

MEETING AGENDA

Date of Meeting: December 6, 2021, 8:00 AM – 12:00 PM
Location: [MS Teams Meeting](#)
Subject: Regional Compliance for a Sustainable Bay TAC Meeting #5:
 Legal Review of Proposed Regional Alternative Compliance System
Attendees: Amanda Booth, Sarah Kolarik, Lynn Nerland, *City of San Pablo*
 Michele Mancuso, *Contra Costa County*
 Steve Waymire, Lucile Paquette, Cathleen Terentieff, *City of Walnut Creek*
 Keith Lichten, Derek Beauduy, Zach Rokeach, *SFBRWQCB*
 Luisa Valiela, Jacques Landy, Sara Goldsmith, *EPA*
 Tim Jensen, Paul Detjens, *Contra Costa County Flood Control District*
 Mitch Avalon, Karin Graves, *Contra Costa Clean Water Program*
 Nicholas Ghirelli, *RWG Law, for Contra Costa Clean Water Program*
 Viviana Heger, *Meyers Nave, for City of Walnut Creek*
 Stacy Lee, *Shute, Mihaly & Weinberger LLP, for City of Orinda*
 Tony Hale, Gemma Shusterman, *San Francisco Estuary Institute*
 Kelly Havens, Lisa Austin, *Geosyntec Consultants*
 Mark Kieser, *Kieser & Associates*
 Jill Bicknell, *EOA*
 Susanne Heim, *Panorama Environmental*
 George Kelly, *Bespoke Mitigation Partners*
 Brooks Smith, *Troutman Pepper*

Discussion Topics:

1. Introductions and Agenda Review 8:00 AM
2. Project Schedule/Deliverables and Notes 8:05 AM
Process: Review project schedule and next steps; review TAC Meeting Notes.
Intended outcome: Approve TAC Meeting #4 Notes (see Attachment A).
3. Overview of System Summary Report Legal Review Comments..... 8:10 AM
Process: Present System Summary Report Legal Comments Materials (see Attachment B, Attachment C, and file “RAC Summary Report_all comments_matrix.docx”)
4. Discuss System Summary Report Legal Comments by Topic 8:15 AM
Discussion topics and suggested participating Legal Reviewers for each item included:
 - a. *Item 1: System Objectives (all Legal Reviewers)*
 - b. *Item 2: PCBs and Mercury TMDL Drivers (all Legal Reviewers)*
 - c. *Item 3: Administrative Structure – Permittee Role (Permittee Legal Reviewers)*

- d. *Item 4: Flood Control District/O&M Assessment Approach (Contra Costa Watershed Program and Contra Costa Clean Water Program Legal Reviewers)*
- e. *Item 5: CEQA Considerations (all Legal Reviewers)*
- f. *Item 6: Mitigation Fee Act (all Legal Reviewers)*
- g. *Item 7: System Boundaries/Restrictions (all Legal Reviewers)*
- 5. *Break* 10:00 AM
- 6. Discuss System Summary Report Legal Comments by Topic 10:10 AM
 - a. *Item 8: Funding/Financing and Compliance Unit Cost Basis (interested Legal Reviewers)*
 - b. *Item 9: Adaptive Management – Amendments (Water Board)*
- 7. Discuss Responses to Legal Reviewer Input 11:05 AM
 - a. *Brainstorming with TAC members to respond to discussion items.*
- 8. Action Items and Next Steps..... 11:50 AM
- 9. Adjourn 12:00 PM

**DRAFT MEETING SUMMARY – REGIONAL COMPLIANCE FOR A
SUSTAINABLE BAY TAC MEETING #4**

Date of Meeting: January 12, 2021, 1:30 PM – 4:30 PM
Location: Online Meeting
Subject: Regional Compliance for a Sustainable Bay TAC Meeting #4:
Regional Alternative Compliance System Details
Attendees: Amanda Booth, Sarah Kolarik, *City of San Pablo*
Joanne Le, *City of Richmond*
Michele Mancuso, *Contra Costa County*
Steve Waymire, Lucile Paquette, Cathleen Terentieff, *City of Walnut Creek*
Keith Lichten, Derek Beauduy, Zach Rokeach, *SFBRWQCB*
Luisa Valiela, Jacques Landy, *EPA*
Tony Hale, Gemma Shusterman, *San Francisco Estuary Institute*
Kelly Havens, Lisa Austin, *Geosyntec Consultants*
Mark Kieser, David Chen, *Kieser & Associates*
Jill Bicknell, Lisa Sabin, *EOA*
Susanne Heim, *Panorama Environmental*
George Kelly, *Bespoke Mitigation Partners*
Seth Brown, *Storm and Stream Solutions*

Meeting Summary:

1. Introductions and Agenda Review

Roll call for those on the line; *Kelly Havens* provided an overview of the agenda. No questions or comments on the agenda.

2. Project Schedule/Deliverables and Notes

TAC Meeting Notes #3 approved. Project schedule was presented, including schedule for legal review period, which is expected to begin in April 2021. A brief project schedule is provided below:

February/March 2021 – Draft System Summary Report reviewed by Steering Committee and revised by Project Team.

April 2021 – Revised Draft System Summary Report provided to legal reviewers for review; comments requested within 4-6 weeks.

May 2021 – Project Team compiles comments received by legal reviewers into “Legal Comment Matrix” and begins developing preliminary responses to legal comments.

June 2021 – “Legal Comment Matrix” and preliminary responses to legal comments are discussed during final Project TAC meeting (#5), which will be focused exclusively on these comments and responses.

DRAFT TAC Meeting #4 Notes
January 12, 2021
Page 2

July/August 2021 – Project Team develops final “Responses to Legal Comments Matrix” based on input from TAC meeting, along with Draft Final Program Documents. Draft Final Program Documents are distributed to AC as well as other interested TAC and legal reviewers.

August/September 2021 – Final Program Documents, addressing comments on Draft Final Program Documents, are delivered by Project Team.

Luisa Valiela stated that the suggested 6-week comment period would likely be adequate for review, but there could be issues with concurrent legal reviews by EPA and RWB attorneys. *Amanda Booth* replied that review of multiple drafts is possible. *Kelly* mentioned that legal review will be focus of a TAC meeting held in June. (A schedule has been provided in these notes for clarity.)

3. Proposed System and System Details

Amanda and *Kelly* presented the proposed regional alternative compliance system. Discussion highlights are provided below:

- *Zach Rokeach* - With multiple sources of funding, how will you differentiate which projects need to be completed by when? *Amanda* – The offsite projects must be built at the same time or prior to the regulated projects per CEQA. We will be tracking to make sure that the metrics are not sold more than once.

Allowable Control Measures

- *Keith Lichten* - Would off-site self-treating/retaining control measures include converting impervious area to pervious? *Kelly* – Yes, this is a potential application of that control measure. *Keith* - Combination of cisterns/bioretention or vaults control measure – can you explain this? *Cathleen Terentieff* – These are meant to deal with HMP/treatment. *Keith* - may need to think through separating [HMP and water quality]. *Luisa* – Consideration of life of trade with regard to ongoing O&M adequacy is needed. *Amanda* – Control measures are intended to operate “in perpetuity”, hoping ongoing O&M payment can facilitate this.

Discussion of Equivalent Pollutant Loading Demonstration

- *Jack Landy*: Is a programmatic ratio [applied to volume] proposed for simplicity? *Kelly*: This could help to generate more exchanges as there are less variables and constraints. Regional-specific ratios could introduce some constraints on specific exchanges. There are advantages and downsides to both approaches.
- *Luisa*: Would we be using both options [i.e., programmatic-wide ratio and regional-specific ratios] for equivalent volume capture? *Kelly*: These approaches are difficult to combine, we suggest selecting one approach.
- *Zach*: Does [programmatic ratio] assume that projects would be distributed evenly? There could be more exchanges resulting in less than the ratio. Recommend discussion of the ratio analysis assumptions be provided. Not sure whether it is good to encourage participation in the program or focus on simplicity. *Mark Kieser* – Could build in a safety

DRAFT TAC Meeting #4 Notes

January 12, 2021

Page 3

factor/conservatism with programmatic level and have a 3-year or 5-year evaluation period, we can look at where these exchanges shake out following evaluation and adjust the trade ratio as needed. For program implementation, experience in other programs points to (A) simplicity, (B) consistency, as beneficial. This provides buyer assurance that program is not going to change for a window of time. *Lisa A.* – Net environment benefit is a good reason to encourage participation in program. Additionally, a certain amount of participation is needed for System to operate optimally. *George Kelly* – With limited involvement, smaller projects mean costs per metric go up. We need a big enough program scale to optimally use resources. Very successful programs are very simple, but don't want so much conservatism to reduce participation.

- *Luisa* – Anticipate the need for technical content and rationale for ratio approach. EPA legal review is going to want to see these for their review. Make sure this is written into the document for review.
- *Keith*: Question on equivalent concentration land use table – would the on-site versus off-site comparison be required to meet both categories [relating to equivalent or higher influent pollutant concentrations treated off-site as compared to on-site for PCBs and TSS]? *Kelly*: That is what we are proposing, yes. TSS will be used as a surrogate for other urban pollutants of concern.

Discussion of Fee Components and Setting Fee

- *Luisa*: Relating to cost estimates based on built projects - is there opportunity to do more cost estimates with other data and the current COVID economy? Need input from technical experts. Need more data, not sure these cost values help get better projects in place. General knowledge that this is crazy expensive, whole point is to address how expensive this is.
- *Lisa* – Market-based system may be a good way to go as there is a huge range in cost per acre. An approach that would promote the use of private parcels would lend itself to more cost-effective approaches.
- *George* – Great to have market-based approach - but is this an opportunity as this is [potentially] limited by using the ILF approach? Performance driven and procurement processes can take market-based processes into consideration. Oftentimes there is very little cost data available. Suggest you use pilot and use true cost associated with that.

Net Environmental Benefit (NEB)

- *George*: With currently proposed NEB fee structure, do not foresee a big pool of money. Suggest just adding it onto the “equivalent acres greened” metric. *Keith* – That makes sense where funding is limited and provide flexibility to have broader applicability in the future.
- *Luisa* – Appreciate putting this out for discussion. As forward thinking and experimental as this is, we want to build on success. Some of the things you've listed can be added later when people are more comfortable with the System – have a goal for more flexibility later.

DRAFT TAC Meeting #4 Notes
January 12, 2021
Page 4

Hydromodification “Track”

- *George* – San Diego ILF example showed preliminarily that there are marginal increased site costs to build LID onsite if they are managing hydromodification onsite.
- *Keith* – There is complexity where hydromodification management is incorporated into the GSI design. Glad to see it’s there as placeholder, recognize that there is additional work to be done for hydromod.

Legal and General System Questions

- *Zach*: Are there any municipalities that have indicated that they would not be interested in participating in the program? May need to account for this in the ratio calculations if so. *Amanda* – Management Committee representatives have expressed interest but need to wait to see what steps would be needed to join, and they want to have control over which projects are allowed to participate.
- *Amanda* - Will make recommendations to cities on CEQA approach for the System.
- *Keith* – Regarding baselines, if a project that is built larger than what it would have been otherwise, those additional credits would be eligible.
- *Luisa* – Are the legal outcomes for Contra Costa something that would be applicable for other Bay Area jurisdictions? *Amanda* – Tricky question to answer. Others can learn from what we find, but different counties have different concerns and different acceptable levels of exposure.

4. Overview of Certification/Verification and System Templates (J. Bicknell)

Jill Bicknell presented a high-level overview of the System templates proposed.

- *Luisa* – SFEI is working on tracking mechanism for tracking credits. What will be made available online? *Jill* – Data that is uploaded into the tracking system through the templates will be available based on the level of permission (SFEI presentation will address).
- *Keith* – We welcome using existing procedures as much as possible, the template proposal all sounds good. Proposed summary form also sounds good to develop.

5. Overview of Tracking System

Tony Hale and *Gemma Shusterman* presented on proposed Tracking System.

