1. At the May 11, 2022, hearing, the Water Board directed Water Board staff to report back to the Board on certain Permit topics such as including alternative treatment or low impact development (LID) measures in Regulated Projects (as that term is defined in the Permit) and the impacts, if any, on the Permit’s Category C Special Project (Affordable Housing) LID credits on housing costs.
2. Since the Permit’s adoption, Water Board staff convened numerous stakeholder meetings and workgroups related to the Permit, including on alternative treatment systems and Category C Special Projects. Based on new information, this Order amends the Permit. Specifically, this Order adds Provision C.3.c.i.(2)(c)(iii) to the Permit to allow for the implementation of alternative treatment systems upon a demonstration of technical infeasibility of LID treatment systems and a demonstration of commensurate benefit, among other requirements. This Order also amends the Category C Special Projects Provision of the Permit so that it better aligns with affordable housing projects built in the San Francisco Bay Region by modifying Provision C.3.e.ii.(5)’s method for calculating LID Affordable Housing Credits and making related changes. Further, the Order modifies Section C.3.e.ii.(5) of Permit Attachment A (Fact Sheet) to be consistent with the changes to the Category C Special Projects Provision.
3. The Fact Sheet for this Order (Attachment 1) contains background information and the rationale and basis for this Order’s requirements. It is hereby incorporated into this Order by reference and constitutes findings for this Order.
4. This Order is exempt from the provisions of the California Environmental Quality Act pursuant to Water Code section 13389. This Order does not cover new sources as defined by the federal Clean Water Act (CWA) (i.e., sources constructed after new source performance standards were published).
5. Pursuant to Water Code section 13149.2, the Water Board has considered readily available information concerning potential water quality impacts in disadvantaged communities and tribal communities that may result from the adoption of this Order. As described in Finding 3, this Order makes modifications to the Permit. The authorization of alternative treatment systems and the modification to the Permit’s Category C Special Projects will not result in water quality impacts. The modifications take into account potential water quality impacts and incorporate measures to protect water quality or otherwise provide offsetting water quality benefits (see Attachment 1, pp. A-18 to A-19, Antidegradation).

There were no environmental justice concerns raised pertaining to water quality impacts within the Water Board’s authority. However, interested persons raised other environmental justice concerns regarding potential adverse impacts that the MRP’s road reconstruction requirements could have on road safety in disadvantaged communities. The Water Board considered these concerns and determined that the concerns are not supported and changes to the requirements of the Order are not warranted. The requested changes to the MRP’s road reconstruction requirements would result in adverse water quality impacts in disadvantaged communities and are not authorized under the NPDES regulations (40 C.F.R. § 122.62).

…portions of the map must be accepted by the Executive Officer as accurate.

Alternative treatment systems in the two geographic areas listed in Provision C.3.c.i.(2)(c)(iii)a must have an active General Use Level Designation certification for Enhanced Treatment from the Washington State Department of Ecology’s Technology Assessment Protocol – Ecology (TAPE) Program.[[1]](#footnote-1)

Implementation of alternative treatment systems requires a Demonstration of Technical Infeasibility[[2]](#footnote-2) that has been submitted by the Permittee to the Water Board and approved by the Executive Officer for each Regulated Project where an alternative treatment system is proposed. Permittees shall include the following documentation in the Demonstration of Technical Infeasibility:

1. The technical constraints (spatial, utility, or other) to treating 100 percent of the Provision C.3.d design volume and/or flow onsite and offsite using LID and that the Regulated Project maximizes LID treatment within those constraints. This must include an assessment of the technical feasibility of incorporating all potential types and configurations of LID, including, but not limited to, the following: runoff capture and use, suspended pavement systems with the structural soilsapproved biotreatment soil media (e.g., Silva cells), bioretention, green roofs, pervious pavement systems, and infiltration galleries.

