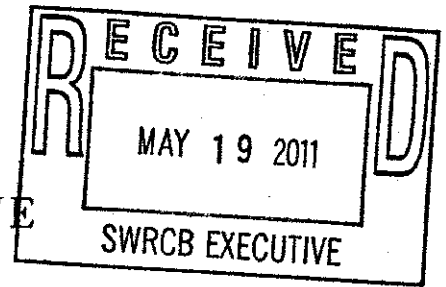




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May 19, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comment Letter – ASBS Special Protections

Dear Members of the State Water Resources Control Board:

This letter responds to the State Water Resources Control Board's (State Water Board) Notice of Public Hearing dated January 20, 2011, subject as above, and March 11, 2011 Re-Notice of Public Hearing for the General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance, including Special Protections for Beneficial Uses and the Associated Draft Program Environmental Impact Report (DPEIR).

The City of Pacific Grove appreciates the opportunity to participate in the hearing process for the Special Protections for the Areas of Special Biological Significance (ASBS). The State Water Board is also concurrently considering the proposed General Exception to these Special Protections, as requested by twenty-seven local entities in 2006. Adoption of the Special Protections and General Exception are collectively referred to herein and in the DPEIR as the "Project."

The City of Pacific Grove concurs with the City of Carmel-by-the-Sea's observation that the previously submitted comments on March 12, 2010 during the Notice of Preparation (NOP) were not addressed in the DPEIR. Pacific Grove incorporates Carmel's comments regarding the issues raised collectively by the cities and County in our NOP comment letter by reference. We believe none of the comments raised was addressed in the DPEIR. Pacific Grove is disappointed that the SWRCB staff has been dismissive of the concerns of the ASBS local stakeholders in the CEQA process.

The foundation for the Project is based on a categorical approach that would regulate stormwater as waste. We contend that this foundation is fundamentally flawed, as there is no legal mandate that the State Board must apply to stormwater and other forms of runoff to ASBS. We refer the State Board to the law review article published in Spring 2008 in *Environs, Environmental Law and Policy Journal*, "When Water Becomes Waste: A Call for a Practical Approach to Regulating Stormwater Discharges," which has been subject to peer review (Singarella and Richardson, 2008). This article is incorporated herein by reference. Pacific Grove requests a full response to the legal issues raised in this article by the SWRCB legal staff.

Pacific Grove has taken a leadership role in protecting the ASBS in Monterey Bay, having already implemented the first two phases of a dry weather urban runoff diversion system that has been sending flows during the months of April to November to the regional sewer system for recycling. Pacific Grove has been awarded \$2.4 million through a Proposition 84 ASBS grant to implement the third phase of the urban diversion, as well as implementation of a stormwater treatment wetland and upstream low impact development (LID) residential retrofit program.

Regardless, considerable additional funding would be required to implement the proposed Project. The City of Pacific Grove fully accepts its responsibility for protecting our ASBS; our record of innovation and aggressive implementation of environmental protection measures is clear. The City is committed to undertaking those prevention measures that are based on sound science and that will have a meaningful impact. Pacific Grove is most concerned that the burden of conducting general research on water quality along California's coastline should not be placed on municipalities; rather it should be funded by the State. At most, dischargers should be asked to provide reasonable monitoring of their discharges. Good governance requires the State to be responsible for monitoring the receiving waters to determine if the discharges are having any appreciable impact on them. Every dollar that cities are forced to spend on inappropriate monitoring is a dollar not available for prevention and remediation.

Further, the burden of any monitoring program must bear a reasonable relationship to the need for and benefits of monitoring (California Water Code §§ 13267(b), 13225(c), of California's Porter-Cologne Water Quality Control Act, Water Code § 13000 et seq.; *City of Burbank v. SWRCB* (2005) 35 Cal.App.4th 613.) Here, the State Water Board has not demonstrated that the estimated costs bear a reasonable relationship to benefits of the monitoring program.

We urge you to delay SWRCB consideration of adoption of the proposed Project, because local stakeholder issues identified to date remain unaddressed. Pacific Grove urges that the Special Protections be revised to address and respond to the City's comments contained herein. Following this, the DPEIR should be revised to reflect those changes and be recirculated for public comment before bringing any action to adopt the Special Protections to the State Water Board.

Exhibit 1 contains the remainder of the City's comments on the Special Protections and General Exception, and Draft Program EIR (DPEIR) related to these matters.

Please also refer to the comment letter submitted by Monterey County's Mayors regarding our concerns regarding fiscal impact of the Project and unfunded mandates.