- *Lisa*: Who would be selecting the offsite project to purchase metrics, would the Regulated Project developer have input? What about if two projects are trying to buy the same offsite project credit? *Amanda*: City staff will be administrators, anticipated they will be making this selection or would be providing options to the Regulated Project based on availability. There will have to be a hold to figure out if there are multiple demands on the same project. *Tony* – This could also be tied to certification process.
- *Jill* – Need to look at how much data on the regulated project needs to be in the Tracking System (too many fields currently shown); also noted that data for regulated projects may

DRAFT TAC Meeting #4 Notes
January 12, 2021
Page 5

not be available in AGOL at the time it is needed to be transferred to the Tracking System. *Gemma* – Wanted to make sure there was a form-based entry form as well as direct transfer. Hopefully that will lower barrier for entering data into the system. *Lisa* – Make sure there is a QA/QC (validation) on data entry described in the Tracking System documentation. *Tony* – Validation will be conducted by specific roles. There will be different processes available to some and not others through the Tracking System. QA role would be available to certain specified entities.

- *Sarah* – How will Tracking System timeline mesh with System Summary Report? *Tony* – We presented a mock-up, and a prototype is the next step, which tests how the System works/operates. Prior to releasing, we will go through prototype testing, guided by Functional Requirements document. *Amanda* – Tracking System development will continue on after System Summary Report is released and being reviewed. Will add tracking documents to summary report, Tracking System will follow rules that System creates. *Sarah* – Would like to be able to test Tracking System and have guidance on its use.
- *Zach*: What elements may the RWB have access to? *Amanda* – This is under discussion. We may start limited and open this up over time. Either way, we will report on the System.

6. Action Items (K. Havens)

- Please provide follow-up comments via email. Feedback will be used to make decisions that will be presented in draft summary report.
- Will be finalizing Draft System Summary Report for Steering Committee review in a few weeks; refer to schedule provided at the beginning of these notes for other key Summary Report dates.

POTENTIAL LEGAL ISSUES REGARDING THE FINANCING, ONSTRUCTION, OPERATION AND MAINTENANCE OF OFF-SITE GREEN STORMWATER INFRASTRUCTURE PROJECTS

On behalf of the Contra Costa County Watershed Program, below is a summary of potential legal issues pertaining to the 9/27/21 draft “Regional Alternative Compliance System Summary Report” prepared for the City of San Pablo by Geosyntec Consultants, Inc., and Kieser & Associates, LLC.

1. Loans.

Proposal: An off-site green stormwater infrastructure (GSI) project would be fully funded and built before developers purchase “compliance units” generated by the completed GSI project. A permittee or other public agency would obtain a loan or other funding to finance the construction of off-site GSI projects, which could be built by public or private entities on public or private property. This “borrower agency” could lend the proceeds to entities that will build the projects.

Issue: Counties, cities, and other political subdivisions are generally prohibited under the California Constitution from making loans to any person, association, or corporation.

2. Construction of Off-Site GSI Projects.

Proposal: Possible use of private entities to construct projects “at a lower cost than standard procurement processes.”

Issue: If public money is used to construct or maintain a public works project, the laws that apply to public contracting, including bidding procedures and payment of prevailing wages, will apply to the project.

3. Mitigation Fee Act.

Proposal: A developer would buy “compliance units” generated by an off-site GSI project in lieu of building stormwater treatment facilities on the developer’s property. Payments would be pooled and used to implement other projects.

Issues: If a developer “opts in” and chooses to buy compliance units, an enforcement mechanism such as a condition of approval or ordinance would be necessary to ensure that the developer follows through. If the purchase becomes mandatory because of the applicable enforcement mechanism, the payment may be considered a monetary exaction charged by a local agency, and the requirements of the Mitigation Fee Act may apply. If the Mitigation Fee Act applies to the payment, the proposed pooling of payments may not be legally authorized.

4. Assessments.

Proposal: The Contra Costa County Flood Control & Water Conservation District (District) would levy assessments to fund operation and maintenance costs of off-site GSI projects.

Issues:

- A. The District is authorized to levy assessments under the Contra Costa County Flood Control and Water Conservation District Act (Act). Assessments levied under Section 12.1 of the Act may be used for flood control, storm drainage, water, or sewerage facilities of a zone, but it is not clear that stormwater treatment facilities would fall into one of these categories.
- B. Other provisions of the Act authorize the District to levy assessments, but none appear applicable.
- C. The District is authorized to levy assessments under the Benefit Assessment Act of 1982, but assessments under this statute may be used only to finance projects that are part of the District's drainage or flood control systems.
- D. Under Proposition 218, an assessment is defined as a levy on real property "for a special benefit conferred upon the real property," and the proportionate special benefit derived by each parcel must be based on (1) the capital cost of a public improvement; (2) the maintenance and operation expenses of a public improvement, or (3) the cost of a property related service that is being provided."
 - 1. Assessments may not be levied to pay for operation or maintenance of private improvements.
 - 2. It is not clear how an off-site GSI project that does not serve the parcels upon which an assessment is levied would provide a special benefit to those parcels.
- E. Zone 100.
 - 1. All areas of Contra Costa County, incorporated and unincorporated, are within Zone 100, so property owners would not "ballot into" the zone.
 - 2. Participating parcel owners would need to approve an assessment on their parcels in accordance with Prop. 218. This may necessitate a separate assessment ballot proceeding each time a developer opts into the alternative compliance program.
 - 3. The District, not the County's Community Facilities District 2007-1 (Stormwater Management Facilities) (CFD), would have control over Zone 100 assessment revenues. The CFD funds the County's oversight of private stormwater maintenance facilities in the unincorporated area.

From: [Sarah Kolarik](#)
To: [Kelly Havens](#)
Subject: FW: Contra Costa County Regional Alternative Compliance System Legal Review
Date: Monday, November 8, 2021 1:54:42 PM
Attachments: [image002.jpg](#)
[image003.png](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)
[image007.jpg](#)

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Comments from Lynn below.

Sarah Kolarik

Environmental Program Analyst

510.215.3068

From: Lynn Tracy Nerland <LynnN@sanpabloca.gov>
Sent: Tuesday, November 2, 2021 11:56 AM
To: Sarah Kolarik <SarahK@sanpabloca.gov>
Cc: Jill Mercurio <JillM@sanpabloca.gov>; Amanda Booth <AmandaB@sanpabloca.gov>
Subject: RE: Contra Costa County Regional Alternative Compliance System Legal Review

Sarah – I have reviewed the draft report and admittedly I was not following on all of the details. Some initial questions that I had were:

1. City Ordinance -- Section 3.4 of the report references Permittees implementing the Contra Costa System within their jurisdiction by a new ordinance or an ordinance amending the Permittee/city's existing stormwater ordinance. However, section 10.1 doesn't seem to include the development of such a template ordinance. I think that will be needed.
2. Bidding and other Public Works requirements – Section 6.3.2 (as well as sections 3.1, 3.2.1 and 3.2.2) seem to discuss how the Off-Site GSI Project will be built. The “Traditional Design-Bid-Build” model is of course familiar and we have the documents in place to ensure a competitive bidding process and required contract clauses (e.g. prevailing wages) with this kind of project delivery method.

I am also familiar with a design-build procurement method allowed under Public Contract Code section 22160 for certain public works projects exceeding \$1 million. However that authority is limited to the projects described below and excludes street and highway projects. I am not sure that the GSI projects will qualify under the authority for a design-build project under Public Contract Code section 22160. Has this been discussed? (There is also an alternative to competitive bidding for renewable energy and energy efficiency projects pursuant to Government Code section 4217.10 et seq. but I don't think it would apply in this context).

In a similar vein, I am not sure how a Performance-Based Contract (section 6.3.2.2) or a Public-Private Partnership (section 6.3.2.3) would meet competitive bidding requirements – or perhaps I need to understand how these delivery/procurement methods would work to better discuss if there would be

competitive bidding issues under the State law requirements. Also, even if competitive bidding requirements can be met in some manner, if public funding is used, there will likely still be prevailing wage requirements, etc.

3. Programmatic Demand – This may not be so much of a legal issue, but I was not tracking with the minimum program purchase guarantee concept that is discussed in Section E.6.

Unless you think an internal discussion would be helpful regarding these points, feel free to share them with the appropriate folks developing the program. Can you remind me when the meeting is scheduled to discuss any legal comments received?

Cal. Public Contract Code section 22160 ...

g)

(1) Except as specified in subdivision (h), for a local agency defined in paragraph (1) of subdivision (f), “project” means the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a local agency defined in paragraph (1) of subdivision (f) that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

(2) For a local agency defined in paragraph (2) of subdivision (f), “project” means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities.

(3) Except as specified in subdivision (h), for a local agency defined in paragraph (3) of subdivision (f), “project” means a transit capital project that begins a project solicitation on or after January 1, 2015. A “project,” as defined by this paragraph, that begins the solicitation process before January 1, 2015, is subject to Article 6.8 (commencing with [Section 20209.5](#)) of Chapter 1. “Project,” as defined by this paragraph, does not include state highway construction or local street and road projects.

(4) For a local agency defined in paragraph (4) of subdivision (f), “project” has the same meaning as in paragraph (3), and shall also include development projects adjacent, or physically or functionally related, to transit facilities developed or jointly developed by the local agency.

(5) For a local agency defined in paragraph (5) of subdivision (f), “project” means the Stanislaus Regional Water Authority’s Regional Surface Water Supply Project.

(h) In recognition of the additional transportation funds made available by the Road Repair and Accountability Act of 2017 (Chapter 5 of the Statutes of 2017), and to accelerate the delivery of transportation projects to the public, in addition to the authority provided in other subdivisions of this section, for a local agency defined in paragraph (1) or (3) of subdivision (f), for up to six projects to be selected by the Department of Transportation, a “project” also means construction or rehabilitation of local streets and roads, including, but not limited to, bridge replacement and railroad grade separations. Consistent with Provision 2 of Item 2660-110-0042 of Section 2.00 of the Budget Act of 2016, as amended by Chapter 7 of the Statutes of 2017, three projects shall be reserved for and selected by the Riverside County Transportation Commission, with the first priority for the projects listed in that budget item.

Lynn

Lynn Tracy Nerland

City Attorney



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City Hall Office Hours:

Monday thru Thursday - 7:30 am to 6:00 pm, open during lunch, closed Fridays.

**With the exception of the San Pablo Senior Center, Youth Services and Police Patrol Services. Recreation will be open Fridays with limited services.*

COVID-19 Alert: Following the declarations of emergency by the Federal, State and County governments, the City of San Pablo City Council proclaimed the existence of a local emergency due to Novel Coronavirus (COVID-19) on March 16, 2020. Accordingly, the City of San Pablo adopted a Modified Operations Plan, including closure of all City buildings, including City Hall, to the public. All City Departments will be working at reduced staffing levels and will be providing essential services only, primarily through e-mail and phone.

Please check the City's website for additional information about City operations and links to resources for staying safe during this emergency. <https://www.sanpabloca.gov/CivicAlerts.aspx?AID=596>



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From: Sarah Kolarik

Sent: Tuesday, September 28, 2021 8:05 AM

To: Lynn Tracy Nerland <LynnN@sanpabloca.gov>

Cc: Jill Mercurio <JillM@sanpabloca.gov>; Amanda Booth <AmandaB@sanpabloca.gov>

Subject: FW: Contra Costa County Regional Alternative Compliance System Legal Review

Good morning Lynn,

See attached for the revised draft of the Regional Alternative Compliance System Summary Report for legal review (in pdf and word form).

Please provide comments by EOD Monday, November 8th. Tracked changes / comments in Word is great. **Can you also fill out this [doodle poll](#)** for the Technical Advisory Committee (TAC) meeting that will discuss the legal review comments. **Note:** *When filling out the doodle poll, keep in mind we are only asking legal reviewers to participate in the first 2 hours of the meeting.*

Let me know if you have any other questions. If you are able to share this information at your next CC County



San Francisco Bay Regional Water Quality Control Board

Sent via email: No hard copy to follow

November 17, 2021

Kelly Havens
Geosyntec Consultants
1111 Broadway, 6th Floor
Oakland, CA 94607
khavens@geosyntec.com

Subject: Water Board comments on Revised Draft Regional Alternative Compliance System Summary Report

Dear Ms. Havens:

Thank you for the opportunity to comment on the subject report (Summary Report). The Summary Report is part of the City of San Pablo- (City-) led U.S. EPA Water Quality Improvement Fund (WQIF)-funded Regional Compliance for a Sustainable Bay Project, which is recognized in the San Francisco Bay Regional Water Quality Control Board's (Water Board) Municipal Regional Stormwater NPDES Permit (MRP) Tentative Order Fact Sheet (Fact Sheet).

