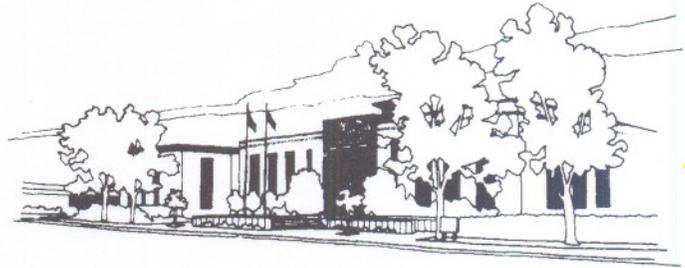


City of San Leandro  
Civic Center, 835 E. 14th Street  
San Leandro, California 94577



April 2, 2009

*Via Email (MRP@waterboards.ca.gov) and Overnight Delivery*

Mr. Bruce Wolfe  
Executive Officer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Ste. 1400  
Oakland, CA 94612

**Detailed Comments on 2/11/09 Tentative Order for the Municipal Regional Storm Water Permit**

Dear Mr. Wolfe:

On April 1, 2009, the City of San Leandro submitted general comments regarding the draft Municipal Regional Permit (MRP) for the San Francisco Bay Region, dated February 11, 2009. Since then, City staff has completed its detailed review and is providing the attached comments on the draft MRP. In addition to our comments, City staff supports and concurs with those being provided by BASMAA and the Alameda Countywide Clean Water Program (ACCWP). We request that you distribute a copy of our comments to the Water Board Members and include them in the record of this administrative proceeding.

City staff acknowledges the work and effort that has gone into the draft and appreciates the willingness of Water Board staff to work with local agency representatives. We recognize many of the changes incorporated into the revised tentative order from the previous draft. However, many of our previous concerns were not addressed and some of the new requirements added to the MRP are of great concern.

These difficult economic times have made clear that local agencies are having difficulty funding current stormwater programs and do not have the resources to take on additional costly and burdensome requirements. Future mandates must be accompanied by a stable, long-term funding source and have a demonstrated and clear benefit. We therefore ask that the existing permit be extended to provide the time to find a viable solution. If you have any questions about our detailed comments, please contact John Camp, Environmental Services Supervisor, at 510.577.6029.

Sincerely,

Michael Bakaldin  
Director of Public Works

Attachments: MRP component comments  
Land Use data corrections & Map

Tony Santos, Mayor

City Council:

Michael J. Gregory;  
Diana M. Souza;

Jim Prola;  
Joyce R. Starosciak;

Ursula Reed;  
Bill Stephens



## MRP Component Comments from City of San Leandro

### **Section C.3.b.ii (1) – New Development, Regulated Projects Defined last paragraph**

Requirements of the section above are applied to all projects that have not received final approval. We recommend that all requirements should be applied when the application is deemed complete as defined in the permit streamlining act. Otherwise we may be asked to change the requirements for a project at the 11th hour.

### **Section C.3.b.iii – Green Streets**

Language is poorly written. It is not clear what a project must contain to be considered a green street. The phrase monitoring to document water quality appears to require testing of the effluent.

### **Section C.3.c.i (4)-(5) – Water Board Notification**

Water Board is notified of all projects per the annual report requirement, this is redundant and inefficient. Recommend removing from this section.

### **Section C.3.c.i (6) – Water Board Approval**

This requirement may delay permit issuance beyond allowable time frames.

### **Section C.3.e.i (1)(d)(i) – TOD Parking Requirement**

Exceptions are still limited to projects with no more than 1 parking space per unit. Marketing data shows this is not viable and a hindrance to implementing TOD developments. The exception should be changed to 1.5 parking spaces per unit so TOD projects are marketable.

### **Section C.3.h.iii – O&M verification C3 treatment systems, maintenance approvals**

The Tentative Order specified due date for full implementation of “immediate” is not feasible. Requirements for a new database or tracking system and greatly expanded reporting in section C.3.h.iv (1) cannot be accomplished immediately. With regards to reporting, the only two items that the WB should be concerned with is design problems with specific types of BMPs and O&M problems with associated enforcement actions. The discussions required in section C.3.h.iv (3) of the reporting should be adequate to address these concerns and provide this information. The expectations of the MRP must match the capabilities of the Permittees and this due date should be changed to a feasible date. Delete section C.3.h.iv (1) from reporting as it is overly prescriptive and burdensome.

