



# Memorandum

**TO:** TRANSPORTATION AND ENVIRONMENT COMMITTEE  
**FROM:** Kerrie Romanow  
**SUBJECT:** MUNICIPAL REGIONAL STORMWATER PERMIT UPDATE  
**DATE:** October 24, 2023

Approved

Date **10/25/23**

## RECOMMENDATION

Accept this update on the status of the City's implementation of the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit.

## BACKGROUND

The City of San José operates a citywide stormwater program under the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) issued by the San Francisco Bay Regional California Water Board (Water Board). The Water Board adopted the current five-year Stormwater Permit on May 11, 2022, it became effective July 1, 2022, and the permit is set to expire on June 30, 2027.

The Stormwater Permit specifies increasing actions necessary to prohibit non-stormwater discharges into the municipal storm sewer system and waterways to protect local creeks and the San Francisco Bay. This memorandum provides an update regarding the first year of implementing the new Stormwater Permit and a summary of next steps and additional funding needed to attain permit compliance.

The current state of many of our creeks is significantly degraded. The U. S. Environmental Protection Agency's Watershed Health Index states both Coyote Creek and Guadalupe River are impaired for aquatic life, fish/shellfish consumption, and recreational use. As such, the City should continue to focus its resources and prioritize funding to restore and protect local waterways, revitalize riparian areas for community activity, and foster climate resiliency.

## ANALYSIS

Fiscal Year 2022-2023 was the first year of the current Stormwater Permit. Staff made significant strides in preparing for and implementing its heightened requirements. The

Stormwater Annual Report<sup>1</sup> was approved by the City Council on September 19, 2023, and submitted to the Water Board on September 29, 2023. Below is a summary of requirements, achievements, and challenges organized by permit provision.

**Provision C. 3 – New Development and Redevelopment (Green Stormwater Infrastructure – GSI)**

*1. Regulated Projects*

*Current Status:* As of July 1, 2023, any new development or redevelopment that creates or replaces 5,000 square feet, single-family homes (10,000 square feet or greater), road reconstruction (one contiguous acre or greater), and utility trenching (eight feet or greater) is required to comply and will be regulated. Approximately 56% of private development projects that were submitted to the City after July 1, 2023, may require the installation of stormwater treatment within the public right-of-way. Currently, there is no other option for developers to meet GSI treatment requirements other than onsite treatment.

The Stormwater Permit allows for alternative compliance, which consists of building offsite GSI treatment or paying an in-lieu fee for an offsite GSI treatment project. This tool is potentially useful for development projects that may have difficulty treating stormwater onsite due to utility conflicts, size, or space constraints. An alternative compliance program can provide more flexibility on where to install these GSI treatment systems, providing multipurpose benefits such as addressing localized flooding or reducing urban heat island effects.

The City must also implement five acres of GSI during the permit term. The River Oaks Regional Stormwater Capture GSI project, identified in the City Council-approved San José GSI Plan, will exceed this requirement by treating over 200 impervious acres of drainage area. Construction began in September 2023 and is planned for completion in summer 2024. Another regional GSI project, the City Land South of Phelan Regional Stormwater Capture Project, is being designed south of Kelley Park, behind Yerba Buena High School. The project will treat over 450 acres of impervious drainage area and receive \$4.98 million from the Prop 1 Integrated Regional Water Management Round 2 Implementation Grant Program. City staff is also exploring options for future regional GSI projects, including a potential San Jose Mineta International Airport site.

*Challenges:* The Environmental Services Department, Public Works Department, Planning, Building & Code Enforcement Department, and Department of Transportation work closely to ensure the Stormwater Permit is correctly interpreted for private and public projects. Given the increase in the volume of development projects that now require onsite GSI treatment, the City anticipates a growing need to establish an alternative compliance program and determine an appropriate in-lieu fee payment system to support these development projects while ensuring sufficient resources to operate and maintain these treatment systems.

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<sup>1</sup> <https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/our-creeks-rivers-bay/stormwater-management-annual-reports>

## *2. Stormwater Permit Amendment for Provision C.3*

*Current Status:* Water Board staff released the final Tentative Order for the Stormwater Permit Amendment for Provision C.3 on October 3, 2023. Staff is analyzing it to determine its impacts on the Special Project section related to affordable and emergency interim housing requirements and GSI Alternative Treatment Systems.

