

# SUPPLEMENTAL

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STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ITEM: **6 – Supplemental**

SUBJECT: **Municipal Regional Stormwater NPDES Permit – Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and Solano County – Reissuance of NPDES Permit**

DISCUSSION: This document describes proposed staff changes to the Revised Tentative Order for the Water Board's consideration. It also includes corrections to errors. Additions are shown by underlined text, and deletions are shown by ~~strikethrough~~ text.

1. During the written comment period, the Board received comments that housing projects that have filed a preliminary application, as defined in Senate Bill 330, the Housing Crisis Act of 2019, and its extension legislation, SB 8, should be grandfathered from Provision C.3's low impact development and related requirements. Staff looked further into these bills and now understand that Permittees can subject a housing development project only to those ordinances, policies, and standards adopted and in effect when a preliminary application was submitted, subject to certain exceptions. Therefore, the Permittees are constrained from requiring certain pending housing development projects to meet new requirements. Similarly, when acting on tentative map applications, the Permittees may not apply new requirements enacted after a tentative map application was deemed complete, subject to certain exceptions. Accordingly, the following language in Provision C.3.b.i. (p. C.3-11) is added that in effect exempts these projects from the new requirements of the Order:

(3) Any pending Regulated Project that has not yet been approved as of June 30, 2023, and for which a Permittee has no legal authority to require new requirements under Government Code sections 66474.2 or 65589.5., subd. (o), is subject to the Provision C.3 requirements in effect on the Permit's effective date.

Likewise, the following sentence is added to the Fact Sheet on page A-111:

However, this provision allows exemptions for some of these previously approved projects in situations where the Permittees lack legal authority to retroactively change their previous approvals. For a pending Regulated Project that has not been approved as of June 30, 2023, and a Permittee has no legal authority to require changes under Government Code sections 66474.2 or 65589.5, subd. (o), this provision does not require the Permittee to require compliance with the new requirements of this Order, because it cannot.

2. During the written comment period, the Board received comments that it was necessary to phase in changed requirements to Provision C.3.e.ii over time to facilitate Permittee implementation, and specifically to allow Permittees to adjust review processes, train staff, and complete other internal changes. Based on conversations with the Permittees, we agree. Accordingly, the proposed revision to Provision C.3.e.iii (p. C.3-37) by adding (4) and (5), is added:

- (4) Prior to July 1, 2023, Permittees shall implement Provision C.3.e.ii in Attachment I, which are requirements from the Previous Permit.
- (5) Beginning July 1, 2023, Permittees shall implement Provision C.3.e.ii.

Consistent with this change, add the following text to page A-129 of the Fact Sheet:

**Provision C.3.e.iii. Implementation Level** directs the Permittees to implement Provision C.3.e.ii beginning July 1, 2023. Prior to July 1, 2023, Provision C.3.e.iii.(5) directs Permittees to implement Provision C.3.e.ii in Attachment I, which are requirements from the Previous Permit, with dates adjusted for consistency. The rationale for these requirements is set forth in the Previous Permit's Fact Sheet and is incorporated herein. The purpose of the delayed implementation date for Provision C.3.e.ii is to allow Permittees the time needed to arrange all relevant planning authorities and municipal processes to implement changes to Provision C.3.e.ii relative to the Previous Permit.

3. During the public comment period, the Board received comments that all changes to Provision C.3.b.ii should be delayed by one year, instead of only delaying by one year the changes to the thresholds in the existing Regulated Project categories (C.3.b.ii.(2)-(4)) and the addition of the new Regulated Project categories (C.3.b.ii.(5)-(6)). For the same reason as Item 2 of this Supplemental, Provision C.3.b.iii (p. C.3-19) is revised as follows:

### **iii. Implementation Level**

- (1) ~~All elements of Provision C.3.b.i, and Provisions C.3.b.ii.(1)-(4), shall be effective immediately.~~
- (2) Beginning July 1, 2023, the Regulated Project definitions in Provisions C.3.b.ii are effective. C.3.b.ii.(5)-(6) shall be effective. Prior to July 1, 2023, projects under Provision C.3.b.ii.(5) shall comply with Provision C.3.j.iii (No Missed Opportunities). Prior to July 1, 2023, projects under Provision C.3.b.ii.(6) shall comply with Provision C.3.i.
- (3) Beginning~~Prior to July 1, 2023, the Regulated Project definitions in Provision C.3.b.ii in Attachment I are effective, which are definitions from the Previous Permit. all references to 10,000 square feet in Provisions C.3.b.ii.(2)-(4) change to 5,000 square feet. The lower 5,000 square foot impervious surface threshold does not apply to private Regulated Projects~~

~~which have received final discretionary approval (by June 30, 2023) and to public Regulated Projects which have been fully funded and have had construction scheduled (both by June 30, 2023).~~

Consistent with this change, the corresponding section of the Fact Sheet (p. A-119) is revised, as follows:

**Provision C.3.b.iii** Implementation Level directs the Permittees to implement the Regulated Project definitions in Provisions C.3.b.ii, and C.3.b.ii.(1)-(4), immediately beginning July 1, 2023.