Sincerely,

Carmelita Garcia
Mayor

Carmelita Garcia

Thomas Frutchey
City Manager

Thomas Frutchey

1. Costs of the Proposed Special Protections and General Exception Requirements

The City of Pacific Grove is concerned about the fiscal impacts and costs associated with implementation of the Project. Given the State's budget crisis and the severely declined economic conditions we face at this time, Pacific Grove's available fiscal resources to comply with the regulations proposed are limited, and would be at expense of our ability to implement Best Management Practices (BMPs) already required by Pacific Grove's stormwater program and existing unfunded stormwater mandates.

Pacific Grove disagrees with the statement made in Section 8.4 of the DPEIR that "The State Water Board staff has balanced the economic, legal, social, technological and other benefits of this proposed Project against the unavoidable environmental risks in determining whether to recommend that the State Board approve this project." Further, where a state project sets forth more stringent restrictions than the federal Clean Water Act requires, California law allows the SWRCB to take into account economic factors, including the cost of compliance. *City of Burbank v. SWRCB* (2005) 35 Cal.4th 613. Given the estimate that statewide dischargers will have to pay out of their own funds between \$11 and \$22 million to comply with the monitoring requirements and install additional BMPs required by the Project, the City of Pacific Grove faces tradeoffs at the expense of other critical public services to fulfill the requirements of this unfunded mandate. Many of the local agencies which requested exceptions to the Special Protections are small communities that are already struggling with extreme economic challenges.

Pacific Grove is concerned that capital costs for the Project are grossly underestimated. Due to technological limitations it may not be possible to achieve a 90% reduction in pollutant loading for Table B. In such cases, diversion to local wastewater treatment plants may be required; however, Monterey Peninsula wastewater treatment plants may not have the extra capacity to accept stormwater flows into treatment systems. To accommodate these flows, millions of dollars would be required to expand capacity. Operation and maintenance costs would also increase at each treatment plant required to expand capacity.

In the regulatory effects discussion, State Board staff acknowledges additional workload for Regional Water Board and/or local agency staff cannot be accommodated within existing budgets, and raises concerns about impairing the ability of local agencies to protect water quality and implement Special Protection. Given that State and local governments and agencies are still coping with the aftermath of the worst recession in over 50 years, the City of Pacific Grove is gravely concerned that the proposed Project constitutes an unfunded mandate that imposes financial burdens and will force more cuts in existing critical public safety and other services.

The SWRCB has an obligation to the residents of California to assess both the cost and the benefit of the requirements it imposes on them. California Water Code §§ 13267(b), 13225(c). The costs associated with the Special Protections have been estimated, but the corresponding "value" of the benefit that they will supposedly achieve has not. This is due to the fact that it is not possible to determine whether any benefit will be achieved in terms of appreciable water quality improvement. It is not reasonable for the SWRCB to impose such requirements without first having a firm scientific basis to conclude that doing so will improve water quality to such a high degree as to justify those expenditures. Pacific Grove does not believe it should be the responsibility of the local entities to demonstrate that harm is occurring in the ASBS, particularly given that the anticipated costs of the City's participation in a mandated ASBS regional

monitoring program would exceed the current total budget for implementation of the City's MS4 stormwater program and existing National Pollutant Discharge Elimination System (NPDES) permit under the Monterey Regional Storm Water Management Program (MRSWMP).

2. Natural Water Quality

Throughout the DPEIR, it is implied that discharges to the ASBSs are causing adverse impacts on water quality. The City of Pacific Grove does not find that the discussion in DPEIR Chapter 2 - Project Description, or Chapter 5 - Environmental Baseline, demonstrates that significant adverse impacts are occurring in the ASBS specifically as a result of storm water discharges by local entities.

The SWRCB created its own "Natural Water Quality Committee" which released a report in September 2010 titled "*Summation of Findings - Natural Water Quality Committee, 2006-2009.*" Pacific Grove is concerned that the Proposed Project and DPEIR disregard significant issues raised by this Committee. The following are several excerpts from this report:

- The Committee felt that even if anthropogenic land-based waste discharges were to be completely eliminated from a section of coastline, there would be no guarantee that natural water quality would be reestablished there. Aerial deposition, pollutants carried by oceanic currents from distant sources, and vessel discharges may influence water quality conditions.
- In spite of conducting a 3-year evaluation, the Committee concluded that it was too soon to identify the impacts of waste discharges on biological communities within the ASBS it evaluated in Southern California.
- Based on recent studies at targeted reference sites in southern California, the Committee found that average water quality in the ASBS they evaluated was very similar to reference sites that were selected to approximate what ambient marine water quality would be like in the absence of (or minimally influenced by) waste discharges, i.e. "Natural Water Quality."
- Some areas with poor water quality in that ASBS were observed, but typically limited to a small number of discharges and/or constituents.
- At times concentrations of certain constituents at those reference sites were higher than concentrations in the Table B water quality objectives listed in the California Ocean Plan.
- Biological monitoring conducted in the southern California ASBS found that:
 - 1) there were no significant differences in macro-invertebrate or algal species richness between the reference sites and the sites where discharges into the ASBS were occurring;
 - 2) there were large geographic differences in algal and sessile invertebrate species composition, likely reflecting natural biogeography, but no statistically significant differences between reference sites and ASBS discharge sites;
 - 3) there were large geographic differences in mobile invertebrate species composition, once again reflecting natural biogeography, but no statistically significant differences between reference sites and the ASBS discharge sites.

EXHIBIT 1: The City Of Pacific Grove's Comments on the Proposed Special Protections and General Exception To The California Ocean Plan Waste Discharge Prohibition of Selected Discharges Into Areas Of Special Biological Significance and Draft Program EIR

- An SWRCB-funded statewide survey conducted in 2008-2009 found generally good chemical water quality in the ASBS sites that were sampled. None of the constituents measured exceeded the instantaneous maximum objectives listed in the California Ocean Plan. 7 out of 15 constituents did not exceed the Ocean Plan's most stringent six-month median or 30-day average objectives, and of the eight parameters that did exceed the most stringent objectives, six of these exceeded the objective for relatively small (<15%) portions of the ASBS shoreline. Many of these constituents are common in urban stormwater, but have natural sources as well.
- Monitoring conducted in the southern California ASBS in 2009 found that the ASBS discharge sites behaved very similarly to the reference sites, and in fact average chromium and PAH concentrations at ASBS discharge sites following storm events were not significantly different from average reference site concentrations for all constituents. While there were individual discharges and constituents that were dissimilar from reference concentrations, these appeared to be isolated events rather than the typical condition at southern California ASBS.
- One concern related to the management and regulation of a specific ASBS is that the conditions of the ambient receiving waters may be influenced as much, or more, by discharges outside of the ASBS. These external ASBS discharges, if large enough, may overwhelm discharges inside the ASBS.
- Consistently achieving and maintaining "natural water quality" conditions in ASBSs at all times is not realistic, because of the anthropogenic influences on California coastal waters (and their ecosystems) and on the watersheds and stream systems that drain to the coast.
- In order to avoid significant expenditures that do little to protect ASBS, an assessment of existing and potential anthropogenic influences on each ASBS should be conducted and these influences should be ranked in terms of their threats to the ASBS. Priority should be given to reducing and minimizing the anthropogenic influences that pose greater threats, regardless of their proximity to the ASBS.
- ASBS are not separate from or isolated from the whole of California's coastal waters, and water, biota, and substances move between ASBS and surrounding coastal waters. Providing a higher level of protection to California coastal waters as a whole would also provide a higher level of protection to the ASBSs.
- The Committee made these four recommendations:
 1. Further work needs to occur for quantifying natural variability, because insufficient information was collected to have certainty in assigning natural water quality ranges throughout the State.
 2. Effort should be spent identifying the most appropriate monitoring indicators, because not all indicators need to be measured at all times.
 3. The SWRCB should revise Table C of the California Ocean Plan to reflect nearshore, near-surface post-storm reference site water quality, because the existing Table C was

developed over 30 years ago from open ocean sites, using now out-of-date laboratory methods, for use with plume modeling data to calculate effluent limits at offshore submarine outfalls.

4. The SWRCB should identify strategies to account for shifting baselines, since a flaw of the reference site approach is that it defines natural water quality as "the best of what's left." As future development occurs, this may lead to a steady decline in overall water quality.

This Committee's work shows that little to no impact on the quality of water in the ASBSs that were monitored was found to be occurring as a result of the current urban discharges into them. It also points out the lack of technical knowledge about natural water quality and how much, if any, impact those discharges are having on it. This is supported by the statements in Section 7.1 of the DPEIR which acknowledge that it is uncertain what constitutes natural water quality, which discharges alter it, and what the extent and magnitude of natural water quality impacts are on a statewide basis.

