October 6, 2011

Mr. Dale Bowyer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Re: Draft Tentative Order R2-2011-XXXX, Amendment Revising Order No. R2-2009-0074

Dear Mr. Bowyer:

Thank you for the opportunity to comment on the subject Amendment. Our comments will focus on two areas of concern: the Special Projects provisions (Provision C.3.e.ii.); and the Santa Clara Permittees Hydromodification Management Requirements (Provision C.3.g., Attachment F).

**Special Projects**

As a general comment, there appears to be a contradiction in the classification of tree box devices between the introductory description of LID measures in Provision C.3.c. and newly-added language under Provision C.3.e.ii. In the first paragraph under C.3.c Low Impact Development (LID), tree boxes are included with other biotreatment methods described as practices used to adhere to LID principles, including rain gardens, bioretention units, bioswales and planter boxes. In the first paragraph under C.3.e.ii. (1) Special Projects, and repeatedly in subsequent subsections, tree boxes are listed and referred to as one of two types of "non-LID treatment systems". The proposed language should be clearer and less contradictory so that Permittees and prospective project applicants will understand the circumstances under which the use of this type of treatment control can be used.

The proposed Category A provides a 100% LID credit for projects that create and/or replace one half acre or less of impervious surface area. This minimum size criterion is half of what was proposed in the report presented to the Regional Board on December 1, 2010. The BASMAA report provided very rational arguments justifying the 1-acre threshold, based on typical lot sizes in existing older neighborhoods and the financial viability of developing on these lots. We support the higher 1-acre maximum threshold for Category A, as recommended in the BASMAA report.

The proposed Category B establishes a minimum residential density of 50 dwelling units per acre for projects creating or replacing between ½ acre and 2 acres of impervious surface, in order to receive any LID credit. This is considerably higher than the 30 dwelling units per acre threshold recommended for projects in this category in the BASMAA report. We feel that the proposed density threshold would exclude a significant number of development projects in pedestrian-oriented urban, downtown and business districts throughout the Bay Area that should otherwise qualify for some amount of LID credit. We support the BASMAA recommendation of a 30 dwelling unit per acre threshold for this category.

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The Amendment does not include any change in the requirement of C.3.b.ii. (4), which specifies the inclusion of Road Projects in the definition of Regulated Projects, and describes the requirements for runoff treatment. The BASMAA report recommended that Special Projects include a category for street widening with additional lanes, citing the necessity for jurisdictions to expand roadways within urban areas, and listing barriers to implementing runoff treatment controls within street rights-of-way. In addition to barriers such as matching slopes and elevations of existing drainage facilities on adjacent properties, conflicts with utilities and with vehicle, bicycle and pedestrian access, and potential maintenance issues, the report makes a reasonable case for the infeasibility of harvest and reuse, evapotranspiration, and in some cases, bioretention. We strongly agree with their position, and with the contention that the use of tree and vault-type filters is more feasible options for treatment of runoff from roadways. It has been our experience through the design of numerous South Bay Area redevelopment projects that providing LID treatment controls within public street rights-of-way is problematic both from an engineering and policy standpoint. Despite the strong advocacy of green streets designs by the local stormwater programs, very few jurisdictions have actually developed street section standards that include LID treatment controls.

**Hydromodification Management Requirements**

In making revisions to Attachment F (Provision C.3.g. – Santa Clara Permittees Hydromodification Requirements), we request that the Board not adopt the current applicability map (revision date: November 2010), and consider also revising Section 5 – Potential Exceptions to Map Designations, to include a more realistic approach for project applicants to justify exceptions to the map designation for their project sites .
Based on recent discussions we have had with SCVURPPP and the City if San Jose, we feel that there are subwatershed and catchment area boundaries shown on the Map, at least for some of the developed, urban areas, that were not created based on any type of sound hydrologic studies or locations of existing storm drain systems. We strongly object to the use of this map by local permitting jurisdictions as a tool for implementing Provision C.3.g., which requires the inclusion of HM controls on projects. For certain projects currently mapped in the Green category (Subwatersheds less than 65% impervious), the construction of costly onsite HM controls cannot be justified by their potential erosion impacts to the local receiving waters. Although there were recent studies completed to eliminate the "pink" areas on the map, the scope of the studies was limited to a very few areas, and should have included additional areas that contain potential development sites. We would urge the Board not to adopt the current version of the Map until updated studies are completed that can substantiate the proposed subwatershed and catchment boundaries for areas designated as 65% Impervious, and accurately reflect existing conditions. The poor design quality and readability of the map are further reasons not to adopt it. The only reference elements are the major freeways and creeks, which do not allow a user to specifically locate a project site. There are no local streets, expressways or local monuments plotted. This is unacceptable for a map that potentially affects development sites within an urban area the size of the Santa Clara Valley. It is far less detailed, and therefore less useful, than the other county HM maps adopted with the MRP.

Section 5 discusses the preparation of a "User Guide" that the Program could prepare, which would allow Permittees to "guide the preparation of technical reports for …determining whether certain projects are discharging to a watercourse that is less susceptible (from point of discharge to the Bay) to hydromodification (e.g., would have a lower potential for erosion than set forth in these requirements)." Although such a User Guide was never developed by the local Program, we feel there is an urgent need for some process that would allow a project

applicant an opportunity to demonstrate a project's erosion potential by providing independent technical reports, and thus analyzing the actual applicability of the HM standard to the project, as described in the above clause. Given the lack of a User Guide, the technical inaccuracy of the Map, and the fact that there are no regional or in-stream projects available for utilizing alternative compliance within the Santa Clara Valley, we feel that the opportunity for project applicants to take advantage of Section 5 would be extremely limited without some revision to the language to allow independent, project-specific studies to be submitted for review by the Permittees.

Thank you again for this opportunity to provide comments on the draft revisions to the Permit. We sincerely hope that you give them serious consideration before taking action on the draft, as we feel that the comments honestly represent the concerns of the South Bay Area development community, and reflect our desire to achieve balance between practicality and water quality objectives of the MRP.

Sincerely,

HMH

Mike Campbell

Mike Campbell, AICP, CPSWQ
Stormwater Compliance Manager