



PEBBLE BEACH  
COMPANY

Via Email and FedEx



February 21, 2012

Clerk to the Board Townsend,  
Chair Hoppin, and  
Executive Director Thomas Howard  
State Water Resource Control Board  
Division of Water Quality, Ocean Unit  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Subject: Comment Letter – ASBS Special Protections

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

Thank you for public notice of the approaching State Water Board (SWB) agenda item for March 6, 2012 regarding the ASBS General Exception Special Protections and Program Environmental Impact Report (PEIR). Pebble Beach Company (PBC) received the notice on Thursday, February 9, 2012. The public notice stated that revised Special Protections and the revised Final PEIR were available for review and that written comments must be received on the revised Final PEIR prior to February 21, 2012 at 12:00 noon.

**INADEQUATE PUBLIC NOTICE FOR REVIEW AND COMMENT**

At the October 18, 2011 SWB hearing, the SWB directed staff to revise their initial Responses to Comments to adequately address the public comments received, as adequate Responses to Comments are a necessary part of an adequate Final PEIR.

While the revised Special Protections have been made available, we have been unable to find and review the Final PEIR, including any revised Responses to Comments that the SWB directed be prepared. As a result, there is no way that PBC, or any other party, can provide written comments by the February 21 deadline given in the public notice.

On Monday, February 13, both Dominic Gregorio and Constance Anderson were alerted by the City of Monterey that the revised Final PEIR (including revised Responses to Comments) was not yet posted on the SWB website for public review, in contradiction to the public notice. Mr. Gregorio replied to the City, stating that those documents would be coming out "by the end of this week," which would have meant by February 17.

LEGAL AFFAIRS

As of the writing of this letter, at 10:00 am on Tuesday, February 21, 2011, the revised Final PEIR still has not been posted for public review. Even if the revised Final PEIR incorporating the revised Responses to Comments is disclosed to the public later today, the public will have at most a couple of hours to review this revised documentation and respond in writing before today's 12:00 noon project review deadline. A project of this magnitude and expense, with enormous environmental and economic impacts for local communities, deserves far longer time periods for review and comment. The legal adequacy of the limited or perhaps entirely non-existent comment period provided appears questionable at best.

## **DRAFT PEIR LEGALLY INADEQUATE – RECIRCULATE REVISED DRAFT**

The inadequate time period for review and comment concerns us greatly because PBC and other municipalities and business entities around California provided extensive written and verbal public comments raising significant environmental issues with the ASBS Special Protections as proposed, pointing out numerous legal inadequacies in the PEIR dated October 7, 2011, including in the Responses to Comments. In fact, PBC and others believed the PEIR to be so fundamentally conclusory in nature in many areas, and therefore legally inadequate, that recirculation of a revised draft PEIR would be required per CEQA Section 15088.5 *Recirculation of an EIR Prior to Certification*.

CEQA Section 15088 *Evaluation of and Response to Comments* requires the lead agency to evaluate comments on environmental issues and prepare written responses to the public at large and public agencies. The written Responses to Comments shall describe the significant environmental issues raised and address in detail reasons why specific comments and suggestions were not accepted. We do not believe we have received even this minimum consideration. CEQA requires that a good faith, reasoned analysis must be provided in the Responses to Comments and that conclusory statements in response that are unsupported by factual information will not suffice. Additionally, courts look for adequacy, completeness, and a good-faith effort at full disclosure through an EIR (CEQA Section 15151, *Standards for Adequacy of an EIR*). We do not believe this project can pass this test.

At the October 18, 2011 hearing, the SWB acknowledged that the October 2011 version of the Responses to Comments was inadequate, and admitted that it failed to address many of the public comments, such that the Responses to Comments did not constitute a good faith effort toward addressing the environmental issues raised by the public comments. As a result, the SWB directed its staff to more adequately and completely address the public comments received for the project and its associated PEIR, and to revise the project documentation accordingly.

Despite this acknowledged failure by the SWB, the revised Final PEIR incorporating the revised Responses to Comments has not even been posted for the public to review and comment. Due to the lack of consideration given to public comments provided on this project and the inadequacy of the associated PEIR and Responses to Comments produced to date, we believe the public has not been afforded a meaningful opportunity to comment on substantial adverse environmental effects of the project or on feasible ways to mitigate or avoid such effects.

## **SPECIFIC COMMENTS ON THE REVISED SPECIAL PROTECTIONS**

Additionally, CEQA Section 15132 *Contents of Final EIR* provides that a Final EIR should contain among other items responses by the Lead Agency to significant environmental points raised in the public review. We believe that PBC, as well as other parties, provided significant new information to the SWB through written and verbal public comments that is not being considered or addressed in the Responses to Comments that is part of a Final EIR. With regard to the February 3, 2012 version of the Special Protections, PBC has the following comments:

1. No changes were made to the policy to scale the requirements based on characteristics of watersheds draining to Areas of Special Biological Significance (ASBS). For example, the policy does not scale requirements based on population size, density, or land use. Instead, the policy continues to employ a one-size-fits-all urban oriented

approach that has significant impacts for less developed areas (such as the Monterey Peninsula, in general, and the Del Monte Forest, in particular) that are unjustifiable given the speculative environmental benefits in such areas.