For onsite technical infeasibility, a demonstration that the Regulated Project will implement LID in or on all potential or actual onsite landscaping opportunities[[3]](#footnote-3) and that there are no potential or actual onsite landscaping opportunities in or on which LID will not be implemented.

For offsite technical infeasibility, demonstration that there are no opportunities to implemente an equivalent amount of LID in the adjacent or nearby public right of way (ROW) for the Regulated

Project; in the adjacent or nearby public ROW as part of a district-scale project that treats runoff from both the Regulated Project and from other nearby projects and/or portions of the public ROW; elsewhere in the Permittee’s jurisdiction (including opportunities identified in the Permittee’s GI Plan); and elsewhere in the same county (including opportunities identified in the GI Plans of other Permittees in the county).; or elsewhere in another county subject to the MRP (including opportunities identified in the GI Plans of other Permittees in all five MRP Counties).

1. How LID was considered by both the project proponent and by the Permittee from the early stages of the project's planning and entitlement processes and how that resulted in the project’s final design.

Implementation of alternative treatment systems requires a Demonstration of Commensurate Benefitc that has been submitted by the Permittee to the Water Board and approved by the Executive Officer for each Regulated Project where an alternative treatment system is proposed. Permittees shall include the following documentation in the Demonstration of Commensurate Benefit:

1. That the alternative treatment system includes TAPE-certified (pursuant to Provision C.3.c.i.(2)(c)(iii)(b)) treatment controls sized to accommodate the Provision C.3.d design volume and/or flow.
2. That the alternative treatment system includes flow controls that, based on monitoring and/or field studies, provide flow control benefit commensurate to the flow control benefit of LID measures had they been implemented for the project.

At a minimum, this shall include consideration of vertical infiltration into soils (including soils with low infiltration rates), horizontal infiltration, evapotranspiration, and the effect of inter-event periods on antecedent soil conditions. In places where infiltration is not allowed because of permanent high groundwater (i.e., less than 10 feet below the surface) or documented existing significant soil and groundwater contamination, flow control benefits may be compared to those from lined bioretention cells.

Implementation – Permittees may implement Provision C.3.c.i.(2)(c)(iii) after they have collectively submitted a Regional Guidance Document to facilitate Permittees’ compliance with the Demonstration of Technical Infeasibility and with the Demonstration of Commensurate Benefit and the Executive Officer has approved the Regional Guidance Documentation.

…Provision C.3.c.i.(2)(c)(iii)—it shall be submitted no later than with the 2025 Annual Reports.

1. Provision C.3.e.ii.(5) Category C Special Project Criteria (Affordable Housing) of Order No. R2-2022-0018 is amended, as follows:
	1. Category C Special Project Criteria (Affordable Housing)
		1. For the purposes of attributing Affordable Housing Credits, affordable housing is defined as preserved housing with deed restrictions running at least 55 years, at rent/mortgage rates (including utilities) no greater than 30 percent of the total household income, and which meets the following income levels specified in maximum area median household income (AMI) limits adjusted for household size, according to the Federal Department of Housing and Urban Development’s (HUD’s) definition of affordable housing in metropolitan areas: For metropolitan areas, HUD defines Acutely Low household incomes as 0-15 percent of area median household income (AMI), Extremely Low household incomes as 016-30 percent of ~~area median household income (~~AMI~~)~~, Very Low household incomes as 31-50 percent of AMI, Low household incomes as 51-80 percent of AMI, and Moderate household incomes as 81-120 percent of AMI.[[4]](#footnote-4)

To be considered a Category C Special Project, a Regulated Project must additionally meet both of the following criteria:

1. Be primarily a residential development project,[[5]](#footnote-5) and
2. Achieve at least a gross density of 40 DU/Ac.
	* 1. For any Category C Special Project, the total maximum LID Treatment Reduction Credit allowed is the sum of four different types of credits that the Category C Special Project may qualify for, namely: Affordable Housing, Location, Density, and Minimized Surface Parking Credits. The total maximum LID Treatment Reduction Credit for any Category C Special Project may not exceed 100 percent.
		2. Affordable Housing Credits: A Category C Special Project may qualify for Affordable Housing Credits, according to the following criteria. The income limits that shall be used for these criteria are the most current Official State Income Limits (adjusted for household size, and specific to each county), which are defined on the California Department of Housing and Community Development’s website.[[6]](#footnote-6),[[7]](#footnote-7) All qualifying affordable housing DUs must be preserved housing with deed restrictions running at least 55 years, at rent/mortgage rates (including utilities) no greater than 30 percent of the total household income.

In each Category C Special Project, up to three DUs that are used as building manager’s DUs may be exempted from the deed restriction requirement and may be excluded from the calculations described below in Provision C.3.e.ii.(5)(c)(i)-(ii).

The following two steps shall be used to calculate Affordable Housing Credits:

1. First, the percentage of the project’s DUs in each affordability category are multiplied by the respective credit multipliers, according to the table below, and rounded to the nearest whole number.

|  |  |
| --- | --- |
| AMI | Credit Multiplier |
| Moderate (≤120% of AMI) | 0.20 |
| Low (≤ 80% of AMI) | 1.00 |
| Very Low (≤ 50% of AMI) | 2.00 |
| Extremely Low (≤30% of AMI) | 3.00 |
| Acutely Low (≤15% of AMI)[[8]](#footnote-8) | 4.00 |

1. Second, the credits generated from the table above in the first step in Provision C.3.e.ii.(5)(c)(i) are summed together to produce a weighted sum and rounded to the nearest whole number. Then…

rent/mortgage rates increase, as rent/mortgage rates as high as the Moderate level are likely to reduce unsheltered homelessness and its associated impacts at a much lower rate.

The other Category C credits (location, density, and parking criteria) are maintained from the Previous Permit but reduced. This is so that Affordable Housing Credits are the dominant credit for Category C projects, while still recognizing the benefits provided by location, density, and parking criteria, and so that the total possible credit available for Category C Special Projects remains 100 percent. Category C of the Previous Permit primarily credited transit-oriented development (via Location Credits) and resulted in the treatment of ~~approximately~~ 414~~324~~ acres of impervious surface by non-LID measures region-wide, most of which is attributable to projects for which the Permittees’ reporting did not clearly demonstrate that it would have been infeasible to incorporate onsite LID or contribute to offsite LID.~~as allowed by Provision C.3.e.i.~~

Provision C.3.e.ii.(5) excludes from compliance with Provisions C.3.c (Low Impact Development) and C.3.d (Numeric Sizing Criteria for Stormwater Treatment Systems) emergency housing projects for people experiencing unsheltered homelessness, when those projects are constructed pursuant to and consistent with Government Code § 8698.4, including the definition of “homeless shelter” in subdivision (c), and that are temporary.[[9]](#footnote-9) It requires those projects instead to comply with Provision C.3.i (Site Design Measures for Small Projects) and to implement relevant best management practices developed under Provision C.17 (Discharges Associated with Unsheltered Homeless Populations), such as provision of appropriate trash collection and sanitary sewage services.[[10]](#footnote-10) This recognizes the projects’ water quality benefits from reducing the number of people experiencing unsheltered homelessness, and the discharges associated with unsheltered homelessness, as described elsewhere in this section. As described in the Fact Sheet section for Provision C.17, it further recognizes the urgent need for such projects and the limited resources available to address unsheltered homelessness relative to the identified need. The flexibility is justified by the water quality benefit from reducing unsheltered homelessness and because it is temporary. If the project becomes permanent and if its created or replaced impervious surfaces meet the thresholds for a Regulated Project, or if a new Regulated Project or Special Project

is constructed, then it must comply with Provision C.3, including Provisions C.3.c and C.3.d.