However, these findings contradict statements in Section 8.4 of the DPEIR that imposing the Special Protections will "...result in improved water quality in the waters of the...ASBSs," "...will have significantly positive impacts to the environment..." and will result in "...enhancement of the economy..." while at the same time having "...positive social and economic benefits..." Pacific Grove concurs with others that these statements are unsupported by facts in the record of these proceedings.

One of the Project Objectives is to "help to ensure that marine life and beneficial uses of the state's Areas of Special Biological Significance waters are protected from waste discharges." SWRCB staff desire to impose and mandate monitoring in order to demonstrate that discharges are in fact waste. The ASBS regional monitoring program purports to answer (Section 5.8.4) the following questions:

- What is the range of natural water quality at reference locations?
- How does water quality along ASBS coastline compare to the natural water quality at reference locations?
- How does the extent of natural quality compare among ASBS with or without discharges?
- Do the project objectives take precedence over the management questions?

Importantly, in establishing water quality objectives, the State Water Board must contemplate economic considerations(Cal. Water Code § 13241).

The City of Pacific Grove contends that the proposed questions to be answered through the monitoring requirements do not in fact provide useful information to the City in making local management decisions. The monitoring data that would be newly available to the local entities do not relate to a sources or contaminants of concern, and do not identify what constitutes "waste" at a concentration that may or may not result in significant environmental impact within the ASBS. The Special Protections and DPEIR are not clear as to the thresholds of significance.

3. Environmental Baseline

The proper CEQA baseline is the physical environment in place when the Notice of Preparation was issued in 2010 (*CBE v. SCAQMD*). Here, the proper environmental baseline is 2010 ASBS receiving water quality, including existing stormwater and non-point source discharges. See DPEIR pages 207-208, majority of ASBS receiving waters demonstrated sufficient water quality, and exceedances were temporally and spatially variable.

The Environmental Baseline does not identify any problems or harm to beneficial uses caused by the stormwater discharges in ASBS. A total ban on all stormwater discharges is not reasonable, and should be justified by the need or harm to beneficial uses. Since the intent of the project/program is to remove or treat these discharges, the EIR should identify the adverse impacts being addressed. Some of the data (e.g., p. 133) identify statistical differences between discharge locations and reference sites, however, as noted, it is difficult to separate out sampling artifacts and natural variability in most cases. Does the Board have evidence of problems in the ASBS caused by the stormwater discharges?

The DPEIR's record of relevant evidence is incomplete. The SCCWRP 2010 annual report on ASBS receiving water quality in Southern California's ASBS concludes that, "[b]ased on the data collected during this study, ASBS in Southern California are consistently protective of natural water quality following storm events" (Schiff, et al., 2010; see page 256 in Attachment 1). This important finding should be part of the environmental baseline, against which the proposed project (Special Protections) is measured. See pages 211-18 of DPEIR, where the DPEIR discusses SCCWRP technical report 625, "Summation of Findings – Natural Water Quality Committee, 2006 – 2009," but does not include SCCWRP's 2010 annual report and this key finding. Also, the report is not listed in references section of the DPEIR. Is it included in the record? (See page 322, listing two SCCWRP reports but not the 2010 annual report).

The City of Pacific Grove is concerned by the reliance on the original reconnaissance surveys from 1979 – 1981 to describe existing conditions in the ASBS areas. Pacific Grove believes it is incumbent upon the SWRCB to update the reconnaissance surveys with clear evidence of significant impacts and harm to beneficial uses resulting from discharges to the ASBS prior to further consideration of the Special Protections or adoption of the General Exception.

4. Required Monitoring Program

The burden of conducting general research on water quality along California's coastline should not be placed on the backs of a few dischargers whose discharges happen to lie within ASBSs. Such work should be funded at the State level (SWRCB), not at the local level. At most dischargers could be asked to provide reasonable monitoring of their discharges, and the State should monitor the receiving waters to determine if the discharges are having any appreciable impact on them. Pursuant to the Water Code, the burden of monitoring must bear a reasonable relationship to the need for and benefits of monitoring (§§ 13267(b), 13225(c); *City of Burbank v. SWRCB* (2005) 35 Cal.App.4th 613.)

Pacific Grove is concerned with the unfunded mandate of expensive monitoring requirements for receiving water, sediments, benthic intertidal marine life, and bioaccumulation due to unknowns

associated with background pollutant levels, natural flux, ocean conditions, currents, proximity to large water bodies with significant pollutant loading to ocean, and variation due to habitat differences. There are too many scientific unknowns to propose such stringent monitoring requirements. It is very likely the data will not demonstrate a direct relationship between a given discharge, ocean receiving water quality, and ASBS condition.

