



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kip Harkness
Omar Passons

SUBJECT: SEE BELOW

DATE: February 20, 2024

Approved *[Signature]*

Date
2/23/24

SUBJECT: STORMWATER PERMIT REQUIREMENTS, HOMELESSNESS AND NEIGHBORHOOD CONSIDERATIONS

RECOMMENDATION

Direct the City Manager or her designee to develop and implement an Enhanced Neighborhoods and Waterways approach to addressing homelessness issues that ensures compliance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) and maintains acceptable levels of service in our neighborhoods:

- a) Resubmit a revised Direct Discharge Trash Control Program Plan (Direct Discharge Plan) to the San Francisco Bay Regional Water Quality Control Board that fully addresses all identified deficiencies in the previous Direct Discharge Plan submittal and appropriately prioritizes services to homeless individuals living within and adjacent to waterways;
- b) Identify and evaluate structural and operational changes within the City organization, as required, to comply with the Stormwater Permit while addressing the needs of homeless individuals and maintaining acceptable levels of services in neighborhoods;
- c) Develop a plan to phase in implementation of any necessary no encampment zones in priority areas in and near waterways (e.g., the direct discharge areas), and return to the City Council with any needed policy and ordinance changes;
- d) Include prioritization criteria for abatement along waterways within San José and include this prioritization in the Framework for Shared Public Spaces;
- e) Explore and pursue potential additional funding mechanisms and partnerships that can provide one-time and ongoing funds to support the work of complying with the Stormwater Permit, homelessness needs, and neighborhood service levels; and
- f) Develop a recommended Enhanced Neighborhoods and Waterways program budget proposal for the City Council’s consideration, as part of the 2024-2025 City Manager’s

Proposed Budget, that complies with the Stormwater Permit while maintaining, to the extent feasible, acceptable levels of service in our neighborhoods.

SUMMARY AND OUTCOME

The City Council has given direction to prioritize action around homelessness in neighborhoods and business areas. Recently, the San Francisco Bay Regional Water Quality Control Board (Water Board) rejected the City's revised Direct Discharge Plan, which is part of the Stormwater Permit. In its rejection, the Water Board indicated deficiencies in prioritizing action around homelessness and the impacts of homelessness on the waterways as a principal reason for the rejection. Addressing homelessness and the impacts of homelessness in either our neighborhoods or our waterways is extremely complicated and difficult. Accomplishing both aims will require significant additional financial investments, policy changes, and service delivery improvements.

After evaluating a range of options, staff recommends that the City proceed with creating an Enhanced Neighborhoods and Waterways approach to homelessness issues that ensures compliance with the Stormwater Permit mandated by the Water Board while also maintaining, to the extent feasible, acceptable levels of service in our neighborhoods for housed and unhoused residents that is expected by our community.

In its rejection of the City's Proposed Direct Discharge Plan, the Water Board stated, "*To appropriately address direct discharges, the City needs to incorporate proximity to creeks and other receiving waters (within 500 feet) as a criterion for encampment abatement. In addition, the revised Plan needs to describe what steps the City is taking toward moving these encampments away from receiving waters.*"

The City needs to prioritize services to people experiencing homelessness along San José's waterways to comply with the Stormwater Permit and mitigate against potential fines, penalties, and litigation. The Water Board made this point explicitly in its comments. The following is an excerpt from the Water Board's verbal feedback, "Encampment Abatement Criteria – this needs to show waterways as a criteria; If this is not updated, then the plan will not be approved." (Emphasis added.)

Although the Water Board does not mandate abatement uniformly within the entirety of the 500-foot area, it does place direct requirements for prioritized services within that area. Ultimately, however, the City will have to move toward prohibiting encampments along key sections of the waterways (e.g., the direct discharge areas). Such a prohibition, along even a portion of the 140 miles of waterways, will come at a substantial cost and impact delivery of other City services. Any effort to move unsheltered populations from the creeks will cause people to relocate into neighborhoods or commercial areas, if alternative housing or other temporary places to live cannot be provided (or offered and not accepted), exacerbating the neighborhood issues. The proposed Enhanced Neighborhoods and Waterways approach would scale up our work in the waterways and identify the priority waterway encampments that would be provided the necessary outreach and abatement within a designated timeframe. The faster the waterway-

adjacent sites are cleared, the sooner the City needs to respond with land-side services and safe sleeping sites in kind to support people moved from the waterways. However, it is not prudent to immediately shift resources in the current fiscal year for three reasons: 1) this would involve a dramatic reduction in services for neighborhoods, streets, and commercial areas; 2) it does not put the City in a strategic position to clear the creeks very effectively or efficiently; and 3) it increases the likelihood of negative impacts and disconnection from services of the people who will be displaced. To comply with the Water Board's interpretation of the regulatory requirements, the City must develop a new operational model and take the time required to plan and scale our approach. The City will continue with significant ongoing clean-up and service efforts in the waterways, but will need the next six months and additional resources through the budget process to plan and scale the recommended enhanced approach.

Preliminary estimates indicate that the amount of new ongoing funding needed for these phases may exceed \$25 million. This is an extremely preliminary figure that will be further refined as the service model is developed in the coming weeks and months. However, given the City's limited budgetary capacity and competing City Council priorities, providing enhanced services both along the waterways and within neighborhoods may not be feasible unless deeper reductions are made to other core City services. The Administration will bring forward the most feasible strategy based on direction from the City Council in its approval of the Mayor's March Budget Message for Fiscal Year 2024-2025.

BACKGROUND

Regulatory Requirements

The federal Clean Water Act states that it is unlawful to discharge any pollutant into the waters of the United States except in compliance with the Stormwater Permit. The Water Board has the authority to administer the Stormwater Permit on behalf of the Federal Environmental Protection Agency. The Water Board oversees the San Francisco Bay Area and the Stormwater Permit covers 76 regional agencies. The City has held an Stormwater Permit for the City's municipal separate storm sewer system since 1990. Trash was first introduced in the Stormwater Permit in 2009 as a pollutant of concern. A key component of the Stormwater Permit is a Direct Discharge Plan.

For almost 10 years, the Water Board has focused on encampments and their impacts on water quality. For example, on May 13, 2015, the Water Board adopted Resolution No. R2-2015-004 "Actions to address the adverse water quality impacts of homeless encampments." The resolution states that "discharges of trash and human wastes from homeless encampments pose a significant water quality and public health threat" and "the Water Quality Control Plan for the San Francisco Bay Basin, known as the Basin Plan, prohibits the discharge of rubbish, refuse, or other solid wastes into surface waters or any place where they would be eventually transported to surface waters, including flood plains. Discharges of trash from homeless encampments are covered under this prohibition." The resolution specifies, "The problem of discharges of trash and human waste from homeless encampments is entwined with complex and challenging societal issues, including poverty, the Bay Area's high cost of living, and un/underemployment."

In addition, the Environmental Protection Agency defines water quality goals under the Clean Water Act based on aquatic life, biological, human health, and microbial/recreational criteria. In San José, the State of California designated both the Guadalupe River and Coyote Creek as “Impaired Water Bodies” because of the levels of trash, pesticides, and mercury in those waterways.

San José is home to approximately 140 miles of waterways. Protecting the water quality of this vast riparian area requires significant resources and commitment. Since the early 1990s, the City has actively worked to clean up homeless encampments along creeks. These efforts involved a long history of partnering with Valley Water to jointly reduce the accumulation of trash and its environmental impacts in waterways from encampments. In 2008, the City and Valley Water amended an existing memorandum of agreement to include encampment cleanups. When the 2009 Stormwater Permit came into effect, the City identified that direct discharges in waterways were primarily due to trash from encampments and it was an opportunity to achieve trash load reduction targets as defined to meet compliance. The City implemented an innovative approach that included cross-department collaboration and interagency partnership with Valley Water and was the first municipality in the San Francisco Bay Area to have a Direct Discharge Plan approved by the Water Board.

The goal of the first Direct Discharge Plan was to address focus zones along the City’s three major waterways: Coyote Creek, Guadalupe River, and Los Gatos Creek (approximately 26 miles in total) that were heavily impacted by encampments. That plan was a comprehensive and systematic approach that addressed environmental impacts only by reducing or preventing directly discharged trash completely. Since its 2016 approval, the Direct Discharge Plan has been expanded and implemented through a coordinated effort among Parks, Recreation, and Neighborhood Services Department’s BeautifySJ program, the Housing Department’s Homeless Response Division, the Environmental Service Department’s Watershed Protection Team, the Transportation Department’s Parking Compliance Team, Police Department, Valley Water, and local non-profits such as Keep Coyote Creek Beautiful and the South Bay Clean Creeks Coalition.

The current Stormwater Permit became effective as of July 1, 2022 and requires the City to provide a systematic and comprehensive implementation of control actions, which shall include a commitment to and a plan for increasing the provision of emergency, transitional, and/or permanent housing and the following services: trash and sanitary services, and other services which are necessary to reduce discharges associated with unsheltered homelessness, such as recreational vehicle safe parking areas and pump out services, and social services that can help the unsheltered homeless transition to housing. The City submitted an updated Direct Discharge Plan to the Water Board on January 3, 2023 and that plan was rejected by the Water Board. The City revised and resubmitted the plan to the Water Board on May 22, 2023, that plan was again rejected by the Water Board. The City again revised and resubmitted the plan to the Water Board on October 2, 2023, and for a third time the Water Board rejected the City’s Direct Discharge Plan.

Past Regulatory Enforcement Actions

The Water Board has the authority to enforce actions upon any permittee for potential violations of the Stormwater Permit. For example, on September 5, 2014, the Water Board received a California Fish and Game complaint and initiated an investigation into the City's Homeless Encampment Response Program. The City was required to provide additional information on its plans and conduct efforts to eliminate the discharge of human waste to Coyote Creek from property owned by the City, formerly known as the "Jungle", located at Story and Senter Roads. Through subsequent reports to the Water Board, the City provided short-term actions to address the issue of human waste and provided additional information on its intermediate and long-term plans, known as the City's Rapid Re-Housing Pilot Project, to permanently close and secure the encampment noted above. These efforts took approximately one year to plan and implement. Upon successful completion, the Water Board commended the City's multi-faceted comprehensive approach to solving the problem at this location.

Failure to comply with the Stormwater Permit could result in significant civil and criminal enforcement, including fines, penalties, and attorneys' fees.

In addition, the City is party to a consent decree with San Francisco Baykeeper. The consent decree identifies "Trash Hot Spots" along Coyote Creek and Guadalupe River. Annually, the City must conduct a receiving water monitoring analysis about the sources of trash and report the results. According to the City's Environmental Services Department Watershed Division, since 2017, an average of 88% of the trash found in creeks is due to activities of people experiencing homelessness.

Per City Council approval in September 2023, the City submitted a Long-Term Trash Load Reduction Plan that was required for the City to meet the Stormwater Permit's 90% compliance benchmark by June 30, 2023. The City relies on offsets or credits (additional Creek and Shoreline Clean Ups (10%) and implementing an approved Direct Discharge Plan (15%)) to meet the Stormwater Permit's mandatory 100% trash load reduction by June 30, 2025. However, these offsets will sunset simultaneously and will no longer be available to meet the City's obligations. To maintain compliance throughout the permit term, the City must expand existing or set up new programs to meet trash load reduction goals while reducing pollutants from unhoused people living within 500 feet of waterways and lived-in vehicles near storm drains. This means a substantial additional resource need and prioritization change will be necessary. The **Figure** below reflects the compliance goals to achieve 100% trash load reduction by June 30, 2025, and throughout the permit term. The Private Lands Trash Controls (in orange) is a new program that will help the City achieve this gap. However, the Compliance Gap (in red) illustrates what existing or new programs will need to be further evaluated to maintain compliance.