We appreciate the thought and work that went into developing the proposed alternative compliance program and the Summary Report, which provides a thorough explanation of the program's potential design. There are several elements in the Summary Report that we would like to see addressed and have further dialogue on. Our comments are provided herein and in the attached Microsoft Word version of the Summary Report. They reflect input from both our technical and legal staff. As it is not the Water Board's role to review the program for compliance with all applicable local, state, and federal laws, we are not rendering any technical or legal opinion in that regard. Instead, our review focused on key elements of the proposed program to ensure that it is workable in achieving its intended purpose in a transparent, accountable, and defensible manner. A program that achieves these goals will facilitate a successful future permit amendment process.

Following are our comments on the Summary Report.

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

Comments

1. The Summary Report frequently refers to language in the Fact Sheet as “allowing” or “requiring” certain actions. The Fact Sheet recognizes the possibility of an alternative compliance program for exchanges of impervious surface treatment credits, but does not include any requirements. The Fact Sheet’s purpose is to provide a rationale for and information on the Tentative Order’s proposed requirements, including potential amendments thereto. Please correct references that suggest that the Fact Sheet includes requirements.
2. The Summary Report frequently asserts that the Water Board may “approve” the Contra Costa County System, after which it will be formally recognized under Provision C.3.e in the Tentative Order (and in MRP 3). The Water Board will not be “approving” the Contra Costa County System. In order to allow the program as an alternative means of compliance, the Water Board will have to complete a permit amendment subject to the public review and comment process.
3. The Summary Report discusses (e.g., in Section 8, Adaptive Management) how the Contra Costa County System may be altered over time; however, several of those alterations would likely require an additional permit amendment or could be incorporated into a future permit reissuance. For example, on page 59: “Non-LID/GSI facility types could potentially be considered in the future, through the Contra Costa County System adaptive management protocol...” The Summary Report discusses major vs. minor alterations in Section 8.3, Procedures for System Amendments, but it does not provide examples of either.
4. The Summary Report frequently asserts that the proposed Contra Costa County System will provide PCBs and mercury TMDL compliance benefits, and that it will target the retrofit of untreated older urban and industrial areas. It may, but will not necessarily, do those two things. The extent to which those two things occur will depend on the individual buyers and sellers that engage in the Contra Costa County System. Elsewhere (e.g., Section 4.3), the Summary Report refers to a discounted water quality benefit (WQB) ratio of 1.0 to encourage treatment of dirtier areas; the extent to which that discount may result in certain outcomes is not predicted in the Summary Report, nor would it be easily predictable.

Furthermore, if the MRP is amended to allow the Contra Costa Permittees to use the Contra Costa County System, it will be for the Contra Costa County System’s use as an alternative means to comply with the Tentative Order’s Provision C.3 New Development and Redevelopment requirements, not for its use as an alternative means to comply with the Tentative Order’s TMDL implementation requirements. However, as proposed in the Tentative Order, controls implemented to satisfy the Provision C.3 requirements, including the numeric retrofit requirements specified in Provision C.3.j.ii.(2), may also be used to satisfy Provision C.11, Mercury Controls, and Provision C.12, PCBs Controls requirements, as long as they satisfy the other aspects of those requirements, such as location (i.e., for PCBs, controls that are

implemented in areas of old industrial land use or otherwise in areas with identified relatively high concentrations of PCBs). The Summary Report should be revised to be consistent with the foregoing.

Finally, in Section 2.1.2 Additional System Drivers, the Summary Report says that "...targeted management of PCBs is a more efficient and effective means of meeting compliance requirements, rather than investing in control measures based on jurisdictional population." Although the current permit, MRP 2, includes a requirement for the Contra Costa Permittees as a whole to achieve a certain load reduction for mercury and PCBs via green infrastructure, for which individual Permittees may be held responsible for their share (based on their populations) if the countywide total is not achieved, no such requirement is proposed in the Tentative Order. The Contra Costa County System will not be implemented during MRP 2, and thus will not facilitate the Contra Costa Permittees' compliance with MRP 2; it is planned to be implemented during MRP 3, for which the Tentative Order does not propose a population-based retrofit requirement for green infrastructure in order to achieve TMDL compliance.

5. The Summary Report is missing (e.g., in Section 9, Overview of Tracking Tool) a discussion of how, and the extent to which, the System Tracking Tool will include, for each linked "buyer" and "seller," the following information: a comparison of created or replaced impervious surface, pollutant loading, and climate (rainfall). It is also unclear what will be reported to the Water Board, how it will be reported, and by whom.
6. The Summary Report asserts (e.g., in Section 4.2.3.2, Equivalent Pollutant Loading) that pollutant loading is not significantly different for Residential, Commercial/Industrial, and Transportation/Freeway land use categories, based on statistical tests performed using total suspended solids (TSS) data from the National Stormwater Quality Database. Conventional understanding is that loading of typical urban stormwater pollutants is likely greater in non-residential areas, for example, in the Freeway land use category, and the Summary Report does not provide any explanation for why the data appears to reject that conventional understanding. Given this unintuitive result, the same statistical tests should be repeated for other typical urban stormwater pollutants, such as total petroleum hydrocarbons (TPH), to confirm the rejection of that conventional understanding.

We suggest meeting to better understand and have further dialogue on the WQB ratio, equivalent pollutant loading, and the rainfall ratio. For example, we likely need to discuss the statement in Section 4.2.3.2 that LID effluent concentrations are independent of influent concentrations.

7. It is not clear whether there will be any verification of current activities within the tributary drainage areas of the buyer and seller's respective sites, or, whether the Contra Costa County System will simply rely on zoning maps to make assumptions about pollutant loading.

8. It is not clear (e.g., in Sections 5.6, Certification Requirements, and 5.7, Verification Requirements) whether the Certifying Entity and the Verifying Entity could be the entity that is “selling” the Off-Site GSI Project, which, if allowed, might be a conflict of interest. U.S EPA’s Water Quality Trading Policy, dated February 6, 2019, suggests consideration of third-party verification providers.
9. The Summary Report states, “[u]nder the Contra Costa County Flood Control and Water Conservation District Act, any proposed fees (or assessments) levied under the Zone may be used only for “the acquisition, construction, engineering reconstruction, maintenance and operation of the flood control, storm drainage, water or sewerage facilities of a zone” (Contra Costa County, 2011). Pending confirmation by counsel for the Flood Control District, O&M assessments fall within this definition of allowable expenditures” (Section 4.6.1). Given the importance of having a viable mechanism to collect and spend monies for operation and maintenance obligations, we would like to know as soon as possible whether counsel confirmation is likely and whether there may be any other legal impediments to the O&M assessment proposal outlined in the Summary Report.

For non-parcel-based participants, the Summary Report states that they would enter into long-term agreements with the Flood Control District allowing them to be invoiced, but the duration has yet to be determined (Section 4.6.2). We would like more information on how the duration will be determined.

Section 5.3 of the Summary Report states that O&M plans would be required to be recorded on the parcel in which the Off-Site GSI project is constructed to ensure the site is managed consistent with the plan. Elsewhere in the report, it says the plan will be recorded “if appropriate.” Please clarify which is correct.

It is not clear (e.g., in Section 6.4.4, Ongoing O&M Assessments) how, and the extent to which, the O&M assessment will be systematically adjusted as needed over time. Will there be a regularly scheduled reassessment, for example, every year?

10. The Summary Report, in several places, refers to the need for the Contra Costa County System to demonstrate equivalent or increased water quality benefit, “...as required for [the] proposed program submittal per [the] MRP 3 Tentative Order Fact Sheet.”

Fact Sheet p. A-124 recommends a “demonstration of equivalent or increased water quality benefit (e.g., through the equivalent or net increase in impervious surface treat, and the equivalent or net reduction in flow and/or pollutant load, but not necessarily in the same watershed).” We regret that this was a mistake that will be corrected in the Revised Tentative Order, so that it is more in line with Option 1 (Provision C.3.e.i.(1)), which reads: “...Offsite LID treatment measures must provide hydraulically-sized treatment... of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit” (emphasis added). The change should not significantly impede the Contra Costa County System, which

we think generally has been designed to achieve this expectation, and we look forward to further dialogue on this issue as necessary.

11. The Summary Report states that the jurisdiction in which the Off-Site GSI Project is located will be solely responsible for inspecting it, but this may become an undue burden on that Permittee if many Off-Site GSI Projects are built in its jurisdiction, relative to other jurisdictions. The Summary Report does not yet address this potential burden.

Additional specific comments are provided in the attached Microsoft Word version of the Summary Report. We look forward to further discussion with the City of San Pablo and the Contra Costa County Permittees should we identify additional issues in the Summary Report that we did not comment on in this letter.

If you have any questions, please contact Zach Rokeach of my staff via email to Zachary.rokeach@waterboards.ca.gov.

Sincerely,

Keith H. Lichten, Chief
Watershed Management Division

cc: Amanda Booth, City of San Pablo, amandab@sanpabloca.gov
Sarah Kolarik, City of San Pablo, sarahk@sanpabloca.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Memorandum

Subj: **Non-Binding Review of the Draft Regional Alternative Compliance System Summary Report, September 27, 2021 Revised Draft for Legal Review (Draft Report)**

From: Sara Goldsmith, Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9

Thru: Laurie Kermish, Chief
Clean Water Act Section
Office of Regional Counsel
U.S. EPA Region 9

To: The Project Team¹ for the Draft Report

Date: November 8, 2021

I. Introduction and Disclaimer

As detailed below, the U.S. Environmental Protection Agency (EPA) has been requested by the Project Team to provide legal review of a Draft Regional Alternative Compliance System Summary Report (Draft Report). According to the Draft Report it “describes the efforts and outcomes of the EPA Water Quality Improvement Fund (WQIF) grant-funded Regional Compliance for a Sustainable Bay project (Project).

The purpose of this Project is to develop and pilot a regional alternative compliance system (referred to as the Contra Costa County System) to achieve the water quality objectives of the San Francisco Bay Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (MRP; Order No. R2-2015-0049 and future orders). The MRP incorporates performance standards for new development and redevelopment, as well as requiring control measures to implement the San Francisco Bay Total Maximum Daily Loads (TMDLs) for polychlorinated biphenyls (PCBs) and mercury. The Contra Costa County System is intended to provide a flexible, cost-effective, and scientifically defensible compliance option for addressing the green stormwater infrastructure (GSI) and mercury/PCBs control requirements outlined in the MRP (Provisions C.3, C.11, and C.12, respectively). The Contra Costa County

¹ The Draft Report at page 1 says the “Project Team” is comprised of the Steering Committee and the Consultant Team. The Draft Report at page vii (Acknowledgements) states the “Steering Committee is comprised of representatives from the Cities of San Pablo, Walnut Creek and Richmond and Contra Costa County who are guiding development of the Contra Costa County System,” and the “Project Consultant Team” consists of “Kelly Havens, Lisa Austin, and Ken Susilo, Geosyntec Consultants; Mark Kieser and David Chen, Kieser & Associates, LLC; Jill Bicknell and Lisa Sabin, EOA, Inc.; Susanne Heim, Panorama Environmental; George Kelly, Bespoke Mitigation Partners; with consultation from Legal Advisor Brooks Smith of Troutman Pepper.”

System framework is intended to be easily adaptable by the other San Francisco Bay Area (Bay Area) countywide programs. . . .

The 2015 MRP is currently being revised; the Tentative Order for the 2022 reissuance was released on September 10, 2021 (referred to herein as the MRP 3 Tentative Order).

The MRP 3 Tentative Order Attachment A, Fact Sheet, allows for:

‘...the Permittees [to] submit new information for an alternative compliance program for exchanges of impervious surface treatment credits at the regional, county, and/or municipal level...’

See Draft Summary Report at Executive Summary.