Pacific Grove requests clarification as to how the Project proposes to interpret discharge data in the context of the California Ocean Plan Table B, which applies only to water quality objectives in the ocean (e.g., see Section S.1). In the Project description, reference is made to the Ocean Plan; however, the original intent of this document was to address the discharges of treatment plants and not stormwater. This is reflected in the Ocean Plan definition of "waste," "[a]s used in this Plan, waste includes a discharger's total discharge, of whatever origin, i.e., gross, not net, discharge." This may be acceptable in reference to treatment plant discharges, but when applied to stormwater, this implies that all stormwater is waste, regardless of the presence or absence of anthropogenic pollutants. This interpretation is flawed and has the potential to disrupt the natural hydrologic cycle between terrestrial and marine ecosystems. Please clearly define "waste" as it pertains to stormwater.

The draft Special Protections appear to have multiple standards of compliance, including: 1) natural ocean water quality in an ASBS; 2) water quality objectives in Chapter II of the Ocean Plan; and 3) a 90% reduction in pollutant loading for the Ocean Plan Table B parameters. As written, it is not clear whether the discharger must comply with one or all; three of the standards. A primary standard for compliance with the Exception should be clarified in the Special Protections.

The Natural Water Quality Committee concluded "it is not practical to identify a unique seawater composition as exhibiting *natural water quality*." Moreover, the committee believes that it is practical to define an *operational natural water quality for an ASBS*, and that such a definition must satisfy the following criteria:

- it should be possible to define a *reference* area or areas for each ASBS that currently approximate *natural water quality* and that are expected to exhibit the likely natural variability that would be found in that ASBS,
- any detectable human influence on the water quality must not hinder the ability of marine life to respond to natural cycles and processes.

In the absence of an ability to define what constitutes natural water quality, please explain how will the two operational criteria be measured and applied. How does the Project ensure that water quality will "not hinder the ability of marine life to respond to natural cycles and processes?"

Data collected from selected reference sites may not be representative of a given ASBS due to potential impacts from large water bodies located in close proximity to the discharge (e.g., Salinas River). Sampling to determine natural ocean water quality needs to be conducted and issues with background contaminants need to be resolved PRIOR to implementation of the Special Protections. Given these limitations, natural ocean water quality conditions may not be ideal as a point of compliance within the four-year compliance schedule specified in the draft Special Protections. While we agree that determination of natural ocean water quality conditions is important, the dischargers should not be responsible for establishing natural and background

ocean water conditions. This should be established by the Board or by ocean scientists and water quality experts prior to implementation of the Special Protections rather than concurrently.

Discharge diameter or width may not be a good indicator of runoff and pollutant loading. Storm drain facilities are often upsized to accommodate large flow events and therefore, may not be representative of typical flow. Appendix 5 includes discharges with shapes noted as irregular or rectangular (i.e., concrete gutters and earthen ditches). It should be recognized that the flow capacities of these discharges may be considerably less than the typical round pipe. These issues should be addressed in the Special Protections monitoring requirements.

There is a lack of clarity on how the core monitoring requirements in the Special Protections fit into either the Project objectives or the management questions. Both the Project objectives and management questions focus on receiving water quality, which is described as the point of compliance. Nevertheless, the core monitoring requirements focus on measurements of discharge water quality. The DPEIR states that core monitoring should include effluent monitoring so that the loading and water quality characteristics of the discharges are well understood. How will the core monitoring results be used in a regulatory context? There appears to be a conflict between the waste discharge prohibition and statements that the point of compliance will be the receiving water. What is the actual definition of "waste discharge" that would be applied in regulatory actions that might occur as a result of the project?

Given the potential ambiguity regarding the point of compliance and attendant triggers for regulatory actions that will apply to individual dischargers, flexibility should be allowed in the design and implementation of core monitoring requirements, much as is being recommended by Water Board staff for new monitoring requirements that are being developed for all ocean discharges. In order to truly "understand the characteristics of the discharges," flexibility in core monitoring requirements must be allowed to incorporate contaminants of local concern and help address issues of interest to local stakeholders.

Please explain how the comparison of biological impacts presented in Table S.1 can ascribe greater impacts to the No-Project alternative when there are no data that clearly document biological impacts from existing discharges. For example, Table 5.6.1 (Trinidad Head) shows higher abundance of the common red alga *Endocladia muricata* at the "undisturbed" site than at the discharge site, whereas in Table 5.6.3 (Del Mar Landing) there are higher abundances of *E. muricata* at the discharge site than at the reference site. Several other numerically dominant species also show such converse "responses."