Water Board staff convened a Category C Special Projects / Affordable Housing Workgroup, which met seven times between September 2022 and April 2023, to discuss the Provision C.3.e.ii.(5) Category C Special Project Criteria (Affordable Housing). The Workgroup was co-led by Permittee staff and Water Board staff. Workgroup participants included non-profit/affordable housing advocates, for-profit housing advocates, municipal housing authorities, Permittees, MTC/ABAG, engineering consultants, and others. Presentations were given by various Workgroup participants on the following topics: 1) Definitions of affordable housing; 2) The kinds of projects implemented in the region that include affordable housing; 3) Concerns about how those affordable housing projects may be affected by the existing Category C Special Project Criteria; and 4) Recommended changes to Category C Special Projects. The Workgroup and Water Board work identified new information and Water Board review of that information led to modifications of the crediting criteria first adopted by the Water Board to better align the criteria with the range of affordable housing projects being built in the Bay Area and their associated water quality benefits. The projects range from fully affordable projects, typically constructed by public agencies or non-profit entities, to projects with lesser amounts of affordability, typically constructed by for-profit developers. The revised criteria continue to grant the maximum amount of flexibility to fully affordable projects and “sliding scale” flexibility to other projects, with more flexibility granted to projects that are more affordable. This recognizes that more affordable projects have greater water quality benefit and can also be more challenging to construct because of the amount of money required to support the more affordable units. Managers’ units, which are usually not income restricted, have been excluded from the calculation to avoid unintended adverse consequences of limiting flexibility for otherwise affordable projects. The definition for “primarily residential projects” in Provision C.3.e.ii.(5)(a)(i) is intended to facilitate implementation of that subprovision and requires at least two-thirds of the square footage to be residential, which aligns with and is the definition of housing developments in California Government Code section 65589.5, subdivision (h)(2)(B).

Therefore, Category C ~~has been revised to~~ solely target~~s~~ affordable housing development and redevelopment projects, as Provision C.3.e.i in this Permit already provides sufficient flexibility for other non-affordable housing development and redevelopments that would have qualified as Category C Special Projects in the Previous Permit.

To be considered a Category C Special Project, the Regulated Project must be primarily a residential development project, achieve at least a gross density of 40 DU/acre, and the project’s DUs must comply with the criteria outlined in Provision C.3.e.ii.(5)(c), which ~~are~~ includes two steps. In the first step, the percentage of the…

#### ATTACHMENT I – FACT SHEET

This Fact Sheet describes the additional rationale and basis for this Order’s requirements beyond those set forth in the Fact Sheet for the San Francisco Bay Municipal Regional Stormwater Permit (MRP or Permit) (Order No. R2-2022-0018, NPDES Permit No. CAS612008).

##### Background

The Water Board adopted the Permit at a public hearing on May 11, 2022. The Permit regulates municipal stormwater discharges from those dischargers (Permittees) listed on page one of this Order and encompasses Alameda, Contra Costa, San Mateo, Santa Clara, and Solano counties in the San Francisco Bay region. In adopting the Permit, the Water Board asked staff to report back on certain Permit topics, such as the inclusion of low impact development (LID) or alternative treatment measures in Regulated Projects, as that term is defined in the Permit, and a review of Provision C.3.e.ii.(5) Category C Special Project (Affordable Housing) criteria and its potential impacts on housing costs. In response, the Water Board staff convened several workgroups on these and other topics. Through these workgroups, the Water Board received and reviewed new information related to alternative treatment systems and Category C Special Projects that gave cause to modify the Permit.