~~Prior to July 1, 2023, the Regulated Project definitions in Provision C.3.b.ii in Attachment I, which are definitions from the Previous Permit, are effective and apply. It also directs Permittees to implement Provisions C.3.b.ii.(5)-(6) beginning July 1, 2023. Prior to July 1, 2023, projects under Provision C.3.b.ii.(5) shall instead comply with Provision C.3.j.iii (No Missed Opportunities). Prior to July 1, 2023, projects under Provision C.3.b.ii.(6) shall comply with Provision C.3.i.~~

~~Beginning July 1, 2023, all references to 10,000 square feet in Provisions C.3.b.ii.(2)-(4) change to 5,000 square feet. The lower 5,000 square foot impervious surface threshold does not apply to private Regulated Projects which have received final discretionary approval (by June 30, 2023) and to public Regulated Projects which have been fully funded and have had construction scheduled (both by June 30, 2023)~~

~~The purpose of this delayed implementation date for Provisions C.3.b.ii.(5)-(6), and of the delayed change in thresholds for Provisions C.3.b.ii.(2)-(4), is to allow Permittees the time needed to arrange all relevant planning authorities and municipal processes, train their staff, etc., regarding the changes to Provision C.3.b.ii relative to the Previous Permit.~~

4. As explained in Item 2 and 3 of this Supplemental, above, we are delaying all of the changes to C.3.b.ii, instead of only delaying certain specific changes to C.3.b.ii. Accordingly, the thresholds in Provisions C.3.b.ii.(2)-(4) are reverted from 10,000 square feet to 5,000 square feet, however, consistent with Item 3, they will not be effective until July 1, 2023.

Provision C.3.b.ii.(2) (p. C.3-14) is revised, as follows:

“...that create 540,000 square feet or more...”

Provision C.3.b.ii.(3) (p. C.3-15) is revised, as follows:

“...that create and/or replace 540,000 square feet or more...”

Provision C.3.b.ii.(4) (p. C.3-16) is revised, as follows:

“...that create 540,000 square feet or more...”

5. Consistent with the changes proposed in Items 2, 3, and 4 of this Supplemental, above, Provision C.3.i.i Task Description (p. C.3-51) is revised, as follows:

- i. Task Description** – ~~“Prior to July 1, 2023, the Permittees shall require all development and redevelopment projects, which create and/or replace  $\geq 2,500$  ft<sup>2</sup> to  $< 10,000$  ft<sup>2</sup> of impervious surface, and detached single-family home projects,<sup>28</sup> which create and/or replace  $\geq 2,500$  ft<sup>2</sup> of impervious surface, to install one or more of the following site design measures. Beginning July 1, 2023,~~ “The Permittees shall require all development and redevelopment projects, which create and/or replace  $\geq 2,500$  ft<sup>2</sup> to  $< 5,000$  ft<sup>2</sup> of impervious surface, and detached single-family home projects,<sup>28</sup> which create and/or replace  $\geq 2,500$  ft<sup>2</sup> to  $< 10,000$  ft<sup>2</sup> of impervious surface, to install one or more of the following site design measures: ...”

Additionally, Provision C.3.i.ii (p. C.3-52) is added between Provision C.3.i.i Task Description and Provision C.3.i.iii Reporting (Reporting is incremented from C.3.i.ii to C.3.i.iii), as follows:

**ii. Implementation Level**

- (1) Beginning July 1, 2023, Permittees shall implement Provision C.3.i.
- (2) Prior to July 1, 2023, Permittees shall implement Provision C.3.i in Attachment I, which are requirements from the Previous Permit.

The following text is added to the corresponding section of the Fact Sheet (p. A-137), as follows:

**Provision C.3.i.ii. Implementation Level directs the Permittees to implement Provision C.3.i beginning July 1, 2023.**

Provision C.3.i.ii.(2) is as follows: Prior to July 1, 2023, it directs Permittees to implement Provision C.3.i in Attachment I, which are requirements from the Previous Permit. The rationale for these requirements is set forth in the Previous Permit’s Fact Sheet and is incorporated herein. The purpose of this delayed implementation date for Provision C.3.i is to allow Permittees the time needed to arrange all relevant planning authorities and municipal processes, train their staff, etc., regarding changes made to Provision C.3.i relative to the Previous Permit.

