HMP Requirements cannot be implemented and why. Be specific and detailed in your response, and identify which, if any, HMP Requirements are able to be implemented. Attach additional pages as needed:_____

_____

_____

_____

_____

_____

_____

8. Please attach the following:
   - ___Storm Water Requirements Applicability Checklist (required)
   - ___ Final Environmental Document (required if applicable)
   - ___ Primavera Schedule (required if applicable)
   - ___ Storm Water Quality Technical Report (required)
   - ___ Additional Pages Documenting Infeasibility (if applicable)
   - ___ Other Documentation Supporting Infeasibility (required if applicable)

RECOMMENDATION: ___ EXEMPT ___ INFEASIBLE WITH PRIOR LAWFUL APPROVAL ___ COMPLIANCE REQUIRED

REVIEWED BY: _____ DATE: _____

Name and Title (EPS Section Manager/Senior Planner)

NOTES: _____

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_____

DETERMINATION: ___ EXEMPT ___ INFEASIBLE WITH PRIOR LAWFUL APPROVAL ___ COMPLIANCE REQUIRED

DETERMINATION BY: _____ DATE: _____

Name and Title (City Engineer/*Deputy City Engineer)