Specifically, this Order amends the Permit by adding Provision C.3.c.i.(2)(c)(iii) Alternative Treatment Systems to the Permit to allow certain Regulated Projects to treat runoff using an alternative treatment system. Those Regulated Projects for which it is technically infeasible to treat a portion of the Provision C.3.d design volume and/or flow via LID may use alternative treatment systems for that portion, as long as those systems meet the alternative treatment system requirements of Provision C.3.c.i.(2)(c)(iii). Among other requirements, this includes providing a demonstration of technical infeasibility of LID treatment systems and a demonstration of commensurate benefit. Commensurate benefit includes combining alternative treatment controls with flow controls so that the alternative treatment system’s water quality benefits (i.e., improvements to runoff quality and hydrologic benefits that benefit downstream water quality) are consistent with those provided by the Permit’s LID standard. To ensure this is the case, the area where alternative treatment systems are allowed is limited to areas where LID’s broader water quality benefits are relatively more limited, and the benefits provided by alternative treatment systems are comparable to LID.

This Order also modifies Permit Provision C.3.e.ii.(5) Special Projects: Category C to better align it with how affordable housing projects are planned and built in the region, and to exempt from Provision C.3.c and C.3.d temporary emergency homeless shelters for people experiencing unsheltered homelessness, instead requiring those projects to comply with Provision C.3.i and to implement relevant best management practices developed under Provision C.17. The modification better facilitates the construction of affordable housing, and temporary transitional shelters, that reduce~~s~~ water quality impacts associated with unsheltered homelessness.

operation and maintenance of all systems. However, this also supports the Permit’s continued prioritization of LID systems to provide water quality benefits.

To ensure alternative treatment systems are appropriately comparable to the Permit’s LID standard, the implementation of alternative treatment systems is contingent on Permittee submittal of two demonstrations to the Water Board: a Demonstration of Technical Infeasibility and a Demonstration of Commensurate Benefit. The requirements for these demonstrations are in Provisions C.3.c.i.(2)(c)(iii)c and C.3.c.i.(2)(c)(iii)d, respectively. Examples are included at the end of this section in Attachment A. Permittees must also re-submit the applicable portions of their Countywide Hydromodification Applicability Map to accurately identify the two geographic areas in which alternative treatment systems are allowed under the Permit.

Provision C.3.c.i.(2)(c)(iii)c.1. requires Permittees to submit a Demonstration of Technical Infeasibility to evaluate opportunities for implementation of offsite LID. If a Permittee’s municipal code precludes implementation of offsite LID elsewhere within its jurisdiction, or outside of its jurisdiction, or both, then that Permittee is encouraged to review its municipal code and consider changes to allow or more-flexibly allow implementation of offsite LID of the given kind(s).

Because guidance for these demonstrations has not yet been prepared, Permittees may implement this Provision only upon Executive Officer acceptance of a Regional Guidance Document submitted collectively by the Permittees to the Water Board. This document will also facilitate Permittee and project compliance with the Demonstration of Technical Infeasibility and the Demonstration of Commensurate Benefit. If the Executive Officer determines that the Regional Guidance Document is sufficiently detailed to enable Permittee review of demonstrations of technical infeasibility and commensurate benefits for Regulated Projects in a consistent, objective, and rigorous manner, the Executive Officer may allow Permittees[[11]](#footnote-11) to approve the Demonstration of Technical Infeasibility and the Demonstration of Commensurate Benefit for those Regulated Projects, in lieu of the requirement to receive Executive Officer approval of both demonstrations, contingent on Permittees implementing the approved Regional Guidance Document for those Regulated Projects. In future Permits, the Water Board may consider increasing flexibility for the implementation of alternative treatment systems depending on the Permittees' success in implementing this Provision and the state of knowledge about the equivalency of alternative treatment systems relative to LID systems.

The level of documentation submitted for each demonstration should reflect the significance and complexity of the proposed project. The Water Board does not anticipate the same level of evaluation will be necessary for each demonstration for all

projects, since there is likely a correlation between the scope of the evaluation, demonstrated equivalency, and the potential extent of adverse impacts.

