

Chapter 9: Alternative Compliance

<i>9.1 What is Alternative Compliance?</i>	9-2
<i>9.2 Categories of Alternative Compliance</i>	9-3
9.2.1 Option 1: LID Treatment at an Off-Site Location	9-3
9.2.2 Option 2: Payment of in-lieu fees.....	9-3
9.2.3 Option 3: On-site Alternative Compliance.....	9-4
<i>9.3 Offsite or Regional Project Completion Deadlines</i>	9-5
9.3.1 Timeline for Construction of Offsite Project.....	9-5
9.3.2 Timeline for Construction of a Regional Project.....	9-5
<i>9.4 Alternative Compliance Case Study</i>	9-6

9.1 What is Alternative Compliance?

Provision C.3.e of the Municipal Regional Stormwater Permit (MRP) allows municipalities to grant “alternative compliance” to new development or redevelopment projects in lieu of requiring full onsite treatment of the Provision C.3.d amount of stormwater runoff and pollutant loads with low-impact development (LID) measures. **Projects that receive alternative compliance must still provide LID treatment in full**, but the treatment does not have to take place onsite. There are no special eligibility criteria for using alternative compliance in the MRP. If the project is required to provide LID treatment, then alternative compliance may be used to meet these requirements. There is no MRP requirement to make LID impracticability or infeasibility findings in order to use alternative compliance. The MRP offers two options for using alternative compliance, described in Section 9.2 and sets deadlines for constructing offsite alternative compliance projects (Section 9.3).

9.2 Categories of Alternative Compliance

A Regulated Project may use any of the alternative compliance options listed below.

9.2.1 Option 1: LID Treatment at an Off-Site Location

Projects may use alternative compliance to treat the required amount of stormwater runoff off-site using LID in three different ways:

- Off-site at a Joint Treatment Facility (all or a portion);
- Off-site at a Regional Project (all or a portion); or
- Off-site at another location (all or a portion).

The off-site treatment must be located ***within the same watershed as the development project using alternative compliance***. Offsite LID treatment measures must provide an equivalent or greater quantity of hydraulically-sized treatment of both stormwater runoff and pollutant loads and ***achieve a net environmental benefit***. The LID measures must follow the same basic design requirements used for on-site treatment and treat the C.3.d amount of runoff.

Definitions

Joint Treatment Facility: A stormwater treatment facility built to treat the *combined runoff from two or more regulated projects* at a nearby, offsite location that discharges into the same watershed as the regulated project.

Regional Project: A regional or municipal stormwater treatment facility that *treats runoff from a region of the watershed* that discharges into the same watershed as the Regulated Project.

Offsite Equivalent Treatment Project: An offsite equivalent treatment project provides off-site LID treatment for a surface area or volume and pollutant loading of storm water runoff, equivalent to that of the proposed new development or redevelopment project for which alternative compliance is sought. Examples of acceptable equivalent treatment projects include the installation of hydraulically-sized LID treatment measures in a nearby parking lot, development project, or street where hydraulically-sized LID treatment measures were not previously installed.

9.2.2 Option 2: Payment of in-lieu fees

Projects may treat a portion of the required amount of stormwater runoff using LID on-site or offsite at a joint treatment facility and ***pay equivalent in-lieu fees to treat the remaining amount*** of stormwater runoff with LID treatment measures at a Regional Project.

In-Lieu Fees

In-lieu fees provide the monetary amount necessary to treat an equivalent quantity of stormwater runoff and pollutant loading with hydraulically-sized LID treatment measures at a Regional Project ***and*** the

monetary amount necessary to share a proportionate amount of the operation and maintenance costs of the Regional Project. Additionally, there is nothing in the MRP that disallows the use of in-lieu fees for payment of O&M costs to be used in combination with **any** of the alternative compliance types of projects discussed in this Chapter.

