

MRP 3 Tentative Order Draft Comment Letter Package

**Special Stormwater Committee Meeting
November 4, 2021**

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Structure

- Upfront letter summarizes most important issues and “asks”
 - Attachment 1 - larger picture context regarding existing and planned SW runoff management approaches, accomplishments, and commitments
 - Attachment 2 - sub-provision specific comments and specific requested revisions, with higher priority sub-provisions highlighted
 - Attachment 3 – selected redline/strikeout recommendations for language changes consistent with the comments provided elsewhere

Att 1 – Approaches and Accomplishments

- Progressive efforts of C/CAG and San Mateo County permittees driven by three key components:
 1. Strong but flexible drivers in MRP 2.0 that allow each Permittee to determine the approach that makes the most sense for their community
 2. An influx of outside financial or technical resources
 - \$30M from Caltrans for regional SW and trash capture partnerships
 - Nearly \$1M in grant funding from Caltrans for the SSMP
 - \$3M from the State to advance regional SW capture projects
 - Pro-bono support to explore innovative and market-based funding and financing strategies
 3. Progressive planning efforts for integrated, multi-benefit SW management such as SRP, SSMP, GI Plans, and collaboration on countywide-scale SW management

Att 2 – Preliminary Draft Comment Matrix

DRAFT 10-20-2021

	A	B	C	D	E	F
1	C.15 Exempted and Conditionally Exempted Discharges					
2	Subprovision	Description of Change from MRP 2.0 to MRP 3.0 (text change in TO in red)	Change from Admin Draft to TO?	Key Issues/Concerns	Priority	Response/Recommendation
3	C.15.b.i.(2) Pumped Groundwater, Foundation Drains, and Water from Crawl Space Pumps and Footing Drains	Updated EPA sampling methods and reporting limits. Added chromium III, manganese, and chlorine, total residual reporting limit to (b)(i) table.	N	Total Residual Chlorine is not an appropriate sampling parameter for groundwater and should be removed from the table.	L	Remove total residual chlorine from the list of sampling parameters.
4	C.15.b.iii Discharge Type – Emergency Discharges of Firefighting Water and Foam	Significant change in requirements.	Y	Described in the rows below. Over-regulation of firefighting activities during emergency situations. Municipal Fire Department representatives do not believe these specific requirements are needed or appropriate. Adds requirements for Permittees regarding things over which they have no jurisdiction. Greatly increases reporting requirements.	H	See rows below.
5	C.15.b.iii Discharge Type – Emergency Discharges of Firefighting Water and Foam	(1) Emergency Discharges – Discharges resulting from emergency firefighting activities		This is repetitive of Subprovision title.	L	Delete and reformat numbering.
6	C.15.b.iii - (2) Regional Coordination	(a) Permittees shall collectively convene a regionwide Firefighting Discharges Working Group (Working Group) together with Water Board staff – and other stakeholders identified in Provision C.15.b.iii.(2)(vi), below – to identify and evaluate opportunities to reduce the impacts of emergency discharges to the MS4 associated with firefighting activity. The Permittees shall collectively (e.g., through the Working Group):	Y	No issues identified We support the idea of a Working Group to discuss potential issues with emergency firefighting discharges. There are a significant amount of new requirements with very little knowledge, background or research to support them. There are statements in the Fact Sheet that demonstrate a lack of understanding of Fire Departments, fire response and post-fire clean-up. Without this basic understanding it is detrimental to include so many new, specific requirements. For example, the Fact Sheet states: "The Permittees estimate that a portion of fires are fought not with municipal resources, but by private firefighting crews." This is not accurate. There are no "private" firefighting crews we are aware of in the Bay Area. During meetings with RWB staff Permittees expressed concern that not all Permittees, e.g. cities, have direct oversight over the Fire Departments that operate in their jurisdiction. These Fire Departments are still public agencies. For example, the Alameda County Fire Department operates in the City of Emeryville. Another example is the Menlo Park Fire District (MPFD) that provides fire protection services to Menlo Park, East Palo Alto, Atherton and portions of Unincorporated San	NA	

Att 3 – Selected Redline Strikeout

C.3.j.ii. Green Infrastructure Numeric Implementation

(3) **Design and Other Criteria** - Green infrastructure projects built pursuant to Provision C.3.j shall:

(a) Comply with Provision C.3.c and Provisions C.3.e-h.

(b) Comply with Provision C.3.d. With cause (e.g., significantly constrained area for a BMP, substantially increased costs for that sizing relative to the C.3.j.i.(2)(g) approach outlined in the Previous Permit, significant amounts of run-on from adjacent areas, or other substantial constraints identified by Permittees) and with reporting in their Annual Reports, Permittees may use the Guidance for Sizing Green Infrastructure Facilities in Streets Projects with companion analysis Green Infrastructure Facility Sizing for Non-Regulated Street Projects submitted in June 2019, to size Non-Regulated green streets projects. If so, Permittees must comply with the Water Board's June 21, 2019, conditional approval of that submittal, which provides qualifiers to, and the conditions under which, the alternative sizing criteria may be used for Non-Regulated green streets projects. Additionally, with cause (e.g., lack of infiltration feasibility, lack of available demand for non-potable use, significantly constrained space, or other substantial constraints) and with reporting in their Annual Reports, Permittees may claim green infrastructure numeric implementation credit for the impervious surface retrofits via regional projects that achieve multiple benefits, such as pollutant load reduction, peak flow and flood reduction, water supply, and/or climate resiliency, and use media filtration as a treatment measure for some or all of the stormwater managed.