6. The following clarifying footnote is added to Provision C.3.b.ii.(3) (p. C.3-15):

“...and public projects (other than public road and trail projects),<sup>1</sup> including sidewalks...”

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<sup>1</sup> Examples of such public projects are construction/reconstruction of: streetlights, signals, and signs; curb extensions, sidewalks, and medians; crosswalk enhancements, bulb-outs, curb ramps, and ADA improvements; and sidewalk extensions.

7. During the public comment period, the Board received comments that the requirement to include deep utility line trenching in road reconstruction projects could require time to phase in and that larger projects were more likely to have levels of disturbance that would more easily allow implementation of clean water controls. Based on those comments and subsequent conversations with the Permittees, to address this, revise Provision C.3.b.ii.(5) as follows: “This Regulated Project category includes utility trenching projects which are – on average, over the entire length of the project – greater than or equal to 8 feet wide.”

Also revise the Fact Sheet (p. A-117) by adding the following language after the paragraph that ends with “...specified in Provision C.3.j.ii.(2).,” and before the paragraph that starts with “...The Large Detached Single-Family Home Projects category...”: “This Regulated Project category includes utility trenching projects which are – on average, over the entire length of the project – greater than or equal to 8 feet wide. This is intended to include utility trenching projects that alter a portion of the roadway sufficient to warrant retrofit with clean water controls. The Water Board will use information collected during the Permit term to consider modifying the utility trenching criteria in a subsequent permit.”<sup>8</sup>. The following sentence in the preamble to Provision C.14 (page C.14-1) is deleted because it is unnecessary, as the preamble specifies elsewhere which Permittees are subject to the Provision:

Provisions C.2 through C.7 contain requirements to control sources of pollutants to the Permittees’ MS4s. Implementation of these requirements should control sources of bacteria<sup>53</sup>; still, exceedances of bacteria water quality objectives occur in some water bodies that receive urban runoff. ~~The requirements of this Provision apply to Permittees with discharges identified as causing or contributing to exceedances of bacteria water quality objectives in a receiving water.~~

9. We received comments during the Tentative Order comment period on Provision C.10.f.ii requesting to extend the deadline, beyond September 1, 2022, for Permittees with an existing Direct Discharge Control Plan (DDCP) approved under the current Permit to submit an updated DDCP for approval. Some Permittees with DDCPs that were approved under the previous permit will be required to bring an updated DDCP to their City Council for approval prior to submitting the DDCP to the Water Board. With the Permit’s expected effective date of July 1, 2022, we find it appropriate to extend the deadline beyond September 1, 2022, to allow more time for these Permittees to bring updated plans to their councils for approval. Therefore, the second sentence of the second paragraph of Section C.10.f.ii. on page C.10-12 is revised as follows:

Permittees with an existing DDCP approved during the Previous Permit shall submit an updated DDCP for approval no later than ~~September 1, 2022~~January 3, 2023, in order to continue claiming trash load percent reduction offsets.

### **Errata:**

C.11.h.i., p. C.11-9: Replace the term “fishers” with “anglers” in “...such as subsistence ~~fishers~~ anglers and their families.”

C.14.a.viii.2.e., p. C.14-7: Remove apostrophe from Steven's Creek as follows:

“...a minimum total of 5 sites in Steven's Creek...”

C.14.b.i.(2)(a)(iii), p. C.14-9: Remove duplicative language:

~~Coordinate with the responsible sanitary sewer collection agency to identify and implement BMPs to prevent sanitary sewer overflows, such as developing or~~ Coordinate with the responsible sanitary sewer collection agency to identify and implement BMPs to prevent sanitary sewer overflows, such as developing or enhancing a spill response plan for significant sanitary sewer overflow incident areas to decrease potential sewage discharges into the storm sewer system.

Fact Sheet p. A-99 and A-100: Revise the following sentence:

The section applies to “the cities of Mountain View and Sunnyvale for discharges that are causing or contributing to exceedances of applicable bacteria water quality objectives in Stevens Creek (both cities), Calabazas Creek (Sunnyvale), and Sunnyvale East Channel/Guadalupe Slough (Sunnyvale), respectively.”

Fact Sheet p. A-147: Revise as follows:

“...the City of San Jose is required to appropriate \$100 million over the next ten years, subject to meet and confer and other terms of the consent decree, to implement the projects in its Green Stormwater Infrastructure Plan; The Green Stormwater Infrastructure Plan forecasts which is likely to result in retrofit of roughly 3,7501,750 acres of impervious surface between 2020 and 2030, and roughly an additional 40,0008,500 acres of impervious surface between 2030 and 2040...”