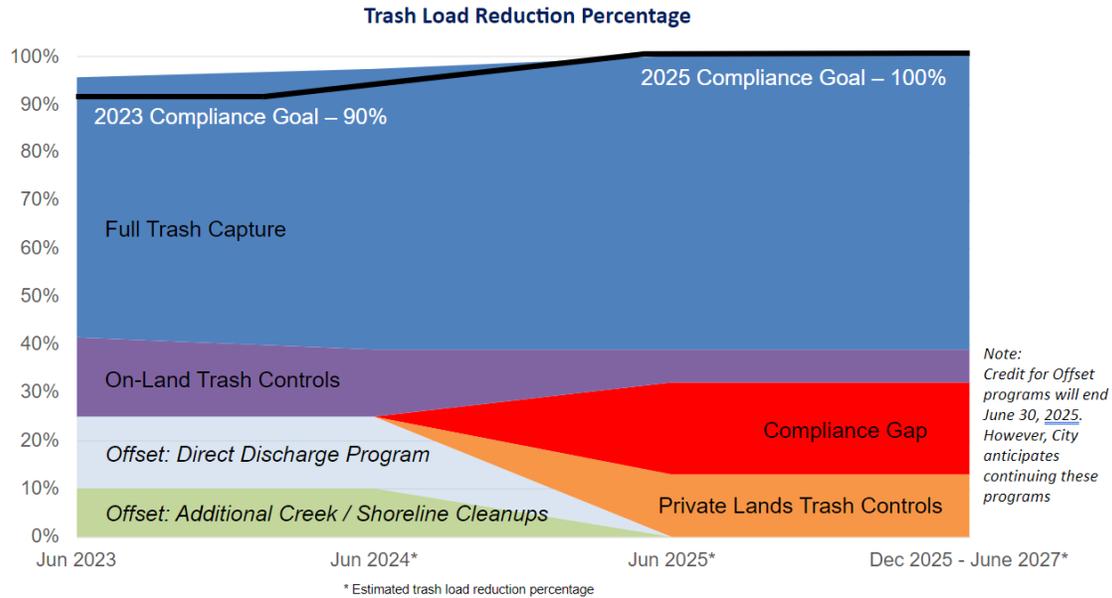


Figure: Trash Load Reduction Compliance Goals by Year

There is a conflict and tension between the steps necessary to prioritize addressing homelessness in the City's residential and business areas and the steps necessary to prioritize addressing homelessness to protect the waterways. This conflict requires policy, program, and budget guidance from the City Manager's Office and policy and budget direction from City Council.

Homelessness is a pervasive and profound crisis in San José that is both a humanitarian tragedy and a massive impact on municipal resources for service delivery and the natural environment. There are substantial impacts in terms of loss of years and quality of life of people experiencing homelessness, along with equity considerations related to data showing outsized impact on communities of color and LGBTQ+ people. There are also negative impacts from trash accumulation, interpersonal conflicts, and safety and emergency medical response throughout the City. These impacts are felt by business owners, some of whom have closed or relocated due to the inability to obtain insurance caused by activity at adjacent encampments. They are felt by residents near schools, who have been exposed to criminal acts, public urination/defecation, and trash accumulation in and near neighborhoods. They are felt by property owners of industrial properties, who cannot lease out properties due to the impact of uncontrolled encampment areas.

During the winter months, as storm events increasingly occur, living along waterways susceptible to flooding is unsafe. This risk is exacerbated by the need for construction of flood improvements accelerated by the rebuild of the Anderson Dam. The flood improvements are designed to protect neighborhoods and keep the water within the banks of the creeks and adjacent open spaces where most waterway encampments are found. Additionally, the bypass tunnel that will be in operation for the 10-year-plus reconstruction of Anderson Dam means that

stormwater from the watersheds in the Diablo range that the dam would have trapped will now flow directly into Coyote Creek with little warning and no ability to mitigate the flow.

As noted, most of the pollutants discharged into San José's waterways are from encampments of unhoused residents. This is problematic in two ways. First and most obvious is the environmental damage and the threat to public health created by volumes of trash and human waste. Second and more insidious is that the programs and systems needed to deal with this problem, even partially by regularly removing trash and human waste, are both more expensive pound per pound and dramatically less efficient than the equivalent services provided to people living in housing. In other words, servicing people living in waterways is more costly, less effective, and less efficient than providing services to those sheltering in a non-waterway.

However, despite the difficulties and inefficiencies of existing service delivery and the dangers along the waterway, a shift would come at a substantial cost and complexity. City staff are aware of the locations of at least 47 encampments across San José for which it does not have sufficient resources to provide trash or other services. Similarly, although the Recreation Vehicle Pollution Prevention Program provides biowaste services to approximately 150 vehicles, at least 650 recreation vehicles and other lived-in vehicles are not resourced for regular service. Further, resource constraints limit homelessness prevention, workforce training, re-connection to families, and other services that significantly impact the magnitude of people experiencing homelessness on our streets. Absent substantial additional resources and structural organizational changes, the Water Board's interpretation of regulatory requirements would require diverting large numbers of existing staff from providing services in other parts of the City. In addition, even after the waterways are cleared, additional resources will be needed to prevent re-encampment and to keep the waterways clear.

ANALYSIS

This analysis lays out the primary known benefits and risks of the recommended approach, including cost and service implications identified at present. To address the Water Board's recommendation to prioritize resources for individuals within 500-foot buffer, staff evaluated three potential policy alternatives:

1. Enhanced Neighborhoods and Waterways Approach (recommended)
2. Neighborhood Prioritization Approach
3. Stormwater Compliant Approach

The recommended policy alternative is discussed below. The analysis of the #2 and #3 policy alternatives above that are not recommended can be found in **Appendix A**.

Recommended Policy: Enhanced Neighborhoods and Waterways Approach that ensures compliance with the Stormwater Permit and maintains acceptable service levels in our neighborhoods.

The City needs to prioritize San José’s waterways to comply with the Stormwater Permit and mitigate against potential fines, penalties, and litigation while maintaining and expanding land-side/neighborhood homeless services to meet the expectations of neighborhoods, to the extent feasible.

The Stormwater Permit requires a Direct Discharge Plan that “*shall prioritize providing housing and services to people experiencing unsheltered homelessness who are living near receiving waters.*”¹ In its response to the City’s proposed plan, the Water Board stated, “*To appropriately address direct discharges, the City needs to incorporate proximity to creeks and other receiving waters (within 500 feet) as a criterion for encampment abatement. In addition, the revised Plan needs to describe what steps the City is taking toward moving these encampments away from receiving waters.*” After receiving a third rejection from the Water Board for the Direct Discharge Plan, the City sought clarity from the Water Board on the extent of its direction and the pace of moving unhoused people from waterways into housing. The Water Board provided the following clarification specifically related to encampments near waterways²:

- To the City’s question, “Is the Water Board requirement that there can be no encampments (managed or unmanaged) within 500 feet of receiving waters?” The Water Board clarified,
“*The 500-foot buffer is intended to be a criteria for the prioritization of resources for the City’s unsheltered populations since homeless encampments that are less than 500 feet (of receiving waters) can cause adverse impacts to receiving waters. The Water Board’s position is that encampments less than 500 feet of receiving waters should be prioritized for emergency alternative (temporary or permanent) housing. In the interim (to the provision of emergency housing), trash collection, sanitary, and other services need to be provided at an adequate frequency to ensure the encampments aren’t contributing to adverse impacts to receiving waters.*”(Emphasis added.)
- When asked, “Is there a distinction between a setback vs. 500-foot buffer to receiving waters?” The Water Board wrote,
“*The 500-foot buffer is essentially a more well defined “setback” area where emergency resources, including housing, should be prioritized.*”

Although the above clarification does not uniformly mandate abatement within the entire 500-foot area, it does place direct requirements for prioritized services within that area. As noted earlier, any effort to move unsheltered populations from the creeks will cause people to relocate into neighborhoods or commercial areas, if alternative housing or other temporary places to live

¹ Stormwater Permit Provision C.10.f.ii (page C.10-12)

² For additional context and history of the Water Board’s comments and the City’s responses related to homeless encampments near receiving waters, see **Appendix B**. For all Water Board and City correspondences, see **Appendix C** - Complete package of all Water Board correspondence with the City of San José.

cannot be provided, exacerbating the neighborhood issues. To address this, the Administration recommends that the City develop Enhanced Neighborhoods and Waterways approach that, in phases, moves people into higher levels of housing.

This Enhanced Neighborhoods and Waterways approach would consider the number of waterway encampments that could be abated within a designated timeframe and ensure sufficient time to build the team and scale. The faster the waterway-adjacent sites are cleared, the sooner the City needs to respond with land-side services and safe sleeping sites in kind (e.g., safe outdoor sleeping, managed overnight areas, emergency/temporary housing, etc.). However, it is not prudent to rapidly shift resources in the current fiscal year for two reasons: 1) this would involve a dramatic reduction in services for neighborhoods, streets, and commercial areas, and 2) it does not put the City in a strategic position to clear the creeks very effectively or efficiently. To comply with the Water Board's interpretation of the regulatory requirements, the City must develop a new operational model and take the time required to plan our approach.

Proposed Action Timeline

Phase 0: Launch (Now – June 2024)

- Continue planned and ongoing work in waterways to implement the City's Direct Discharge Plan.
- Convene waterways team and strengthen and implement the City's governance structure to oversee this work.
- Refocus existing teams to plan prioritization of waterways and develop budget proposals for additional staff to enhance the waterways and neighborhoods teams.
- Fully develop enhanced plan and approach/strategy for homeless and waterways teams to include cleaning waterways in direct discharge areas and priority areas near waterways.
- Continue to provide services in all direct discharge areas as defined in the plan (25 miles) at an adequate frequency to reduce trash and sanitary discharges from encampments.
- Identify costs and develop approach/strategy to address trash/sanitary discharges from lived-in vehicles near storm drains.
- Establish methodology and protocol for regular count/data gathering for direct discharge areas and all waterways and lived-in vehicles.
- Identify, appropriately resource, and create safe emergency sleeping sites for specific direct discharge areas to be prioritized for managed encampment sites within 500-foot buffer of waterways.
- Work with Valley Water to enter into a letter of intent on partnering on cleaning the waterways adjacent to direct discharge areas and partnering on housing people living in and adjacent to waterways.
- Work with the County of Santa Clara to add a vulnerability factor related to living in waterways to its Continuum of Care coordinated entry system.

- Identify, plan, and update any needed ordinance or policy changes and bring forward recommended changes to the City Council for approval, including any areas that may benefit from an overnight camping ban.

Phase 1: Scale up waterways team and service delivery model (July – December 2024)

- Complete planning work and service model development.
- Develop neighborhood, business, and unhoused resident engagement framework and begin engagement.
- Hire staff and scale existing waterways team.
- Train new and existing staff.
- Scale neighborhood teams as unhoused residents shift from waterways.
- Identify and secure logistical needs (e.g., storage sites) and procure needed equipment (e.g., vehicles).
- Amend existing contracts and/or conduct a Request for Proposals/Quotes for additional vendors.
- Build out a service delivery model.
- Create clear prioritized work plan aligned with the Stormwater Permit and cognizant of neighborhood impacts.
- Build out of geographical information and data systems to guide work and monitor outputs and outcomes.
- Bring forward overnight camping ban ordinance along direct discharge areas in waterways for City Council approval.
- Finalize agreements with Valley Water.
- Identify and urgently establish alternative housing and sleeping options (e.g., safe outdoor sleeping, managed overnight areas, emergency/temporary housing, etc.)
- Conduct focused abatements of encampments in direct discharge sites prior to the wet season and relocate people from focused areas of the waterways.
- Revise existing and establish new trash collection routes and other service provisions to encampments.

Phase 2 Clear the direct discharge sites; Identify/create safe sleeping sites for the priority segments of waterways including the direct discharge sites (January – June 2025)

- Continue and complete Phase 1 work.
- Begin scaling abatement of encampments along direct discharge sites primarily during dry season.
- Move people into the most basic emergency shelters as possible (e.g., safe sleeping sites); while this is not a long-term option for housing, it would offer a safer living situation than along creek beds and is the fastest way to reduce negative environmental health impacts.
- Initial cleaning of trash and enforcement from re-encampment of abated areas.
- Physically identify and secure cleared areas with signage, fencing, and physical barriers if feasible and as needed.
- Begin monitoring and regular security in the areas to prevent re-encampment.

