

October 6, 2011

Mr. Bruce Wolfe  
Executive Officer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Attn: Dale Bowyer

**Subject: City of San José Comments on the Tentative Order Amending the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

Dear Mr. Wolfe,

Thank you for the opportunity to comment on the Tentative Order for the Municipal Regional Stormwater Permit (MRP) dated September 6, 2011.

The City of San José has had proactive stormwater pollution prevention and control programs since the first countywide municipal stormwater permit for Santa Clara County was adopted in 1990. San José has been actively engaged in the development and implementation of the MRP, with staff having participated in the original work groups and continuing to work on implementation with regional partners through Bay Area Stormwater Management Agencies Association (BASMAA) and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).

The MRP's effect on new and redevelopment is of particular importance to San José as it strives to accommodate a projected population increase of 400,000 by 2035 in an environmentally sustainable manner. San José's draft General Plan, *Envision 2040*, includes policies that direct growth into higher-density, mixed-use, urban districts or "Villages" which will co-locate jobs and housing and reduce the environmental impacts of that growth by promoting transit use, walking and biking to reduce per capita vehicle miles travelled.

San José's key concerns related to the Tentative Order involve the (Smart Growth) Special Projects criteria. The City acknowledges the efforts of Water Board staff to work with BASMAA to develop Low Impact Development Treatment Reduction Credits (LID credits) that acknowledge the watershed-scale benefits of Smart Growth by affording certain development projects greater flexibility in meeting its stormwater treatment requirements, as intended by the MRP. San José also commends the Water Board staff's effort to involve and consider diverse

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perspectives during development of an approach to LID flexibility for Smart Growth Special Projects.

San José supports many aspects of the proposed Special Projects approach:

- The use of location (e.g., Central Business Districts, Priority Development Areas) and density (Dwelling Units per Acre, Floor-Area Ratio), as originally proposed in the BASMAA Special Projects Proposal, are appropriate criteria for defining Smart Growth. Further, the City agrees that Smart Growth should avoid conventional surface parking lots and should limit surface parking to the minimum necessary.
- That new and redevelopment projects meeting the location, density, and site coverage criteria to use tree-well biofilters and/or structural media filters to treat the portion of the C.3 volume specified by the LID credits.
- Special Projects will provide treatment for the entire C.3 runoff volume.
- San José supports semi-annual reporting of Special Projects to the Water Board as proposed by the Tentative Order and welcomes the opportunity this provides for permittees to demonstrate successful application of the Special Projects provision.

San José remains concerned that this Tentative Order does not align with the Smart Growth development strategies of the Bay Area region. Throughout the development of the Special Projects criteria, San José has advocated for an LID credit system that would provide full treatment flexibility to certain types of Smart Growth development. As drafted, the Tentative Order does not align with the MRP's vision for incentivizing Smart Growth to leverage its water quality benefits at the watershed scale. San José's specific comments and recommendations are as follows:

- San José is most concerned about the limited location credit for projects in Priority Development Areas (PDAs). As noted in the BASMAA Special Projects Proposal, PDAs are the centerpiece of the Association of Bay Area Government's FOCUS program, a regional development and conservation strategy that promotes compact development in transit-rich areas. Priority Development Areas represent less than 5% of the total Bay Area, yet are projected to accommodate over half its growth. To better align the MRP with regional sustainable growth strategies, the Tentative Order should provide at least a 50% location credit for Transit Oriented Development projects that meet the minimum density/intensity criteria and are located in PDAs.
- The density requirements of the LID credit system only provide full (100%) treatment flexibility to small infill projects (Category A) and to very high density or high-rise

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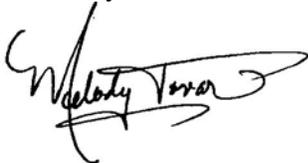
projects (Categories B & C). These are rare forms of (re)development and represent the exception rather than the norm of development in the Bay Area region. San José recommends that, at a minimum, the Category B criteria for 100% credit be revised to a Floor/Area Ratio (FAR) of 3:1 or a density of 75 dwelling units per acre.

- The FAR identified for the Transit Oriented Development density criteria for mixed-use and commercial development describe a much more intense form of development than for the residential densities to which they should be aligned. The FAR for the 20% density credit should be reduced to 3:1 and the FAR for 30% credit should be lowered to 4:1.
- The entire LID credit system appears structured to ensure that nearly every qualifying Smart Growth project is required to treat at least a portion of its runoff with LID treatment methods, rather than allowing those projects to successfully treat the full C.3 volume with compact structural BMPs. The Water Board has not presented sufficient evidence that the structural BMPs in use today are not effective and should not be used in Smart Growth development. San José is concerned that the application of partial LID credits to Smart Growth projects will add complexity and cost due to the additional architectural and engineering design necessary to route portions of a project's stormwater runoff to different treatment facilities, as well as increased construction costs.

The City appreciates that the Tentative Order incorporates the revised Hydromodification Management (HM) Applicability Map for Santa Clara Valley into the MRP. The City notes that field verification of catchment areas may indicate the need to adjust the map boundaries. The City will notify the Water Board and submit documentation supporting any need for adjustments. The City also notes and supports SCVURPPP's comments regarding the incorporation of the biotreatment soil specifications as Attachment I to the MRP amendment.

San José acknowledges the time and effort of the Water Board staff that went into the development of the Tentative Order. We appreciate your consideration of our comments and look forward to implementing stormwater treatment approaches that recognize and balance project-scale and watershed-scale relationships to our waterways.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Romanow". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

*for*

Kerrie Romanow

Acting Director, Environmental Services