Fact Sheet p. A-224 and A-225: Revise the following sentence:

It also contains requirements for the cities of Mountain View and Sunnyvale for their discharges that are causing or contributing to exceedances of water quality standards in Stevens Creek (both cities), Calabazas Creek (Sunnyvale), and Sunnyvale East Channel/Guadalupe Slough (Sunnyvale) for which there are no TMDLs.

C.10.g.xi., p. C.10-15: Revise as follows:

Starting with the 2023 Annual Report, Permittees with approved DDCPs shall provide the following information in each Annual Report for which they use an offset from the implementation of Provision C.10.f.ii towards their trash load percent reduction:

C.22.a., p. C.22-1: Revise as follows:

Each Annual Report shall report on the previous fiscal year beginning July 1 and ending June 30. The annual reporting requirements are set forth in Provisions C.1 – C.21, with the exception of the 2022 annual reporting requirements for Provisions C.2 – C.9, which are set forth in Provisions C.2 - C.9 of the previous Permit, Order No. R2-2015-0049, as amended.

Attachment I

C.3. New Development and Redevelopment

C.3.b. Regulated Projects

ii. Regulated Projects are defined in the following categories:

(1) Special Land Use Categories

(a) **New Development or redevelopment projects** that fall into one of the categories listed below and that create and/or replace 5000 square feet or more of impervious surface (collectively over the entire project site). This category includes development projects of the following four types on public or private land that fall under the planning and building authority of a Permittee:

- (i) Auto service facilities, described by the following Standard Industrial Classification (SIC) Codes: 5013, 5014, 5541, 7532-7534, and 7536-7539;
- (ii) Retail gasoline outlets;
- (iii) Restaurants (SIC Code 5812); or
- (iv) Stand-alone uncovered parking lots and uncovered parking lots that are part of a development project if the parking lot creates and/or replaces 5,000 square feet or more of impervious surface. This category includes the top uncovered portion of parking structures, unless drainage from the uncovered portion is connected to the sanitary sewer along with the covered portions of the parking structure.

(b) For redevelopment projects in the categories specified in Provision C.3.b.ii.(1)(a)(i)-(iv), specific exclusions are:

- (i) Interior remodels; and
- (ii) Routine maintenance or repair such as:
  - roof or exterior wall surface replacement, and/or
  - pavement resurfacing within the existing footprint.

(c) Where a redevelopment project in the categories specified in Provision C.3.b.ii.(1)(a)(i)-(iv) results in an alteration of **50 percent or more** of the impervious surface of a previously existing development that was not subject to Provision C.3, the entire project, consisting of all existing, new, and/or replaced impervious surfaces, must be included in the treatment system design (i.e., stormwater

treatment systems must be designed and sized to treat stormwater runoff from the entire redevelopment project).

- (d) Where a redevelopment project in the categories specified in Provision C.3.b.ii.(1)(a)(i)-(iv) results in an alteration of **less than 50 percent** of the impervious surface of a previously existing development that was not subject to Provision C.3, only the new and/or replaced impervious surface of the project must be included in the treatment system design (i.e., stormwater treatment systems must be designed and sized to treat stormwater runoff from the new and/or replaced impervious surface of the project).

(2) **Other Development Projects**

New development projects that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial, industrial, residential housing subdivisions (i.e., detached single-family home subdivisions, multi-family attached subdivisions (town homes), condominiums, and apartments), mixed-use, and public projects. This category includes development projects on public or private land that fall under the planning and building authority of a Permittee. Detached single-family home projects that are not part of a larger plan of development are specifically excluded.

(3) **Other Redevelopment Projects**

Redevelopment projects that create and/or replace 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial, industrial, residential housing subdivisions (i.e., detached single-family home subdivisions, multi-family attached subdivisions (town homes), condominiums, and apartments), mixed-use, and public projects. Redevelopment is any land-disturbing activity that results in the creation, addition, or replacement of exterior impervious surface area on a site on which some past development has occurred. This category includes redevelopment projects on public or private land that fall under the planning and building authority of a Permittee.

Specific exclusions to this category are:

- Interior remodels; and
  - Routine maintenance or repair such as:
    - roof or exterior wall surface replacement, and/or
    - pavement resurfacing within the existing footprint.
- (a) Where a redevelopment project results in an alteration of **50 percent or more** of the impervious surface of a previously existing development that was not subject to Provision C.3, the entire project, consisting of all existing, new, and/or replaced impervious surfaces, must be included in the treatment system design (i.e., stormwater

treatment systems must be designed and sized to treat stormwater runoff from the entire redevelopment project).