Please document the scientific interpretative approach for discerning discharge impacts in rocky intertidal communities. Have differences in any measurements or community indices between discharge and reference sites been attributed definitively to discharges, to the exclusion of other potential influences?

Please explain how the project will confirm that "first priority controls are for higher threat discharges to the beneficial uses of ASBS" when large, uncontrolled agricultural watersheds are the biggest threat to many Central California areas of special biological significance.

The City of Pacific Grove concurs with CASQA on the needed clarifications for the monitoring program requirements, and incorporates these comments by reference, in addition to the above comments.

5. Prohibition on dry weather or non-stormwater flows

No proof of adverse impact to coastal waters from non-stormwater discharges has been provided by State Board staff to substantiate efforts to absolutely prohibit all non-stormwater discharges. If receiving water monitoring reveals impacts to natural water quality due to the non-stormwater flows, then additional BMPs or even treatment systems may be necessary, but the need for this is not sufficiently analyzed in the DPEIR.

The City of Pacific Grove believes that dry weather flows are a natural state within the shallow groundwater table underlying the Pacific Grove ASBS watershed area. Regardless, Pacific Grove has implemented the first two phases of a dry weather urban runoff diversion program. While we have flow data from this project, because Pacific Grove pays the Monterey Regional Water Pollution Control Agency to accept these additional waters into the regional wastewater system, and then recycles the water for agricultural use in northern Monterey County. Despite this recent flow data, the hydrologic and hydrogeologic characteristics of the watershed and the source these natural flows are not well documented at this time. The natural condition of groundwater seepage and hillside dewatering is not acknowledged in the descriptions of the Pacific Grove ASBS or baseline environmental setting.

The absolute prohibition of non-stormwater discharges may have unintended impacts to the hydrologic cycle, which have not been mitigated in the DPEIR. Dry season flows from storm drains can often be partially attributed to year round groundwater contributions to the storm drain conveyance system. Many storm sewer systems have been installed to route pre-existing streams and creek beds underneath roads and developments. There are a number of possible sources of non-natural non-stormwater discharges; however, if they are combined with natural flows, it is not possible to separate them.

"Naturally occurring groundwater seepage via a storm drain" is a permitted non-stormwater discharge. There are many instances in which natural drainages were converted into man-made drainage facilities (e.g., ditches or pipes). Groundwater seepage into the man-made drainage facility may be commingled with unauthorized non-stormwater from private residences (i.e. irrigation, car washing) and irrigation discharges from agriculture. It will be difficult to determine when stormwater or wet weather flow ends, non-stormwater flow begins, and if non-stormwater flow contains sources other than groundwater seepage. Wet weather flow needs to be defined. We suggest that it be defined by season (e.g., October to April) rather than by storm event.

6. Feasibility of BMPS and End of Pipe Requirements

The Special Protections require that BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm be designed to achieve the following target levels: (1) Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the COP; or (2) a 90% reduction in pollutant loading for the COP Table B parameters; however, Table B objectives were intended for samples collected at locations where initial dilution by ocean waters is

completed rather than from the end-of-pipe. It would be okay to assert that no discharge of "waste" shall cause or contribute to an exceedance of Table B, but, the proposal goes much further, and is not valid. Table B cannot be applied to end-of-pipe because doing so assumes material in stormwater is "waste," which may not be the case for many naturally occurring substances found in stormwater. Such a proposal also assumes ASBS has no assimilative capacity for these compounds, but the findings of SCCWRP's "Natural Water Quality Committee" report (see Attachment 4), which is discussed in detail in Section IV of this letter, show that ASBS do have assimilative capacity. "In fact, reasonable potential analysis indicated that many constituents were not a threat to ASBS water quality." Furthermore, the Porter-Cologne Act (PCA) requires assimilative capacity to be taken into account. (See, e.g., Water Code §§13241 (allows for some degradation; however, we are not asking for that here); 13000 (highest water quality that is reasonable).) In addition, there is no demonstration that Table B end-of-pipe is reasonably achievable and may be impossible. Finally, the proposal turns Table B into end-of-pipe performance standards such that special CEQA review is warranted.

Under the proposed program, stormwater dischargers will have end-of-pipe requirements in addition to providing for maintenance of natural ocean water quality in the receiving water. In effect, the Special Protections create effluent-based water quality limitations (WQBELs). Consistently meeting Table B objectives may require capturing the flows, directing these flows to treatment facilities, and providing relatively high level treatment (filtration). For some discharges, advanced chemical treatment may be required because of dissolved constituents (especially copper) not removed by traditional filtration. These treatment facilities are very costly and technically challenging in the coastal environment (i.e., siting facilities end-of-pipe or pumping to treatment elsewhere). The DPEIR does not adequately evaluate potentially significant environmental impacts that may result from such projects, and even if further evaluation is required at the project level, these impacts should be identified at the programmatic level.