EPA’s most recent guidance, *Updating the Environmental Protection Agency’s Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality*, February 6, 2019 (2019 Policy), at n.1., strongly supports water quality trading and other market-based programs, which it broadly defines to include “other types of incentive- and community-based programs as well as other collaborative approaches, . . . including, for example, pay for success programs, coordinated point/nonpoint pollution reduction or offset projects.” The 2019 Policy further acknowledges that “EPA has long interpreted the Clean Water Act to allow pollutant reductions from water quality trading, offsets and other similar programs to be used for ensuring compliance with regulatory requirements.” *Id.* at 2. While the 2019 Policy mentions six broad market-based principles EPA supports to reduce pollutants in our Nation’s waters, it explicitly notes “[t]hese principles do not represent the universe of policy options available to states, tribes and stakeholders, rather, they are intended to encourage creativity and innovation in state and local policy development.” *Id.* at 3. Finally, the 2019 Policy notes that “EPA is committed to assisting states, tribes, and stakeholders with developing new market-based programs, refining existing programs that have not been widely implemented, engaging in problem solving, and facilitating flexible approaches to achieving meaningful pollutant reductions.” *Id.* In this spirit, EPA is participating in this legal review.

EPA’s legal review of the Draft Report, however, is nonbinding, limited, and qualified as the Draft Report is a conceptual proposal that by design is subject to adaptive management changes as implemented. EPA legal counsel is reviewing this Draft Report solely for general consistency with EPA guidance and policy on water quality trading projects. EPA expressly is not reviewing the Draft Report for the legality of any assertions pertaining to local, municipal, or state law, regulation, or guidance. Similarly, EPA is not independently assessing or corroborating any underlying facts, assumptions, or assertions provided in the Draft Report.

II. Background

The excerpt below comes from the one-page Summary of the Draft Report sent to the legal reviewers.

“Background and Objective:

The Cities of San Pablo, Walnut Creek, and Richmond, and Contra Costa County have partnered for a USEPA San Francisco Bay Water Quality Improvement Fund grant to develop and pilot a Regional Alternative Compliance System in Contra Costa County (the “Contra Costa County

System”). The objective of the Contra Costa County System is to more efficiently and cost-effectively meet Municipal Regional Stormwater Permit (MRP) and total maximum daily load (TMDL) water quality goals, while also providing a net environmental benefit. The development of the Contra Costa County System aims to create deliverables that can be implemented in other counties and agencies subject to similar water quality compliance requirements.

Contra Costa County System:

The Contra Costa County System creates an optional off-site pathway for MRP Provision C.3 compliance for Regulated Projects (i.e., development projects required to implement low impact development (LID)/ green stormwater infrastructure (GSI)). Permittees or other agencies within Contra Costa County could also participate as System "buyers" to meet GSI retrofit plans or goals. Regulated Project owners or other buyers would achieve alternative compliance through purchase of "compliance units" generated by Off-Site GSI projects to cover their required GSI compliance needs. These buyers would additionally be subject to an assessment to cover the ongoing operations and maintenance requirements of the Off-Site GSI projects.

System Legal Review:

This project has brought together experts from across the Bay Area and the nation to develop an Alternative Compliance System that is tailored to the unique context of Contra Costa County. The resulting Draft System Summary Report describes the drivers and structure for the Contra Costa County System. **The project team is requesting legal review of this Draft System Summary Report and associated documents to prepare the System for pilot implementation.**” Legal reviewers include counsel from the USEPA, the San Francisco Regional Water Quality Control Board, the Contra Costa Clean Water Program, Contra Costa cities, and the County.”

II. EPA General Comments

1. Suggest replacing the Glossary at the end of the Draft Report with a Definition Section located in the beginning of the Draft Report that includes all the terms in the Glossary as well as other key terms already defined throughout the document in footnotes or texts. Also suggest cross-referencing as appropriate to the MRP-3 Tentative Order or other sources for the definitions used where available.
2. Suggest providing a few hypothetical scenarios of how the System might work, for example using generic terms such as “Municipal Permittee A,” has a Regulated Project (list example) and seeks so many “compliance units” etc. and walk through how the System might work. This would help the reader better understand the proposed System.
3. As noted in the Draft Report, the language (excerpt below, *emphasis added*) allowing for submission of an alternative compliance program is not in the MRP-3 Tentative Order itself but in the associated Fact Sheet. However, the MRP-3 Tentative Order incorporates the Fact Sheet by reference in support of the Permit requirements.

Submittal of this Draft System Report proposal is voluntary, but the Fact Sheet references this specific developing alternative compliance program and notes the Water Board’s intent to consider such alternative compliance programs and amend the permit as

appropriate to officially recognize and authorize it as part of the permit. Therefore, suggest the Draft Report reference the MRP-3 Tentative Order provision below that incorporates the Fact Sheet, including the additional explanatory information, into the MRP-3 Tentative Order.

Any amendment to the controlling MRP Order to incorporate an alternative compliance program should be consistent with Clean Water Act law and regulations, including 40 C.F.R. § 122.62 allowing for public review and comment on any major modification or amendment to the MRP Order.

During the Permit term, the Permittees may submit new information for an alternative compliance program for exchanges of impervious surface treatment credits at the regional, county, and/or municipal level, resulting in offsite treatment of payment for equivalent offsite compliance for 100 percent of the required Provision C.3.c-d stormwater runoff (and Provision C.3.g, as appropriate).

*Any such program should include at least the following: a clear organizational framework; demonstration of equivalent or increased water quality benefit (e.g., through the equivalent or net increase in impervious surface treated, and the equivalent or net reduction in flow and/or pollutant load, but not necessarily in the same watershed); an accounting and reporting system; a process for collection and timely use of funds; compliance with Provisions C.3.c-d and C.3.f-h; program oversight by an entity or entities; and expectations for timing and location. **If or when such a program proposal is submitted, the Water Board will consider the new information and may consider amending the Permit to include a third option in Provision C.3.e.i that formally recognizes and allows the program specified in the proposal.** This is in part a response to the City of San Pablo-led U.S. EPA Water Quality Improvement Fund (WQIF)-funded Regional Compliance for a Sustainable Bay project, which is investigating such a program that would facilitate alternative compliance exchanges between Permittees within Contra Costa County, but may be of interest in other counties and regionally.*

One page 1 of the MRP-3 Tentative Order under the heading “Findings” it states:

Incorporation of Fact Sheet

1. The Fact Sheet for the San Francisco Bay Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Attachment A) includes cited regulatory and legal references and additional explanatory information in support of the requirements of this Permit. The Fact Sheet, including any supplements thereto, is hereby incorporated by reference.

III. Editorial Suggestions, Questions, and Observations in Text of Draft Report

In addition to the general comments above, the attached Word version of the Draft Report includes additional observations, editorial suggestions, and questions in track changes and comment boxes.

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
24	City of Walnut Creek	E.2/ 2.2	System Objectives	MEYERS NAVE COMMENT - TRANSPARENCY: Nos. 2, 3, and 4 overlap and creates ambiguity if the System is actually planning implementation and construction of storm water retention and targeting where facilities should be installed to reduce PCBs and mercury. The general rule is that compliance credit-trading programs must be transparent to ensure that the involved parties, the regulatory agencies, and the public can understand and support the program's operations. Edits are suggested in redline, but it would be better to re-write this important section to be both more precise. It seems like alternative compliance could utilize the priority projects municipalities are required to develop in the Green Infrastructure Plan required under MRP Section C.3.j to potentially expedite project development. If so, perhaps that objective could be added.	Item 1: System Objectives Informational Discussion	
101	SFRWQCB	4.3	System Driver: PCBs and Mercury TMDL	Is this discount the only thing that this program will rely on to achieve the desired outcomes expressed previously in this document? (prioritization of treatment of dirtier land uses)	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
87	SFRWQCB	4.2	System Driver: PCBs and Mercury TMDL	The framing of expectations for this needs more discussion. We want to avoid the unintended outcome of treating "cleaner" areas because that's the cheapest/easiest way to comply with C.3.j. One approach could be to set a pollutant loading metric based on, say, arterial streets.	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
14	SFRWQCB		System Driver: PCBs and Mercury TMDL	The Summary Report frequently asserts that the proposed Contra Costa County System will provide PCBs and mercury TMDL compliance benefits, and that it will target the retrofit of untreated older urban and industrial areas. It may, but will not necessarily, do those two things. The extent to which those two things occur will depend on the individual buyers and sellers that engage in the Contra Costa County System. Elsewhere (e.g., Section 4.3), the Summary Report refers to a discounted water quality benefit (WQB) ratio of 1.0 to encourage treatment of dirtier areas; the extent to which that discount may result in certain outcomes is not predicted in the Summary Report, nor would it be easily predictable. Furthermore, if the MRP is amended to allow the Contra Costa Permittees to use the Contra Costa County System, it will be for the Contra Costa County System's use as an alternative means to comply with the Tentative Order's Provision C.3 New Development and Redevelopment requirements, not for its use as an alternative means to comply with the Tentative Order's TMDL implementation requirements. However, as proposed in the Tentative Order, controls implemented to satisfy the Provision C.3 requirements, including the numeric retrofit requirements specified in Provision C.3.j.ii.(2), may also be used to satisfy Provision C.11, Mercury Controls, and Provision C.12, PCBs Controls requirements, as long as they satisfy the other aspects of those requirements, such as location (i.e., for PCBs, controls that are implemented in areas of old industrial land use or otherwise in areas with identified relatively high concentrations of PCBs). The Summary Report should be revised to be consistent with the foregoing. Finally, in Section 2.1.2 Additional System Drivers, the Summary Report says that "...targeted management of PCBs is a more efficient and effective means of meeting compliance requirements, rather than investing in control measures based on jurisdictional population." Although the current permit, MRP 2, includes a requirement for the Contra Costa Permittees as a whole to achieve a certain load reduction for mercury and PCBs via green infrastructure, for which individual Permittees may be held responsible for their share (based on their populations) if the countywide total is not achieved, no such requirement is proposed in the Tentative Order. The Contra Costa County System will not be implemented during MRP 2, and thus will not facilitate the Contra Costa Permittees' compliance with MRP 2; it is planned to be implemented during MRP 3, for which the Tentative Order does not propose a population-based retrofit requirement for green infrastructure in order to achieve TMDL compliance.	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
29	SFRWQCB	E.3	System Driver: PCBs and Mercury TMDL	What assurance is there that this will actually happen? Not only in older urban and industrial areas (for the PCBs WLA), but generally, in "dirty" urban areas, particularly in disadvantaged areas (e.g., san pablo). It's one thing to have a few pilot projects up front that are by design located in the san pablos of the world, but the question is, moving forward, as the system is implemented in the coming years and decades, will offsite projects continue to be located in those dirty & disadvantaged areas? What will ensure that will happen? There needs to be equivalent environmental benefit, and there should be equity in the distribution of resources.	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
54	SFRWQCB	2.2	System Driver: PCBs and Mercury TMDL	We recognize this list restates the System's key objectives. That said, how targeted will implementation really be?... What structures will ensure this outcome?	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
60	SFRWQCB	3.1	System Driver: PCBs and Mercury TMDL	What structures will ensure this outcome?	Item 2: Drivers - PCBs and Mercury TMDLs Informational Discussion	
119	SFRWQCB	5.6	Administrative Structure: Permittee Role	See previous comment(s) about this burden on the local permittee. Might it become disproportionate? Would that be addressed by the funding distribution approach? How can the burden be shared between the two permittees that are participating in the exchange?	Item 3: Administrative Structure - Permittee Role Informational Discussion	
37	City of Walnut Creek	E.4/ 3.3.1	Administrative Structure: Permittee Role	MEYERS NAVE COMMENT - CLARITY: Here and elsewhere, it is unclear whether the Permittees are responsible for undertaking these responsibilities. The report mainly uses passive voice, but should make sure to change statements to active voice when the System imposes requirements on the Permittees. Otherwise, the Permittees' duties are not clear and it may be difficult for the Permittees to evaluate and comment. For example, if the Permittees must calculate compliance units then this should be clear. Municipal permittees should not take on any duties in the System that are not in the 2015 MRP.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
76	City of Walnut Creek	3.3.2.1	Administrative Structure: Permittee Role	MEYERS NAVE COMMENT - CLARITY: Here and in many other places, it is not clear who is responsible for carrying out certification, tracking, reporting, all of which are the basis of compliance and enforcement. See prior comment in executive summary. Permittee duties should be spelled out in statements written in active voice, rather than passive voice. Thus, "must be certified" should be re-written as "must certify"	Item 3: Administrative Structure - Permittee Role Informational Discussion	
86	SFRWQCB	3.4	Administrative Structure: Permittee Role	Who are anticipated to be these volunteers? Why will they be appropriate for this role, or how will the distribution collectively be appropriate?	Item 3: Administrative Structure - Permittee Role Informational Discussion	
135	SFRWQCB	6.3.2	Administrative Structure: Permittee Role	This will still require Permittee oversight.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
1	City of San Pablo	3.4	Administrative Structure: Permittee Role	City Ordinance -- Section 3.4 of the report references Permittees implementing the Contra Costa System within their jurisdiction by a new ordinance or an ordinance amending the Permittee/city's existing stormwater ordinance. However, section 10.1 doesn't seem to include the development of such a template ordinance. I think that will be needed.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
85	Contra Costa Clean Water Program	3.4	Administrative Structure: Permittee Role	Do you believe this is necessary? I wouldn't want to commit a city to amend its stormwater ordinance if it believes the program can be implemented by other means.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
148	City of Walnut Creek	7.2.3.1	Administrative Structure: Permittee Role	MEYERS NAVE COMMENT - COSTS: Are these financial duties to be imposed on municipalities?	Item 3: Administrative Structure - Permittee Role Informational Discussion	

