



CITY OF PACIFIC GROVE

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February 21, 2012

Chair Hoppin, Executive Director Thomas Howard, and Clerk to the Board Townsend
State Water Resources Control Board
c/o Division of Water Quality, Ocean Unit
1001 I Street, 24th Floor
Sacramento, California 95814

Electronic delivery to commentletters@waterboards.ca.gov
Hard copy to follow

Subject: Comment Letter – ASBS Special Protections

Dear Chair Hoppin, Executive Director Howard, and Clerk to the Board Townsend:

Thank you for notification of the approaching State Water Resources Control Board (SWRCB) agenda item for March 6, 2012 regarding the ASBS General Exception Special Protections and Program Environmental Impact Report (PEIR). The City of Pacific Grove (City) and other local ASBS stakeholders received emailed notification on Thursday, February 9, 2012. Per the notice, written comments are due by noon on Tuesday, February 21, 2012 at noon, and must be limited to only changes from the previously circulated Special Protections.

However, the Final Program Environmental Impact Report (FPEIR) is not available for public review as of Monday, February 20, 2012, which is a Federal holiday. Therefore, the City of Pacific Grove objects to the limitations specified in the notice and the deadline for receipt of written comments, and respectfully requests a continuance of the SWRCB hearing on this matter until a subsequent meeting. We incorporate our comments of the entire proceeding to date by reference, as not all comments have been addressed by the revised Special Protections, dated February 3, 2012.

At this time, we offer the following comments:

California Environmental Quality Act. At the October 18, 2011 hearing, the SWRCB recognized that the October 7, 2011 version of the Response to Comments was not adequate, acknowledging that it did not thoroughly address the full extent of public comments raised on the Draft PEIR. As a result, the SWRCB directed staff to more adequately and completely address the public comments received for the project in the FPEIR, and to revise it accordingly. At this time, the revised FPEIR, as directed by the Board, has not been posted for public review.

The City of Pacific Grove is concerned that the SWRCB is not following the CEQA requirement for a good faith, reasoned analysis that allows for participants in the process to raise comments and request a more thorough analysis on potentially significant environmental impacts that may result from the project. Further, in our comments on the DPEIR, we proposed a credible and potentially environmentally superior alternative to the Special Protections. To date, we have neither received nor seen any response to our comments. The alternative we proposed deserves a reasonable analysis and consideration as an alternative to the currently proposed Special Protections.

We are disappointed that the CEQA documents for this project have not been made available with sufficient advance notice for review and comment prior to the February 21, 2012 deadline. By commenting at each stage of the Board's deliberations, the City is seeking to work with the SWRCB to develop the ASBS Special Protections and a General Exception that will be reasonable and feasible. We believe we raised substantial comments on the Draft PEIR that warrant further response in the FPEIR but we do not yet know if further responses will be provided.

We are concerned that if our comments are not addressed, the FPEIR will continue to contain conclusory statements that are unsupported by factual information, as was the case at the time of the SWRCB's hearing on this matter on October 18, 2011. The FPEIR must address the potentially significant environmental impacts that may result from requirements for both structural and non-structural controls identified in the ASBS Special Protections if it is to be a defensible CEQA document.

February 3, 2012 version of the Special Protections. As requested by the notice, the City of Pacific Grove has the following specific comments on the February 3, 2012 Revision to the Special Protections:

1. **Alterations to Existing Outfalls for Compliance** (Section A.1.d): The City of Pacific Grove appreciates the clarification added to this provision.
2. **Allowed Non-Storm Water Discharges and Non-Point Source Discharges** (Sections A.1.e and B.1.e): The City of Pacific Grove has hydrogeologic conditions that result in all types of non-storm water flows identified in this section. The City has been urbanized since the early 1900s, and is built out with impervious surface coverage over fifty percent in many parts of the ASBS watershed. At the same time, the watersheds of the Monterey Peninsula are predominantly located on granite with shallow depths to the bedrock, greatly limiting the land capacity for infiltration and absorption of these flows.

The City believes it will be necessary to further study and document these existing conditions to establish an appropriate environmental baseline for compliance within the Pacific Grove ASBS watershed, for both non-structural and structural controls. This should be included as part of the ASBS Compliance Plan.

