



# TOWN of PORTOLA VALLEY

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July 9, 2015

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

**Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit**

Dear Mr. Wolfe:

The Town of Portola Valley appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls). Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

For each high priority issue that we have identified, a corresponding recommended revision to the Tentative Order is presented below, organized by each provision for which we are providing comments.

For the Town of Portola Valley, the **C.3.j - Green Infrastructure** requirement would pose a significant problem to the Town and its small staff. Portola Valley is located in the Santa Cruz mountain range in a rural setting among a heavily wooded environment and made up of primarily residential homes. The Towns drainage system is primarily natural swales and open space. Unlike urban areas, the Towns small roadway system does not have curb and gutter and mainly drain to roadside ditches and vegetated areas. Although we support the idea of green infrastructure, due to the nature of our town, we are already in a "Green" setting. In addition, there is not a lot of pollutant loading in this setting.

We ask that the Water Board seriously consider evaluating small, rural, and residential Towns such as Portola Valley with flexibility to prevent wasted expenditures of general funds and staff time.

## C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

### C.3.b.i - Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- **Issue:** Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

**Requested Revision:** Delete this requirement. It would have minimal water quality benefit and would likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced in the region would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior tentative map approvals or development agreements.

### C.3.c.i.(2)- LID Site Design

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- **Issue:** The process for compliance with this provision is unclear (i.e., whether and what type of submittal is required, and by when). In addition, the definition of pervious pavement systems does not include grid pavements (e.g., turf block or plastic grid systems).
- **Requested Revision:** Allow Permittees to reference a regional or countywide pervious paving specification in their annual reports (including a web link to the document) that meets the intent of this provision. Expand the definition of pervious pavement systems to include grid pavements.

### C.3.e.ii - Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio (FAR)<sup>1</sup> or Dwelling Units (DU) per acre. Both criteria are computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes

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<sup>1</sup> Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density<sup>2</sup>). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- **Issue:** Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR.

**Requested Revision:** Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

#### **C.3.g.iv - Hydromodification Management (HM) Standard – Methodology for Direct Simulation of Erosion Potential**

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propose a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- **Issue:** The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos that make the requirements somewhat confusing.

**Requested Revision:** Allow Executive Officer approval of the sizing methodology. Correct the following typos:

- C.3.g.i – Move items (1) through (3) to after the first paragraph in which they are referenced.
- C.3.g.ii.(3) – change “charges” to “charts” in the first sentence.
- C.3.g.vii.(5) – delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.

#### **C.3.h - Operation and Maintenance of Stormwater Treatment Systems**

- **Issue:** C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee’s inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days.

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<sup>2</sup> Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

**Requested Revision:** Allow 90 days for completion of permanent corrective actions.

- **Issue:** Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years. In addition, more flexibility needs to be given to those Permittees that only have a small number of sites, so that they do not have to inspect them more frequently than necessary.

**Requested Revision:** Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years. Also, correct the following typos:

- C.3.h.ii.(7) – begin first sentence with "Permittees shall prepare and maintain..."
- C.3.h.v.(4) – Change "XX" Annual Report to "2017" Annual Report.

### **C.3.j - Green Infrastructure Planning and Implementation**

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements. Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- **Issue:** The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by GI over the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

**Requested Revision:** Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the

permit term are not required for compliance with GI pollutant load reductions.

- **Issue:** Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

**Requested Revision:** Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

- **Issue:** Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

**Requested Revision:** The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

- **Issue:** Provision C.3.j.i(1)(c) requires Green Infrastructure Plans to include “targets for the amount of impervious surface within the Permittee’s jurisdiction to be retrofitted” within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these “targets” are to be established by each Permittee. In addition, the timeframes for establishing “targets” (we would prefer the term “projections”) for the amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

**Requested Revision:** Allow the development of “projections” instead of “targets”, and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

- **Issue:** Provision C.3.j.ii requires early implementation of GI, focused on identifying

and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

**Requested Revision:** Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below<sup>3</sup>) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

## **C.10 - TRASH LOAD REDUCTION**

### **C.10.a.i – Trash Reduction Requirement Schedule**

- **Issue:** Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

**Requested Revision:** We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended to at least to 2018.

### **C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas)**

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft<sup>2</sup> and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

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<sup>3</sup> Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors... Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

**Requested Revision:** We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

- **Issue:** Throughout the Bay Area thousands Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The Water Board to reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size? Trash items ARE effectively removed by these facilities without modification.

**Requested Revision:** We request that the Water Board removed the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

#### **C.10.b.iv - Source Controls**

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- **Issue:** Permittees to-date have focused on instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because they are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

The maximum of 5% reduction for all source control actions arbitrary and inconsistent with our currently knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

**Requested Revision:** We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

#### **C.10.b.iv - Receiving Water Observations**

- **Issue:** The TO requires the Permittees conduct receiving water observations downstream from trash generation areas converted to "low" trash generation. By requiring Permittees to focus on areas downstream of control actions, appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. Confusing, because the process to judge compliance with stormwater reductions is outlined in the TO – full capture, visual assessments, source control values, and offsets associated with cleanups. We are supportive of an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

**Requested Revision:** We request that the TO language be revised to state that purpose of receiving water observations is "...to evaluate the level of trash present in receiving waters over time, and to the extent possible determine whether there are ongoing sources outside of the Permittee's jurisdiction that are causing or contributing to adverse trash impacts in the receiving water(s)." Additionally, we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

#### **C.10.e.i – Optional Trash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups**

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While we appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions.

The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2x/year. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site.



**Requested Revision:** We request that the TO be revised to:

- Increase the maximum offset for creek and shoreline cleanups to 10%;
- Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,
- Remove the requirement that a site be cleanup at least 2x/year before claiming an offset.

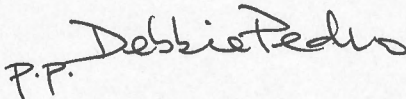
**C.10.f - Reporting**

- **Issue:** Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to “submit a report of non-compliance” if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

**Requested Revision:** We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, “submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner...”

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at [npegueros@portolavalley.net](mailto:npegueros@portolavalley.net) or (650) 851-1700 xt. 215 if you have any questions or would like to further discuss any of our comments.

Sincerely,

  
P.P.

Nick Pegueros  
Town Manager