### **Section C.4.a.ii (2) – Industrial/Commercial Site Controls, legal authority**

Prescribing a baseline of 10 days for corrective actions is unreasonable. 30 days is the standard baseline across other regulatory programs, such as pretreatment and UST, with a shorter time frame given when conditions warrant it, such as next storm event projected or eminent threat to people or the environment. Change Baseline time frame from 10 to 30 days and eliminate justification for any correction time frame less than 30 days.

### **Section C.4.c.i – Enforcement Response Plan – Task Description**

Typo Replace “public and private construction” with “industrial and commercial”

### **Section C.4.c.ii (2) – Enforcement Response Plan – Implementation Level – Timely correction of violations**

10 days to correct all violations is unrealistic as is the requirement to document every time 12 or 15 working days are needed instead of 10 working days. The more paperwork and data entry there is required by this permit the less time there is for actual field work necessary to implementing an effective program. We recommend a more standard baseline of either 20 working days or 30 days and recognition

that Permittees will continue to prescribe shorter time frames when weather or threat to sensitive receptor conditions warrant doing so.

#### **Section C.5.d – Illicit Discharge, Mobile Sources**

The requirement to “Establish oversight and control of pollutants from mobile sources” in theory may sound good, but after 15 years of already attempting to do so ACCWP Permittees are still in process. As a city, we often cannot even track and collect business licenses for these mobile businesses. Yet we have participated in or shared information leading to enforcement of mobile sources through collaboration with the Alameda County Environmental Crimes Task Force and County District Attorney’s office. The more this permit demands of individual agency staff time; the more staff may be forced to pull back on un-funded regional participation.

Implementation level should consist of developing BMPs and reporting on successful partnering where it is available with entities/agencies that do have control. An example is the recent addition of owner training and certification to comply with ACCWP BMPs achieved by ACCWP partnering with AlCo Env Health Agency who permits mobile food vendors.

#### **Section C.5.f.i (3) – Illicit discharge, Tracking & follow-up, Implementation Level**

There are far too many needless data tracking requirements; such as response in days of; call to investigation, investigation to abatement and call to abatement. This level of detail is inhibitory to effective implementation and draws funding and resources from field based tasks to reporting and data management.

We recommend deleting section (3) as it is unnecessary to implementation of an effective illicit discharge component.

#### **Section C.6.e.ii (4) – Construction Site Control, Inspection Tracking**

Permit requires either an electronic or written log of all inspections and requires that we note the inches of rain that fall between inspections

Remove requirement for recording inches of rain.

#### **Section C.9.a – Adoption of IPM ordinance or policy**

The use of pesticides falls under the federal and state respective departments of pesticide. The purpose of adopting something into ordinance is to make it enforceable local law. Since the City will never have the expertise necessary to attempt to supersede these state and federal agencies it is difficult to understand why the Water Board would attempt to circumvent their own counterpart agency via this permit.

Permittees can and should be accountable for their own pesticide usage through adoption of an internal policy. Permittees can adopt a resolution supporting others in implementing IPM. Permittees in Alameda County have been very successful in partnering with the County Ag Commission and retailers in public education of IPM.

Remove the added “and others” as Permittees can only enforceable control their own operations on this issue. Remove the reference to ordinance entirely or replace with resolution.

#### **Section C.9.e – Track & Participate in relevant regulatory process**

Bay Area Permittees and regional groups; such as BASMAA & BACWA; have a long and successful history of doing all the tasks in this section collectively. Individual agencies have widely variable resources and levels of participation. Mandating all these tasks does not change an agencies capability. The regional, statewide and national collaborative groups and processes will continue to work as they have. The only effective way the Water Board can facilitate this process is through consistent participation and dedication of its resources.

Section c.9.e should be deleted from the permit.

### **Section C.9.f – County Ag Commission, Report violations**

The Water Board needs to develop effective relationships with Ca DPR and the County Ag Commissions directly, not attempt to mandate this upon Permittees

The task descriptions of section i should be recommendations, otherwise it should be deleted from the permit.