- Develop budget proposals for 2025-2026 based on lessons learned so far including any organizational changes needed.

Phase 3: Continue clearance and maintain cleared areas of waterways (July 2025 - Beyond)

- Continue abatements of encampment sites and relocation of people from the waterways during dry season.
- As beds become available, move people from safe sleeping sites to interim housing.
- Maintain effective enforcement along waterways to discourage re-encampments.
- Modify service delivery model and efforts as needed to maintain cleared areas.
- Continue to clear additional areas as needed an appropriate to ensure compliance.

EVALUATION AND FOLLOW-UP

If City Council directs the recommended balanced neighborhood-stormwater approach, staff will begin work to launch the program as described above in Phase 0.

As discussed below, the Administration will bring forward budget proposals to address the work described in Phases 1 and 2, dependent upon available resources, trade-off considerations of other City core services, and direction from the City Council's approval of the Mayor's March Budget Message for Fiscal Year 2024-2025.

COST SUMMARY/IMPLICATIONS

Phase 0: Launch (Now – June 2024)

This phase will not require additional budget; existing staff and resources will be reprioritized to conduct this work.

Phases 1 & 2: Scale up waterways team and service delivery model and clear the direct discharge areas; identify/create safe sleeping sites for the priority segments of waterways including the direct discharge sites (June 2024 – June 2025)

Preliminary estimates indicate that the amount of new ongoing funding needed for these phases may exceed \$25 million, including encampment management and recreational vehicle biowaste prevention along the waterways (\$17 million), additional encampment management in surrounding neighborhoods, and additional outreach services and funding for new safe sleeping sites (\$8 million). This is an extremely preliminary figure that will be further refined as the service model is developed in the coming weeks and months.

It is important to note that this placeholder value of \$25 million assumes the continued delivery of previously authorized interim housing sites and previously funded outreach efforts. That is,

the approximately \$25 million would be on top of already significant investments the City has made with respect to reducing unsheltered homelessness.

Given the City's limited budgetary capacity and competing City Council priorities, providing enhanced services both along the waterways and within neighborhoods may not be feasible unless deeper reductions are made to other core City services. The Administration will bring forward the most feasible strategy based on direction from the City Council in its approval of the Mayor's March Budget Message for Fiscal Year 2024-2025.

Phase 3: Continue clearance and maintain cleared areas of waterways (July 2025 - Beyond)

As this work is slated for future fiscal years, staff will hold off on estimating these costs until Phases 1 and 2 are underway.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the following City departments: Airport; Environmental Services; Housing; Parks, Recreation, and Neighborhood Services; Public Works; and Transportation.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the March 5, 2024 City Council meeting. City staff will also proactively communicate directly with unhoused residents through the Your Thoughts, Your Input discussion series and contact service provider networks throughout San José. In addition, information about this City Council session will be shared with business and resident groups to maximize awareness of the issues to be considered.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body.

HONORABLE MAYOR AND CITY COUNCIL

February 20, 2024

Subject: Stormwater Permit Requirements, Homelessness and Neighborhood Considerations

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

KIP HARKNESS
Deputy City Manager

/s/

OMAR PASSONS
Deputy City Manager

For questions, please contact Erica Garaffo, Assistant to the City Manager, at erica.garaffo@sanjoseca.gov.

ATTACHMENTS

Appendix A: Policy Alternatives Not Recommended

Appendix B: Summary of Water Board Comments and City Responses Related to Encampments Near Receiving Waters

Appendix C: Complete Package of All Water Board Correspondence with the City of San José

APPENDIX A: POLICY ALTERNATIVES NOT RECOMMENDED

Policy Alternative 2: Neighborhood Prioritization Approach

Prioritization of neighborhoods would likely result in being out of compliance with the Stormwater Permit. This choice would negatively affect the quality of our waterways, and risk litigation and the imposition of significant penalties on the City.

Pros:

- Aligns with current City Council direction regarding encampment management, including staffing to maintain setbacks around schools, on sidewalks, in streets and critical public infrastructure.
- Current trash volume: outside waterways – 7,842,000; inside waterways – 2,578,000.
- Consistent with United States Department of Housing and Urban Development and California Department of Housing and Community Development funding guidelines for homelessness resources (Environmental, Social, Governance Funding; Community Development Block Grant; Homeless Housing, Assistance and Prevention Grant; etc.) and County requirements for funding partnerships for temporary and permanent housing.
- Places focus on areas heavily trafficked by residents and business patrons.

Cons:

- Continued life/safety risks to unhoused people living along waterways due to weather events.
- Continued costly, unsafe, and inefficient model for trash and waste removal when staff must go into waterway areas to remediate.
- Risk of significant penalties from litigation or enforcement due to violations with Stormwater Permit and Clean Water Act.
- Continued degradation of waterside parks trails and open spaces.
- People continue to live in unsanitary and unsafe conditions along the waterways with limited access to support and services.

Reason for not recommending: Maintaining or expanding this approach that allows people to remain along waterways increases risks to loss of life, inefficient service delivery, and non-compliance with Stormwater Permit requirements.

Policy Alternative 3: Stormwater Compliant Approach

There is no apparent way to fully comply with the Stormwater Permit as currently interpreted by the Water Board without both dedicating significant funds and instituting and enforcing overnight camping prohibitions along significant portions of San José's waterways. Doing so would necessarily mean shifting resources from existing neighborhood priorities. This choice would have profound effects on the quality of life for both housed and unhoused residents and service delivery out of waterways and may require the use of land for stays of unknown duration at safe outdoor sleeping locations throughout the City.

Pros:

- Aligns with current City Council direction adopted on September 19, 2023, authorizing certification of Annual Report to meet compliance with the Stormwater permit.¹
- Provides a path to keep our creeks and waterways clean.
- Increases long-term efficiency and effectiveness of Solid Waste Management and water and sanitation services provided to unhoused residents.
- Increases safety for unhoused residents by keeping them out of hazardous flood prone locations.
- Protects other environmental and natural resources, such as salmonid streams, foliage, and wildlife that are at risk along and in waterways.

Cons:

- Causes significant increase in unhoused resident density outside waterways.
- Likely adds City service cost burden from increased call volume and need for public safety and medical response on City streets.
- Limits availability of response resources outside waterways.
- Unknown one-time capital and ongoing operations and maintenance costs to enforce waterway ban over unknown miles of embankment area, along with difficult enforcement program requirements.

Reason for not recommending: Shifting to this approach is likely to have impacts to all residents as well as on business/tax revenue from closed businesses similar to what is already happening near encampments, due to more conflicts. Enforcement of a camping ban along waterways would come at the expense of enforcement and social services in non-waterway areas with unknown second-order impacts. Need to coordinate with Valley Water to ensure appropriate responsibility taken by Valley Water and to develop cost sharing approach. Estimated potential loss of homelessness grant funding (federal and state combined): \$31 million (FY 2023-2024 funding requiring existing prioritization approach)

¹ City Council also adopted a resolution on December 13, 2022, approving the updated Direct Discharge Trash Control Plan and directing staff to submit the plan to the San Francisco Bay Regional Water Quality Control Board (Water Board) by January 3, 2023, as required under the Municipal Regional Stormwater Permit provision C.10.f.ii; and further authorizing the City Manager to modify the plan as necessary after Water Board review.

APPENDIX B: SUMMARY OF WATER BOARD COMMENTS AND CITY RESPONSES RELATED TO ENCAMPMENTS NEAR RECEIVING WATERS

Below are excerpts from the Water Board comments relating to the City's homeless encampments along waterways. The complete history of Water Board Correspondence follows in Appendix C.

In the January 29, 2024 "Additional Comments on the City of San José's revised Direct Trash Discharge Control Plan" letter from the Water Board, the Water Board wrote:

'Encampment Abatement; page 25

Previous Water Board comment: The City's Plan includes encampment abatement criteria; however, it is unclear to Water Board staff how the City incorporates proximity to receiving waters as a criterion for encampment abatement. To appropriately address direct discharges, the City needs to incorporate proximity to creeks and other receiving waters (within 500 feet) as a criterion for encampment abatement. In addition, the revised Plan needs to describe what steps the City is taking toward moving these encampments away from receiving waters.

The above comment with respect to "Encampment Abatement" has not yet been addressed. This comment needs to be addressed adequately for the revised plan to be acceptable. That is, adding proximity to waterways as one criterion for abatement is a necessary condition for plan approval.

In addition, this section's last paragraph states that "the City will compile and report the number of clean ups and abatements within receiving water ways to baseline its current level of service and understand the expanded budgetary impact needed to maintain and expand. This will provide an opportunity to learn best practices encampment management in addition provide an evaluation and overall City impacts in establishing setbacks or no encampment zones, benefits of structural deterrents, security/policing posts. This will better inform policies that can be set in place to ensure protection of waterways and housing individuals who are unsheltered."

The City has had an approved DDCP since 2016. Furthermore, under the conditions of approval, the City has been required to record, among other metrics, encampment locations, encampment counts, the tons of debris removed (along the creek), number of encampments dismantled, and number of cleanups accomplished. Based on this information, the City should have a reasonable sense of the approximate number of cleanups and abatements of homeless encampments within 500 feet of receiving waters and have a reasonable sense of the expanded budgetary needs to maintain and expand this level of service in subsequent years. Please include this information within the City's revised Plan.'

(The above is excerpted from pages 7-8 of the January 29, 2024, "Additional Comments on the City of San José's revised Direct Trash Discharge Control Plan". The complete package of all correspondence from the Water Board is included in Appendix C)

The City emailed the Water Board seeking clarity regarding the above comment on January 30, 2023. The Water Board's responses to our questions are listed below in *green italics*:

1. Is the Water Board requirement there can be no encampments (managed or unmanaged) within 500 feet of receiving waters?

Water Board: *The 500 foot buffer is intended to be a criteria for the prioritization of resources for the City's unsheltered populations since homeless encampments that are less than 500 feet (of receiving waters) can cause adverse impacts to receiving waters. The Water Board's position is that encampment less than 500 feet of receiving waters should be prioritized for emergency alternative (temporary or permanent) housing. In the interim (to the provision of emergency housing), trash collection, sanitary, and other services need to be provided at an adequate frequency to ensure the encampments aren't contributing to adverse impacts to receiving waters.*

2. What is an acceptable timeline to remove/abate all encampments within 500 feet of receiving waters? Over the time frame when the Direct Discharge credits expire (6/2025)? Over the time frame when the current permit expires (6/2027)? Or, over a longer time frame?

Water Board: *The expectation from the Water Board is that these homeless encampments need to be prioritized ASAP with respect to the provision of services as describe above. The City's DDCP should describe steps that are in place to adequately manage these encampments over the short-term, and long-term period.*

3. Can interim emergency housing or safe sleeping sites overseen by the City can be within the 500 foot buffer of receiving waters if trash, sanitary and social services are provided at adequate levels to prevent discharges into receiving waters?

Water Board: *Yes.*

4. Can you clarify the expectations of the 500-foot buffer? Is the buffer intended to apply only to open space/natural lands that are adjacent to, and discharging directly into receiving waters? City's assumption is that developed lands within 500 feet of receiving waters would fall under other provisions within permit. (For example, a housing development next to a creek)?

Water Board: *Please see previous response to Q1 with respect to the 500-foot buffer as a prioritization criteria.*

On February 1, 2024, the City requested one final clarification, to which the Water Board responded with the below answer:

[The City has] one clarifying question based upon our discussion and Water Board's written comments regarding Table 2: Encampment Abatement Criteria (page 25), is there a distinction between a setback vs. 500 foot buffer to receiving waters?