- (b) Where a redevelopment results in an alteration of **less than 50 percent** of the impervious surface of a previously existing development that was not subject to Provision C.3., only the new and/or replaced impervious surface of the project must be included in the treatment system design (i.e., stormwater treatment systems must be designed and sized to treat stormwater runoff from the new and/or replaced impervious surface of the project).

(4) **Road Projects**

Any of the following types of road projects that create 10,000 square feet or more of newly constructed contiguous impervious surface and that fall under the building and planning authority of a Permittee:

- (a) Construction of new streets or roads, including sidewalks and bicycle lanes built as part of the new streets or roads.
- (b) Widening of existing streets or roads with additional traffic lanes.
  - (i) Where the addition of traffic lanes results in an alteration of more than 50 percent of the impervious surface of an existing street or road within the project that was not subject to Provision C.3, the entire project, consisting of all existing, new, and/or replaced impervious surfaces, shall be included in the treatment system design (i.e., stormwater treatment systems must be designed and sized to treat stormwater runoff from the entire street or road that had additional traffic lanes added).
  - (ii) Where the addition of traffic lanes results in an alteration of less than 50 percent of the impervious surface of an existing street or road within the project that was not subject to Provision C.3, only the new and/or replaced impervious surface of the project must be included in the treatment system design (i.e., stormwater treatment systems must be designed and sized to treat stormwater runoff from only the new traffic lanes). However, if the stormwater runoff from the existing traffic lanes and the added traffic lanes cannot be separated, any onsite treatment system shall be designed and sized to treat stormwater runoff from the entire street or road. If an offsite treatment system is installed or in-lieu fees paid in accordance with Provision C.3.e, the offsite treatment system or in-lieu fees must address only the stormwater runoff from the added traffic lanes.
- (c) Construction of impervious trails that are greater than 10 feet wide or are creek-side (within 50 feet of the top of bank).
- (d) Specific exclusions to Provisions C.3.b.ii.(4)(a)-(c) include the following:

- Sidewalks built as part of new streets or roads and built to direct stormwater runoff to adjacent vegetated areas.
- Bicycle lanes built as part of new streets or roads but are not hydraulically connected to the new streets or roads and that direct stormwater runoff to adjacent vegetated areas.
- Impervious trails built to direct stormwater runoff to adjacent vegetated areas, or other non-erodible permeable areas, preferably away from creeks or towards the outboard side of levees.
- Sidewalks, bicycle lanes, or trails constructed with permeable surfaces.<sup>1</sup>
- Caltrans highway projects and associated facilities.

**C.3.e. Alternative or In-Lieu Compliance with Provision C.3.b.**

**ii. Special Projects**

- (1) When considered at the watershed scale, certain land development projects characterized as smart growth, high density, or transit-oriented development can either reduce existing impervious surfaces, or create less “accessory” impervious areas and automobile-related pollutant impacts. Incentive LID Treatment Reduction Credits approved by the Water Board may be applied to these Special Projects, which are Regulated Projects that meet the specific criteria listed below in Provision C.3.e.ii.(2). For any Special Project, the allowable incentive LID Treatment Reduction Credit is the maximum percentage of the amount of runoff identified in Provision C.3.d. for the Special Project’s drainage area, that may be treated with one or a combination of the following two types of non-LID treatment systems:

- Tree-box-type high flowrate biofilters
- Vault-based high flowrate media filters

The allowed LID Treatment Reduction Credit recognizes that density and space limitations for the Special Projects identified herein may make 100% LID treatment infeasible.

- (2) Prior to granting any LID Treatment Reduction Credits, Permittees must first establish all the following:
- (a) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project’s drainage area with LID treatment measures onsite;

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<sup>1</sup> Permeable surfaces include pervious concrete, porous asphalt, unit pavers, and granular materials.

- (b) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project's drainage area with LID treatment measures offsite or paying in-lieu fees to treat 100% of the Provision C.3.d runoff with LID treatment measures at an offsite or Regional Project; and
- (c) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project's drainage area with some combination of LID treatment measures onsite, offsite, and/or paying in-lieu fees towards at an offsite or Regional Project.

For each Special Project, a Permittee shall document the basis of infeasibility used to establish technical and/or economic infeasibility.

Under Provision C.3.e.vi, each Permittee is required to report on the infeasibility of 100% LID treatment in each scenario described in Provision C.3.e.ii.(2)(a)-(c) above, for each of the Special Projects for which LID Treatment Reduction Credit was applied.