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
21	SFRWQCB		Administrative Structure: Permittee Role	The Summary Report states that the jurisdiction in which the Off-Site GSI Project is located will be solely responsible for inspecting it, but this may become an undue burden on that Permittee if many Off-Site GSI Projects are built in its jurisdiction, relative to other jurisdictions. The Summary Report does not yet address this potential burden.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
34	SFRWQCB	E.3	Administrative Structure: Permittee Role	If a parcel within City A is seeking the offsite LID, and a parcel within City B is providing the offsite LID, then would City B be responsible for inspecting the offsite LID in perpetuity? Seems like a burden on City B...	Item 3: Administrative Structure - Permittee Role Informational Discussion	
39	SFRWQCB	E.5	Administrative Structure: Permittee Role	This may be a significant burden on the jurisdiction in which the Off-Site GSI Project is located. Since the regulated project receiving the benefit is in a different jurisdiction, how is it fair for this jurisdiction to bear the burden of O&M verification (ongoing inspections... also, inspection before/during/after construction)? This burden may become more imbalanced if there are certain jurisdictions that are accumulating relatively more of the "seller" offsite GSI projects, as compared to other jurisdictions that are accumulating relatively more of the "buyer" parcels.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
77	SFRWQCB	3.3.2.1	Administrative Structure: Permittee Role	Does this have the potential to be an undue burden on the city in which the offsite project is located? What if one city in particular is laden with a huge amount of these offsite projects in their jurisdiction, compared to other cities? How would the system address such a situation?	Item 3: Administrative Structure - Permittee Role Informational Discussion	
124	City of Walnut Creek	5.7	Administrative Structure: Permittee Role	MEYERS NAVE COMMENT – TRANSPARENCY: This potentially binds municipalities to numerous inspections until corrections are implemented and corrections are outside of the municipalities control. Municipal permittees should not take on any duties in the System that are not in the 2015 MRP.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
130	City of Walnut Creek	6.2.1	Administrative Structure: Permittee Role	MEYERS NAVE COMMENT – TRANSPARENCY: Municipalities should not be bound to responsibilities in the System that are beyond those in the 2015 MRP.	Item 3: Administrative Structure - Permittee Role Informational Discussion	
68	Contra Costa Clean Water Program	3.2.3	Flood Control District Role/ O&M Assessments/ O&M Fund	at what point do the participants agree to the assessment?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
7	Contra Costa County Watershed Program		Flood Control District Role/ O&M Assessments/ O&M Fund	<p>Assessments. Proposal: The Contra Costa County Flood Control & Water Conservation District (District) would levy assessments to fund operation and maintenance costs of off-site GSI projects.</p> <p>Issues: A. The District is authorized to levy assessments under the Contra Costa County Flood Control and Water Conservation District Act (Act). Assessments levied under Section 12.1 of the Act may be used for flood control, storm drainage, water, or sewerage facilities of a zone, but it is not clear that stormwater treatment facilities would fall into one of these categories. B. Other provisions of the Act authorize the District to levy assessments, but none appear applicable. C. The District is authorized to levy assessments under the Benefit Assessment Act of 1982, but assessments under this statute may be used only to finance projects that are part of the District's drainage or flood control systems. D. Under Proposition 218, an assessment is defined as a levy on real property "for a special benefit conferred upon the real property," and the proportionate special benefit derived by each parcel must be based on (1) the capital cost of a public improvement; (2) the maintenance and operation expenses of a public improvement, or (3) the cost of a property related service that is being provided." 1. Assessments may not be levied to pay for operation or maintenance of private improvements. 2. It is not clear how an off-site GSI project that does not serve the parcels upon which an assessment is levied would provide a special benefit to those parcels. E. Zone 100. 1. All areas of Contra Costa County, incorporated and unincorporated, are within Zone 100, so property owners would not "ballot into" the zone. 2. Participating parcel owners would need to approve an assessment on their parcels in accordance with Prop. 218. This may necessitate a separate assessment ballot proceeding each time a developer opts into the alternative compliance program. 3. The District, not the County's Community Facilities District 2007-1 (Stormwater Management Facilities) (CFD), would have control over Zone 100 assessment revenues. The CFD funds the County's oversight of private stormwater maintenance facilities in the unincorporated area.</p>	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
82	SFRWQCB	3.3.5	Flood Control District Role/ O&M Assessments/ O&M Fund	<p>Did you consider making this proportional to the burden to inspect different scales of offsite projects? I.e., a larger site with larger/more LID systems may warrant a greater O&M contribution. Or is the assumption that there will be a normal distribution of maintenance burdens among the population of offsite projects, or otherwise an overall cost distribution sufficient to allow this funding approach to be successful? Is there any supporting information? If not, should the O&M assessment be site-specific, or include some sort of sliding scale?</p> <p>The goal is to avoid underfunded O&M, including both regular and less-frequent restorative maintenance.</p>	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
83	Contra Costa Clean Water Program	3.3.5	Flood Control District Role/ O&M Assessments/ O&M Fund	What is the "pool" of funds? Accounts for various facilities' O&M? Assessment revenues cannot be "pooled" with other revenues. The assessment could pay administrative costs related to collection and use of the O&M assessment but not other funds.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
103	City of Walnut Creek	4.6	Flood Control District Role/ O&M Assessments/ O&M Fund	MEYERS NAVE COMMENT – COSTS: It may be necessary to determine whether this type of assessment will require a review of the reasonableness of the rate structure and its relationship to the service being provided and whether challenges would arise if these findings cannot be made.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
104	City of Walnut Creek	4.6.1	Flood Control District Role/ O&M Assessments/ O&M Fund	MEYERS NAVE COMMENT – COSTS: Basing LID-related features on flood control should be explored further because LID and GSI is intended to achieve water quality objectives.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
105	Contra Costa Clean Water Program	4.6.1	Flood Control District Role/ O&M Assessments/ O&M Fund	This conclusion should be verified by district, per last sentence.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
106	Contra Costa Clean Water Program	4.6.1.1	Flood Control District Role/ O&M Assessments/ O&M Fund	I think this can be deleted. The key concept is that there must be assessment authority. There are several enabling acts that apply, including their own Act and the 1982 Benefit Assessment Act. The purpose of our memo was to point out that we needed to identify the enabling act, and we identified a few possible statutes. However, it appears that the District intends use the District's own act, which will be fine as long as they confirm that it authorizes assessments for the desired services.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
107	SFRWQCB	4.6.2	Flood Control District Role/ O&M Assessments/ O&M Fund	The program must continue to function... if it becomes defunct at a later time, in a future permit term, O&M would still be required; otherwise, the respective permittee could be cited for violation of a previous permit.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
138	Contra Costa Clean Water Program	6.4.4	Flood Control District Role/ O&M Assessments/ O&M Fund	Any increase above the amount approved in the assessment ballot would require a new balloting process. This can be avoided by building in an annual adjustment to set a "maximum cap" on the assessment amount. Then, each year, they can levy up to the max cap depending on costs.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
139	SFRWQCB	6.4.4	Flood Control District Role/ O&M Assessments/ O&M Fund	This is important, and please provide additional detail on the expected adjustment frequency and timing. How will this be done, formally? Will there be a regularly-scheduled reassessment? E.g., once per year?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
140	Contra Costa Clean Water Program	6.4.4	Flood Control District Role/ O&M Assessments/ O&M Fund	We will need to verify that a reserve fund is permitted.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
141	SFRWQCB	6.4.4	Flood Control District Role/ O&M Assessments/ O&M Fund	What other activities? Activities unrelated to the O&M of these LIG/GSI assets? Please give examples or describe generally.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
142	Contra Costa Clean Water Program	6.4.4	Flood Control District Role/ O&M Assessments/ O&M Fund	From Prop 218 "No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel." Assessments can only be used for the purposes for which they were imposed and cannot be used for any general benefit purposes.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
143	City of Walnut Creek	6.5.3	Flood Control District Role/ O&M Assessments/ O&M Fund	MEYERS NAVE COMMENT – TRANSPARENCY: A situation may arise where a municipal permittee, rather than the Flood Control District, should have a say in the amount of funds appropriate for O&M.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
144	Contra Costa Clean Water Program	6.5.4	Flood Control District Role/ O&M Assessments/ O&M Fund	"pooling" raises concerns for assessment revenues. an assessment may only be used for the services for which it was imposed. Any pooled funds should not include assessment revenues.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
146	Contra Costa Clean Water Program	7.1.2	Flood Control District Role/ O&M Assessments/ O&M Fund	Once a participant has purchased credits and agreed to assess its property, then could it suffer from future non-compliance if the project fails?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
47	Contra Costa Clean Water Program	E.6	Flood Control District Role/ O&M Assessments/ O&M Fund	does this mean that the assessment will be billed at the same time and in the same manner as ad valorem property taxes?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
59	EPA	3.1	Flood Control District Role/ O&M Assessments/ O&M Fund	On the Regulated Project owner's on-site parcel?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
78	Contra Costa Clean Water Program	3.3.2.2	Flood Control District Role/ O&M Assessments/ O&M Fund	What does this mean? Assessment revenues can only be used for the specific purposes for which they were approved.	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
81	Contra Costa Clean Water Program	3.3.5	Flood Control District Role/ O&M Assessments/ O&M Fund	Trisha please review. What is the purpose of accessing fee projects the rates than the site where fee regulated project is located. Who is paying?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	
19	SFRWQCB		Flood Control District Role/ O&M Assessments/ O&M Fund	The Summary Report states, "[u]nder the Contra Costa County Flood Control and Water Conservation District Act, any proposed fees (or assessments) levied under the Zone may be used only for "the acquisition, construction, engineering reconstruction, maintenance and operation of the flood control, storm drainage, water or sewerage facilities of a zone" (Contra Costa County, 2011). Pending confirmation by counsel for the Flood Control District, O&M assessments fall within this definition of allowable expenditures" (Section 4.6.1). Given the importance of having a viable mechanism to collect and spend monies for operation and maintenance obligations, we would like to know as soon as possible whether counsel confirmation is likely and whether there may be any other legal impediments to the O&M assessment proposal outlined in the Summary Report. For non-parcel-based participants, the Summary Report states that they would enter into long-term agreements with the Flood Control District allowing them to be invoiced, but the duration has yet to be determined (Section 4.6.2). We would like more information on how the duration will be determined. Section 5.3 of the Summary Report states that O&M plans would be required to be recorded on the parcel in which the Off-Site GSI project is constructed to ensure the site is managed consistent with the plan. Elsewhere in the report, it says the plan will be recorded "if appropriate." Please clarify which is correct. It is not clear (e.g., in Section 6.4.4, Ongoing O&M Assessments) how, and the extent to which, the O&M assessment will be systematically adjusted as needed over time. Will there be a regularly scheduled reassessment, for example, every year?	Item 4: Flood Control District Role/O&M Assessment Approach Discussion	