Water Board: *The 500-foot buffer is essentially a more well defined "setback" area where emergency resources, including housing, should be prioritized.*



San Francisco Bay Regional Water Quality Control Board

Sent via email; no hard copy to follow

March 13, 2023

City of San Jose – Environmental Services Department
Attn.: Rajani Nair, Deputy Director
Watershed Protection Division
200 E. Santa Clara St., 7th Floor
San Jose, CA 95113

Emailed to: Rajani Nair, Rajani.Nair@sanjose.ca.gov

Subject: Comments on the City of San Jose’s Direct Trash Discharge Control Plan Developed per Municipal Regional Stormwater NPDES Permit Provision C.10.f.ii, Trash Load Reduction, Optional Trash Load Reduction Offset Opportunities, Direct Trash Discharge Controls

Dear Ms. Nair:

Thank you for submitting the City of San Jose’s (City’s) Direct Trash Discharge Control Plan, dated January 3, 2023 (Plan), to the San Francisco Bay Regional Water Quality Control Board (Water Board) in compliance with Provision C.10.f.ii of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018 (Permit or MRP). The Plan describes the City’s continued and substantial efforts to plan and implement actions to reduce unsheltered homelessness and control direct discharges of trash generated from people experiencing unsheltered homelessness. However, those efforts are insufficient to fully address the direct discharges and additional efforts are needed to control them. To be acceptable under the Permit, the Plan needs revision, as discussed below and in the attached comments, to better describe the City’s current and planned efforts, and necessary increases in the amount and level of effort, to reduce direct trash discharges.

Under Permit Provision C.10.f.ii, Permittees wishing to receive an offset of their trash load reduction requirements are required to submit and implement an approved Direct Discharge Control Plan. The plan must provide in detail specific actions Permittees are currently implementing, and actions that will be implemented through the course of the

JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

Permit term, to control direct discharges of trash to receiving waters in their jurisdiction from sources such as homeless encampments and direct dumping. Permit provision C.10.f.ii.(b) requires the plan to include “[a] description of control actions that will be implemented during the permit term to prevent or reduce direct discharge trash loads...in a systematic and comprehensive manner.” Permit provision C.10.f.ii.(b)(i) requires:

For Permittees whose plans address significant discharges from populations experiencing unsheltered homelessness, systematic and comprehensive implementation of control actions shall include a commitment to, and a plan for, increasing the provision of emergency, transitional, and/or permanent housing, and the following services: trash and sanitary services, and other services which are necessary to reduce discharges associated with unsheltered homelessness, such as RV safe parking areas and pump out services, and social services that can help the unsheltered homeless transition to housing. (...)

The [plan] shall document the existing capacities for housing and services as of the time of the [plan’s] submittal, and include projections of changes to those capacities for each subsequent year during the Permit term.

Permittees with an approved plan may offset up to 15 percent of their percent load reduction requirements through plan implementation.

The Plan discusses the housing and trash management measures the City is currently implementing to address the significant amounts of trash and debris that discharge to its waterways from homeless encampments. However, the Plan must be revised to sufficiently document the existing capacities for housing and services to address unsheltered homelessness and include projections of changes to those capacities for each subsequent year during the Permit term.

Also, there is a need to sharpen the evaluation of current actions and descriptions of future actions, including the City’s commitment(s) to those actions. That includes explaining how the City will determine the degree to which current actions are sufficient, describing additional actions and the changes in level of effort needed for existing actions to fully address the identified direct discharges, and describing how the City intends to accomplish those changes.

The Plan states the following about how the City intends to continue and enhance the level of services it currently offers to unsheltered residents living near receiving waters:

As resources become available, the City will continue to implement services and programs for individuals living along waterways. For example, the State has released additional funds for encampment resolution, which the City plans to apply for that could be used for waterways (Section 2.4, p.12).

That text describes a general intent and notes a potential source of funds that could be used to support that intent, but lacks the detail necessary to be considered acceptable. For the Plan to be considered acceptable, the City must provide more detailed information on: the current and anticipated future need; actions that are currently being implemented and actions that will be implemented throughout the course of the Permit term to appropriately address direct discharges from individuals experiencing homelessness to receiving waters; and the City's planned approaches to obtain resources for and implement those actions.

For example, the Plan describes the City's efforts to implement trash pickups at a portion of the locations within the City where unsheltered homeless populations are living. These measures are clearly beneficial, but are they sufficient relative to the need? Are there opportunities for incremental improvement in effectiveness over time? Are weekly pickups the most effective frequency and is the approach to trash collection the most effective? Has the existing coordination with homeless residents been effective to support trash collection or is there an opportunity to improve effectiveness by changing it? Are bags, dumpsters, roll-off bins, or other approaches relatively more or less effective? Where measures involve coordination with other parties (e.g., with Valley Water, non-governmental organizations, and Santa Clara County), are they recognized? If changes in frequency or method are needed, how will the need for the changes be identified, what would the planned schedule be for their implementation, and, if additional funding is needed, how will the changes be funded? If funding is not available at present, what are the options, how would they be evaluated or pursued, and over what timeline? Similarly, how is the City identifying or prioritizing not-yet-served locations that could benefit from trash pickup services, and how will those locations be incorporated into the City's program over time?

In addition, in a number of sections where the Plan should describe specific actions the City is taking, the Plan provides a hyperlink for that information. We appreciate the link to additional information. Where it is not yet included, the Plan should be updated to include a summary of the linked information and, as appropriate, a description of how the information is being used in the Plan.

Finally, the Plan includes information that may assist the City in complying with MRP provision C.17, discharges associated with unsheltered homelessness. This includes reporting on best management practice implementation, effectiveness, and opportunities for improvement over time. We hope the City will be able to share its lessons learned with other MRP permittees to help reduce direct discharges of trash and other wastes throughout the Bay Area.

We have attached our more-detailed comments on the Plan. Please revise the Plan to address the comments and resubmit it. We recognize the City's commitment to addressing unsheltered homelessness, including the City's commitment of resources to prepare and implement the Plan. We look forward to continuing to work with the City and its partners.

Should you have additional questions, or if you would like to discuss these comments, please contact Imtiaz-Ali Kalyan of my staff at (510) 622-2944 or via email to Imtiaz-Ali.Kalyan@waterboards.ca.gov.

Sincerely,



Digitally signed by Keith
H. Lichten, Division
Manager

Date: 2023.03.13 17:19:23

Water Boards

Keith H. Lichten
Division Manager

Attachment: Comments on specific Plan sections

Cc: Kerrie Romanow, City of San Jose, Environmental Services Director
Mary Morse, City of San Jose, Senior Environmental Program Manager
Chris Sommers, Santa Clara Valley Urban Runoff Pollution Prevention Program
(SCVURPPP)

Attachment: Comments on specific Plan sections*Section 1.2 Directly Discharged Trash Sources; page 3*

Section 1.2 uses receiving water trash monitoring results, including results from the BASMAA Receiving Water Trash Monitoring Report (Report), to assert that the City's MS4 contributes approximately 1 percent of the total volume of trash found in receiving waters. Please remove Table 1, which describes the relative contributions of trash to receiving waters on a percentage basis from the four trash pathways that were analyzed in the Report. The statement that "the largest contribution of trash discharging into San Jose's receiving waters is from unsheltered homeless populations" is sufficient.

The Report provided some beneficial information; for example, it found that at targeted locations, poor trash conditions are likely associated with higher proportions of trash from encampments and illegal dumping. However, we identified gaps in the analysis and found the Report did not appropriately address the four critical questions that were outlined in MRP 2 Provision C.10.b.v. Because the trash pathways determination used in the Report was subjective and challenging to substantiate due to inherent variability of potential trash sources, it is inaccurate to conclude that the City's MS4 contributes approximately 1 percent of the total volume of trash found in receiving waters, especially considering that only 52 percent of the City's TMA is currently controlled via full trash capture.

Section 2.2 Current Homelessness Prevention and Support Programs; page 9

The first paragraph in this section references the County's supportive housing system as a significant resource that "provides shelter, supportive housing, and homelessness prevention services in furtherance of the goal of making homelessness rare, brief, and non-recurring," and provides links to Santa Clara County's Office of Supportive Housing, including the Office's "Ending Homelessness: report. However, it is unclear how the City coordinates with the County. Please revise the Plan to explain the City's role and how it relates to efforts to reduce direct discharges (e.g., by prioritizing populations near receiving waters).

We appreciate the information in the last two paragraphs, which describe some of the Housing Department's key achievements. It represents substantial effort, including effort to help San Jose residents avoid unsheltered homelessness. Please revise the Plan to present the information relative to the need—that is, relative to the current and/or anticipated future size of the City's population experiencing unsheltered homelessness.

This section describes the construction of affordable housing by the Housing Department. Please include a definition of "affordable housing" and a description of how the constructed projects fall into various categories of affordability.

Section 2.3 Access to Housing Strategy/Plan; page 10

Section 2.3 discusses a resolution (adopted by City Council in August 2020) that endorses a comprehensive, regional response to homelessness through the County's five-year *Community Plan to End Homelessness*. This section describes four targets that the region is aiming to achieve by 2025:

- House 20,000 people through the supportive housing system;
- Expand the Homeless Prevention System and other early interventions to serve 2,500 people a year
- Double temporary housing and shelter capacity to reduce the number of people sleeping outside
- Achieve a 30 percent reduction in annual inflow of people becoming homeless.

This section then includes a discussion of the City's efforts to increase the supply of emergency, transitional, and permanent housing; to provide programs and services for residents living in RVs and other vehicles; and providing services to unsheltered residents living near waterways. While these efforts are all valuable, it is not clear how they relate to the Community Plan goals. Please discuss what milestones the City is aiming for during each subsequent year of the permit term to meet the four 2025 targets. For example, consider including information on the number of people currently served by the homeless prevention team (and other early interventions); the existing and planned number of temporary housing units and amount of shelter capacity to reduce the number of people sleeping outside, and relevant information including the current annual inflow of people becoming homeless in 2023, resources available to help address homelessness, and steps the City is taking to reduce the number of its homeless residents with each subsequent year of the permit term.

In the last paragraph of this section, the Affordable Housing Dashboard hyperlink at the top of page 11 contains information on the City Council's goal of building 10,000 new affordable units by 2022. Please provide a definition of affordable housing here or note the definition added in the previous section. Consider noting who the affordable housing units will be available to once they've been completed and the qualifying income bracket(s) for prospective residents, as well as anticipated completion dates. The dashboard currently lists 7,506 of the 10,000 units as having a status of "prospective" and notes that developers have only submitted preliminary applications for these projects and do not have any permits. However, their path to construction, including timing, is not clear. Similarly, the dashboard lists affordable projects that will be constructed with contributions of City funds but does not indicate the number of affordable units those projects will include. Most of the projects are listed as being in the pipeline. Others are listed as completed, but have not been included in the subsequent table, "total affordable housing developments in San Jose." The above information should be presented in the resubmitted plan, as well as the City's goal, with respect to affordable housing units and units targeted toward housing the unsheltered, for each subsequent year of the permit term.

Program and Services for RVs and Lived in Vehicles; page 11

We recognize that unsheltered populations in vehicles can be a substantial source of trash and welcome the inclusion of this category in the Plan. The Plan states the City will start a safe parking program for RVs beginning in 2023, and that the program will consist of up to 45 RV parking spaces, plus potential additional spaces later in 2023. The Plan states that the sites will offer “supportive services.” Please provide a brief description of those services, and an estimate of the approximate fraction of the total number of RVs or lived-in vehicles along city streets that this site and future planned sites will accommodate. Explain what steps the City is taking to bridge the gap between the total number of RVs and lived-in vehicles on City streets and the total number of safe parking spaces that will be available. Describe the services that will be offered initially and services that will be gradually ramped up over the course of the permit term, as well as how the effectiveness of this measure will be evaluated. Plan Section 2.4 notes the City will pilot additional services for residents in vehicles in FY 23-24, including biowaste removal services. The City should report out on these efforts in its annual report.

Discuss when in 2023 the second RV safe parking area is scheduled to open and the number of vehicles the new site will be able to accommodate as well as a description of services that will be provided initially and in subsequent years.

Include more discussion on biowaste services, including information on whether the City has identified a funding source, or otherwise the steps it will take to address the funding need. Discuss the role of the San Jose-Santa Clara Regional Wastewater Facility with regard to this measure and whether mobile pump out services will also be provided. The Plan needs to also include a discussion on how the City is planning to address this need beyond FY 23-24 and through the remainder of the Permit term.