2. No changes were made to the policy 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 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. A meaningful comparison of “reference” and discharge sites is impossible due to the statistical invalidity of simply comparing the collected samples to one reference site, which will probably be located many miles away from the ASBS in question and with different oceanographic characteristics, and the high degree of natural variability in the ecosystem. In Carmel Bay, we can expect episodic but perhaps significant influences from nearby rivers such as the Carmel, Salinas, and Pajaro. Per our Alternative Approach, which we submitted in May of 2011, we recommend that a state-funded panel be convened to define natural water quality in each ASBS and to provide guidance and protocols for determining whether stormwater runoff is causing and contributing to degraded receiving water quality. This state-funded work must be completed prior to the development and release of proposed Special Protections policy.
3. The Compliance Plans in parts A.2 and B.3 use the effective date of the Special Protections as the beginning point to commence time periods for meeting proposed Special Protection-mandated deadlines. This commencement point does not take into account the time taken to form regional monitoring partnerships or develop an understanding of what constitutes “natural water quality.” We recommend that the commencement date should be after “natural water quality” characteristics are determined.
4. I.A.1.e(2)(vi): This definition is vague. Are “non-anthropogenic” flows from those sources described in (ii) through (v) included in this definition? If so, this new category could lead to further confusion.
5. Section I.A.2.f of the revised policy includes the following new language: “to control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspire storm water runoff on-site.” This proposed policy could have significant, secondary environmental impacts that have not been adequately discussed in the PEIR. For example, infiltration on steep bluffs in many of our coastal areas could lead to an increased risk for slope instability and bluff erosion, which could in turn lead to a myriad of problems including increased sediment inputs to the ASBS. This policy also introduces an ambiguity as to whether the increased groundwater seepage that will occur as a result of implementing LID practices in many areas will be considered an anthropogenic source of water.
6. I.A.2.h(i): This paragraph, which has been deleted, provided a modest amount of flexibility for unforeseen circumstances, and it should be retained. Related to this deletion is the new section A.3.f. The intent of this new section is to provide structure to what will be deemed an unforeseen circumstance.
7. I.A.3.f: The definition of a physical impossibility which is given in the glossary is very narrow and impractical. It does not include such factors as physical impossibility for reasons such as geology, topography, or negative environmental impacts. The definition of what constitutes an economic hardship (lack of funding) which is given in section 1 is also very narrow and completely unrealistic. The median income of a community has nothing to do with the ability or inability of a jurisdiction to raise revenues to pay for this program.
8. I.B.1.e(2)(vi): See comment pertaining to I.A.1.e(2)(vi) above.
9. I.B.2.d: See comment pertaining to I.A.2.h(i) above..
10. I.B.3.f: See comment pertaining to I.A.3.f above.

11. I.B.3.f.1 and .2: These two conditions do not appear under I.A.3.f. Was this intentional?
12. III.E: See comments pertaining to I.A.3.f and I.B.3.f above.
13. 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 be allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.
14. 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...”.
15. Section IV.B.2, Regional Integrated Monitoring Program, contains substantial revisions that will increase monitoring costs (annual toxicity testing for runoff samples as opposed to once every five years, pre- and post-storm monitoring three times per year for Regional Monitoring Programs). It is not clear if the increased costs associated with the revised monitoring requirements were incorporated into the CEQA Economic Analysis. If the Special Protections policy is adopted on March 6, 2012, as planned, the impacted communities will need time to assess the full cost of the monitoring program. We recommend that water quality monitoring not be required until the 2013-2014 rainy season to allow time to assess and budget for the cost of compliance once the policy is adopted. The monitoring results are critical to BMP design; we request that the Compliance Plan and BMP Implementation Schedule be adjusted accordingly.
16. IV.B.2.a: This policy states that a minimum of three ocean reference samples are to be collected, but it doesn’t specify over what period of time.
17. IV.B.2.c: This policy specifies sampling over two storm seasons, but without the term of the Special Protections being known, it isn’t clear over what period this is to be done.
18. Section IV.A.3.b.(3) of the policy was revised to require stormwater runoff toxicity testing annually as opposed to once every five (5) years. This change will increase monitoring costs significantly. Have these increased costs been incorporated into the Economic Analysis? If not, then they need to be included and the document re-circulated for public review and comment. Additionally, annual testing may be unnecessary and therefore unreasonable. If the results show no toxicity after one year of sampling, we recommend that the sampling frequency be reduced to once every five years.

## **RECOMMENDATION TO DELAY PROJECT**

In an earlier letter sent by PBC dated May 20, 2011, we proposed a credible and potentially environmentally superior alternative to the Special Protections. The alternative received no response to our comment, and it deserves a fair and unbiased review and analysis as an alternative to the designated project.

For these reasons and many others stated within our written and verbal communications to the SWB on this project, we believe that the SWB should not approve the project due to the fact that the final PEIR certification, if adopted, was not completed in compliance with CEQA, which is necessary per CEQA Section 15090.

Accordingly, we request that the SWB table this project until SWB staff can adequately respond to public comments, as well as comply with necessary public processes, documentation, and disclosure requirements afforded per CEQA. Please contact Thomas Quattlebaum of my office at (831) 625-8402 if you have any questions concerning these comments.

Sincerely,

**PEBBLE BEACH COMPANY**

A handwritten signature in cursive script, appearing to read "Diane Goldman".

Diane Goldman

Associate General Counsel