Staff informed developers of proposed changes and updated guidance documents before the Permit Amendment adoption hearing on October 11, 2023. In preparation for this adoption hearing, City staff provided feedback to both the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and Water Board staff regarding GSI requirements for Emergency Interim Housing projects, as well as the Road Reconstruction requirement and its adverse impact on disadvantaged communities. Water Board staff appreciated the City's comments, and the revised Permit Amendment language now exempts temporary emergency interim housing projects from GSI requirements. City staff will continue to evaluate potential workload increases and alternative compliance options.

## **Provision C.10 – Trash Load Reduction**

### *1. Trash Load Reduction*

*Current Status:* The Stormwater Permit requires the City to achieve 90% trash load reduction by June 30, 2023, and 100% by June 30, 2025. The City achieved 95.6% trash load reduction as of June 30, 2023. The City updated its Long-Term Trash Control Plan, which was approved by the City Council on September 19, 2023. The Plan was submitted to the Water Board with the Stormwater Annual Report on September 29, 2023. The Long-Term Trash Control Plan details the City's plan to achieve 100% trash load reduction through implementing new and/or expanded structural controls and on-land trash management programs. Staff is currently assessing effective and efficient approaches to implement new trash control measures with multipurpose benefits for other permit provisions (e.g., polychlorinated biphenyls, mercury). Additional funding will be needed to expand efforts to ensure the City achieves 100% compliance with the Stormwater Permit.

*Challenges:* Trash load reductions are achieved through structural controls built into the City's storm sewer system (e.g., Small and Large Trash Capture devices, bioretention devices) and on-land trash control measures (e.g., public litter cans, Adopt-A-Park). Under the new permit, the 10% offset for additional creek and shoreline cleanups and the 15% offset for the City's Direct Discharge Plan will phase out by June 30, 2025. In response to this change, the City must increase additional full trash capture loads, expand existing, and/or implement new on-land trash control measures to achieve 100% trash load reduction.

### *2. Full Trash Capture in the Public Right-of-Way*

*Current Status:* The City has installed 34 Large Trash Capture devices and established partnerships with Caltrans to further expand the program in addressing trash within the stormwater system. The City also has 106 Small Trash Capture devices, which are installed inside storm drain inlets, and 88 bioretention treatment systems that remove dissolved pollutants and particulate matter from stormwater runoff, reduce the volume and rate of stormwater

discharged, and meet full trash capture design criteria. The City will complete the installation of six Large Trash Capture devices by June 30, 2025, bringing the total to 40. Additional funding may be available from Caltrans to design, procure, and install additional Large Trash Capture systems.

*Challenges:* There are difficulties in identifying suitable locations for new Large Trash Capture systems that maximize benefits. Data indicates areas of the City with the highest trash load impacts are spread widely across the City, necessitating smaller, inlet-based full trash capture systems. This increases the funding needed to address ongoing operations and maintenance needs.

### *3. Full Trash Capture Requirements for Private Lands*

*Current Status:* All private parcels that have been identified as generating medium, high, or very high trash loads and that have a private connection direct to the municipal storm sewer system, must have either structural controls installed to capture trash or owner-implemented practices that would be equivalent to full trash capture, by June 30, 2025. Staff estimates that approximately 2,100 parcels will be affected by this requirement and is currently verifying.

*Challenges:* All owners of parcels subject to this Stormwater Permit requirement will be required to install full trash capture or enact equivalent controls by June 30, 2025. Water Board staff indicated that physical inspection of parcels and installed devices will be required to ensure proper installation has been completed. To meet the permit requirements, the City must determine the best approach to ensure private parcel owners comply and appropriate funding to inspect and enforce for ongoing compliance.

### *4. Direct Discharge Trash Control Program (DDTCP)*

*Current Status:* In FY 2022-2023, DDTCP efforts removed over 1,289 tons of trash from creeks. The City submitted an updated DDTCP plan on October 2, 2023, and is awaiting Water Board approval. DDTCP efforts include providing outreach, social and sanitary services to homeless individuals and those living in encampments and vehicles; cleanup of encampment trash and debris; removal of residual trash from creeks in partnership with non-profits and Santa Clara Valley Water District; and visual assessments. Once approved, additional funding and potential policy changes will be needed to support the ongoing need to address waterway encampments and lived-in vehicles near storm drains.

*Challenges:* The City received multiple comments from the Water Board and is awaiting final approval of the DDTCP. If the City cannot revise the DDTCP sufficiently to secure Water Board approval, the City will be required to take costly and potentially controversial measures to ensure it complies with the Stormwater Permit and the Federal Clean Water Act.