Throughout the DPEIR, the authors analyze the impacts caused by BMPs such as installing catch basin inserts, vortex separators, as well as street and parking lot sweeping as if these measures would make a significant improvement in the quality of the effluent. Existing information concerning the efficacy of many of these BMPs is often anecdotal or subjective and it leaves the impression that BMPs alone will not be able to achieve the levels of pollution reduction sought by the State. The BMPs do not encompass the full range of feasible BMP alternatives.

The DPEIR does not adequately address the potential environmental impacts of subsequent projects that may be required to implement the Project's regulatory mandates. The potential adverse impacts of diversion pipes, pump stations, and treatment facilities have not been addressed at all. They are put off to the individual projects that will be needed to address these requirements. However, this programmatic EIR must address the aggregate impacts of the projects required to implement this program.

The City of Pacific Grove concurs with the State's own blue ribbon panel that numeric end of pipe effluent limitations are not recommended and should not be imposed here. The federal program of BMPs to the Maximum Extent Practicable (MEP) should be the guiding principal along with an iterative process of increasingly rigorous BMPs.

7. Ban on new outfalls

The City of Pacific Grove concurs with CASQA's comments that, while it agrees that new or increased discharges should not occur, it disagrees with the prohibition on moving them. For example, Pacific Grove sees a likely need to re-engineer the stormwater conveyance system to benefit recreational activities at Lovers Point beach by relocating the existing outfall to the west of the park to discharge away from the beach and cove where kayaking, diving and surfing are ongoing recreational activities.

The City concurs there are other likely scenarios or instances where relocating or reconfiguring existing outfalls would be including in implementing projects under the proposed Special Protections:

- Installation of dry weather diversion facilities may require siting of a new wet weather relief/overflow drain.
- Flows that are currently co-mingled may need to be separated, requiring a new outfall.
- Engineering solutions to meeting the ASBS Special Protections may require modified or additional outfalls.
- New treatment facilities will be required to meet the performance requirements. Adequate space may not be available at the location of the original outfall to construct a sand filter or other treatment. Returning the treated flow to the original outfall location wastes funds and provides no environmental benefit.

This provision should perhaps prohibit moving discharges to locations with less tidal movement that would place water quality at risk. However, a change that results in the same or improved exposure to tidal and wave action should not be prohibited—in fact, it should be encouraged. The City of Pacific Grove requests that this provision (I.A.1.d) be modified to allow moving discharges to locations with the same or less risk of adverse impacts:

Any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls unless the new outfall results in the same or less risk to water quality. ~~and~~ The new outfall shall not result in any increased contribution of waste to an ASBS (i.e., no additional pollutant loading).

8. Effective date for compliance

The City of Pacific Grove does not believe it is feasible for municipalities to plan, permit, design, construct, and trouble-shoot a project resulting in compliance within 4 years. Diversion facilities or large treatment units in the coastal zone will present significant construction and permitting challenges. The schedule does not provide dischargers adequate time to compile and produce the requested information for the Stormwater Management Program (SWMP), conduct analyses to determine where BMPs are needed and which BMPs are most effective and suitable for a given area, design projects, secure the necessary funds, complete environmental permitting, complete the public bidding process, and implement the projects. The Board should recognize that dischargers need sufficient time to develop a plan and secure funding for implementation of these requirements, which are unfunded mandates.

At this time, the City of Pacific Grove has been jointly awarded a planning grant under the Southern Monterey Bay & Monterey Peninsula Integrated Regional Water Management (IRWM) planning to further study alternatives for compliance within the Pacific Grove ASBS, including:

- Storm flow capture and storage for treatment
- Possible diversion to storage, inland treatment, or around the ASBS
- Screening and initial filtration
- Treatment requirements

Even with this IRWM grant funding and the matching funds being contributed by the City of Monterey, Pacific Grove will need to fund design and construction of these projects plus provide for ongoing funding for operation and maintenance. Securing additional funding, even if possible in the current economic conditions, will take time. The City of Pacific Grove suggests that that the compliance period be lengthened considerably, to ten years.

9. Alternatives

The PDEIR does not provide a reasonable range of alternatives to the proposed Project. The "no project" alternative is improperly framed as the "no exception" alternative. In fact, the "no project" alternative should represent the status quo, including current discharges.