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
25	City of Walnut Creek	E.2/ 2.3	CEQA	MEYERS NAVE COMMENT - COMPLETENESS: This discussion of CEQA requirements is a good start but does not address the extent to which the Regional Board's approval of the System will trigger CEQA. (14 C.C.R. 15251, List of Certified Programs does not list permitting.)	Item 5: CEQA Considerations Discussion	
43	Contra Costa Clean Water Program	E.6	CEQA	I do not understand why CEQA affects the remainder of this sentence. Why couldn't funds be collected for a potential project before CEQA is completed for the project? I do not believe that is a pre-commitment issue. Further, the 2015 Permit provides 3 years to complete the Regional Project after the in-lieu fee payment. Why not take advantage?	Item 5: CEQA Considerations Discussion	
65	City of Walnut Creek	3.2.1	CEQA	MEYERS NAVE COMMENT - TRANSPARENCY: This seems to conflict with an earlier discussion that suggested fees could be "pooled" and, presumably, when sufficient funds existed, a project could be built.	Item 5: CEQA Considerations Discussion	
74	Contra Costa Clean Water Program	3.3.2	CEQA	If the purpose of this program to fund off-site regional projects, wouldn't there be an advantage to structuring the program in a way that both complies with CEQA and does not necessarily require pre-construction. I think the permit provides a 3-year window for construction of projects funded with in-lieu payments.	Item 5: CEQA Considerations Discussion	
126	Contra Costa Clean Water Program	6.1	CEQA	It is a little unclear why CEQA is the limitation here.	Item 5: CEQA Considerations Discussion	
6	Contra Costa County Watershed Program		Mitigation Fee Act	Mitigation Fee Act. <u>Proposal:</u> A developer would buy "compliance units" generated by an off-site GSI project in lieu of building stormwater treatment facilities on the developer's property. Payments would be pooled and used to implement other projects. <u>Issues:</u> If a developer "opts in" and chooses to buy compliance units, an enforcement mechanism such as a condition of approval or ordinance would be necessary to ensure that the developer follows through. If the purchase becomes mandatory because of the applicable enforcement mechanism, the payment may be considered a monetary exaction charged by a local agency, and the requirements of the Mitigation Fee Act may apply. If the Mitigation Fee Act applies to the payment, the proposed pooling of payments may not be legally authorized.	Item 6: Mitigation Fee Act Discussion	
136	Contra Costa Clean Water Program	6.4.1	Mitigation Fee Act	Do you believe this discussion is necessary if the mitigation fee act doesn't apply? You are creating an expectation that probably won't play out because the fee is an in-lieu fee.	Item 6: Mitigation Fee Act Discussion	
64	Contra Costa Clean Water Program	3.2.1	Mitigation Fee Act	I agree with the recommendation to omit this paragraph. AB 1600 fees are not subject to Proposition 218.	Item 6: Mitigation Fee Act Discussion	
36	EPA	E.4	System Driver: MRP (Same Watershed)	Regional Project (defined in this report at fn 5), and defined in MRP-3, C.3.e(i)(2) fn 12 requires discharges into the same watershed, i.e., "Regional Project – A regional or municipal stormwater treatment facility that captures runoff from a drainage area larger than the parcel on which it is located and discharges into the same watershed as the Regulated Project."	Item 7: System Boundaries/Restrictions Informational Discussion	
113	Contra Costa Clean Water Program	5.4	System Restrictions	If the West/East divides watersheds, could they ever be exchanged between each other?	Item 7: System Boundaries/Restrictions Informational Discussion	
114	SFRWQCB	5.4	System Restrictions	What about subsequent to phase 2? We don't understand the use of the word "expected" or "anticipated." Can this report be more transparent about what will or will not happen, as you are dictating the terms of this program, and the Water Board needs to be able to evaluate those terms, which will be difficult if they are not clear and explicit. Why would exchanges be limited? We see below that East County is being defined as areas within the Central Valley Regional Water Board's jurisdiction. At a minimum, please revise this section to note that distinction.	Item 7: System Boundaries/Restrictions Informational Discussion	
115	EPA	5.5.2	System Restrictions	Although watershed is mentioned in title, underlying paragraphs don't explicitly discuss it.	Item 7: System Boundaries/Restrictions Informational Discussion	
116	SFRWQCB	5.5.2	System Restrictions	What about after phase 2? Would this change?	Item 7: System Boundaries/Restrictions Informational Discussion	
117	Contra Costa Clean Water Program	5.5.2	System Restrictions	Earlier this is described as a prohibition, because they are in different watersheds.	Item 7: System Boundaries/Restrictions Informational Discussion	
73	City of Walnut Creek	3.3.2	Project Delivery	MEYERS NAVE COMMENT – TRANSPARENCY: A discussion of how projects are funded should occur before a discussion of steps following funding.	Item 8a: Funding/Financing Approaches Informational Discussion	
2	City of San Pablo	6.3.2	Project Delivery	Bidding and other Public Works requirements – Section 6.3.2 (as well as sections 3.1, 3.2.1 and 3.2.2) seem to discuss how the Off-Site GSI Project will be built. The "Traditional Design-Bid-Build" model is of course familiar and we have the documents in place to ensure a competitive bidding process and required contract clauses (e.g. prevailing wages) with this kind of project delivery method. I am also familiar with a design-build procurement method allowed under Public Contract Code section 22160 for certain public works projects exceeding \$1 million. However that authority is limited to the projects described below and excludes street and highway projects. I am not sure that the GSI projects will qualify under the authority for a design-build project under Public Contract Code section 22160. Has this been discussed? (There is also an alternative to competitive bidding for renewable energy and energy efficiency projects pursuant to Government Code section 4217.10 et seq, but I don't think it would apply in this context). In a similar vein, I am not sure how a Performance-Based Contract (section 6.3.2.2) or a Public-Private Partnership (section 6.3.2.3) would meet competitive bidding requirements – or perhaps I need to understand how these delivery/procurement methods would work to better discuss if there would be competitive bidding issues under the State law requirements. Also, even if competitive bidding requirements can be met in some manner, if public funding is used, there will likely still be prevailing wage requirements, etc.	Item 8a: Funding/Financing Approaches Informational Discussion	
30	SFRWQCB	E.3	Project Delivery	Can you say more about this potential outcome?	Item 8a: Funding/Financing Approaches Informational Discussion	
134	City of Walnut Creek	6.3.1	Project Delivery	MEYERS NAVE COMMENT – CLARITY: The explanations of the process and the loan forgiveness need to be enhanced to allow better understanding.	Item 8a: Funding/Financing Approaches Informational Discussion	

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3	City of San Pablo	E.6	Compliance Unit Cost Basis: Programmatic Demand	Programmatic Demand – This may not be so much of a legal issue, but I was not tracking with the minimum program purchase guarantee concept that is discussed in Section E.6.	Item 8b: Compliance Unit Cost Basis - Programmatic Demand Approach Informational Discussion	
42	City of Walnut Creek	E.5/ 6.2.1	Compliance Unit Cost Basis: Programmatic Demand	MEYERS NAVE COMMENT – TRANSPARENCY: A “guarantee of purchase of compliance metrics” could be interpreted that applicant-buyers, which could include Permittees, must guarantee they will purchase credits. It does not seem like that is the intent so rewording to explain the System is needed here and in similar sections elsewhere.	Item 8b: Compliance Unit Cost Basis - Programmatic Demand Approach Informational Discussion	
45	SFRWQCB	E.6	Compliance Unit Cost Basis: Programmatic Demand	But it’s not always a cost to the municipality. Usually, won’t it be a cost to a private developer? Also, cost is not as straightforward as the cost of building LID at a particular site. It’s also the opportunity cost of the lost development space on the buyer’s parcel. When a buyer avoids that lost opportunity cost, how significant is that boon? Will vary, project by project.	Item 8b: Compliance Unit Cost Basis - Programmatic Demand Approach Informational Discussion	
132	SFRWQCB	6.2.1	Compliance Unit Cost Basis: Programmatic Demand	Are we understanding correctly that permittees will be encouraged to proactively force certain future private development/redevelopment projects to do offsite LID, even if onsite LID is feasible? Or is this more about public projects, and in particular, C.3.j?	Item 8b: Compliance Unit Cost Basis - Programmatic Demand Approach Informational Discussion	
46	SFRWQCB	E.6	Compliance Unit Cost Basis: Programmatic Demand	In this context, what does it mean that these offsite GSI projects should be economically feasible?	Item 8b: Compliance Unit Cost Basis - Programmatic Demand Approach Informational Discussion	
4	Contra Costa County Watershed Program		Project Delivery	Loans. Proposal: An off-site green stormwater infrastructure (GSI) project would be fully funded and built before developers purchase “compliance units” generated by the completed GSI project. A permittee or other public agency would obtain a loan or other funding to finance the construction of off-site GSI projects, which could be built by public or private entities on public or private property. This “borrower agency” could lend the proceeds to entities that will build the projects. Issue: Counties, cities, and other political subdivisions are generally prohibited under the California Constitution from making loans to any person, association, or corporation.	Item 8c: Funding/Financing - Public Financing Discussion	
5	Contra Costa County Watershed Program		Project Delivery: Prevailing Wage Requirements	Construction of Off-Site GSI Projects. Proposal: Possible use of private entities to construct projects “at a lower cost than standard procurement processes.” Issue: If public money is used to construct or maintain a public works project, the laws that apply to public contracting, including bidding procedures and payment of prevailing wages, will apply to the project.	Item 8d: Funding/Financing - Prevailing Wage Requirements Discussion	
128	Contra Costa Clean Water Program	6.1	Project Delivery: Prevailing Wage Requirements	Would all projects trigger prevailing wages, even purely private projects that participate in the program? This is a legal issue to look into further.	Item 8d: Funding/Financing - Prevailing Wage Requirements Discussion	
13	SFRWQCB		System Driver: MRP	The Summary Report discusses (e.g., in Section 8, Adaptive Management) how the Contra Costa County System may be altered over time; however, several of those alterations would likely require an additional permit amendment or could be incorporated into a future permit reissuance. For example, on page 59: “Non-LID/GSI facility types could potentially be considered in the future, through the Contra Costa County System adaptive management protocol...” The Summary Report discusses major vs. minor alterations in Section 8.3, Procedures for System Amendments, but it does not provide examples of either.	Item 9: Adaptive Management - Permit Amendments Discussion	
49	SFRWQCB	E.8	System Driver: MRP	This needs further discussion because amendments to the Contra Costa County System may require additional Permit amendments.	Item 9: Adaptive Management - Permit Amendments Discussion	
151	SFRWQCB	8.1	System Driver: MRP	Would any of these modifications require further permit amendments? Is it possible to add additional detail now to increase what’s possible ahead of a future amendment?	Item 9: Adaptive Management - Permit Amendments Discussion	
154	SFRWQCB	8.1.3.2	System Driver: MRP	While a broader program as described here could be beneficial, this appears to be beyond the scope of the current program, and would likely require an additional permit amendment.	Item 9: Adaptive Management - Permit Amendments Discussion	
155	SFRWQCB	8.2.2	System Driver: MRP	Not currently allowed; would require an additional permit amendment, given how significantly this deviates from the expectations in C.3. Not likely that this will be allowed in the future, considering the lesser environmental/water quality/hydrologic benefit.	Item 9: Adaptive Management - Permit Amendments Discussion	
159	SFRWQCB	8.3.2	System Driver: MRP	Use of treatment control measures not allowed by C.3, for Regulated Projects or C.3.j projects, is likely to require a permit amendment under the MRP’s current and proposed language. Likewise for C.10 (etc...). This is not something that could be done unilaterally by the Permittees and is likely to fall under the “significant change” category.	Item 9: Adaptive Management - Permit Amendments Discussion	
89	SFRWQCB	4.2.1.2	System Driver: MRP	This would likely require an additional future permit amendment.	Item 9: Adaptive Management - Permit Amendments Discussion	
108	SFRWQCB	5	System Driver: MRP	Can the nature and scope of these predicted amendments be outlined? That would help us determine the appropriate future needed Water Board response, such as another permit amendment.	Item 9: Adaptive Management - Permit Amendments Discussion	
156	Contra Costa Clean Water Program	8.3	System Driver: MRP	Does this refer to amendments to this document or to the permittee programs?	Item 9: Adaptive Management - Permit Amendments Discussion	
157	Contra Costa Clean Water Program	8.3	System Driver: MRP	What would minor amendments require?	Item 9: Adaptive Management - Permit Amendments Discussion	
158	SFRWQCB	8.3	System Driver: MRP	This will depend on the nature of the changes. What is meant by “minor adaptations” here? We suggest providing additional description and/or a list of minor or more-significant edits to help frame expectations.	Item 9: Adaptive Management - Permit Amendments Discussion	
91	SFRWQCB	4.2.3	Compliance Unit	While rainfall is one element, equivalent volume should be based on volume/rate of runoff, which is a function of rainfall regime and site surface types and drainage patterns?	Not discussed - separate meeting with Water Board to discuss	
102	SFRWQCB	4.4	Compliance Unit	Need a 3rd baseline: if a portion of the drainage area tributary to the offsite GSI project is subsequently developed/redeveloped... what then?	Not discussed - separate meeting with Water Board to discuss	
147	SFRWQCB	7.2.2	Compliance Unit	How so? This general statement needs additional discussion/explanation; it appears to rely on the idea that there is less-effective municipal oversight of Regulated Projects.	Not discussed - separate meeting with Water Board to discuss	