The information requested in this reporting requirement should be provide to the Water Board by the County Ag Commissions and/or Ca DPR; not the Permittees. This reporting requirement should be removed from this permit.

### **Section C.10 – Trash**

The requirements of this section cannot be met financially by the Permittees. Water Board staff has estimated a \$6.06 per capita cost to Permittees which in actuality is \$27,473,822 just to comply with section C.10.a.v. This estimate may be considerably low as based on our estimates accounting for some known variables; including discrepancies in the acreage requirement and costs per acre; the per capita cost range could be as high as \$22.84 per capita down to \$6.26 per capita.

Permittees, just like the State, are in a massive budget deficit and the stormwater programs, even before this economic collapse, were already under funded due to Proposition 13 and 218 restrictions on increasing revenues. With our own small agency facing an \$11.3 million budget deficit in FY09-10; it cannot absorb the estimated \$1.8 million treatment costs.

State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.

### **Section C.10.a.ii & v – Trash Hot Spot selection & commercial/retail acres**

The data in the 2005 ABAG Land Use database is inaccurate. One fallacy that is right on their description web page is that all their land area calculations are to the middle of the public street. Where their other data errors are is unclear due to the lack of a map based on their data. However, in reviewing their full data many of their land use categories for which our City has land so categorized is shown as zero acreage in the ABAG data.

Using the City's current General Plan data and GIS mapping system; the City is providing 2009 data in the appendix of this document. Raw and summarized data is also available as a separate excel workbook. The latest published (2008) General Plan land use data and map, found in chapter 3.1, is available on the City Web Site at [http://www.ci.san-leandro.ca.us/pdf/slgpchap3\\_1.pdf](http://www.ci.san-leandro.ca.us/pdf/slgpchap3_1.pdf).

Using 2009 updated general plan data; Urban land area (Acres) should be listed at 7353, Total land area at 9915, Total commercial land area at 721, Retail/wholesale commercial only land area at 662 and 30% of retail/commercial at 199 acres respectively.

What appears to be arbitrary doubling of population based hot spot locations from 2 to 4 is out of line with the majority of other agencies. It appears that the variance between population and retail/wholesale acreages for most agencies is 1 or less.

The number of hot spot locations, given the current population and flaws in the ABAG acreage data, should be set at 3, not 4 in the fact sheet table attachment 10.1.

### **Section C.10.b.i – Trash hot spot assessment & reporting**

Typo error on results criteria of "If a trash assessment scores less than 10 pieces of trash per 100 feet." This should be changed to 100 pieces of trash per 100 feet; as this would be consistent with the urban optimal listed in section C.10.a iv and the urban RTA tool guide.

### **Section C.11.a – Mercury Controls, Regional collection & recycling**

Mercury in all forms: fluorescent lamps, batteries, thermometers, medical devices, dental amalgam or elemental, is a universal waste under state and federal law. It must be recycled or disposed as hazardous waste and as such is tracked and under the jurisdiction of DTSC.

Through BACWA and CIWMB efforts consumer mercury is already being collected.

Due to data gaps and in order to assist the Water Board most agencies are already making significant progress and reporting this requested information via BACWA's BAPPG committee and in individual NPDES P2 reports.

Section i should be changed to acknowledge the existing program and facilitate consolidating those few stormwater Permittees not participating into the existing framework to improve efficiency and consistency.

Section ii should contain an exemption for Permittees that are already reporting this information to the Water Board in their P2 reports or via BACWA regional reporting to eliminate double reporting and costs associated with inefficient requirements.

### **Section C.11.c ii – Mercury Controls, Pilot projects to investigate and abate Hg sources, implementation level**

The Water Board has no authority via this permit to change federal law enacted via CERCLA regarding who is a potentially responsible party due to a release or spill resulting in contamination. As a holder of public lands in trust for its constituency, local agencies who exercise due diligence and perform all appropriate inquiries are actually protected from being named responsible parties. Deleting out the word parties after responsible from the previous draft does not change the context or makes this statement legal. Delete the last sentence of section ii, "Permittees are responsible for contaminants located on public right-of-way and the stormwater conveyance system."