10/12-13 Water Board Hearings on Tentative Order

- Presentations by Water Board, program, NGO, and Permittee staff and elected officials
- Focus was on priority issues
 - C.3 and Green Infrastructure
 - Trash
 - Unsheltered Homeless Populations
 - PCBs
 - Water Quality Monitoring
- Testimony from SM County reps:
 - Marie Chuang – C/CAG Chair
 - Jovan Grogan – San Bruno City Manager
 - Randy Breault – Brisbane Public Works Director
 - Reid Bogert – C/CAG staff

Water Board Hearings (cont.)

- WB members discussion highlights – uncertain to lead to changes
 - Addressing roadway water quality impacts important but avoid unintended consequences like less roads being fixed
 - Homelessness provisions: stay in our lane (bacteria & trash water quality impacts), don't hinder many existing municipal efforts, instead complement and give credit for them under permit
 - Maintain option for impactful programs like trash source control credits and creek and shoreline cleanup offsets that help community to connect to their watershed
 - Concern about limited municipal resources and increases in level of effort to implement permit, especially reporting and water quality monitoring

Overall Comments

- Cumulative impact of many new and enhanced requirements has significant resource implications, including:
 - GI retrofit numeric targets
 - C.3 thresholds and road requirements
 - New monitoring requirements
 - Trash controls and monitoring
 - Unsheltered homeless populations
 - PCBs controls
 - Cost reporting
 - Asset management
 - Additions to "core" provisions (e.g., MS4 mapping & numerous new reporting requirements)
- The overall cost of implementing MRP 3 is anticipated to increase substantially compared to MRP 2
- Strategically postpone non-essential new requirements

Overall Comments (cont.)

- Direct staff to work with Permittees to change permit so that implementation is more cost-effective and better tailored to municipal processes/priorities
- Reduce prescriptiveness – incentivize integrated multi-benefit planning and funding efforts like SSMP and regional SW capture projects in San Mateo County - continue building on previous successes
- Phase requirements over multiple permit terms to better align with
 - Local municipal planning and funding timelines
 - Realities of local government funding constraints (e.g., COVID, competing core public services, fee initiative challenges)

C.3 New/Redevelopment

- More regulated projects/lower thresholds
 - Administrative/cost burden, not covered by fees, little WQ benefit
 - Challenges with regulating single-family homes – add to letter?
 - Request to phase in requirements later in permit term – add to letter?
- Roadway project regulation
 - Changes to maintenance exemptions, thresholds, and roadway reconstruction requirements
 - Many public right-of-way projects may be regulated under MRP 3
 - Requested exclusion of these projects

C.3 Public ROW Projects

- Feedback from Water Board staff on 10/27
 - Did not intend to regulate “piecemeal” (non-contiguous) projects (e.g., ADA curb ramps and sidewalk repairs)
 - Do intend to regulate larger scale, contiguous projects >5,000 SF
 - Plan to make language clearer but will not exclude all public works projects in ROW
- Definition of Gravel as Impervious
 - Upgrading from dirt to gravel considered creation of impervious surface
 - Inconsistent with site design and pervious pavement approaches
 - Agreed that it was dependent on degree of compaction and open to suggested language changes

C.3.j. GI Implementation (Retrofit)

- **Long-term numeric goal to be developed during MRP 3** in collaboration with WB staff, EPA, and impartial science experts
 - Short-term goals should be set within context of long-term goal and should consider all GI projects implemented to date
- **Short-term GI implementation** – Each Permittee required to treat 3 acres per 50,000 population (prorated) within permit term; can be met at countywide scale (San Mateo County target is 46 acres)
 - **Orange Memorial Park project** will satisfy countywide target for all Permittees
 - In addition, each Permittee must implement or “cause to be implemented” one project with minimum of 0.2 acres treated – flexibility on how this is done
 - Asked for more flexibility for regional projects to count towards targets

C.3.j. GI Implementation (Cont.)