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
133	SFRWQCB	6.2.2	Compliance Unit Demand	Yes, the issue is lost profits to the developer, not technical infeasibility of onsite controls.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
16	SFRWQCB		Compliance Unit: Pollutant Loading	The Summary Report asserts (e.g., in Section 4.2.3.2, Equivalent Pollutant Loading) that pollutant loading is not significantly different for Residential, Commercial/Industrial, and Transportation/Freeway land use categories, based on statistical tests performed using total suspended solids (TSS) data from the National Stormwater Quality Database. Conventional understanding is that loading of typical urban stormwater pollutants is likely greater in non-residential areas, for example, in the Freeway land use category, and the Summary Report does not provide any explanation for why the data appears to reject that conventional understanding. Given this unintuitive result, the same statistical tests should be repeated for other typical urban stormwater pollutants, such as total petroleum hydrocarbons (TPH), to confirm the rejection of that conventional understanding. We suggest meeting to better understand and have further dialogue on the WQB ratio, equivalent pollutant loading, and the rainfall ratio. For example, we likely need to discuss the statement in Section 4.2.3.2 that LID effluent concentrations are independent of influent concentrations.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
17	SFRWQCB		Compliance Unit: Pollutant Loading	It is not clear whether there will be any verification of current activities within the tributary drainage areas of the buyer and seller's respective sites, or, whether the Contra Costa County System will simply rely on zoning maps to make assumptions about pollutant loading.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
92	SFRWQCB	4.2.3	Compliance Unit: Pollutant Loading	What is the intended level of evaluation/groundtruthing? Will there be any verification of the specific activities taking place in the tributary drainage areas? Or will it only rely on the stated land use, e.g., in zoning maps?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
93	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	How are dissolved constituents considered in this analysis?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
94	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	This needs additional discussion. While media generally has achieved good removal rates for particulates and particulate-bound pollutants, those are not the only pollutant of concern. Also, in some cases, particulate-like pollutants, such as bacteria, may behave differently.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
95	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	The notion that controls produce a similar effluent concentration and load regardless of influent concentration, and thus the focus should be on influent load, needs additional discussion, to the extent it is relying on TSS/particulate removal as a proxy. Why is that sufficient as we consider pollutants like nutrients and, generally, dissolved forms of pollutants? How does that address equivalent hydrologic benefit associated with the LID approach?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
96	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	Any confirmation of the actual present-day land uses, or will this be based on zoning maps?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
97	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	Intuition is that pollution-generating activities are, generally, greater in commercial and freeway areas, compared to residential areas. Past runoff data, including BASMAA's 1995 work, suggests more-significant variation in pollutant loading between land uses. Thus, it's not clear that limiting evaluation to TSS data is sufficient to translate between land uses. This analysis should be repeated using other pollutants; for example, PAH or TPH. We'd be surprised if the same result was generated.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
98	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	See previous comment. What explains this result?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
99	SFRWQCB	4.2.3.2	Compliance Unit: Pollutant Loading	What's the basis for this assumption? For example, do we expect weathered road surfaces to produce the same level of pollutants as new roads? Are there differences associated with other factors?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
100	SFRWQCB	Table 7	Compliance Unit: Pollutant Loading	As noted above, additional discussion is needed to understand and support these proposed outcomes.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
20	SFRWQCB		Equivalent or Increased Water Quality Benefit	The Summary Report, in several places, refers to the need for the Contra Costa County System to demonstrate equivalent or increased water quality benefit. "...as required for [the] proposed program submittal per [the] MRP 3 Tentative Order Fact Sheet." Fact Sheet p. A-124 recommends a "demonstration of equivalent or increased water quality benefit (e.g., through the equivalent or net increase in impervious surface treat, and the equivalent or net reduction in flow and/or pollutant load, but not necessarily in the same watershed)." We regret that this was a mistake that will be corrected in the Revised Tentative Order, so that it is more in line with Option 1 (Provision C.3.e.i.(1)), which reads: "...Offsite LID treatment measures must provide hydraulically-sized treatment... of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit" (emphasis added). The change should not significantly impede the Contra Costa County System, which we think generally has been designed to achieve this expectation, and we look forward to further dialogue on this issue as necessary.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
69	SFRWQCB	3.2.4	Hydromodification Management	It would be helpful for this to have additional discussion/explanation outlining explicitly what is implicit—namely how they would participate in the water quality aspect.	<i>Not discussed - separate meeting with Water Board to discuss</i>	
33	SFRWQCB	E.3	Reporting	Does this include MRP Provision C.3 Annual Report reporting? If so, in which AR will the reporting on these projects take place? Or is this talking about different reporting here, like on the system as a whole?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
50	SFRWQCB	E.9	Reporting	Is there more to say about how this process would be developed and who would be responsible?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
161	SFRWQCB	9.3	Reporting	This isn't clear to me... to what extent will the reporting remain individual for participating permittees, vs a collective reporting rollup by the CCCWP permittees as a whole?	<i>Not discussed - separate meeting with Water Board to discuss</i>	
152	City of Walnut Creek	8.1.2	System Objectives: Environmental Justice	See prior comment. Recommend deleting. (Comment #32 in matrix.)	<i>Not discussed - written comment to clarify</i>	
31	SFRWQCB	E.3	System Objectives: Environmental Justice	We are interested in the extent to which the system is designed to definitively produce these outcomes.	<i>Not discussed - written comment to clarify</i>	
32	City of Walnut Creek	E.3	System Objectives: Environmental Justice	MEYERS NAVE COMMENT - RELEVANCE: Is it necessary to include this non-water-quality co-benefit? It could provide the Regional Board or environmental groups more criteria for the	<i>Not discussed - written comment to clarify</i>	
27	City of Walnut Creek	E.3	Compliance Purchase	MEYERS NAVE COMMENT - TRANSPARENCY: This phrase should be re-written to provide transparency. Perhaps it should say "... cover capital costs of an LID treatment measures at an offsite location in the same watershed," as stated in the MRP. The 2015 MRP does not mention Operations & Maintenance assessments, only capital costs; therefore, O&M should be discussed elsewhere.	<i>Not discussed - written comment to clarify</i>	
48	Contra Costa Clean Water Program	E.7	Compliance Purchase	Why is the buyer at risk? They pay, get their credit and are done with the process.	<i>Not discussed - written comment to clarify</i>	
137	City of Walnut Creek	6.4.3	Compliance Purchase	See prior comments related to costs. Consider whether a cap is needed here. (Comment #27 in matrix.)	<i>Not discussed - written comment to clarify</i>	

Item Number	Reviewer	Section	Topic	Comment	TAC Meeting Discussion Item	Response (To Be Completed)
35	City of Walnut Creek	E.4/ 3.3.2	Compliance Unit	MEYERS NAVE COMMENT - TRANSPARENCY: If E.4 is intended to follow the acre-feet levels in MRP 3 Section C.3.j and Attachment H of MRP 3.0 then those should be explained here. The explanations of calculations are hard to follow and Runoff Gen. Acres seems to need a definition.	<i>Not discussed - written comment to clarify</i>	
90	City of Walnut Creek	4.2.2	Compliance Unit	MEYERS NAVE COMMENT - CLARITY: It would be good to clarify whether all Permittees agree on this approach.	<i>Not discussed - written comment to clarify</i>	
67	City of Walnut Creek	3.2.3	Compliance Unit Cost Basis	MEYERS NAVE COMMENT - COSTS: Federal EPA believes that in-lieu fees could be set "at a level slightly higher than necessary for the state, territory, or tribe to fund the BMPs needed to generate the required credits to cover the administrative costs of running the program, insure against risk, and enhance overall environmental benefit." (See 84 Fed. Reg. 49293, 49297.) It would be helpful to verify that these costs are only slightly higher and will not lead to the System becoming cost prohibitive.	<i>Not discussed - written comment to clarify</i>	
79	City of Walnut Creek	3.3.4.1	Compliance Unit Cost Basis	MEYERS NAVE COMMENT - COSTS: Limits to these amounts are needed to avoid unfunded mandates. EPA believes only slight fees above capital cost are permitted in trading systems. (See comment in executive summary.)	<i>Not discussed - written comment to clarify</i>	
80	City of Walnut Creek	3.3.5	Compliance Unit Cost Basis	MEYERS NAVE COMMENT - COSTS: Limits to these amounts are needed to avoid unfunded mandates. EPA believes only slight fees above capital cost are permitted in trading systems. (See comment in executive summary.)	<i>Not discussed - written comment to clarify</i>	
149	Contra Costa Clean Water Program	7.2.3.3	Compliance Unit Providers	Insurance should be provided to help manage this risk.	<i>Not discussed - written comment to clarify</i>	
41	SFRWQCB	E.5	Compliance Unit Providers	Once a seller's "application" is approved, and they are allowed into the system, are any subsequent credits they generate subjected to the same level of scrutiny/evaluation that the first credits they generated are subject to (when their application was considered)?	<i>Not discussed - written comment to clarify</i>	
44	SFRWQCB	E.6	Compliance Unit Providers	How early in the buyer's project application/development phase will these guarantees take place? What if, later in that phase, it turns out that slightly more acres greened are needed? How will that be accounted for, if a purchase was already made for less acres greened than what is needed to comply?	<i>Not discussed - written comment to clarify</i>	
127	City of Walnut Creek	6.1	Compliance Unit Providers	MEYERS NAVE COMMENT - TRANSPARENCY: Here and elsewhere the report should explain who is building the projects and why the municipalities cannot.	<i>Not discussed - written comment to clarify</i>	
8	EPA		Document Format	Suggest replacing the Glossary at the end of the Draft Report with a Definition Section located in the beginning of the Draft Report that includes all the terms in the Glossary as well as other key terms already defined throughout the document in footnotes or texts. Also suggest cross-referencing as appropriate to the MRP-3 Tentative Order or other sources for the definitions used where available.	<i>Not discussed - written comment to clarify</i>	
88	Contra Costa Clean Water Program	4.2.1.2	Hydromodification Management	Wouldn't these issues still exist in Phase 3?	<i>Not discussed - written comment to clarify</i>	
28	City of Walnut Creek	E.3	Legal Basis: EPA Water Quality Trading Policy	MEYERS NAVE COMMENT - TRANSPARENCY: Here and elsewhere, the report dives into details before explaining their legal significance and this can cause confusion. EPA's Water Quality Trading Toolkit (Aug. 2007) recommends transparency. It would be prudent to state in this section who is eligible to trade, where trading can occur, and what can be traded.	<i>Not discussed - written comment to clarify</i>	
38	City of Walnut Creek	E.5	Legal Basis: EPA Water Quality Trading Policy	MEYERS NAVE COMMENT - TRANSPARENCY - EPA requires that water trading programs provide transparency of who the buyers will be. Federal EPA recommends that "any alternate approaches that states decide to adopt should be clear, transparent, and demonstrate that the overall planned reductions in the watershed are sufficient to meet the overall TMDL allocations for the watershed." (See e.g., 84 Fed. Reg. 49293, at p. 49297 (Sept. 19, 2019).)	<i>Not discussed - written comment to clarify</i>	
40	City of Walnut Creek	E.5	Off-Site GSI Projects	MEYERS NAVE COMMENT - TRANSPARENCY: It would seem that initial projects need to be built to generate credits; however, the discussion does not describe that process.	<i>Not discussed - written comment to clarify</i>	
71	City of Walnut Creek	3.3.2	Off-Site GSI Projects	MEYERS NAVE COMMENT - TRANSPARENCY: The report does not make clear who would be constructing the initial off-site projects that generate credits.	<i>Not discussed - written comment to clarify</i>	
75	SFRWQCB	3.3.2.1	Off-Site GSI Projects	Footnote 11 says that it is "expected" that preliminary quantification of benefits would occur during preliminary review processes. Please revise to more definitively state how this would be completed under the System and, if there are multiple potential approaches the System might use, what they are.	<i>Not discussed - written comment to clarify</i>	
109	SFRWQCB	5.3	Off-Site GSI Projects	Envisioned? Or will? Can this be described in more detail, or the location where it is described be cited here?	<i>Not discussed - written comment to clarify</i>	
110	Contra Costa Clean Water Program	5.3	Off-Site GSI Projects	Is this sufficient? Usually an option would only be exercised if entitlements are approved for the buyer's project. What happens if the option is not exercised, but the GSI Project is approved?	<i>Not discussed - written comment to clarify</i>	
111	Contra Costa Clean Water Program	5.3	Off-Site GSI Projects	Would need to verify that the easement permits the project.	<i>Not discussed - written comment to clarify</i>	
129	EPA	6.1	Off-Site GSI Projects	Isn't an "off-site GSI project" already in a location other than the regulated project?	<i>Not discussed - written comment to clarify</i>	
145	City of Walnut Creek	6.5.4	Off-Site GSI Projects	MEYERS NAVE COMMENT - RELEVANCE: Is this necessary to include? Larger projects are not necessarily better. Small, isolated projects in the right locations could be effective, and the greater economies of scale for larger projects can potentially translate to larger-scale risks of failure.	<i>Not discussed - written comment to clarify</i>	
84	EPA	3.4	Participation Agreements	MOUs generally are aspirational and not legally binding.	<i>Not discussed - written comment to clarify</i>	
9	EPA		Pilots	Suggest providing a few hypothetical scenarios of how the System might work, for example using generic terms such as "Municipal Permittee A," has a Regulated Project (list example) and seeks so many "compliance units" etc. and walk through how the System might work. This would help the reader better understand the proposed System.	<i>Not discussed - written comment to clarify</i>	
57	EPA	3.1	Pilots	An example of one would be helpful. Suggest including several sample scenarios of how this program might work to help the Reader conceptualize the System.	<i>Not discussed - written comment to clarify</i>	
112	Contra Costa Clean Water Program	5.4	Pilots	How would Phase 1 units be collected? Do you need to address?	<i>Not discussed - written comment to clarify</i>	
18	SFRWQCB		Project Certification	It is not clear (e.g., in Sections 5.6, Certification Requirements, and 5.7, Verification Requirements) whether the Certifying Entity and the Verifying Entity could be the entity that is "selling" the Off-Site GSI Project, which, if allowed, might be a conflict of interest. U.S. EPA's Water Quality Trading Policy, dated February 6, 2019, suggests consideration of third-party verification providers.	<i>Not discussed - written comment to clarify</i>	
118	City of Walnut Creek	5.6	Project Certification	MEYERS NAVE COMMENT - PRECISION: Does this refer to private projects like the next paragraph or public projects? Who certifies municipal public projects?	<i>Not discussed - written comment to clarify</i>	
153	City of Walnut Creek	8.1.3.1	Project Delivery	MEYERS NAVE COMMENT - TRANSPARENCY: It is not clear whether this requires the municipal permittees to fund projects; if so, then better explanation is needed.	<i>Not discussed - written comment to clarify</i>	