(3) Category A Special Project Criteria

- (a) To be considered a Category A Special Project, a Regulated Project must meet all of the following criteria:
  - (i) Be built as part of a Permittee's stated objective to preserve or enhance a pedestrian-oriented type of urban design.
  - (ii) Be located in a Permittee's designated central business district, downtown core area or downtown core zoning district, neighborhood business district or comparable pedestrian-oriented commercial district, or historic preservation site and/or district.
  - (iii) Create and/or replace one half acre or less of impervious surface area.
  - (iv) Include no surface parking, except for incidental surface parking. Incidental surface parking is allowed only for emergency vehicle access, Americans with Disabilities Act (ADA) accessibility, and passenger and freight loading zones.
  - (v) Have at least 85% coverage for the entire project site by permanent structures. The remaining 15% portion of the site is to be used for safety access, parking structure entrances, trash and recycling service, utility access, pedestrian connections, public uses, landscaping, and stormwater treatment.
- (b) Any Category A Special Project may qualify for 100% LID Treatment Reduction Credit, which would allow the Category A Special Project to treat up to 100% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area with either one or a

combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.

- (4) Category B Special Project Criteria
  - (a) To be considered a Category B Special Project, a Regulated Project must meet all of the following criteria:
    - (i) Be built as part of a Permittee's stated objective to preserve or enhance a pedestrian-oriented type of urban design.
    - (ii) Be located in a Permittee's designated central business district, downtown core area or downtown core zoning district, neighborhood business district or comparable pedestrian-oriented commercial district, or historic preservation site and/or district.
    - (iii) Create and/or replace greater than one-half acre but no more than 2 acres of impervious surface area.
    - (iv) Include no surface parking, except for incidental surface parking. Incidental surface parking is allowed only for emergency vehicle access, ADA accessibility, and passenger and freight loading zones.
    - (v) Have at least 85% coverage for the entire project site by permanent structures. The remaining 15% portion of the site is to be used for safety access, parking structure entrances, trash and recycling service, utility access, pedestrian connections, public uses, landscaping, and stormwater treatment.
  - (b) For any Category B Special Project, the maximum LID Treatment Reduction Credit allowed is determined based on the density achieved by the Project in accordance with the criteria listed below. Density is expressed in Floor Area Ratios (FARs<sup>2</sup>) for commercial development projects, in Dwelling Units per Acre (DU/Ac) for residential development projects, and in FARs and DU/Ac for mixed-use development projects.
    - (i) 50% Maximum LID Treatment Reduction Credit
      - For any commercial Category B Special Project with an FAR of at least 2:1, up to 50% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.

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<sup>2</sup> **Floor Area Ratio** – 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 site area.

- For any residential Category B Special Project with a gross density<sup>3</sup> of at least 50 DU/Ac, up to 50% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
  - For any mixed use Category B Special Project with an FAR of at least 2:1 or a gross density of at least 50 DU/Ac, up to 50% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
- (ii) 75% Maximum LID Treatment Reduction Credit
- For any commercial Category B Special Project with an FAR of at least 3:1, up to 75% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
  - For any residential Category B Special Project with a gross density of at least 75 DU/Ac, up to 75% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
  - For any mixed use Category B Special Project with an FAR of at least 3:1 or a gross density of at least 75 DU/Ac, up to 75% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
- (iii) 100% Maximum LID Treatment Reduction Credit
- For any commercial Category B Special Project with an FAR of at least 4:1, up to 100% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.
  - For any residential Category B Special Project with a gross density of at least 100 DU/Ac, up to 100% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two

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<sup>3</sup> **Gross Density** – The total number of residential units divided by the acreage of the entire site area, including land occupied by public right-of-ways, recreational, civic, commercial and other non-residential uses.

types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.

- For any mixed use Category B Special Project with an FAR of at least 4:1 or a gross density of at least 100 DU/Ac, up to 100% of the amount of runoff identified in Provision C.3.d. for the Project's drainage area may be treated with either one or a combination of the two types of non-LID treatment systems listed in Provision C.3.e.ii.(1) above.

(5) Category C Special Project Criteria (Transit-Oriented Development)

(a) Transit-Oriented Development refers to the clustering of homes, jobs, shops and services in close proximity to rail stations, ferry terminals or bus stops offering access to frequent, high-quality transit services. This pattern typically involves compact development and a mixing of different land uses, along with amenities like pedestrian-friendly streets. To be considered a Category C Special Project, a Regulated Project must meet all of the following criteria:

- (i) Be characterized as a non-auto-related land use project. That is, Category C specifically excludes any Regulated Project that is a stand-alone surface parking lot; car dealership; auto and truck rental facility with onsite surface storage; fast-food restaurant, bank or pharmacy with drive-through lanes; gas station, car wash, auto repair and service facility; or other auto-related project unrelated to the concept of Transit-Oriented Development.
- (ii) If a commercial development project, achieve at least an FAR of 2:1.
- (iii) If a residential development project, achieve at least a gross density of 25 DU/Ac.
- (iv) If a mixed use development project, achieve at least an FAR of 2:1 or a gross density of 25 DU/Ac.

