



May 9th, 2022

Honorable Chair Jim McGrath and Members of the Regional Board  
State of California  
San Francisco Bay Regional Water Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Dear Chair McGrath and Water Board Members,

We are writing to you today to comment on the proposed amendments to the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (“the Permit”), in particular on the changes to the Category C Special Projects Criteria, released April 11, 2022. We encourage you to work with housing developers, environmental advocates and other stakeholders prior to the adoption of these amendments, with a particular focus on better understanding and communicating the impacts of these amendments on the feasibility of new infill housing construction. We also encourage you to eliminate the affordability credit framework outlined on page C.3-35 from the Permit and instead adopt a policy based on balancing project feasibility with the low impact development goals of the Permit.

Our organizations promote sustainability and equity in the Bay Area. We care deeply about the health of our region, which includes cleaning up water quality and reducing flooding risk in the San Francisco Bay Area. San Francisco Bay fails to meet Clean Water Act standards for ten pollutants, including pesticides, heavy metals, and chemicals incorporated in building materials.<sup>1</sup> A major source of these pollutants is stormwater runoff: the rainwater and irrigation water that runs off urban areas into storm drains and creeks, then to the Bay.<sup>2</sup> Rapid stormwater runoff

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<sup>1</sup> State Water Board. Appendix A: Proposed 2018 303(d) List of Impaired Waters.

[https://www.waterboards.ca.gov/water\\_issues/programs/water\\_quality\\_assessment/2018\\_integrated\\_report.html](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2018_integrated_report.html). San Francisco Bay, San Pablo Bay, and/or Suisun Bay are impaired for Chlordane, DDT, Dieldrin, Dioxin compounds, Furan Compounds, Invasive Species, Mercury, and PCBs.

<sup>2</sup> San Francisco Bay Nonpoint Source Program.

[https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/nps/index.html#:~:text=San%20Francisco%20Bay%20is%20impaired,largely%20from%20nonpoint%20source%20pollution.](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/nps/index.html#:~:text=San%20Francisco%20Bay%20is%20impaired,largely%20from%20nonpoint%20source%20pollution.)

also increases the risk of flooding. Low-Impact Development is considered a best practice for reducing the pollution and flooding risk from stormwater.<sup>3</sup>

We are also committed to ensuring that the region is actively addressing the housing affordability crisis by building more housing in infill locations. As you know, California is experiencing a significant housing crisis. Building more housing at all income levels is absolutely critical to addressing this crisis and reducing homelessness. The most recent Regional Housing Needs Determination for the Bay Area is over 441,000<sup>4</sup> units. This housing must be built in infill locations, particularly in those locations proximate to transit in order to address climate change and reduce greenhouse gas emissions<sup>5</sup>.

We are supportive of the goal of including more low impact development (LID) in new housing construction as a means of more effectively treating stormwater and minimizing flooding risk. We believe this goal can be accomplished while also encouraging new housing in transit oriented locations. To this end, we make the following recommendations.

- 1. Work with housing developers, environmental groups and other stakeholders prior to adopting the amendments to the Permit in order to better understand and communicate the impacts of these amendments on the feasibility of new infill housing construction.**

We appreciated meeting with Water Board staff on May 5th to learn more about the impacts of the proposed changes to the Permit. From this conversation we understood that incorporating LID measures into new housing developments can be cost/space neutral, that there are many options for how to incorporate the measures and if the measures cannot be implemented on-site that there are options for meeting the requirements off-site. It would be very helpful to the public dialogue to develop several case studies demonstrating the flexibility of implementing the new requirements while analyzing the financial impacts of the requirements on new housing construction. At minimum, the public could learn more about how to flexibly implement the requirements. If modifications are needed to the requirements in order to make them cost/space neutral, those modifications could be fleshed out through this process. If the new LID requirements cannot be made cost/space neutral, then credits should be provided to both affordable and market rate projects in infill transit-oriented locations.

- 2. Eliminate the affordability credit framework from the Permit and instead adopt a policy informed by the relationship between the proposed amendments and project feasibility.**

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<sup>3</sup> US EPA. Urban Runoff: Low Impact Development.  
<https://www.epa.gov/nps/urban-runoff-low-impact-development>

<sup>4</sup> Final Regional Housing Needs Allocation Plan (RHNA): San Francisco Bay Area, 2023-2031,  
[https://abag.ca.gov/sites/default/files/documents/2021-12/Final\\_RHNA\\_Allocation\\_Report\\_2023-2031-ap  
proved\\_0.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf)

<sup>5</sup> Critical Cooling, SPUR: <https://www.spur.org/publications/spur-report/2009-05-01/critical-cooling>

We appreciate the desire to support new affordable housing construction by crediting projects that have a high percentage of affordable units within them. Unfortunately the affordable housing methodology summarized in the table on page C.3-35 is not informed by project feasibility. Adopting this methodology would very likely have the outcome of only allowing 100% affordable housing projects to avail themselves of the credit because the other options have not been informed by a financial feasibility analysis and could have the negative consequence of conflicting with a jurisdiction's existing inclusionary housing ordinance.

We note that it is confusing to assert that affordable housing requires credits because of the cost or space concerns related to incorporating LID measures in their projects, while also asserting that the LID measures in the permit are flexible enough not to impact project feasibility. If LID measures do impact project feasibility, then both affordable housing projects and market rate housing projects in transit oriented locations should be able to benefit from these credits. If they do not impact project feasibility, then no credits should be needed.

**3. Clarify the timeline for the implementation of these changes.**

We understand from staff that projects that the proposed updates to the stormwater permit do not go into effect until July 1, 2023. Additionally, staff communicated that existing law ensures that project permits already approved by a municipality are unaffected by updates to the municipality's stormwater permit. It would be helpful to communicate this fact to the public. Staff should also clarify what is meant by project "approval" (i.e. securing planning entitlements or some other metric).

Thank you for the opportunity to comment on these important amendments. Should you have any questions, please do not hesitate to contact us.

Sincerely,

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Executive Director  
Greenbelt Alliance

Sarah Karlinsky  
Senior Advisor  
SPUR