Services for Unsheltered Near Waterways; page 11

Please provide an appropriate description of the “several programs” offered through the City’s Housing Department that are mentioned in the first sentence of the second paragraph as well as a description of funding, or note that they programs are the ones subsequently described in this subsection. The Plan should also discuss what steps the City is taking to expand these services to the unsheltered near receiving waters during each subsequent year of the Permit term.

Please include an appropriate map that identifies the 16 SOAR sites and specifically the 11 sites that are along or near creeks.

The City’s goal to reach 1,000 new emergency and interim beds is laudable. It should be accompanied by a timeframe and interim milestones. The City should report on these milestones with their annual report submittal.

The Plan notes that the City was awarded a \$2 million grant from the State for “encampment resolution,” and that it will use the grant between 2022 and 2024 to provide services and housing to about 146 individuals at an encampment in downtown San Jose. This seems promising, and the Plan gives examples of services that will be provided, noting “if successful and depending on...funding, the model can be scaled to address other encampments [in] San Jose.” Recognizing the goal of prioritizing and transitioning individuals and restoring the Guadalupe River Trail for public use, how will the City determine success?

For example, given the grant’s 2024 end date, the Plan could include a date in 2024 for when the City to achieve this goal as well as some milestones towards this end result. Discuss how the effectiveness of this measure will be evaluated, e.g., assessment of trash conditions within this stretch of the Guadalupe River, encampment size, residents housed, or engagement with homeless residents and community groups. The City should provide a status update on this effort with their 2024 annual report. Plan section 2.4 states that the City will report out on the Safe Encampment Resolution program as part of its Direct Discharge Progress reporting. Will that include reporting on the outcome of this work?

City staff provided a draft Plan in December 2022 for Water Board staff review. The draft Plan discussed City Council-authorized funding for an additional section of the Guadalupe River Trail, from Julian St. to Taylor St., that would provide “*street-based case management and core services*” needed to house approximately 46 individuals living along the Guadalupe River Park Trail. That effort was not included in the submitted Plan. Please explain why that initiative has been left out or how it has been included under another program name.

The Plan describes the City’s success in closing Guadalupe Gardens near the Guadalupe River Trail and San Jose International Airport, which was approximately 40 acres. Are there lessons learned from the Guadalupe Gardens work that the City will use as it implements similar measures at other locations where homeless encampments exist near receiving waters.

The last paragraph of this section notes the Housing Department provides portable restrooms and hand washing stations at SOAR encampments. It then comments that the locations were strategically chosen to support populations that had relied on other public facilities, including libraries and community centers, and businesses. Have the public facilities been maintained and are the portable restrooms and handwash stations in addition to those resources? More generally, does the City have a strategy to maintain and expand public facilities, such as those provided at libraries and community centers?

Section 2.4 Encampment Management Strategy; page 12

Please describe the services SOAR provides at the 11 SOAR sites that are in close proximity to receiving waters (e.g., clean water and sanitation; porta-potties; and trash

pickup). Services provided at these sites (near receiving waters) should be enhanced relative to services provided at other SOAR sites that are not near receiving waters. Note whether the City considers receiving water proximity as a factor in prioritizing services.

Section 2.5 Funding and Planned Actions; page 14

“Currently, the City provides regular trash pickup services at least one time per week to encampments located near the waterways to reduce discharges into the waterway and increase sanitation”

Trash pickup services are a key tool to reduce direct discharges of trash to receiving waters. The City’s trash management strategy is noted here and discussed in greater detail in Plan Section 3, Trash Management Strategy.

Based on Water Board staff inspections, the frequency of once per week has not been shown to be effective to fully address the problem and prevent discharges of trash to receiving waters. Please revise the Plan to describe the steps the City is taking to evaluate pickup frequencies and methods and, as needed, modify them to improve the effectiveness of this practice. Also describe the steps the City is taking or will take during each subsequent year of the Permit term.

“Moving forward the City will assess resource availability to fund a team to focus on addressing trash and debris along impacted waterways.”

We recognize the need for and benefit of a dedicated team focused on addressing trash and debris along impacted waterways. Please provide additional detail regarding how the City will assess potential funding resources and propose reporting on outcomes.

This section’s last paragraph describes a proposed cost-sharing agreement with Valley Water for work along Coyote Creek from 2023-2026. The work will implement a range of strategies to address unsheltered homelessness along this 9-mile stretch of the creek, and the Plan notes that construction will necessitate the removal of encampments along the reach. Removal may reduce direct discharges in the area of removal, but has the potential to increase discharges in other areas via reencampment. The Plan should incorporate appropriate reporting on this substantial project.

Reporting at a high level could focus on populations and encampments. At a more detailed level, the Plan states that “[t]he City will install deterrents where feasible to limit access once an area has been cleared. See Section 3.3 for further information.”

We recognize deterrents in general as measures that can reduce encampment—or, where an encampment is in place, as measures that can reduce the amounts of trash and debris the encampment generates. Please consider adding to Section 3.3 the opportunity to report out on deterrent effectiveness for this project and lessons learned.

Section 3. Trash Management Strategy

Encampment Management Program; page 14

“This Encampment Management Program distributes and collects litter bags at encampment sites; picks up trash from those residing in vehicles; removes large trash/debris piles at encampments; and appropriately disposes of items soiled with human waste to reduce contamination.”

Please expand upon this section by describing how the City will build upon the existing effort with each subsequent year of the Permit term.

The Plan states that *“the City provides escalated cleanup actions at encampments that have a substantial amount of trash and debris to improve the sanitation of surrounding areas”* (pp. 14-15). Under “Escalated Cleanups,” the Plan states that “[e]scalated cleanups are performed on an as-needed basis.”

We support increasing the level of effort where needed to address substantial problems, sufficient to address those problems. However, how those situations are identified and the timing and intensity of the response are unclear. Based on Water Board staff inspections, it is not clear that the City has the resources necessary to fully address the need for those encampments that are near receiving waters. Please consider rephrasing the statement to something like *“additionally, the City will provide escalated cleanup actions at encampments that are within close proximity to receiving waters and that have a substantial amount of trash and debris, sufficient to improve the sanitation of surrounding areas.”*

In addition, the Plan needs to describe what *“escalated cleanup actions”* consist of, the triggers for an escalated cleanup, including proximity to receiving waters, and how effectiveness will be evaluated, including evaluation of the needed frequency and intensity of cleanups in order for them to be effective. The Plan should include reporting on the encampments for which escalated cleanups are needed, the amount completed, effectiveness, and the amount of encampments for which cleanups were needed, but were not able to be completed.

Trash and Sanitary Services; page 15

We appreciate this general discussion of measures the City is providing to help manage discharges from unsheltered homeless encampments. Please discuss in more detail what steps the City is taking to expand this level of effort for encampments near receiving waters now and in subsequent years of the Permit term to address the problem. Also describe how the effectiveness of this measure will be evaluated, and identify appropriate reporting.

Cash 4 Trash; page 15

This program appears effective to help prevent the discharge of trash from encampments to receiving waters. Water Board staff have observed Cash 4 Trash bags in waterways and at abandoned homeless encampments waiting pickup. Thus, there's an opportunity to continue to consider how the program can be improved. Please revise the Plan to note the need for continuing improvement and to describe how the City will build upon this effort moving forward and with each subsequent year of the Permit term.

Escalated Cleanups; page 15

This section should describe in more detail how escalated cleanups are evaluated and conducted. Please see above notes regarding escalated cleanups.

The City should be performing enhanced cleanups at its most problematic and continuously inhabited encampments. Describe what steps the City is taking towards that goal.

Encampment Abatement; page 15

The Plan includes encampment abatement criteria; it is unclear how they incorporate proximity to receiving waters as a criterion, although it appears to be incorporated seasonally via the flood threat criterion and potentially via the "infrastructure degradation" criterion. To address direct discharges, the City should consider incorporating proximity to creeks and other receiving waters (e.g., encampments within 500 feet) as a criterion. Discuss what steps the City is taking towards moving encampments away from receiving waters. The Plan should include reporting that describes the number of cleanups and abatements of encampments near receiving waters that have been conducted and steps the City is taking to expand the level of effort with each subsequent year of the Permit term, including how effectiveness will be evaluated.

Abandoned Vehicle Abatement Program; page 16

We appreciate the description of the City's program and the statement that "[v]erified abandoned vehicles are removed during encampment abatement efforts." Please include in the revised Plan a description of how the City addresses and prioritizes for abatement abandoned vehicles in creeks and receiving waters.

Future Work; page 17

This discusses measures the City is considering, with the availability of additional resources, to enhance services near waterways. These services include:

- Outreach and education to unhoused on proper trash disposal (PATH/HomeFirst outreach workers) and the 311 app (specifically for abandoned vehicles)

- Non-profits and contractors (grant funded/partnerships)
 - Volunteer cleanups, outreach and education; outreach events (e.g., nature walks)
 - Contractor cleanups
 - Structural deterrents
- Dedicated waterways encampment management team, which will be pursued through the City's 2023-2024 budget process

We support the City's work to expand its programs near waterways. The City should also be reporting on its existing programs as noted in our comments above.

Section 5; Monitoring and Reporting; page 18

At the end of this section, please include a table that summarizes specific metrics the City will report on with each annual report, and associated with addressing homeless encampments that are within 500 ft of receiving waters. The list should include the following:

- Total number of identified encampment sites or similar metric;
- Approximate number of homeless individuals at encampment sites;
- Number of homeless individuals who accept shelter or long-term housing;
- Number of homeless encampment sites with garbage pickup; number with weekly pickup; number with more frequent garbage pick-up;
- Number of homeless encampment sites with sanitation services, including toilets and running water or portable toilets and health hygiene services; number of these that are situated at the 11 SOAR sites close to RWs;
- Number of homeless encampments cleared/number of encampment abatements; and
- Volume of trash removed from homeless encampment sites.

5.1 Capacities for Housing/System Performance; page 18

This subsection discusses a County program and metrics related to housing that the County keeps track of. We appreciate it as a source of information. Please describe specific metrics tied to housing that the City is keeping track of, describe how these metrics under the City program are tied to efforts under the countywide program and how effectiveness will be evaluated. Describe what the City's current capacity for housing is and measures the City is taking to expand this capacity with each subsequent year of the permit term.

5.2 Unsheltered Homeless Populations; page 19

The estimated number of people experiencing unsheltered homelessness in San José along with the estimated number of people experiencing unsheltered homelessness living within approximately 500 feet of receiving waters will be reported in the annual DDTCP Progress Report

We welcome the City's inclusion of this information in annual reporting. As noted above, in addition to the above, the City's Plan should keep track of the estimated portion of these individuals who were provided emergency, transitional, or permanent housing; sanitation controls; trash controls; social services; RV parking and pump out services. Each of these reporting elements should be accompanied by a narrative description in the annual report.

5.3 Housing Services and Outreach; page 20

The region regularly monitors the supportive housing system performance. The Community Plan has four primary targets and reports on these metrics quarterly to the region's Continuum of Care Board.

Please see our comments on Section 5.1 regarding expectations and opportunities for City-specific reporting on housing system performance.

5.6 Receiving Water Monitoring; page 21

The Trash Receiving Water Monitoring Program was consistent with and met the obligations of sub-provision C.10.b.v of MRP 2.0. This sub-provision required public agencies to develop, submit and test a Receiving Water Trash Monitoring Program Plan (Trash Monitoring Plan).

Please remove this statement. As noted above, Water Board staff identified shortcomings in the Trash Monitoring Plan that were addressed via the Board's adoption of MRP 3.

Section 6. Project Area; page 22

Project Area #1: A 30.4-acre area at intersection of Coyote Creek at Story Road known as "Coyote Meadows" (See Map 2: Project Area #1).

The area of Coyote Creek north of this boundary area (north of the 280 freeway) near Olinder Dog Park is significantly impacted by trash and the presence of homeless encampments along the creek bank. Water Board staff have observed a significant amount of trash within this stretch of Coyote Creek. Please include, or explain why this stretch of the creek, north of 280 overpass, has not yet been included within the Project Area #1 defined on page 22.