Provision C.3.c.i.(2)(c)(iii)c.2. requires Permittees to show – in the Demonstration of Technical Infeasibility – how LID was considered by both the project proponent and by the Permittee from the early stages of the project's planning and entitlement processes and how that resulted in the project’s final design. For example, Permittees could submit the following information: 1) when in the planning and entitlement process LID was considered, 2) the scope and results of that consideration, including the alternatives that were considered and why they were not implemented, and 3) the identification, conclusions, and recommendations of the Permittee’s responsible engineer and of the project proponent’s responsible engineer.

Reporting requirements have been added in the Order on the use of alternative treatment systems and are required pursuant to Clean Water Act section 308(a) and Water Code section 13383.

**Examples of Technical Infeasibility**

The following are examples of technical infeasibility which may aid Permittees’ preparation of the Demonstration of Technical Infeasibility required by Provision C.3.c.i.(2)(c)(iii).

* Examples of on-site technical infeasibility which are potentially acceptable:
	+ The project is a “zero lot line” development with no landscaping at ground level or at any other level; the project includes no open space that could incorporate LID measures; the roof slope is so great (e.g., 50 percent) that it precludes implementation of a green roof; the roof must be covered in solar panels and therefore cannot be designed as a green roof; stormwater runoff can be harvested from the site, but there is no feasible use for the harvested stormwater.
* Examples of on-site technical infeasibility which are likely not acceptable:
	+ *It is technically infeasible to treat 100 percent of the C.3.d volume/flow with on-site LID measures; therefore, no on-site LID will be included.* On-site LID must be maximized; it is not a binary option where there is either 100 percent LID treatment or no LID treatment.
	+ *The site is too flat to route stormwater runoff to LID treatment measures.* Different areas of the site could be graded as needed to direct stormwater runoff to LID treatment measures. If graded overland/sheet flow cannot provide sufficient hydraulic head, bubblers can be used. If neither graded overland/sheet flow nor bubblers can provide sufficient head, pumping should be considered.
	+ *Long lengths of plumbing from the podium/courtyard level within the retail spaces to the frontage are impracticable.* This does not provide enough detail to explain why this is infeasible.
	+ condition of approval on private redevelopment projects; if such a project did include LID measure(s) in the reconstruction public ROW, it is unlikely that the municipality would want to change the ROW in such a way that would require removal of the LID measure(s) located in that ROW. Regardless, this provision is optional, and municipalities may choose to require project proponents to implement on-site LID treatment in lieu of off-site LID treatment.

**Examples of Commensurate Benefit:**

The following are examples of types of BMPs and projects that could be used to achieve commensurate flow control and urban greening benefit (i.e., an equivalent amount of flow controlthat benefit as would have been provided by the project if the project were to implement LID), which may aid Permittees’ preparation of the Demonstration of Commensurate Benefit required by Provision C.3.c.i.(2)(c)(iii).

* Examples of flow control systems that could be used to achieve commensurate flow control benefit, that are potentially acceptable:
	+ Harvesting and use; systems that provide sufficient retention; systems that provide sufficient infiltration.
* Examples of flow control systems that could be used to achieve commensurate flow control benefit that are likely not acceptable:
	+ Systems that inappropriately assume highly infiltrative native soils.

Provision C.3.e.ii.5.(a)(i) has been revised to clarify the definition of primarily residential projects, based on new information provided during the Workgroup participants that affordable housing projects are facilitated through allowing mixed uses. The modification allows projects that provide affordable housing, and thus associated water quality benefits, to benefit from allowed flexibility, even if up to one-third of their square footage is dedicated to other uses (e.g., commercial). It appropriately recognizes that affordable housing projects are not exclusively single-use (i.e., residential), and sets a reasonable threshold for mixed use to retain the provision’s affordable housing focus and ensure water quality remains appropriately protected.

