

## *City of Carmel-by-the-Sea*

COMMUNITY PLANNING AND BUILDING DEPARTMENT

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17 February 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



Electronic delivery to [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:

The City of Carmel-by-the-Sea recently received notice regarding the ASBS General Exception Special Protections and Program Environmental Impact Report (PEIR). The notice stated that the revised Special Protections and EIR were available for review. However, it does not appear that a revised Response to Comments has been released yet for public review. As part the PEIR, the Response to Comments should also be posted for public review.

On October, 18 2011 that the State Water Resources Control Board directed its staff to revise the Response to Comments to more adequately address the extensive public comments that had been received. A revised PEIR should be made available for public review including the revised Response to Comments.

As of today, the Revised Response to Comments and the EIR are still not posted on the SWRCB website. It seems unacceptable to request written comments prior to noon on February 21, 2012 if the proper documents have not even been released yet for review. This is the second time that documents for this project have not been made available with sufficient advance notice for review and comment prior to a deadline, which raises significant concerns about the SWRCB staff's willingness to consider public comments.

Based upon the timeline for the consideration of adopting the Special Protections (March 6, 2012 SWRCB meeting), it is clear the SWRCB does not plan to recirculate a revised PEIR prior to certification of the ASBS Special Protections project. From this, we're able to draw the conclusion that the SWRCB determined that no significant new information was added to the PEIR to warrant recirculation.

The City of Carmel and others around California have provided extensive written comments raising significant environmental issues with the ASBS Special Protections project, its associated PEIR and Response to Comments. In fact, the City and others believed the PEIR to be fundamentally and basically inadequate and conclusory in nature, which in itself would require recirculation of a revised PEIR (per CEQA Section 15088.5 *Recirculation of an EIR Prior to Certification*). Lacking significant revisions to the project and its supporting documentation (PEIR and Response to Comments), the SWRCB's public review process is precluding meaningful public review and comment on the project.

At the October 18, 2011 hearing, the SWRCB acknowledged that the October 2011 version of the Response to Comments was not adequate, acknowledging that it did not address many public comments provided, nor did it provide a good faith effort toward addressing environmental issues raised. As a result, the SWRCB 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.

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 Response to Comments shall describe the significant environmental issues raised and address in detail reasons why specific comments and suggestions were not accepted. We don't believe we've received this minimum consideration as a local/public agency.

CEQA requires that a good faith, reasoned analysis must be provided in the Response 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 don't believe this project can pass this test. Due to the lack of consideration given to public comments provided on this project and the inadequacy of the associated PEIR and Response to Comments produced to date, we're lead to believe the public has not been afforded a meaningful opportunity to comment on substantial adverse environmental effects of the project or a feasible way to mitigate or avoid such an effects.

Per CEQA Section 15132 *Contents of Final EIR*, a Final EIR should contain among other items responses by the Lead Agency to significant environmental points raised in the public review. We believe the City, as well as other parties, provided significant new information to the SWRCB through written and verbal public comment that is not being considered or addressed in the Response to Comments that is part of a Final EIR.

We exhort the Board and staff to give just attention to the issues that have been raised and the concerns regarding proper public process. The City plans on submitting additional comments as well prior to the February 21<sup>st</sup> deadline, but wanted to raise the due process concerns as soon as possible.

Sincerely,



Sean Conroy  
Planning & Building Services Manager