3. **ASBS Compliance Plans** (Section A.2):

- The City of Pacific Grove believes that the ASBS Compliance Plan must provide for localized conditions and establishment of environmental baseline conditions unique to each ASBS area. The added provision that discharges can be prioritized by those that pose the greatest water quality threat is necessarily determined by the unique setting of each ASBS.
- Please clarify the types of construction sites that require weekly inspections. Many projects in Pacific Grove are interior remodels and small projects with limited ground disturbance or soils excavation that would not result in a water quality impact.
- The City has implemented two phases of an urban dry weather diversion, and is currently expanding a third phase to add the storm water outfalls located in the vicinity of Hopkins Marine Station and the Monterey Bay Aquarium. Areas of the watershed west of Lovers Point are not covered by diversion facilities. The City is concerned that significant environmental impacts may occur from the installation of structural controls in these areas. However, there are no clear criteria established to know what would be considered a threat to health and safety, in order not to be required to install structural BMPS, and to "document to the satisfaction of the State Water Board Executive Director."
- Please clarify the change to Section A.2.d(2): If the Ocean Plan Table B parameters are deleted, does this mean that the established "natural water quality conditions," which have yet to be determined for the Monterey Bay region, become the baseline? This section is confusing, particularly in regards to the effectiveness date.
- Because of the City's urbanized and hydrogeologic conditions, watershed restoration activities for both LID and structural controls are limited. The City believes it will be necessary to further study and document these existing conditions to establish an appropriate environmental baseline for compliance within the Pacific Grove ASBS, and recommends this to be a critical component of each ASBS Compliance Plan.
- The revised Special Protections do not contain changes to address the scientific issues associated with determining and complying with the undefined standard known as "natural water quality". The Special Protections policy will require the dischargers to characterize natural water quality, pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near certain discharge locations. The "natural ocean water quality" in each ASBS have not yet been established, nor has it been determined whether a stormwater runoff is causing and contributing to degraded receiving water quality.

4. Compliance Schedule (Section A.3):

- The City requests that the start date for compliance be based on an agreed upon determination of applicable “natural ocean water quality” for each ASBS by individual or regional monitoring area. The Compliance Schedule should take into account the time taken to form regional monitoring partnerships and to develop an understanding of what constitutes “natural water quality”. We recommend that the time zero should be after “natural water quality” characteristics are determined.
- The City of Pacific Grove concurs with previous comments by the southern California jurisdictions that the requirements for installation of structural controls be extended to ten (10) years, in order for adequate funding to be available or generated.
- The definition of what constitutes an economic hardship (lack of funding) is very limited and unrealistic. The median income of a community has nothing to do with the ability or inability for a jurisdiction to raise revenues to pay for this program. The City of Pacific Grove does not have a storm water fee, and likelihood of imposing one can only be determined through the appropriate political process. The real challenges lie in state legislation which limits the ability for local jurisdictions to charge fees or raise taxes.

5. Monitoring Requirements (Section IV)

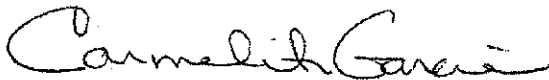
- Core Monitoring – the prescriptive nature of the core monitoring requirements continue to include costly analysis that may or may not provide adequate information to dischargers to make management decisions regarding BMP implementation and to ensure compliance with the Special Protections. The City of Pacific Grove requests clarification that there is flexibility in the core monitoring program requirements if integrated with a Regional Monitoring Program.
- Section IV.A.1: This section includes the following new language “Runoff samples shall be collected when post-storm receiving water is sampled”. Please add language to this section in the final policy that clarifies the length of time that is allowed between sample collection of receiving water and stormwater outfall runoff. We recommend that at least 12 hours are allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.
- Sections IV.A.3.a.(1) and IV.A.3.b.(1): We suggest that these sections be revised to state “samples of storm water runoff shall be ~~analyzed~~ collected during the same storm as receiving water samples annually and analyzed for oil and grease...”.
- Section IV.A.4 : The City of Pacific Grove appreciates the addition of this provision. Please clarify what is meant by “full characterization” of the discharge.
- If the Special Protections policy is adopted on March 6, 2012, as planned, the Central Coast ASBS jurisdictions will need to develop a regional monitoring program, assess the program cost and obtain all necessary funding, and to begin implementation. The monitoring results are critical to BMP design and we request that the Compliance Plan

and BMP Implementation Schedule be adjusted to reflect the timing of regional monitoring implementation.

Request for Continuance. In closing, we are disappointed that most of the previously submitted comments submitted by the City of Pacific Grove have not been responded to or adequately addressed in the revised ASBS Special Protections and General Exception. As of this time, we do not yet know if they have been addressed in the revised FPEIR, as it is not yet available for review. Accordingly, we request that this project matter be continued by the SWRCB until the affected parties have had sufficient time to review the FPEIR, and until the FPEIR adequately responds to public comments, as well as complies with the necessary public processes, documentation, and disclosure requirements afforded per CEQA.

If you have any questions on this matter, please contact me (at 831-648-3181) or Sarah Hardgrave, Environmental Programs Manager (at 831-648-5722).

Sincerely,



Carmelita Garcia
Mayor

Cc: Senator Rodwick Wright
Senator Sam Blakeslee
Assemblymember Bill Monning
Matt Rodriguez, Secretary of Environmental Protection
John Laird, Secretary of Natural Resources

Ec: Monterey Regional Stormwater Management Program, Heidi Niggemeyer