Regional Project

A Regional Project is a regional or municipal stormwater treatment facility located in the same watershed as the project seeking alternative compliance. While not explicitly discussed in the MRP, there does not appear to be any reason why a municipality cannot construct a Regional Project and then collect in-lieu fees from regulated projects afterwards to recover the costs for the design, construction, operation and maintenance of that Regional Project.

9.2.3 Option 3: On-site Alternative Compliance

While not explicitly discussed in the MRP, it is generally understood that a third type of alternative compliance is allowed. This type of alternative compliance entails a regulated project that is redeveloping a portion of the site and is therefore only required to treat the runoff from that portion of the site (in other words, the 50% rule has not been triggered which would have required treatment of the whole site). If the project cannot treat a portion of the runoff on the newly redeveloped section of the site with LID, then an equivalent section of the un-redeveloped portion of the site may be treated with LID treatment measures in exchange. An example of this situation is given below:

A property owner with a 3-acre site is building a half-acre expansion of an existing one-acre impervious parking lot on the site with new impervious pavement. As the new half-acre section of the parking lot is less than 50% of the size of the existing parcel, only the new section of the parking lot is required to install LID treatment. However, the new parking lot section does not have space for any treatment. In exchange, the property owner retrofits an area slightly larger than a half-acre of the original parking lot with C.3.d-sized LID treatment, providing a net water quality benefit for the project and compliance with the MRP.

9.3 Offsite or Regional Project Completion Deadlines

9.3.1 Timeline for Construction of Off-site Project

Construction of the on-site, off-site or joint LID treatment project must be completed within three years after the end of the construction of the subject project.

9.3.2 Timeline for Construction of a Regional Project

Regional Projects must be completed within three years of the subject project. This can be extended to five years only with prior Regional Water Board Executive Officer approval. In order for the Executive Officer to grant the extension to five years, the applicant must have demonstrated good-faith efforts to implement the Regional Project by applying for the necessary permits and having the necessary funds encumbered for project completion.

9.4 Alternative Compliance Case Study

City of Emeryville

In July 2017, the City Council of the City of Emeryville approved the use of an alternative compliance option for a portion of a private property owner's 14.5-acre mixed use redevelopment project building 674 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office space. The majority of the project uses LID to treat on-site stormwater runoff. However, because one four-acre parcel of the site contains several existing buildings and pavement that have been retained and required treatment, the property owner chose to propose to the City the use of an alternative compliance option in MRP 2.0. Several challenges to constructing LID stormwater treatment measures on this parcel were identified early on in the project design including contaminated soil, a high seasonal groundwater table, conflicts with existing and planned utilities, clayey soils, tidal flows, and limited space.

The City used an "Off-site Stormwater Improvement Agreement" (Improvement Agreement) to detail the requirements of the property owner, who constructed and retrofitted approximately 6,300 square feet of new and existing GI measures (bioretention facilities) in four locations of the City's public right-of-way and in a City park to treat runoff from an amount of impervious surface greater than what would have been treated on-site providing a net water quality benefit. The model for the Improvement Agreement was the City's standard improvement agreement that all development projects use for public right-of-way work that is required as a condition of approval. The key purposes of the agreement are to:

- Describe the conditions that led to the approval of off-site stormwater treatment;
- Set forth a process and timeframe for approval of plans and construction; and
- Describe maintenance responsibility and a calculation of cost for maintenance.

The off-site locations for GI were chosen through a consensus-based decision process that provides benefits to both the City and the property owner, including the following:

- Net water quality benefit compared with on-site provision of treatment measures through increases in pollutant of concern type and load reductions and increases of square footage of catchment and treatment area using the C.3.d sizing criteria;
- Increased cyclist and pedestrian safety through the use of stormwater curb extensions as traffic calming measures at intersections and in mid-block areas;
- Replacement of trees in poor health with new trees and improved planting conditions;
- Replacement of turf and other conventional landscapes with new sustainable, Bay-Friendly landscaping with reduced O&M costs, pesticides use, air emissions and carbon footprint;
- Reductions in pollutant (e.g., PCBs, mercury and trash) discharges to the Bay by treating runoff from a larger variety of land uses and roadways as opposed to just roof tops on-site;
- Lower net cost for the property owner; and
- Progress towards meeting MRP 2.0 GI implementation long-term goals.