## **Provision C. 12 – Polychlorinated Biphenyls (PCBs) Controls**

### *1. PCBs in Old Industrial Areas*

*Current Status:* The Stormwater Permit required permittees to submit a Regional Control Measure Plan to reduce PCBs and mercury in urban runoff from old industrial areas, in order to

achieve the county-wide mandated load reductions. The SCVURPPP submitted the Regional Control Measure Plan (Plan) on March 31, 2023. The Water Board provided comments on the Plan in August 2023. City staff is working with local and regional partners to review and respond to these comments by the end of October 2023, requesting additional time to update the Plan by early 2024.

The SCVURPPP confirmed eight properties to have PCBs, (known as source properties) in San José with high concentrations. Additionally, approximately 67 acres of old industrial parcels have been prioritized for further onsite investigation based on elevated PCBs observed in the public right of way (known as moderate properties). SCVURPPP will continue to investigate and potentially identify additional source (i.e., PCBs found on site) and moderate properties that must comply with this provision. Staff will continue to evaluate how these requirements will impact staffing resources, operations and maintenance of storm sewers, properties, and businesses in old industrial areas.

*Challenges:* To claim PCBs reduction credit regionally as required under both the Stormwater Permit and the PCBs Total Maximum Daily Load, the City must develop and implement enhanced operations and maintenance measures such as additional street sweeping, storm drain inlet and pipe cleaning adjacent to source properties, and/or installation of drain inlet devices to capture sediment. For source properties, the City is evaluating the best approach to either (1) refer properties to the Water Board for follow-up investigation and abatement in combination with a City-run enhanced operations and maintenance program, or (2) work directly with the owners of these eight private properties to abate. For moderate properties, the City will need to work directly with the property owners to abate or implement interim control measures in combination with a City-run enhanced operations and maintenance program until abated. These approaches will require additional resources for outreach, inspection, enforcement, and enhanced operations and maintenance until the properties are fully abated.

## *2. PCBs in Building Demolition*

*Current Status:* City staff presented proposed new requirements and updates to the Municipal Code and Council Policies to the Planning Commission on April 12, 2023. The City Council approved these changes on May 9, 2023, with an effective date of June 23, 2023. City staff also participated in updating regional guidance documents to reflect the new requirements, updated the City website, and conducted educational outreach to developers. These updates allow the City to comply with the Stormwater Permit's more prescriptive requirements for applicable structures with building materials confirmed to contain PCBs testing at or above 50 parts per million. Information about the program is available at [www.sanjoseca.gov/ManagingPCBs](http://www.sanjoseca.gov/ManagingPCBs).

## **Provision C.15.b.iii – Emergency Discharges of Firefighting Water and Foam**

*Current Status:* The San José Fire Department and the Environmental Services Department are actively participating in biannual regional Firefighting Discharges Working Group meetings to assess the adequacy of existing best management practices and standard operating procedures to address the potential adverse water quality impact of firefighting water and foam discharged

during emergencies. Once the Firefighting Discharge Report is submitted by September 2025, the San José Fire Department and contract staff must implement and train accordingly.

*Challenges:* Completing this Stormwater Permit requirement will impact the San José Fire Department, which may need additional funding to comply. In addition, the City will need to evaluate the adequacy of large industrial sites' best management practices and standard operating procedures for preventing, containing, and cleaning up emergency firefighting discharges into storm drains and receiving waters. City staff is evaluating the resources and authority needed to implement this new requirement. The San Jose Mineta International Airport is also currently assessing the feasibility of and timeline for switching to a newly approved, fluorine-free firefighting foam. This would require the removal and disposal of the existing firefighting foam, as well as the cleaning of equipment.

**Provision C.17 – Discharges from Unsheltered Homeless Populations**

*Current Status:* The City collaborated with regional partners (75 permittees throughout the San Francisco Bay Area) to submit a region-wide Best Management Practices Report to the Water Board, together with the Stormwater Annual Report, in September 2023. This Best Management Practices Report describes various programs utilized by permittees throughout the Bay Area to address non-stormwater discharges from the unsheltered community into the storm sewer system and waterways. Additionally, as required, the City submitted maps using data from the County of Santa Clara's 2022 point-in-time count that show where unsheltered populations exist, by census tracts, near storm drain inlets and waterways. The DDTCP and the Recreational Vehicle Pollution Prevention Program, a pilot program for 150 vehicles, will assist the City in meeting these requirements. Still, additional funding will be needed as the City increases its efforts. Further analysis of the effectiveness, efficiency, and equity impacts will be evaluated before any program expansion.