The Peninsula communities of Pacific Grove, Carmel-By-The-Sea, County and City of Monterey as well as Pebble Beach Company request that the State Water Board consider and analyze an alternate approach to that proposed in the currently drafted Special Protections. We appreciate the time, effort and expense that has gone into the preparation of the current Special Protections. However, we believe the approach described below is a more efficient and protective process.

Rationale

Because the ocean environment is often-times not well understood and variable both temporally and spatially, the approach to ensuring that ASBS are protected should be based upon sound science and demonstrated cause-and-effect linkages between identified water quality problems within an ASBS, and the cause of the problem(s). The five-step approach outlined below is a rational means of being responsive to the Ocean Plan by protecting natural water quality and the beneficial uses of the oceans.

Step 1: State-funded Panel would gather the necessary scientific data to define natural water quality in each ASBS and determine whether or not any of the ASBSs are experiencing degradation of natural water quality (Degradation). Panel would be chosen by a group of ASBS stakeholders from southern, central, and northern California, working with SWB staff, and would be completely independent from both ASBS stakeholders and SWB. Panel's studies could initially be done on a rough-cut basis using a series of sampling transects within each ASBS.

Step 2: If it is shown that there is statistically significant water quality Degradation occurring within an ASBS such that it is harming beneficial uses, the location(s) and

cause(s) of such Degradation would be mapped. A determination would be made by the Panel as to whether the Degradation was occurring due to the discharge of pollution into the ASBS, and, if so, what is the pollutant(s) of concern. If the Degradation is not being caused by the discharge of pollutants, no restrictions or requirements would be imposed on the dischargers for purposes of mitigating the Degradation.

Step 3: If Degradation is determined to be caused by the discharge of pollutants, the location(s) of Degradation would be compared by the Panel to the location(s) of existing discharges (e.g. storm drains and natural conveyances like rivers) to determine possible sources of the pollutants.

Step 4: If the location(s) of Degradation that is determined to be caused by the discharge of pollutants is in reasonable proximity to an existing storm drain discharge, then the entity responsible for that storm drain would be directed to perform end-of-pipe sampling to determine whether or not the pollutant(s) of the type determined to be causing the Degradation are being discharged at that location.

Step 5: If this sampling finds that the storm drain discharge does not contain appreciable amounts of the pollutant(s), then the discharge would be deemed not to be causing the Degradation. No restrictions or requirements would be imposed on the discharger for purposes of mitigating the Degradation.

If the sampling finds that a discharge is a significant contributor of the pollutant(s) associated with the Degradation, then requirements to mitigate those impacts would be imposed on the discharger via new discharge permitting requirements issued by the SWB. The permitting requirements would apply to only those discharges that are found by the Panel to be causing the Degradation. The requirements would include a monitoring plan for ASBS receiving water and end-of-pipe sampling to assess the performance of mitigation measures taken by the discharger. Those mitigations could take a variety of forms such as structural/treatment Best Management Practices (BMPs) and/or enhanced source-control measures. Compliance with the requirements would be limited to receiving water quality beyond the zone-of-initial-dilution, not at end-of-pipe. The discharger would be required to continue implementing more and more stringent BMPs until the point that additional monitoring after the BMPs were implemented show that the BMPs have effectively reduced the discharge of the pollutant(s) of concern to a less-than-appreciable level. Once that has been achieved, the discharger would be allowed to reduce or stop monitoring. Possible permitting vehicles could come in the form of either: (1) additional requirements in MS4 Stormwater Discharge Permits or (2) waste discharge requirements.

Conclusion

Further study of a number of issues is needed for the SWRCB to develop a fair, practical, achievable and effective program to preserve natural water quality in each unique and distinct ASBS. The SWRCB has both a moral and a fiduciary responsibility to the citizens of California to carefully craft the requirements it imposes on them. This is especially critical during these financially troubled times when the costs associated with such requirements will be significant.

EXHIBIT 1: The City Of Pacific Grove's Comments on the Proposed Special Protections and General Exception To The California Ocean Plan Waste Discharge Prohibition of Selected Discharges Into Areas Of Special Biological Significance and Draft Program EIR

Imposing the proposed Special Protections at this time, with technical knowledge lacking to support many of its requirements, is premature. The City of Pacific Grove requests that the State Water Board direct staff to thoroughly and completely respond to all comments received in the Final PEIR and to revise the Special Protections and General Exceptions in accordance with all stakeholder comments and legitimate concerns.