### **Section C.12.a – PCB Controls – PCB identification training**

The Water Board appears to be attempting to mandate local agencies to circumvent existing hazardous waste laws such as RCRA & CERCLA at the federal level and CCRs at the state level. Building inspectors and stormwater industrial facility inspectors do not have authority or jurisdiction in this area. Cross discipline training within a Permittees agency, as information emerges regarding PCB containing construction materials, is a great idea and may yield some tangible results in time.

The only information to be derived from surveying industrial sites for PCBs or PCB containing equipment is going to be re-identification of the few remaining electrical transformers, capacitors and light ballasts. These industrial facilities are well aware of their inventory and diligent in proper disposal of this equipment at the end of service life. This equipment is sealed and represents minimal threat to water quality.

Section i – Task Description – delete the last sentence "Permittees shall incorporate such PCB identification into industrial inspection programs."

Section ii – Implementation Level – delete "document incident in inspection report and refer to appropriate regulatory agency" as under the law a CUPA, Environmental Health or DTSC Inspector has no action it can take just because a facility has PCB containing electrical components on its site.

Section iii – change to "Permittees shall report successes and failures with training and intra-discipline efforts of expanding knowledge regarding PCB containing materials."

### **Section C.12.b – PCB Controls, Pilot projects to manage PCB-containing materials of construction**

Since electrical components or other equipment containing PCBs are already hazardous waste; it is assumed that the author is trying to mandate the development of a program, via this board order, similar to current asbestos or lead based paint identification, containment and abatement programs.

Local agencies do not possess the resources or expertise to accomplish this task and it has no place being pushed down to the local level. There are OSHA, employee (site worker), resident or occupant and adjacent property issues that local agencies cannot address.

As in the case of asbestos or lead based paint there is a legal process to develop this at the state or federal level to put the force of law in place. Mandating it via this permit is not the legal process and does not involve all the stakeholders.

Delete this section or revise to allow for Permittees to collaborate in research and development of knowledge to assist the Water Board in taking lead in developing state wide law commensurate with Permittees ability to do so.

**Section C.12.c.ii        PCB Controls, Pilot projects to investigate and abate Hg sources, implementation level**

The Water Board has no authority via this permit to change federal law enacted via CERCLA regarding who is a potentially responsible party of a release or spill and responsible for resultant contamination. As a holder of public lands in trust for its constituency, local agencies who exercise due diligence and perform all appropriate inquiries are actually protected from being named responsible parties. Deleting out the word parties after responsible from the previous draft does not change the context or make this statement legal.

Delete the last sentence of section ii, “Permittees are responsible for contaminants located on public right-of-way and the stormwater conveyance system.”

**Section C.12.f – PCB (& Mercury, Copper, Selenium, PBDE, Pesticides) Controls, Diversion of dry weather and first flush flows from stormwater pump stations to POTWs**

The infrastructure and system to cross connect stormwater pump stations to POTWs does not exist and there is no funding to accomplish this. City and County of San Francisco has spent millions of dollars trying to manage a combined storm & wastewater system, had numerous sewer overflows and wastewater plant overloads.

POTWs are designed to treat conventional pollutants; i.e. BOD, TSS, Fecal Coliform and minimal pH stabilization. They are not designed to treat the priority pollutants of concern in this MRP. Hence the very restrictive NPDES limits on the POTW discharge and the mandated need for a pretreatment program and local limits implementation. Setting PCBs aside for the moment, POTW Cu NPDES limits have been slightly raised to a limit that the POTW can comply with due to the Cu SSO but with the anti-back sliding clause in the NPDES to not go above current influent loadings there is no capacity that can be allocated to pump stations. POTW Hg NPDES limits are so stringent that currently no industrial or commercial business can open with a new discharge that would increase the Hg load to the POTW so there is no capacity for our POTW to accept pump station flows containing Hg.

Local ordinances prohibit the introduction of stormwater into the sanitary sewer system. To remove this restriction, or set a precedence of accepting stormwater flows in effect nullifying this restriction would allow every parcel and property owner in town to connect roof leaders, gutters, outside drains and every other source of stormwater and discharge their stormwater to the POTW. Neither the sanitary collection system nor the POTW has the capacity for this hydraulic increase. Millions of dollars would be needed to expand the POTW.