- **October 19 meeting with Water Board, OneShoreline, and Permittee staff**
 - Questions regarding compliance via cost-sharing of construction and/or O&M costs of regional project - Water Board staff indicated flexibility
 - Infiltration vs. filtration - justification likely needed for non-LID
 - Need clear incentives for multiple agencies and to participate and share in costs and benefits of regional projects
 - Recommendation: C/CAG staff to work with ad-hoc WG, SSF, and OneShoreline to develop process for summarizing costs and benefits of specific regional projects and presenting to Water Board staff
 - In the longer term, allow regional projects to provide regulated project alternative compliance as feasible (e.g., for regulated municipal road projects)

C.8 Water Quality Monitoring

- Creek Status Monitoring and SSID projects removed
- New LID Monitoring and Trash Monitoring subprovisions
- POC monitoring remains (inform TMDLs)
- Most important issues
 - Substantial increases in costs and lack of prioritization
 - Lack of adequate time for planning
 - Lack of reliable methodologies – e.g., untested methods proposed for trash monitoring
 - Lack of technical feasibility (e.g., insufficient storms)

C.8 Water Quality Monitoring (cont.)

- Priority “asks”
 - Reduce level of effort described in Tentative Order to at least MRP 2.0 level
 - Provide additional time to adequately plan and provide the needed input from technical advisors
 - Modify the LID Monitoring analyte list and allow for technical advisors to provide input on the methods utilized to address modified requirements
 - Reduce the number of storm events required for monitoring during MRP 3.0 and provide flexibility to allow goals to be achieved over the entire permit term instead of annual minimums

C.10 Trash Controls

- Enforceable trash load reductions
 - by June 30, 2023 - 90% reduction
 - by June 30, 2025 - 100% reduction (or no adverse impacts to receiving waters)
- Extend both dates by two years and make 90% reduction a non-enforceable target.

C.10 Trash Controls (cont.)

- Credits for existing source control actions allowed in MRP 2.0 should remain in MRP 3.0
- Credits for additional/new source control actions should also be allowed in MRP 3.0
- Continue allowing accounting methods and offsets provided in MRP 2.0 for creek/shoreline cleanups and Direct Trash Discharge Control programs
- Credits for existing and additional/new source controls should be allowed towards the 100% compliance benchmark

C.10 Trash Controls (cont.)

- Ensure trash from private lands connected to MS4s is managed by full trash capture or equivalent
 - Applies to private lands draining to private storm drain inlets that connect to MS4 in Very High, High, and Moderate trash generation areas
 - Achieve by July 1, 2025 (according to Tentative Order)
 - Roughly 40% of the trash in county not currently addressed by full capture systems
 - Provide additional time to work collaboratively with private property owners

C.12.c. PCBs Control Measure

Implementation in Old Industrial Areas

- New provision: mandatory **445 acres or 81/grams PCBs** load reduction per year (conversion assumes 70% efficiency)
- Performance metrics may not be achievable – thus no clear path to compliance
- Private properties are sources but PCBs containing sediments spread throughout urban landscape over many decades
- Need more time to
 - Gather additional monitoring data to better delineate hot vs. warm vs. cold areas
 - Work with private property owners to turn off tap
 - Plan cost-effective control strategies, including accounting for redevelopment occurring over time

C.12.c. PCBs Control Measure Implementation in Old Industrial Areas (cont.)

- Old Industrial Work Group recently convened
 - Top nine agencies that contain more than 90% of old industrial land use areas in San Mateo County
 - Evaluate redevelopment (and potential progressive policies to enhance), source property cleanup, and other potential PCBs controls
 - Winning strategy is to address the sources on parcels, not apply Band-Aid by treating runoff in the public right-of-way
 - Good faith effort

C.12.g. Managing PCBs during Demo

- Will be additional burden compared to MRP 2.0
- Emergency demo exemption needed
- Revise this language
 - Permittees shall verify that PCBs in demolished buildings are properly managed...by obtaining official documentation that the building materials with PCBs concentrations of 50 ppm or greater in these demolished applicable structures *were disposed appropriately according to state and federal regulations.*

C.17 Homelessness

- Expansive mapping, tracking, and reporting requirements would be an undue administrative burden and provide limited water quality benefit
- Remove the requirement for BMPs report and instead require that permittees communicate about successful BMPs and share information via a countywide or regional workshop
- Remove the requirement to map unsheltered homeless populations
- Reduce the scope of the requirements in Provision C.17 to focus on water quality protection
- Permittees with no known homeless encampments or unsheltered populations should be exempt from C.17

Other Provisions

- Certain proposed provisions would not provide concrete water quality benefits and are too costly to implement in the short-term, especially considering COVID-19
- The following key requirements should not be included in MRP 3.0
 - C.15.b.iii Discharge Type – Emergency Discharges of Firefighting Water and Foam
 - C.21. Cost Reporting
 - C.22. Asset Management

Schedule

- Oct 28 – BAMSC Steering Committee meeting
- Nov 3 – met with Water Board staff re monitoring & PCBs
- Nov 4 – special Stormwater Committee meeting
- Nov 9 – email revised draft version of package including RLSO
- Nov 12 – any remaining Permittee comments due to C/CAG & EOA
- Nov 16 – submit final package to Water Board
- TBD – ongoing regional meetings: internal and with WB staff
- Late winter to early spring – adoption hearing
- July 1, 2022 – permit effective date