Under "Other Areas," the Plan notes that other areas significantly impacted by trash are addressed "mostly in a complaint-based manner." The Plan generally includes substantial measures intended to address unsheltered homelessness, and thus gradually reduce impacts to "other areas." In this section, please also describe the City's plan to, over time, identify and prioritize direct action in the creek reaches in the City where direct discharge issues persist.



San Francisco Bay Regional Water Quality Control Board

Sent via email; no hard copy to follow

August 3, 2023

City of San Jose – Environmental Services Department
Attn.: Rajani Nair, Deputy Director
Watershed Protection Division
200 E. Santa Clara St., 7th Floor
San Jose, CA 95113

Emailed to: Rajani Nair, Rajani.Nair@sanjose.ca.gov

Subject: Comments on the City of San Jose’s revised Direct Trash Discharge Control Plan

Dear Ms. Nair:

Thank you for submitting the City of San Jose’s (City’s) revised Direct Trash Discharge Control Plan, dated January 3, 2023 (revised Plan) in compliance with Provision C.10.f.ii of the Municipal Regional Stormwater NPDES Permit (Permit or MRP).

Although some improvements have been made in the city's revised Plan, we were discouraged to see that many of our comments were not acknowledged and have not yet been addressed. To meet the Permit’s requirements, the revised Plan must address these comments, attached, at an appropriate level of detail.

Should you have additional questions, or if you would like to discuss these comments, please contact Imtiaz-Ali Kalyan of my staff at (510) 622-2944 or via email to Imtiaz-Ali.Kalyan@waterboards.ca.gov.

Sincerely,


Digitally signed by Keith H. Lichten, Division Manager
Date: 2023.08.03 16:27:37 -07'00'

Keith H. Lichten, P.E.
Division Manager
Watershed Management Division

JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

MRP C.10 Comments on Revised Direct Discharge Trash Control Plan

Attachment: Comments on specific Plan sections

cc: Kerrie Romanow, City of San Jose, Environmental Services Director
Mary Morse, City of San Jose, Senior Environmental Program Manager
Chris Sommers, Santa Clara Valley Urban Runoff Pollution Prevention Program
(SCVURPPP)

Attachment: Comments on specific Plan sections*Section 2.2 Current Homelessness Prevention and Support Programs; page 9*

Please provide a definition of “affordable housing” and a description of how the constructed projects fall into various categories of affordability.

Section 2.3 Access to Housing Strategy/Plan; page 10

Section 2.3 discusses a resolution, adopted by the City Council in August 2020, that endorses a comprehensive, regional response to homelessness through the County’s five-year *Community Plan to End Homelessness*. This section describes four targets that the region is aiming to achieve by 2025:

- House 20,000 people through the supportive housing system;
- Expand the Homeless Prevention System and other early interventions to serve 2,500 people a year;
- Double temporary housing and shelter capacity to reduce the number of people sleeping outside; and
- Achieve a 30 percent reduction in the annual inflow of people becoming homeless.

The Plan needs to describe what interim milestones the City is aiming for during each subsequent year of the permit term to meet the four 2025 targets. The City’s subsequent annual reports should include a status update on where the City is with respect to achieving these milestones.

Services for Unsheltered Near Waterways; page 11

The Plan needs to appropriately describe what the “several programs” offered through the City’s Housing Department are (that are mentioned in the first sentence of the second paragraph) as well as describe their funding sources. In addition, the Plan should describe the steps the City is taking to expand these services to the unsheltered population near receiving waters now and with each subsequent year of the Permit term. Progress on measures should be provided with the Annual Report.

An appropriately detailed map that identifies the 16 SOAR sites and specifically the 11 sites that are along or near creeks needs to be included with the revised Plan.

Furthermore, the revised Plan should include a timeframe, as well as interim milestones, as the City works towards its goal of providing 1,000 new emergency and interim beds. The Annual Report should include a discussion and update on the City’s progress toward achieving these milestones.

Within the last paragraph of page 13, the Plan notes that the City was awarded a \$2 million grant from the State for “encampment resolution,” and that it will use the grant between 2022 and 2024 to provide services and housing to about 146 individuals at an

MRP C.10 Comments on Revised Direct Discharge Trash Control Plan

encampment in downtown San Jose. "...[I]f successful and depending on funding, the model can be scaled to address other encampments [in] San Jose." Recognizing the goal of prioritizing and transitioning individuals and restoring the Guadalupe River Trail for public use, the revised Plan needs to describe how the City will measure success.

Furthermore, the revised Plan should include a tentative date in 2024 when the City aims to achieve this goal. The revised Plan needs to state that the effectiveness of this measure will be evaluated through the assessment of trash conditions within this stretch of the Guadalupe River, encampment size, residents housed, or engagement with homeless residents and community groups. A status update on this effort should be provided with the City's 2023-2024 annual report.

City staff provided a draft Plan in December 2022 for Water Board staff review. The draft Plan discussed City Council-authorized funding for an additional section of the Guadalupe River Trail, from Julian St. to Taylor St., that would provide "*street-based case management and core services*" needed to house approximately 46 individuals living along the Guadalupe River Park Trail. That effort was not included in the submitted Plan or the City's revised Plan. Please explain why that initiative has been left out or how it has been included under another program name.

The Plan describes the City's success in closing Guadalupe Gardens near the Guadalupe River Trail and San Jose International Airport, which covered approximately 40 acres. The revised Plan needs to discuss what lessons the City has learned from the Guadalupe Gardens work and discuss how those efforts can be used as a model for addressing problematic homeless encampments in other locations that are within 500 feet of receiving waters. For example, based on information presented in revised Plan section 2.3, the City was able to provide housing to 115 individuals who were previously living within the encampment. That revised Plan section also states the City will continue to work with those remaining in the area to ensure their transition to temporary housing. Has the City been successful in keeping this encampment closed? What measures have worked well? What measures haven't worked well? Have those individuals who were provided housing stayed in the housing provided or transitioned to permanent housing? What services has the City provided for those who may be still occupying the encampment? Describe how the City may be able to implement some of the positive outcomes from this encampment closure at other locations.

The last paragraph of this section notes the Housing Department provides portable restrooms and hand washing stations at SOAR encampments. It then comments that the locations were strategically chosen to support populations that had relied on other public facilities, including libraries, community centers, and businesses. The Plan needs to discuss this effort relative to the need. In other words, what measures is the City taking to maintain these public facilities and does the City provide portable restrooms and handwash stations in addition to the public facilities? The revised Plan also needs to describe how the City is looking to expand this level of effort in subsequent years to address the needs of the unsheltered community near receiving waters.

Section 2.4 Encampment Management Strategy; page 12

MRP C.10 Comments on Revised Direct Discharge Trash Control Plan

The revised Plan needs to describe what specific services SOAR provides at the 11 SOAR sites that are within 500 feet of receiving waters. Some of the services that should be provided at these sites include, but are not limited to, the provision of clean water and sanitation; porta-potties; and trash pickup. Services provided at these sites (near receiving waters) should be enhanced relative to services provided at other SOAR sites that are not near receiving waters. The City's Annual Report needs to provide an update on the effectiveness of these measures.

Section 3. Trash Management Strategy*Encampment Management Program; page 14*

"This Encampment Management Program distributes and collects litter bags at encampment sites; picks up trash from those residing in vehicles; removes large trash/debris piles at encampments; and appropriately disposes of items soiled with human waste to reduce contamination."

The revised Plan needs to expand upon this section by describing the specific steps the City is taking now, and with each subsequent year of the Permit term to build upon this existing effort. The City's Annual Report should provide an update on these measures.

The Plan states that *"the City provides escalated cleanup actions at encampments that have a substantial amount of trash and debris to improve the sanitation of surrounding areas"* (pp. 14-15). Under "Escalated Cleanups," the Plan states that "[e]scalated cleanups are performed on an as-needed basis."

Based on Water Board staff inspections, it is not clear that the City has the resources to fully address the need for those encampments that are near receiving waters. The revised Plan needs to rephrase this statement to something like *"additionally, the City will provide escalated cleanup actions at encampments that are within close proximity to receiving waters and that have a substantial amount of trash and debris, sufficient to improve the sanitation of the encampment and surrounding areas."*

In addition, the revised Plan needs to describe what *"escalated cleanup actions"* consist of, the triggers for an escalated cleanup, *including proximity to receiving waters*, and how effectiveness will be evaluated. The City's Annual Reports should include reporting on where encampments requiring escalated cleanups are located, a schedule for addressing these sites (or the schedule that they were addressed), the approximate amount of trash and debris removed, and a tentative plan for addressing other problematic encampments that are located within 500 feet of receiving waters.

Cash 4 Trash; page 15

This program appears effective in helping prevent the discharge of trash from encampments to receiving waters. Water Board staff have observed Cash 4 Trash bags in waterways and at abandoned homeless encampments waiting pickup.

MRP C.10 Comments on Revised Direct Discharge Trash Control Plan

The revised Plan needs to describe how the City is building upon this existing effort moving forward and with each subsequent year of the Permit term. The City's Annual Reports should provide a status update on the effectiveness of these measures.

Encampment Abatement; page 15

The City's Plan includes encampment abatement criteria; however, it is unclear to us how the City incorporates proximity to receiving waters as a criterion for encampment abatement. To appropriately address direct discharges, the City needs to incorporate proximity to creeks and other receiving waters (i.e., encampments within 500 feet) as a criterion for encampment abatement. *The revised Plan needs to discuss the steps the City is taking toward moving these encampments away from receiving waters.* The revised Plan needs to describe the number of cleanups and abatements of encampments within 500 feet of receiving waters that have been conducted and steps the City is taking to expand this level of effort with each subsequent year of the Permit term, including how effectiveness will be evaluated.

Abandoned Vehicle Abatement Program; page 16

The City's revised Plan needs to describe in appropriate detail measures that will be implemented that prioritize the abatement of abandoned vehicles that are in or immediately adjacent to creeks and receiving waters.

Section 5; Monitoring and Reporting; page 18

At the end of this section, the revised Plan needs to include a table that summarizes specific metrics the City will report on with each annual report, and associated with addressing homeless encampments that are within 500 ft of receiving waters. The list should include the following:

- Total number of identified encampment sites or similar metric;
- Approximate number of homeless individuals at encampment sites;
- Number of homeless individuals who accept shelter or long-term housing;
- Number of homeless encampment sites with garbage pickup; number with weekly pickup; number with more frequent garbage pick-up;
- Number of homeless encampment sites with sanitation services, including toilets and running water or portable toilets and health hygiene services; the number of these that are situated at the 11 SOAR sites close to RWs;
- Number of homeless encampments cleared/number of encampment abatements; and
- Volume of trash removed from homeless encampment sites.

Section 6. Project Area; page 22

Project Area #1: A 30.4-acre area at the intersection of Coyote Creek at Story Road known as "Coyote Meadows" (See Map 2: Project Area #1).

MRP C.10 Comments on Revised Direct Discharge Trash Control Plan

We have observed on numerous occasions that the area of Coyote Creek north of this boundary area (north of the 280 freeway) near Olinder Dog Park is significantly impacted by trash and the presence of homeless encampments along the creek bank. Please explain why this stretch of the creek, north of the 280 overpass, has not yet been included within Project Area #1 defined on page 22.

Under "Other Areas," the Plan notes that other areas significantly impacted by trash are addressed "mostly in a complaint-based manner." In this section, the revised Plan needs to describe the City's plan to identify and prioritize direct action in the creek reaches where direct discharge issues persist.



San Francisco Bay Regional Water Quality Control Board

Sent via email; no hard copy to follow

January 29, 2024

City of San Jose – Environmental Services Department
Attn.: Rajani Nair, Deputy Director
Watershed Protection Division
200 E. Santa Clara St., 7th Floor
San Jose, CA 95113
Emailed to: Rajani Nair, Rajani.Nair@sanjose.ca.gov

Subject: Additional Comments on the City of San Jose’s revised Direct Trash Discharge Control Plan

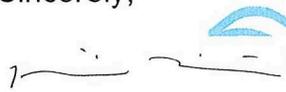
Dear Ms. Nair:

Thank you for submitting the City of San Jose’s (City’s) second revised Direct Trash Discharge Control Plan on August 3, 2023 (revised Plan), to the San Francisco Bay Regional Water Quality Control Board (Water Board) in compliance with Provision C.10.f.ii of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, as amended (Permit or MRP), and for your recent telephone discussions regarding the report.