POTWs collect the basic cost for service based on water volume delivered and used at a parcel by the water purveyor. Stormwater by its nature is un-metered and the cost is un-recoverable so who equitably funds the treatment of stormwater.

The waterboard’s response to comments stating that “it is the intent to use excess capacity of the POTW to treat stormwater” appears to have misunderstanding with the functional operation of POTWs in order to not violate their NPDES Permits. POTWs in order to meet their effluent limits and remain in compliance have already allocated all capacities. The only excess capacity in the allocation methodology is a safety factor that the waterboard sets standards for. The only way to add additional capacity is to expand the POTW and the only way to allocate existing capacity to stormwater is completely redevelop local limits, permanently providing allocation to stormwater and permanently removing that allocation from the industrial discharger sector to the POTW

Treatment of stormwater may have some short term benefits but at very high cost. There are too many conflicts, even between the POTW and Stormwater NPDES permits issued by the same Water Board, economic viability of an agency and the region, severely restricting growth and revenue generation by taking away what little is left of industrial/commercial capacity.

Delete this section or modify it to reflect arrival of consensus on a consolidated strategy between BASMAA, BACWA, all Permittees and all POTWs during the term of this permit.

**Section C.15.b.iii - Exempt & Conditional Exempt Discharges, Potable Water Systems discharges**

This whole section deals with discharges from potable water purveyors, a special district under CA law, who are not part of the ACCWP Permittees group. These special districts, potable water and wastewater among others, were supposed to be included under the stalled phase II implementation. ACCWP Permittees have limited to no authority and will never be able to achieve these prescribed requirements on independent special districts.

The notification & reporting requirements and monitoring requirements should be eliminated allowing current Permittees to continue to develop and work with future Phase II agencies on proper BMP implementation within in their jurisdiction.

**Sections C.8, C.9, C.10, C11, C12, C13, C14, and C15 – Monitoring, special studies, pilot projects, characterization studies, and et.al.**

In previous permits monitoring and special studies were localized and could be reasonably tracked and the costs commented on. In this permit, it is spread all over and an accurate estimate is elusive. Just in C.8, it is estimated that costs will reach \$1 million by mid permit or about \$2 to \$2.5 million additional cost from current levels over five years. Add to that all the special studies, pilot projects, characterization studies and technical reports and it may triple upwards to \$6 or \$7 million due to just the requirements to perform research and fill data gaps for regulatory development.

Local agencies, especially during this economic collapse, with massive budget deficits and declining revenue sources, cannot meet these requirements on the scale proposed in this MRP. Permittees have been asking for two years that the Water Board prioritize and remove lower priority requirements.

At this point in the MRP development and with Board Hearing and potential approval looming our only fiscally responsible comment on behalf of our constituency must be to delete what cannot be financially accomplished.

Appendix – Revision to Land Use Data

Revised Tentative Order Fact Sheet - Municipal Regional Stormwater Permit NPDES No. CAS612008