Provision C.3.e.ii.5 has been revised to exempt from Provision C.3.c and C.3.d temporary emergency homeless shelters for people experiencing unsheltered homelessness, instead requiring those projects to comply with Provision C.3.i and to implement relevant best management practices developed under Provision C.17. Should the use become permanent, or if there is a new Regulated Project and/or Special Project at the site, the project shall comply with Provision C.3, including Provisions C.3.c and C.3.d. The revision facilitates the construction of temporary emergency housing for people experiencing unsheltered homelessness, which reduces discharges of trash and sewage associated with unsheltered homelessness. It is limited because the exemption is removed if the use becomes other than temporary, or if a new Regulated Project or Special Project is constructed at the site. It is further limited because it applies only to temporary emergency housing projects that would have otherwise been Regulated Projects. Many temporary emergency housing projects are not Regulated Projects because they do not create or replace impervious surface (e.g., RV safe parking areas and cabin communities constructed on existing paved areas). It has been included because of the ongoing significant populations of residents experiencing unsheltered homelessness within MRP Permittee jurisdictions, because of the increasing recognition of the benefits of temporary transitional housing by Permittees including Oakland and San Jose,[[12]](#footnote-12) and Permittee recognition of temporary transitional housing as a practice that can address unsheltered homelessness and the non-stormwater discharges associated with it.[[13]](#footnote-13) The revision recognizes new information that justifies excluding temporary emergency homeless shelters from

compliance with Provisions C.3.c-d. This information includes the Bay Area Municipal Stormwater Collaborative report, dated September 30, 2023, “Regional Best Management Practices Report for Addressing Non-Stormwater Discharges Associated with Unsheltered Homeless Populations.” At the time of Permit amendment, the Report had been recently submitted and was under review by the Water Board. The report recognizes temporary emergency homeless shelters, such as managed RV safe parking areas and managed encampment sites like “cabin communities,” as tools in transitioning to shelter Bay Area residents experiencing unsheltered homelessness, and thus reducing associated non-stormwater discharges. Similarly, there is new information on the shifts in effort by MRP Permittees, including the cities of Oakland and San Jose, to increase focus on temporary emergency housing as one tool in the toolbox of reducing unsheltered homelessness. This includes the City of San Jose’s five-year municipal budget projection (e.g., Expenditure Forecast: “In addition, the City has committed the remaining $56.6 million of federal funding from the American Rescue Plan Act to augment and continue critical pandemic response and recovery programs in 2022-2023, including Emergency Interim Housing Construction and Operation, child and youth services investments, contractual services for Beautify San José Consolidated Model, SOAR Expansion, and Digital Equity, which will also be re-evaluated for continuation in 2023-2024 in consideration of ongoing community needs." p.54 of 184, <https://www.sanjoseca.gov/home/showpublisheddocument/95049/638134342380800000>). And the Water Board considered newly published references indicating that temporary emergency housing is part of the set of tools needed to address unsheltered homelessness.

##### Antidegradation

Federal and state antidegradation policies at 40 CFR section 131.12 (federal antidegradation policy) and State Water Board Resolution No. 68-16 (state antidegradation policy) require that high quality waters be maintained unless degradation is justified based on specific findings. The federal antidegradation policy also requires existing instream uses and the level of water quality necessary to protect those uses be maintained and protected. Here, the baseline water quality against which any potential degradation resulting from this Order is measured is the level authorized in the Permit.[[14]](#footnote-14) The modifications in this Order do not authorize any lowering water quality as compared to the Permit such that no antidegradation analysis is required. The Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004 (APU 90-004), provides that no antidegradation analysis is required where the regional water board has no expectation that water quality will be reduced by the permitting action. That is the case here. This Order’s modification to allow alternative treatment systems will not result in lower water quality because their use is…

1. <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Emerging-stormwater-treatment-technologies> [↑](#footnote-ref-1)
2. Examples for the Demonstrations of Technical Infeasibility and Commensurate Benefit are provided in the Fact Sheet. [↑](#footnote-ref-2)
3. Landscaping opportunities include, but are not limited to: roofs, terraces, patios, courtyards, plazas, quadrangles, athletics areas, outdoor pool areas, playgrounds, parks, bike-separation strips, and adjacent public sidewalks, roads, and rights of way (ROWs).