(b) For any Category C Special Project, the total maximum LID Treatment Reduction Credit allowed is the sum of three different types of credits that the Category C Special Project may qualify for, namely: Location, Density and Minimized Surface Parking Credits.

(c) Location Credits

- (i) A Category C Special Project may qualify for the following Location Credits:
  - a. 50% Location Credit: Located within a ¼ mile radius of an existing or planned transit hub.
  - b. 25% Location Credit: Located within a ½ mile radius of an existing or planned transit hub.

- c. 25% Location Credit: Located within a planned Priority Development Area (PDA), which is an infill development area formally designated by the Association of Bay Area Government's / Metropolitan Transportation Commission's FOCUS regional planning program. FOCUS is a regional incentive-based development and conservation strategy for the San Francisco Bay Area.
  - (ii) Only one Location Credit may be used by an individual Category C Special Project, even if the project qualifies for multiple Location Credits.
  - (iii) At least 50% or more of a Category C Special Project's site must be located within the  $\frac{1}{4}$  or  $\frac{1}{2}$  mile radius of an existing or planned transit hub to qualify for the corresponding Location Credits listed above. One hundred percent of a Category C Special Project's site must be located within a PDA to qualify for the corresponding Location Credit listed above.
  - (iv) Transit hub is defined as a rail, light rail, or commuter rail station, ferry terminal, or bus transfer station served by three or more bus routes (i.e., a bus stop with no supporting services does not qualify). A planned transit hub is a station on the MTC's Regional Transit Expansion Program list, per MTC's Resolution 3434 (revised April 2006), which is a regional priority funding plan for future transit stations in the San Francisco Bay Area.
- (d) Density Credits: To qualify for any Density Credits, a Category C Special Project must first qualify for one of the Location Credits listed in Provision C.3.e.ii.(5)(c) above.
- (i) A Category C Special Project that is a commercial or mixed-use development project may qualify for the following Density Credits:
    - a. 10% Density Credit: Achieve an FAR of at least 2:1.
    - b. 20% Density Credit: Achieve an FAR of at least 4:1.
    - c. 30% Density Credit: Achieve an FAR of at least 6:1.
  - (ii) A Category C Special Project that is a residential or mixed-use development project may qualify for the following Density Credits:
    - a. 10% Density Credit: Achieve a gross density of at least 30 DU/Ac.
    - b. 20% Density Credit: Achieve a gross density of at least 60 DU/Ac.
    - c. 30% Density Credit: Achieve a gross density of at least 100 DU/Ac.

- (iii) Commercial Category C Projects do not qualify for Density Credits based on DU/Ac and residential Category C Projects do not qualify for Density Credits based on FAR. Mixed use Category C Projects may use Density Credits based on either DU/Ac or FAR, but not both.
- (iv) Only one Density Credit may be used by an individual Category C Special Project, even if the project qualifies for multiple Density Credits.
- (e) Minimized Surface Parking Credits: To qualify for any Minimized Surface Parking Credits, a Category C Special Project must first qualify for one of the Location Credits listed in Provision C.3.e.ii.(5)(c) above.
  - (i) A Category C Special Project may qualify for the following Minimized Surface Parking Credits:
    - a. 10% Minimized Surface Parking Credit: Have 10% or less of the total post-project impervious surface area dedicated to at-grade surface parking. The at-grade surface parking must be treated with LID treatment measures.
    - b. 20% Minimized Surface Parking Credit: Have no surface parking except for incidental surface parking. Incidental surface parking is allowed only for emergency vehicle access, ADA accessibility, and passenger and freight loading zones.
  - (ii) Only one Minimized Surface Parking Credit may be used by an individual Category C Special Project, even if the project qualifies for multiple Minimized Surface Parking Credits.
- (6) Any Regulated Project that meets all the criteria for multiple Special Projects Categories (i.e., a Regulated Project that may be characterized as a Category B or C Special Project) may only use the LID Treatment Reduction Credit allowed under one of the Special Projects Categories (i.e., a Regulated Project that may be characterized as a Category B or C Special Project may use the LID Treatment Reduction Credit allowed under Category B or Category C, but not the sum of both.).

**iii. Implementation Level**

- (1) Provisions C.3.e.i-ii supersede any Alternative Compliance Policies previously approved by the Executive Officer.
- (2) The definitions of FAR and gross density applicable to Provisions C.3.e.ii.(4) and (5) are effective July 1, 2022, and shall apply to all Special Projects granted final discretionary approval on or after July 1, 2022.