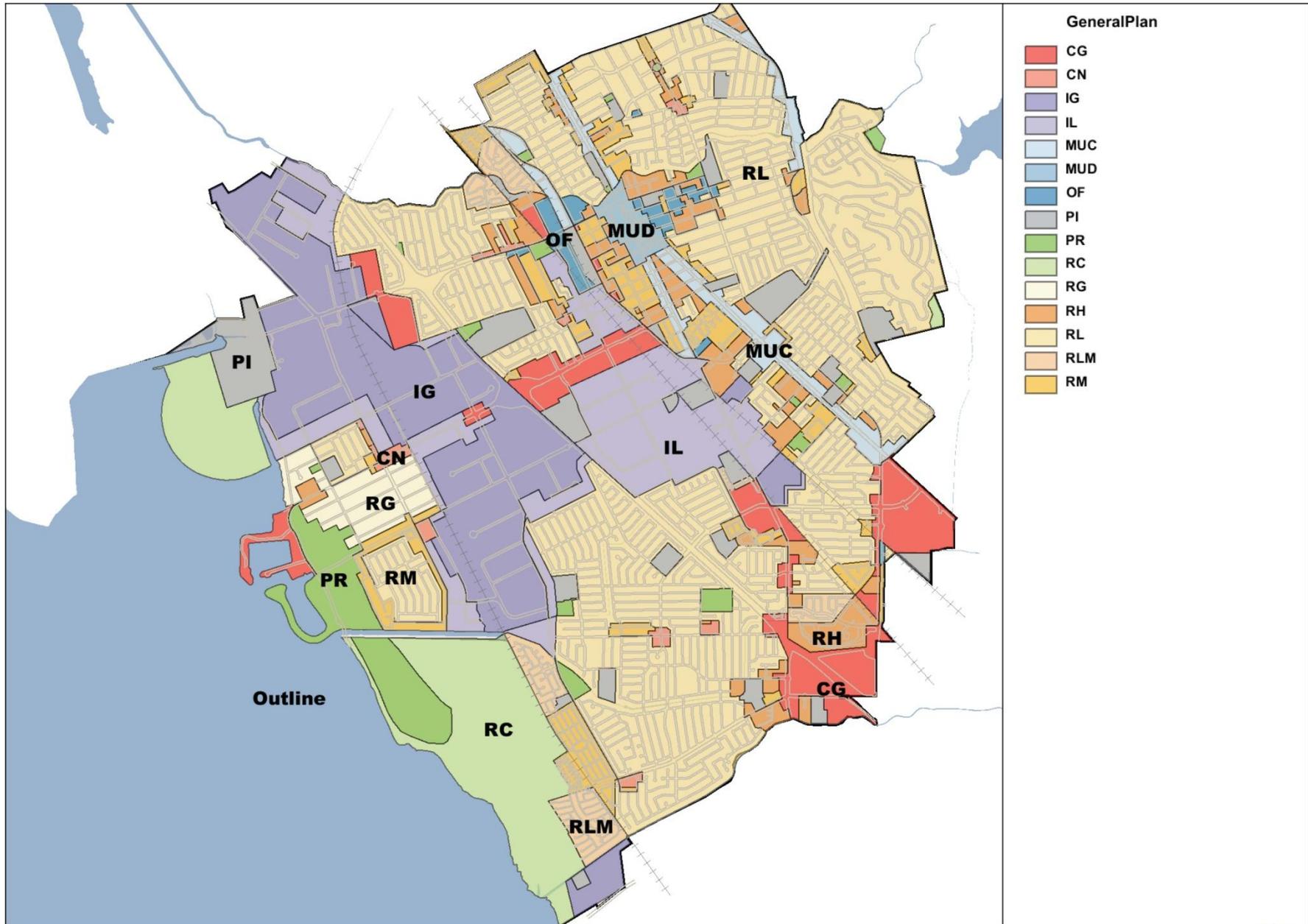
Fact Sheet Attachment 10.1 Page 93 February 11, 2009

**2005 ABAG Land Use Data**

	Population	Urban Land Area, (acres)	Total Land Area (acres)	Total Commercial Acres	Commercial Land as Percentage of urban land	Hot Spots Required / 30K Pop	Hot Spots Required/ Retail- Wholesale Commercial 100 acres	Retail / wholesale Commercial Only (acres)	30% of Retail/Whole sale Commercial (acres)	Retail – Wholesale Commercial Percent of urban land
San Leandro	73,402	8790	9924	1533	17.44%	2	12 reduce to 4	1210	363	13.77%

**City of San Leandro 2009 Data**

	Population	Urban Land Area, (acres)	Total Land Area (acres)	Total Commercial Acres	Commercial Land as Percentage of urban land	Hot Spots Required / 30K Pop	Hot Spots Required/ Retail- Wholesale Commercial 100 acres	Retail / wholesale Commercial Only (acres)	30% of Retail/Whole sale Commercial (acres)	Retail – Wholesale Commercial Percent of urban land
San Leandro Land Use Data from General Plan	79,452	7353	9915	721	9.8%	2	6 reduce to 3	662	199	9.0%



### General Plan Land Use Map

Scale 1:43,846  
 City of San Leandro GIS  
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