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120	City of Walnut Creek	5.7	Project Verification	MEYERS NAVE COMMENT – CLARITY: Does this increase the pre-existing duties of municipalities, and, if so, how?	Not discussed - written comment to clarify	
121	Contra Costa Clean Water Program	5.7	Project Verification	Under what conditions would verification be delegated to a private entity?	Not discussed - written comment to clarify	
122	SFRWQCB	5.7	Project Verification	Good, but to take that to its next logical step, is it ok if the Verifying Entity is hired by the entity that is “selling” the offsite GSI facility? I do not think so, b/c of the inherent conflict of interest.	Not discussed - written comment to clarify	
123	SFRWQCB	5.7	Project Verification	Please specify in greater detail the general timeframe; i.e., set a general expectation.	Not discussed - written comment to clarify	
125	SFRWQCB	5.7	Project Verification	Please revise “should” to some form of: will/must/shall.	Not discussed - written comment to clarify	
150	City of Walnut Creek	8	System Adaptive Management	MEYERS NAVE COMMENT – CLARITY: EPA normally views adaptive management as a strategy to address unforeseen changes in site conditions or other components of the project that require refinements or changes. This section addresses expansion of the program mainly and perhaps should address adaptive management in a more traditional sense.	Not discussed - written comment to clarify	
26	City of Walnut Creek	E.3/ 3.1	System Development	MEYERS NAVE COMMENT - CLARITY: This section E.3 is helpful but could be enhanced to add clarity. First, the System, it appears, is intended to provide the Alternative or In-Lieu Compliance described in MRP Section C.3.e; therefore, this should be stated. Second, MRP Sections C.3, C.3.j, C.11, and C.12 are mentioned above in the list but require a general explanation before launching into the technical components of the system. Doing so will pinpoint how the proposed system provides compliance in accordance with C.3.e. Third, this section states Regulated Project developers are required to comply with the MRP, but they are not; it would be better to re-word as proposed in the redline. Fourth, the terms “in-lieu” payment and “pay-for-performance” should be defined before they are used, perhaps in footnotes that attribute them to MRP 3.0. Fifth, it seems like at most the system would provide indirect compliance strategies for the trash standards of C.10, but more precise language could clear this up.	Not discussed - written comment to clarify	
61	Contra Costa Clean Water Program	3.2.1	System Development	Do you want to disclose these legal comments?	Not discussed - written comment to clarify	
62	City of Walnut Creek	3.2.1	System Development	MEYERS NAVE COMMENT – TRANSPARENCY: The discussion in this section is a good start to describing the new approach; however, the 2015 MRP and the MRP 3 Tentative Order have remained in large part the same so the discussion of the initial system failures lacks the detail needed to highlight the improvements in the current proposed System.	Not discussed - written comment to clarify	
63	Contra Costa Clean Water Program	3.2.1	System Development	I do not necessarily agree with these legal risks, which may justify omitting this discussion.	Not discussed - written comment to clarify	
11	SFRWQCB		System Driver: MRP	The Summary Report frequently refers to language in the Fact Sheet as “allowing” or “requiring” certain actions. The Fact Sheet recognizes the possibility of an alternative compliance program for exchanges of impervious surface treatment credits, but does not include any requirements. The Fact Sheet’s purpose is to provide a rationale for and information on the Tentative Order’s proposed requirements, including potential amendments thereto. Please correct references that suggest that the Fact Sheet includes requirements.	Not discussed - written comment to clarify	
12	SFRWQCB		System Driver: MRP	The Summary Report frequently asserts that the Water Board may “approve” the Contra Costa County System, after which it will be formally recognized under Provision C.3.e in the Tentative Order (and in MRP 3). The Water Board will not be “approving” the Contra Costa County System. In order to allow the program as an alternative means of compliance, the Water Board will have to complete a permit amendment subject to the public review and comment process.	Not discussed - written comment to clarify	
22	City of Walnut Creek	E.2	System Driver: MRP	MEYERS NAVE COMMENT - TRANSPARENCY: The new requirements in the Section C.3.j of the MRP 3.0 are worth highlighting here, rather than only in Section 2.1.2.	Not discussed - written comment to clarify	
58	SFRWQCB	3.1	System Driver: MRP	As we noted in an earlier comment, there’s a wording distinction here, which is that the Board would consider recognizing the program via a permit amendment, rather than “approving” it. (Comment in Section E.3 in document.)	Not discussed - written comment to clarify	
23	City of Walnut Creek	E.2	System Driver: MRP	MEYERS NAVE COMMENT - RELEVANCE: The relevance of highlighting this statement as a system driver is not clear, particularly because the quoted text seems limited impervious treatment credits.	Not discussed - written comment to clarify	
10	EPA		System Driver: MRP	As noted in the Draft Report, the language (except below, emphasis added) allowing for submission of an alternative compliance program is not in the MRP-3 Tentative Order itself but in the associated Fact Sheet. However, the MRP-3 Tentative Order incorporates the Fact Sheet by reference in support of the Permit requirements. Submittal of this Draft System Report proposal is voluntary, but the Fact Sheet references this specific developing alternative compliance program and notes the Water Board’s intent to consider such alternative compliance programs and amend the permit as appropriate to officially recognize and authorize it as part of the permit. Therefore, suggest the Draft Report reference the MRP-3 Tentative Order provision below that incorporates the Fact Sheet, including the additional explanatory information, into the MRP-3 Tentative Order. Any amendment to the controlling MRP Order to incorporate an alternative compliance program should be consistent with Clean Water Act law and regulations, including 40 C.F.R. § 122.62 allowing for public review and comment on any major modification or amendment to the MRP Order. During the Permit term, the Permittees may submit new information for an alternative compliance program for exchanges of impervious surface treatment credits at the regional, county, and/or municipal level, resulting in offsite treatment of payment for equivalent offsite compliance for 100 percent of the required Provision C.3.c-d stormwater runoff (and Provision C.3.g, as appropriate). Any such program should include at least the following: a clear organizational framework; demonstration of equivalent or increased water quality benefit (e.g., through the equivalent or net increase in impervious surface treated, and the equivalent or net reduction in flow and/or pollutant load, but not necessarily in the same watershed); an accounting and reporting system; a process for collection and timely use of funds; compliance with Provisions C.3.c-d and C.3.f-h; program oversight by an entity or entities; and expectations for timing and location. If or when such a program proposal is submitted, the Water Board will consider the new information and may consider amending the Permit to include a third option in Provision C.3.e.i that formally recognizes and allows the program specified in the proposal. This is in part a response to the City of San Pablo-led U.S. EPA Water Quality Improvement Fund (WQIF)-funded Regional Compliance for a Sustainable Bay project, which is investigating such a program that would facilitate alternative compliance exchanges between Permittees within Contra Costa County, but may be of interest in other counties and regionally. One page 1 of the MRP-3 Tentative Order under the heading “Findings” it states: Incorporation of Fact Sheet 1. The Fact Sheet for the San Francisco Bay Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Attachment A) includes cited regulatory and legal references and additional explanatory information in support of the requirements of this Permit. The Fact Sheet, including any amendments thereto, is hereby incorporated by reference.	Not discussed - written comment to clarify	
53	SFRWQCB	2.2	System Driver: MRP	Also: appropriately maximizing use of the MRP’s LID-based compliance approach, and reducing reliance on less beneficial non-LID treatment allowed by C.3.e.ii	Not discussed - written comment to clarify	
51	SFRWQCB	2.1.2	System Driver: PCBs and Mercury TMDL	While the permit supports targeted management of PCBs, this statement is misleading. Please see our comment letter.	Not discussed - written comment to clarify	
66	SFRWQCB	3.2.2	System Integration into Existing Compliance Programs	This is a positive outcome that we would want to see achieved elsewhere. Could more explanation be provided regarding how the System is expected to achieve this?	Not discussed - written comment to clarify	
162	SFRWQCB	10.1	Templates	Also should include, for both buyer and seller: Land uses and associated pollutant generation. Hydrology.	Not discussed - written comment to clarify	

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15	SFRWQCB	Section 9	Tracking Tool	The Summary Report is missing (e.g., in Section 9, Overview of Tracking Tool) a discussion of how, and the extent to which, the System Tracking Tool will include, for each linked “buyer” and “seller,” the following information: a comparison of created or replaced impervious surface, pollutant loading, and climate (rainfall). It is also unclear what will be reported to the Water Board, how it will be reported, and by whom.	<i>Not discussed - written comment to clarify</i>	
160	SFRWQCB	9	Tracking Tool	Perhaps I missed it, but I don’t see the following: for each offsite GSI project, a link to the “buyer’s project site. So the viewer can easily compare the two sites’ pollutant loading and hydrologic regimes, etc.... The Water Board and the public need to have access to this information. Transparency will be key to this program.	<i>Not discussed - written comment to clarify</i>	