The developer agreed to bear the costs of design, permitting, construction, and inspection of the improvements as well as 30 years of post-project O&M of the systems. The City chose to require an in-lieu fee for the O&M costs to be paid by the developer in a lump sum after a majority of the installations have been accepted as complete by the City as detailed in the Improvement Agreement.

9.4 Alternative Compliance Case Study

In 2018, the developer contracted with design and construction firms and paid the City-required plan check fees, insurance and permits necessary to build the improvements. The system designs were approved by the City in August of 2018. Construction began in December of 2018 and the work is now complete. The City is inspecting the improvements via the normal process for any work in the public right-of-way or on public property and after construction is accepted will be assuming responsibility for the maintenance of the new treatment areas using the funds paid by the developer. The O&M agreement for the on-site LID measures of the parcel at the development project will reference the Improvement Agreement and the approval by the City of the alternative compliance option to document in perpetuity the compliance of the project with the MRP and inform future property owners and the City of the agreement conditions and process that was used. Before and after photos of one of the five GI locations are shown in Figures 9-1 and 9-2 below with the tributary area shown in Figure 9-3:



Figure 9-1: Before: Vehicle parking and high-water-using turf landscape strip with failing trees on east side of street. (Both, Credit: EOA, Inc.)



Figure 9-2: After: Parking moved to the west side of the street and the landscape strip widened into a Bay-Friendly bioretention area with new trees.

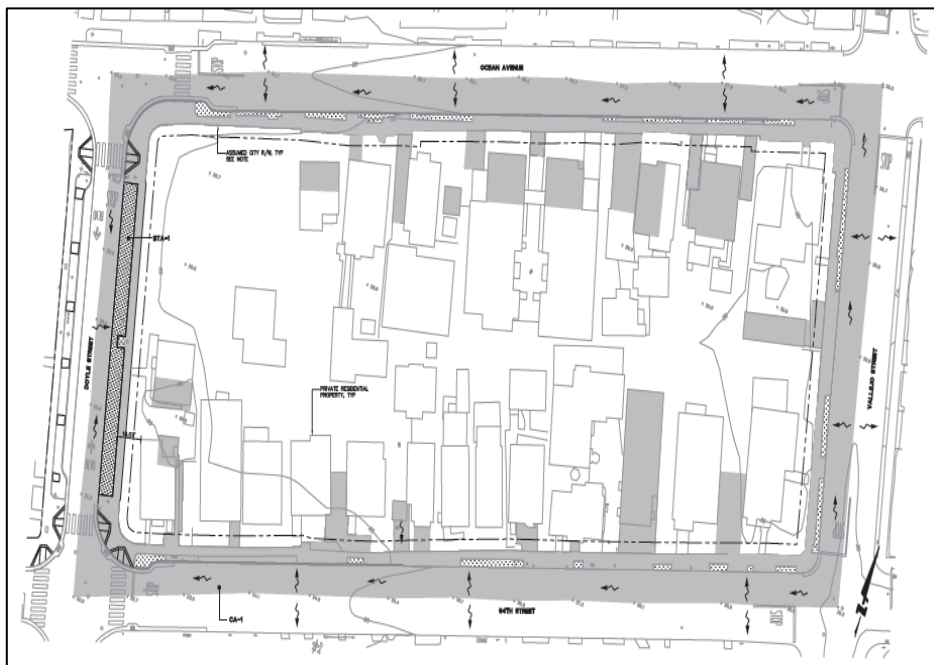


Figure 9-3: Map of the residential streets, parcels and tributary area (shown in gray shading) of the new treatment system shown on the left (west) side of map in the black outlined strip with flow directions. (Courtesy: BKF Engineers and City of Emeryville.)