The City has made some important improvements to the Plan in response to our comments. However, there are still a number of areas where our comments have not yet been addressed and where additional information is needed. These areas are noted in the attachment to this letter. To be considered acceptable, please make the additional revisions described below and submit the updated Plan no later than March 1, 2024.

Should you have additional questions or if you would like to discuss these comments, please contact Imtiaz-Ali Kalyan of my staff at (510) 622-2944 or via email to Imtiaz-Ali.Kalyan@waterboards.ca.gov.

Sincerely,


Digitally signed by Keith H. Lichten, Division Manager
Date: 2024.01.29 12:31:45
08:00!

Keith H. Lichten, P.E.
Division Manager
Watershed Management Division

JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

Attachment: Comments on specific Plan sections

cc: City of San Jose:

Kerrie Romanow, Environmental Services Director

Mary Morse, Senior Environmental Program Manager

Chris Sommers, Santa Clara Valley Urban Runoff Pollution Prevention Program
(SCVURPPP)

Attachment: Comments on specific Plan sections

Section 2.3 Access to Housing Strategy/Plan; page 10

Section 2.3 discusses a resolution (adopted by the City Council in August 2020) that endorses a comprehensive, regional response to homelessness through the County's five-year *Community Plan to End Homelessness*. This section describes four targets that the region is aiming to achieve by 2025:

- House 20,000 people through the supportive housing system;
- Expand the Homeless Prevention System and other early interventions to serve 2,500 people a year;
- Double temporary housing and shelter capacity to reduce the number of people sleeping outside;
- Achieve a 30 percent reduction in the annual inflow of people becoming homeless.

The revised Plan includes Citywide goals for FY 2023-24 only. Please revise the Plan to include similar milestones for FY 2024-2025, including language that states the City's MRP Annual Reports will provide updates with respect to achieving these milestones.

Section 2.3 Program and Services for Recreational Vehicles and Lived in Vehicles; Page 13

The City is currently undertaking a process to count and map the locations of lived-in RV's. When this process is complete, the City will share the data in future Direct Discharge Progress Reports. Additionally, the City is developing an encampment management" tool that will have the ability to map encampments and track detailed information about the encampment such as number of individuals living in the encampment and the service needs of those living there. This tool is intended to go "live" in Fall 2023.

We are encouraged to learn that the City is actively working on the development of an encampment management tool as described above. Please update the revised Plan to include an approximate date for when the proposed task of counting and mapping the locations of lived-in RVs will be completed. In addition, please include an approximate date for when the encampment management tool described above will be operational and the responsible division(s) within the City that will be tasked with monitoring and updating this tool.

The City is also currently piloting a bio-waste collection service to address the human waste discharge (black and gray water systems) from RVs and other lived-in vehicles to reduce the illicit direct discharge into the storm sewer system impacting local watersheds. The pilot program will provide services to approximately 125-150 vehicles and establish baseline data to determine resource needs. This pilot will occur during

the calendar year 2023 (January 2023 – December 2023) and launched March 13, 2023.

The City has released a Request for Information to identify a vendor to support the program. The goal is to service up to 150 vehicles during the pilot phase of the project which will continue through December 2023.

Please update the draft Plan based on the City's findings from the pilot bio-waste collection program that occurred during 2023. What are the next steps for the program? Has the City found a vendor? According to the "*Encampment Management and Safe Relocation Policy Memo*" (mentioned on page 22) despite *BeautifySJ* distributing and collecting litter bags from individuals living in vehicles, there are still challenges tied to providing services related to 'black water' or biological waste disposal. Furthermore, the Memo notes that *BeautifySJ* has one vendor that services encampments that can provide limited bio-waste disposal services for lived-in vehicles with a focus on addressing waste in buckets/containers or other soiled trash but "the lack of funding for a dedicated program to address black water and biological waste from lived-in vehicles has led many to simply dispose of this waste in the street."

According to Water Board staff's understanding, the City does not currently have adequate services to properly address black water waste generated from RVs and other lived-in vehicles which has led to complaints from neighborhoods and businesses. The revised Plan needs to describe the scale of the challenge in more detail, and next steps following the City's 2023 pilot effort towards adequately addressing this water quality concern; please include performance measures that will be evaluated.

Section 2.3; Page 15

"The FY 23-24 goal is 100% completion of 1,000-unit production target for emergency interim housing. This City is on track to exceed this target. As of June 2023, 628 units are completed; 475 are under construction/in development; 142 are in design; and approximately 351 sites have been recommended to Council for approval. Progress towards this goal is reported quarterly to City Council."

Please note in the revised Plan that the City will provide an update to the proposed goals identified here within its MRP Annual Reports.

In section 2.3, the Plan discusses services the City's Housing Department will provide through the acquisition of the \$2 million dollar grant from the California Interagency Council on Homelessness: *"...During the course of the program, there will be clean-ups of debris on land by City staff in the area along with community activation, both will help prevent new individuals from encamping in the area."*

The goals identified here—to prioritize and transition individuals to permanent housing and restore the Guadalupe River trail for public use—are commendable. Please include a description of services the City will provide to the homeless residents currently residing along the Guadalupe River trail from Woz Way to Taylor Street, including an approximate timeline for when these services will be provided. The revised Plan should also describe measures the City will be taking to clean up trash in the Guadalupe River, given that organized cleanup

effort seems to be focused on on-land pickups that may not address trash that has reached the River.

Safe Encampment Resolution; Page 16

Outcome goal: 100 individuals moved to temporary or permanent housing. Housing enrollment and transition rates for every individual in SER will be monitored. For example, the Rapid Rehousing program City-funded program – where 83% of program participants exit to permanent housing – set promising standards for replicating similar results in the SER program. Contract negotiations and scope of work agreements are currently underway between the Housing Department, PATH, and Home First. Measurable outcomes that align with Rapid Rehousing program performance benchmarks and enrollment rates are at the forefront of negotiation discussions and are reflected in core elements of the City’s proposed scope of work agreement.

The revised Plan should include an approximate timeframe for when this contract and scope of work agreement will be completed. The revised Plan should also state that the City’s MRP Annual Reports will include a summary of the scope of work agreement. The Plan needs to describe some of these measurable outcomes as well explain how they “align well with Rapid Rehousing program performance benchmarks.”

Next Steps; Page 18

The City will create a baseline map to identify current trash levels and encampments within the waterways. The City recommends prioritizing the four (4) project areas within Focus Zone #1 – Coyote Creek since these areas are significantly impacted with encampments and trash within the waterways. The proposed work will leverage the lessons learned from other efforts (i.e. COVID-19 pandemic, Guadalupe Gardens, SER) by focusing on outreach for provide housing and services, encampment management including escalated cleanups, removal of trash, security and structural deterrents

Please revise the Plan to include an approximate date for when the City will complete the mapping initiative described here.

Trash Management; Page 18

According to the submitted Plan, the goal within the Direct Discharge Focus Zone area is to achieve 80 percent of encampments receiving on-time trash pickup at a frequency of twice per month. However, at Guadalupe Gardens, the City determined that a trash pickup frequency of once per week was most effective in cleaning and maintaining the area. The Plan needs to describe why a trash pickup frequency of twice per month is sufficient given that the evidence from Guadalupe Gardens is in favor of a weekly trash pickup frequency.

Outreach; Page 19

If resourced, the City would provide a dedicated outreach team for the focus area and provide engagement, case management and connections to social services and temporary or permanent housing. Currently, the Valley Water Outreach team is resourced to provide case management and housing services to 120 individuals living in the waterways. If a dedicated street and outreach team could focus on waterways, an additional 200 individuals could receive services and housing.

The language used here is vague and lacking adequate detail. Is the City actively working to provide a dedicated outreach team for the direct discharge focus areas? If so, include an approximate time for when the team is likely to be created as well as a description of their objectives. If this is something the City is planning on developing in the near future, please include language that states the City will provide an update with their MRP Annual Reports.

2.4 Encampment Management Strategy; SOAR – Page 19

Previous comments from Water Board staff required that an appropriate map identifying the 16 SOAR sites and, specifically, the 11 sites that are along or near creeks be submitted with the City's Plan.

Please submit this map with your revised Plan.

The Plan also states that the City currently provides portable restrooms at 6 SOAR sites located within close proximity to waterways. This is encouraging. Please describe what sanitation services, if any, are being provided to the remaining 4 SOAR sites that are also located close to waterways. In addition, describe what steps the City is taking to expand this level of service in subsequent years, including a description of updates the City will provide with their Annual Reports.

3.1 Encampment Management Strategy; Page 23

The City provides a minimum of weekly trash collection services to approximately 150 encampment locations, at designated trash pick-up areas. The City distributes green bags to encampment residents, that are used by residents throughout the week to collect trash and debris. Bags are distributed to any encampment resident that requests them in all programs (Cash4Trash, RV program, etc.). Bags are then placed at the designated trash pick-up locations. Trash pick-up locations may also be in front of an encampment. The visibility of City of San Jose (bags with logos) green bags at a site are seen as way to identify that people are being cooperative. This Encampment Management Program also removes large trash/debris piles at encampments; and appropriately disposes of items soiled with human waste to reduce contamination.

In previous comments Water Board staff provided on the City's revised draft Plan, we stated that the revised Plan needs to expand upon this section by describing additional measures the City is taking now, and with each subsequent year of the Permit term to build upon this existing effort. The City's MRP Annual Reports should provide an update on these measures. This comment needs to be addressed adequately for the revised Plan to be acceptable.

Cash 4 Trash; page 23

Previous Water Board comment: This program appears effective to help prevent the discharge of trash from encampments to receiving waters. Water Board staff have observed Cash 4 Trash bags in waterways and at abandoned homeless encampments waiting pickup. The revised Plan needs to describe how the City is building upon this existing effort moving forward and with each subsequent year of the Permit term. The revised Plan should also state that the City's Annual Report will provide a status update of the effectiveness of these measures.

Water Board staff provided the above comment with respect to the City's "Cash 4 Trash" program that hasn't been addressed in the revised Plan.

Escalated Cleanups; page 24.

According to the *May 3, 2022 Encampment Management Memo*, in 2022-2023, Beautify prioritized a waterways specific encampment trash program route. The new route along Coyote Creek was focused on the three Direct Discharge focus zones that received trash services every other week. Please include a summary, including lessons learned and next steps based on results from the City's prioritized waterways specific encampment trash route.

The Memo also states that "*beautify* is able to conduct *limited* quarterly escalated cleanups with interagency partners near waterways and in the creek channel and is "*extremely challenged to keep creeks free of vehicles or abandoned and vacant encampment structures*". The Memo further states that City staff will continue to evaluate this new program to determine the effectiveness and will re-examine the funding for this program should there be more than expected escalated clean ups or if the clean ups are more costly and complicated than anticipated.

Please describe in appropriate detail what measures the City is actively taking to address the challenge discussed here in keeping Coyote Creek, and other receiving waterbodies, free of vehicles and/or abandoned and vacant encampment structures. The Plan should also describe potential funding avenues and how effectiveness will be evaluated, including updates the City will report on in their MRP Annual Reports.

Encampment Abatement; page 25

Previous Water Board comment: The City's Plan includes encampment abatement criteria; however, it is unclear to Water Board staff how the City incorporates proximity to receiving waters as a criterion for encampment abatement. To appropriately address direct discharges, the City needs to incorporate proximity to creeks and other receiving waters (within 500 feet) as a criterion for encampment abatement. In addition, the revised Plan needs to describe what steps the City is taking toward moving these encampments away from receiving waters.

The above comment with respect to "Encampment Abatement" has not yet been addressed. This comment needs to be addressed adequately for the revised Plan to be acceptable.