e “Implement” in this paragraph is defined to include not only direct implementation by the project proponent, but also indirect implementation via contribution of funding and/or resources to another entity which will construct and/or maintain an equivalent amount of LID. [↑](#footnote-ref-3)
4. Emergency homeless shelters constructed pursuant to and consistent with Government Code § 8698.4, including the definition of “homeless shelter” in subdivision (c), and that are temporary are not Regulated Projects under Provision C.3.b. As such, they are not subject to Provisions C.3.c (Low Impact Development) and C.3.d (Numeric Sizing Criteria for Stormwater Treatment Systems) and shall instead comply with Provision C.3.i (Site Design Measures for Small Projects) and implement relevant best management practices developed under Provision C.17 (Discharges Associated with Unsheltered Homeless Populations). Should the homeless shelter become permanent and the impervious surfaces it created or replaced meet the thresholds for a Regulated Project, or if there is a new Regulated Project and/or Special Project at the site, the project shall comply with Provision C.3, including Provisions C.3.c and C.3.d. [↑](#footnote-ref-4)
5. At least two-thirds of the square footage of the project must be designated for residential use. [↑](#footnote-ref-5)
6. https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml<https://www.hcd.ca.gov/grants-and-funding/income-limits/state-and-federal-income-rent-and-loan-value-limits> [↑](#footnote-ref-6)
7. As of December 31, 2021June 6, 2023, they are: https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf> [↑](#footnote-ref-7)
8. DUs that are free to tenants, i.e., that do not charge tenants any rent/mortgage, are included in this category. [↑](#footnote-ref-8)
9. Examples of temporary emergency housing projects are: formal “community cabin” or tent communities; RV safe parking areas; and homeless “navigation centers” with housing, that are temporary and provide housing for people experiencing unsheltered homelessness. [↑](#footnote-ref-9)
10. Examples of additional best management practices that could be considered include, but are not limited to, those described in the Bay Area Municipal Stormwater Collaborative report, dated September 30, 2023. “Regional Best Management Practices Report for Addressing Non-Stormwater Discharges Associated with Unsheltered Homeless Populations.” At the time of Permit amendment, the Report had been recently submitted and was under review by the Water Board. [↑](#footnote-ref-10)
11. The Permittee in whose jurisdiction the project is located. [↑](#footnote-ref-11)
12. For example: Guy Marzorati, June 14, 2023. “San Jose City Council Approves Modest Shift Toward Temporary Homeless Housing.” KQED. <https://www.kqed.org/news/11952913/san-jose-council-approves-modest-shift-toward-temporary-homeless-housing>.

McKinsey & Company, March 23, 2023. The ongoing crisis of homelessness in the Bay Area: What’s working, what’s not. <https://www.mckinsey.com/industries/public-sector/our-insights/the-ongoing-crisis-of-homelessness-in-the-bay-area-whats-working-whats-not#/>

National Alliance to End Homelessness, February 24, 2023. Taking an Equitable Approach to Unsheltered Homelessness. https://endhomelessness.org/blog/taking-an-equitable-approach-to-unsheltered-homelessness/ [↑](#footnote-ref-12)
13. See the Bay Area Municipal Stormwater Collaborative report, dated September 30, 2023. “Regional Best Management Practices Report for Addressing Non-Stormwater Discharges Associated with Unsheltered Homeless Populations.” At the time of this Permit amendment, the Report had been recently submitted and was under review by the Water Board. [↑](#footnote-ref-13)
14. See Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004, p. 4 (baseline water quality is the best quality of the receiving water since 1969 considering the state antidegradation policy or 1975 considering the federal antidegradation policy, unless subsequent lowering was authorized consistent with these policies). [↑](#footnote-ref-14)