- (3) For all offsite projects and Regional Projects installed in accordance with Provision C.3.e.i-ii, the Permittees shall meet the Operation & Maintenance (O&M) requirements of Provision C.3.h.

**iv. Reporting** – Annual reporting shall be done in conjunction with reporting requirements under Provision C.3.b.iv.(2).

Any Permittee choosing to require 100% LID treatment onsite for all Regulated Projects and not allow alternative compliance under Provision C.3.e, shall include a statement to that effect in each Annual Report.

**v. Reporting on Special Projects**

- (1) Permittees shall track any identified potential Special Projects, including those projects that have submitted planning applications but that have not received final discretionary approval.
- (2) In each Annual Report, Permittees shall report to the Water Board on these tracked potential Special Projects using Table 3.1 found at the end of Provision C.3. All the required column entry information listed in Table 3.1 shall be reported for each potential Special Project. Any Permittee with no Special Projects shall so state.

For each Special Project listed in Table 3.1, Permittees shall include a narrative discussion of the feasibility or infeasibility of 100% LID treatment onsite, offsite, and at a Regional Project. The narrative discussion shall address each of the following:

- (a) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project's drainage area with LID treatment measures onsite.
- (b) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project's drainage area with LID treatment measures offsite or paying in-lieu fees to treat 100% of the Provision C.3.d runoff with LID treatment measures at a Regional Project.
- (c) The infeasibility of treating 100% of the amount of runoff identified in Provision C.3.d for the Regulated Project's drainage area with some combination of LID treatment measures onsite, offsite, and/or paying in-lieu fees towards a Regional Project.

Both technical and economic feasibility or infeasibility shall be discussed, as applicable. The discussion shall also contain enough technical and/or economic detail to document the basis of infeasibility used.

- (3) Once a Special Project has final discretionary approval, it shall be reported in the Provision C.3.b. Reporting Table in the same reporting year that the project was approved. In addition to the column entries contained in the Provision C.3.b. Reporting Table, the Permittees shall provide the following supplemental information for each approved Special Project:

- (a) Submittal Date: Date that a planning application for the Special Project was submitted.
- (b) Description: Type of project, number of floors, number of units (commercial, mixed-use, residential), type of parking, and other relevant information.
- (c) Site Acreage: Total site area in acres.
- (d) Gross Density in DU/Ac: Number of dwelling units per acre.
- (e) Density in FAR: Floor Area Ratio.
- (f) Special Project Category: For each applicable Special Project Category, list the specific criteria applied to determine applicability. For each non-applicable Special Project Category, indicate n/a.
- (g) LID Treatment Reduction Credit: For each applicable Special Project Category, state the maximum total LID Treatment Reduction Credit applied. For Category C Special Projects also list the individual Location, Density, and Minimized Surface Parking Credits applied.
- (h) Stormwater Treatment Systems: List all proposed stormwater treatment systems and the corresponding percentage of the total amount of runoff identified in Provision C.3.d. for the Project's drainage area that will be treated by each treatment system.
- (i) List of Non-LID Stormwater Treatment Systems: List all non-LID stormwater treatment systems approved. For each type of non-LID treatment system, indicate: (1) the percentage of the total amount of runoff identified in Provision C.3.d. for the Special Project's drainage area, and (2) whether the treatment system either meets minimum design criteria published by a government agency or received certification issued by a government agency, and reference the applicable criteria or certification.

**C.3.i. Required Site Design Measures for Small Projects and Detached Single-Family Home Projects**

- i. **Task Description** – The Permittees shall require all development projects, which create and/or replace  $\geq 2,500$  ft<sup>2</sup> to  $< 10,000$  ft<sup>2</sup> of impervious surface, and detached single-family home projects,<sup>4</sup> which create and/or replace 2,500 square feet or more of impervious surface, to install one or more of the following site design measures:
  - Direct roof runoff into cisterns or rain barrels for reuse.

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<sup>4</sup> **Detached single-family home project** – The building of one single new house or the addition and/or replacement of impervious surface to one single existing house, which is not part of a larger plan of development.

- Direct roof runoff onto vegetated areas.
- Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
- Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
- Construct sidewalks, walkways, and/or patios with permeable surfaces.<sup>1</sup>
- Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.<sup>1</sup>

This provision applies to all development projects that require approvals and/or permits issued under the Permittees' planning, building, or other comparable authority.

- ii. Reporting** – On an annual basis, discuss the implementation of the requirements of Provision C.3.i, including ordinance revisions, permit conditions, development of standard specifications and/or guidance materials, and staff training.