In addition, this section's last paragraph states that "the City will compile and report the number of clean ups and abatements within receiving water ways to baseline its current level of service and understand the expanded budgetary impact needed to maintain and expand. This will provide an opportunity to learn best practices encampment management in addition provide an evaluation and overall City impacts in establishing setbacks or no encampment zones, benefits of structural deterrents, security/policing posts. This will better inform policies that can be set in place to ensure protection of waterways and housing individuals who are unsheltered."

The City has had an approved DDCP since 2016. Furthermore, under the conditions of approval, the City has been required to record, among other metrics, encampment locations, encampment counts, the tons of debris removed (along the creek), number of encampments dismantled, and number of cleanups accomplished. Based on this information, the City should have a reasonable sense of the approximate number of cleanups and abatements of homeless encampments within 500 feet of receiving waters, and have a reasonable sense of the expanded budgetary needs to maintain and expand this level of service in subsequent years. Please include this information within the City's revised Plan.

Abandoned Vehicle Abatement Program; page 26

The City will create a baseline of entire waterway condition within Direct Discharge areas and will determine where vehicles are located within receiving waters. For the Valley Water Creek Flood Improvement project, vehicle abatement will be addressed within the project area. FY22-23, 20 cars and 468 tons of debris have been removed. This fiscal year to date, 3 additional vehicles were removed under the Valley Water Flood Project. [The] City will evaluate policy to prohibit vehicles entering into receiving waters.

We appreciate the information presented above, which is in response to our comment that the City's revised Plan needs to describe in appropriate detail measures the City will implement to prioritize the abatement of abandoned vehicles that are in or immediately adjacent to creeks and receiving waters. The last sentence, however, is inadequate. To be considered acceptable, the revised Plan needs to describe in appropriate detail specific policies the City is developing, including a timeline for implementation and an effectiveness metric or metrics, to adequately prevent the access of vehicles into receiving waters.

RE: Water Board's comments (round 2) on City of San Jose's DDTCP

Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>

Thu 2/1/2024 2:37 PM

To:Nair, Rajani <Rajani.Nair@sanjoseca.gov>;Lichten, Keith@Waterboards <Keith.Lichten@waterboards.ca.gov>
Cc:Romanow, Kerrie <Kerrie.Romanow@sanjoseca.gov>;Chris Sommers <csommers@eoainc.com>;Harkness, Kip <Kip.Harkness@sanjoseca.gov>;Morse, Mary <Mary.Morse@sanjoseca.gov>

[External Email]

Good Afternoon Rajani,

No problem; I'm glad to hear the response we provided was helpful. The 500-foot buffer is essentially a more well defined "setback" area where emergency resources, including housing, should be prioritized.

The PDF document we looked at during our phone conversation contains internal comments and edits that were used to generate our initial comment letter, sent on March 13, 2023, as well as the second comment letter sent on January 29, 2024. Some of the comments within the document have been addressed. To avoid any confusion, my prefer would be not share this version with the City at this time. Thanks for understanding. I hope this helps!

Regards,
Ali

From: Nair, Rajani <Rajani.Nair@sanjoseca.gov>
Sent: Thursday, February 1, 2024 10:28 AM
To: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>; Lichten, Keith@Waterboards <Keith.Lichten@waterboards.ca.gov>
Cc: Romanow, Kerrie <Kerrie.Romanow@sanjoseca.gov>; Chris Sommers <csommers@eoainc.com>; Harkness, Kip <Kip.Harkness@sanjoseca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>
Subject: RE: Water Board's comments (round 2) on City of San Jose's DDTCP

EXTERNAL:

Thank you Ali for your expedited responses. This is very helpful. I had one clarifying question based upon our discussion and Water Board's written comments regarding Table 2: Encampment Abatement Criteria (page 25), is there a distinction between a setback vs. 500 foot buffer to receiving waters?

Lastly, would it be possible to send the .pdf you shared with us last Thursday with your comments?

Thank you,
Rajani

Rajani Nair, P.E. (she/her/hers)
Deputy Director
Watershed Protection Division
Environmental Services Department
200 East Santa Clara Street, 7th Floor

San Jose CA 95113

408-535-8306 (work landline)

408-799-7462 (First net work cell)

sjenvironment.org | [facebook](https://www.facebook.com/sjenvironment) | [instagram](https://www.instagram.com/sjenvironment) | [twitter](https://twitter.com/sjenvironment) | #keepSJclean

[Report storm drain discharges](#)

From: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>

Sent: Wednesday, January 31, 2024 5:36 PM

To: Nair, Rajani <Rajani.Nair@sanjoseca.gov>; Lichten, Keith@Waterboards <Keith.Lichten@waterboards.ca.gov>

Cc: Romanow, Kerrie <Kerrie.Romanow@sanjoseca.gov>; Chris Sommers <csommers@eoainc.com>; Harkness,

Kip <Kip.Harkness@sanjoseca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>

Subject: RE: Water Board's comments (round 2) on City of San Jose's DDTCP

[External Email]

Good Afternoon Rajani,

I've provided a response to your questions below using green font. Please let me know if you have further questions.

Regards,
Ali

From: Nair, Rajani <Rajani.Nair@sanjoseca.gov>

Sent: Wednesday, January 31, 2024 4:19 PM

To: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>; Lichten, Keith@Waterboards <Keith.Lichten@waterboards.ca.gov>

Cc: Romanow, Kerrie <Kerrie.Romanow@sanjoseca.gov>; Chris Sommers <csommers@eoainc.com>; Harkness, Kip <Kip.Harkness@sanjoseca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>

Subject: RE: Water Board's comments (round 2) on City of San Jose's DDTCP

EXTERNAL:

Good afternoon Keith and Ali,

Thank you for your comments on the City of San Jose's Direct Discharge Trash Control Program Plan (Direct Discharge Plan) submitted by the City on January 3rd. I shared with Kerrie and Kip (Deputy City Manager) our verbal discussion with Ali last Thursday (1/25) and also the written comments that Water Board staff provided on Monday (1/29). Both Kerrie and Kip are well versed (cc'ed on this email) and had some additional questions stated below.

In order to be able to submit a Plan acceptable to the Water Board, the City has the following questions:

1. Is the Water Board requirement there can be no encampments (managed or unmanaged) within 500 feet of receiving waters? The 500 foot buffer is intended to be a criteria for the prioritization of resources for the City's unsheltered populations since homeless encampments that are less than 500 feet (of receiving waters) can cause adverse impacts to receiving waters. The Water Board's position is that encampment less than 500 feet of receiving waters should be prioritized for

- emergency alternative (temporary or permanent) housing. In the interim (to the provision of emergency housing), trash collection, sanitary, and other services need to be provided at an adequate frequency to ensure the encampments aren't contributing to adverse impacts to receiving waters.
2. What is an acceptable timeline to remove/abate all encampments within 500 feet of receiving waters? Over the time frame when the Direct Discharge credits expire (6/2025)? Over the time frame when the current permit expires (6/2027)? Or, over a longer time frame? The expectation from the Water Board is that these homeless encampments need to be prioritized ASAP with respect to the provision of services as describe above. The City's DDCP should describe steps that are in place to adequately manage these encampments over the short-term, and long-term period.
 3. Can interim emergency housing or safe sleeping sites overseen by the City can be within the 500 foot buffer of receiving waters if trash, sanitary and social services are provided at adequate levels to prevent discharges into receiving waters? Yes.
 4. Can you clarify the expectations of the 500-foot buffer? Is the buffer intended to apply only to open space/natural lands that are adjacent to, and discharging directly into receiving waters? City's assumption is that developed lands within 500 feet of receiving waters would fall under other provisions within permit. (For example, a housing development next to a creek)? Please see previous response to Q1 with respect to the 500-foot buffer as a prioritization criteria.

Can you provide a preliminary response by tomorrow (2/1) noon? Reason being, we have pulled together an emergency Storm Permit Steering committee comprised of City leaders. We will be discussing next steps and finalizing the Direct Discharge Plan to Water Board by 3/1.

Take care,
Rajani

Rajani Nair, P.E. (she/her/hers)
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Watershed Protection Division
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From: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>
Sent: Monday, January 29, 2024 1:22 PM
To: Nair, Rajani <Rajani.Nair@sanjoseca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>
Cc: Romanow, Kerrie <Kerrie.Romanow@sanjoseca.gov>; Chris Sommers <csommers@eoainc.com>
Subject: RE: Water Board's comments (round 2) on City of San Jose's DDTCP

[External Email]

Good Afternoon Rajani,

are our second round of comments based on WB staff review of the City's revised DDCP submitted on August 3, 2023. We discussed most of these comments during our phone conversation on January 18, 2024. Please let me know if you have any questions.

Regards,
Ali

From: Nair, Rajani <Rajani.Nair@sanjoseca.gov>
Sent: Tuesday, January 23, 2024 1:58 PM
To: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>
Cc: Beauduy, Derek@Waterboards <Derek.Beauduy@waterboards.ca.gov>
Subject: RE: Water Board's comments on City of San Jose's DDTCP

EXTERNAL:

Thank you Ali and Derek. Confirming receipt and appreciate the additional time.

Rajani

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From: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>
Sent: Tuesday, January 23, 2024 1:53 PM
To: Nair, Rajani <Rajani.Nair@sanjoseca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>
Cc: Beauduy, Derek@Waterboards <Derek.Beauduy@waterboards.ca.gov>
Subject: RE: Water Board's comments on City of San Jose's DDTCP

[External Email]

Good Afternoon Rajani,

My pleasure; thank you for summarizing our discussion and the key issues raised during our conversation last Thursday. I've added a few additional notes to your summary with green text for the first two points. The rest of the notes you've captured below are accurate. There are a few additional comments that we didn't have time to cover during our discussion; those comments will be outlined in our comment letter that we'll send to you shortly.

Page 33 discussed an appropriate timeframe for when the City needs to send us a revised draft DDCP and we agreed 3 weeks seems reasonable. I'll send you the official comment letter soon.

Regards,
Ali

From: Nair, Rajani <Rajani.Nair@sanjoseca.gov>

Sent: Monday, January 22, 2024 7:48 AM

To: Kalyan, Imtiaz-Ali@Waterboards <Imtiaz-Ali.Kalyan@Waterboards.ca.gov>; Morse, Mary <Mary.Morse@sanjoseca.gov>

Subject: Water Board's comments on City of San Jose's DDTCP

EXTERNAL:

Good morning Ali

Hope you had a good weekend and thank you again for the time you spent with Mary and me. I greatly appreciate it.

Below were the comments you shared with us and I wanted to make sure if (1) below captured the main concerns from the Water Board (2) are there any additional comments that needs to be addressed? (3)once addressed, when can/should the City of San Jose send Water Board a revised plan.

Summary of comments:

Section 2.3 Access to Housing Strategy/Plan

Page 12 - Strategic Plan to Address Homelessness:

- Need to show what will be accomplished each fiscal year throughout the permit term (June 30, 2027) **June 30, 2025**

Page 13 - Programs and Services for Recreational Vehicles (RVs) and Lived In Vehicles:

- Number of RVs and mapping of location;
- What happens to the RV biowaste pilot after December 2023
- When will the encampment management tool be completed

Page 14 – 15 – Clarify these are all the services being provided to individuals living in the waterways. Include timeframe for services and work done.

Within section 2.3, the Plan discusses services the City's Housing Department will be provided through the acquisition of the \$2 million dollar grant from the California Interagency Council on Homelessness...*"During the course of the program, there will be clean-ups of debris on land by City staff in the area along with community activation, both will help prevent new individuals from encamping in the area."* The goal identified here (to prioritize and transition individuals to permanent housing and restore the Guadalupe River trail for public use) is commendable. The Plan needs to also include a description of services the City will provide to the homeless residents currently residing along the Guadalupe River trail from Woz Way to Taylor Street, including an approximate timeline for when these services will be provided and describe measures the City will be taking to clean up trash in Guadalupe River (given that organized cleanup effort seems to be focused on on-land pickups

Page 15 – Add language to include updates to Water Board as well as City Council

Page 16 – Clarify funding status and timelines

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