*Challenges:* The City will update maps to designate the locations of encampments (especially within waterways) and lived-in vehicles through implementing the first phase of the City's Encampment Management System by the end of 2023. Currently, it is difficult to identify, scale, and analyze the utilization of services provided by the City and its partners as they ensure that social and sanitary services are provided to individuals experiencing homelessness in the waterways and near storm drains. Additionally, the requirements under this provision can be met with the City's DDTCP, pending Water Board approval.

**Provision C.20 – Cost Reporting**

*Current Status:* The City, in conjunction with regional partners, developed a draft cost reporting framework and submitted it to the Water Board on June 30, 2023. This framework includes Stormwater Permit-required detailed costs such as staff, capital, contractual, operations and maintenance, and administrative costs. It was presented to applicable departments on September 29, 2023. Staff is evaluating if additional staffing resources may be required to develop and implement supporting multidepartment budgetary and accounting structures.

*Challenges:* The City must implement the Cost Reporting Framework starting July 1, 2024, for FY 2024-2025, and submit data annually starting with the 2025 Stormwater Annual Report due September 30, 2025. Staff must collaborate across City departments to identify and track costs associated with implementing stormwater permit-related activities. Completing these tasks may require additional staffing resources.

**Provision C.21 – Asset Management**

*Current Status:* Stormwater assets are operated and maintained by multiple City departments, each with its own inventory and asset management systems. Additional funding may be required to develop a comprehensive approach to stormwater permit-related asset management for the entire City.

*Challenge:* The City must develop a master asset management plan by June 2025 and begin implementation by July 2025. Staff will need to collaborate across City departments to assess and consolidate management of applicable assets. Additional funding will be required for asset management improvements.

**Cost Implications**

The City's current suite of stormwater protection, management, and capital improvement programs are primarily funded through storm sewer service charges paid by individual property owners. This is supplemented by funding from various federal and state grants, the Measure T Public Safety and Infrastructure Bond Fund, and the General Fund (in the limited instances where other sources are not eligible to pay for the required costs, such as creek cleanup events). As described within the City's 2023-2024 Adopted Capital Budget and 2024-2028 Adopted Capital Improvement Program, the combined expenditure needs of the operating and capital components eclipse ongoing revenues from storm sewer service charges. Identifying additional funding within the next three fiscal years is imperative.

Though it intends to improve overall environmental and community health, full implementation of the Stormwater Permit is expected to result in significant policy and program cost implications above what the City already faces. These new compliance and cost requirements will impact a wide range of community members – from commercial property owners and businesses to individual homeowners – as well as multiple City departments and capital programs. Staff will continue to review these changes and coordinate across the impacted departments and the City Manager's Budget Office to develop an implementable approach to the new requirements. Applicable strategies may include re-examining and reallocating existing resources to meet the most immediate needs, identifying new or increased fees to pay for new and expanded services, leveraging federal and state grant opportunities where available, and additional General Fund resources as feasible. A full implementation that does not divert resources from other vital City services will likely require a mixture of new revenues, as well as creative funding and expenditure solutions. These considerations will be addressed in the FY 2024-2025 budget development process and beyond, with additional discussion expected at Transportation and Environment Committee meetings and City Council as programs and policies are more precisely defined.

### **Conclusion**

San José's creeks are a vital part of our community, and the City has been a leader in developing creative solutions to ensure compliance with the Stormwater Permit and Clean Water Act. City departments are collaborating to evaluate where existing programs can be enhanced and where staff must develop new programs to meet increasing compliance requirements. It is important to recognize that the latest compliance requirements are more significant than the previous permit. The funding needs to implement and manage those requirements is anticipated to be substantial across City departments. Staff will develop cost estimates for the programs, policies, and systems that meet San José permit responsibilities for City Council review and approval. Recommendations will be included in the 2024-2025 Proposed Budget process and beyond.

### **CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City Action.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Office of Economic Development, and the following departments: Airport; Environmental Services; Housing; Parks, Recreation and Neighborhood Services; Planning, Building and Code Enforcement; Public Works; San José Fire; and Transportation. These departments are tasked to ensure Stormwater Permit requirements are met.

/s/

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