



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

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Public Hearing (5/18/11)  
ASBS Special Protections  
Deadline: 5/20/11 by 12 noon

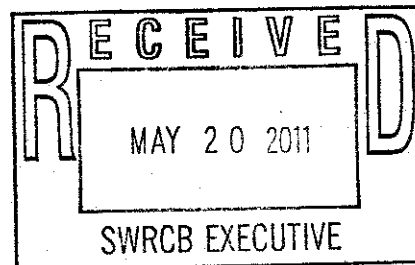
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WM-9

May 19, 2011

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



Dear Ms Townsend

### COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED SPECIAL PROTECTIONS FOR AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE

The enclosed comments are being submitted on behalf of the County of Los Angeles (County) in response to the State Water Resources Control Board's (State Water Board) Notice of Public Hearing regarding the General Exception for Stormwater Discharges into Areas of Special Biological Significance (ASBS) dated January 20, 2011

As an applicant for the general exception, the County generally supports the use of the exception process as a mechanism for regulating discharges into the ASBS. However, we are very concerned that the provisions of the Special Protections for ASBS as currently proposed are unjustifiably stringent and would lead to expenditures of already scarce public funds that may be put to better use. These and other concerns were presented in a comment letter dated March 15, 2010, submitted to the State Water Board by the County and the Los Angeles County Flood Control District in response to the Notice of Preparation and Initial Study. To the extent that those comments have not been addressed, we hereby incorporate them by reference.

Ms. Jeanine Townsend  
May 19, 2011  
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We look forward to your consideration of these comments and working with the State Water Board staff to find a balanced approach to protecting our coastal resources. If you have any questions, please contact me at (626) 458-4300 or [ghildeb@dpw.lacounty.gov](mailto:ghildeb@dpw.lacounty.gov) or your staff may contact Ms. Rossana D'Antonio at (626) 458-4325 or [rdanton@dpw.lacounty.gov](mailto:rdanton@dpw.lacounty.gov)

Very truly yours,

GAIL FARBER  
Director of Public Works



GARY HILDEBRAND  
Assistant Deputy Director  
Watershed Management Division

GA:jtz

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Enc.

cc: Chief Executive Office (Dorothea Park)  
County Counsel (Judith Fries)  
Department of Beaches and Harbors

**COMMENTS OF THE COUNTY OF LOS ANGELES  
ON THE PROPOSED DRAFT "SPECIAL PROTECTIONS"  
FOR AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE AND PROGRAM DRAFT  
ENVIRONMENTAL IMPACT REPORT**

**I. INTRODUCTION**

The County of Los Angeles (County) appreciates this opportunity to comment on the proposed Special Protections for Areas of Biological Significance (ASBS) as well as on the Program draft Environmental Impact Report (PEIR). We recognize that State Water Board staff has been working diligently for several years on this issue. The County appreciates the hard work of staff and their participation in the important studies that have been undertaken into impacts on the ASBS. While it can be anticipated that the various stakeholders in the ASBS process will have very different ideas as to how ASBS protection should be addressed, in these comments, the County has suggested practical changes that will make the Protections more efficient and responsive to the need to protect the ASBS.

Because the State Water Board has taken the position that the discharge of stormwater into ASBS requires an exception under the Ocean Plan, the County supports the use of such a process. The County, however, has significant concerns regarding the proposed Special Protections document proposed by State Water Board staff. Those concerns are discussed in detail below. As noted above, the County believes that the proposed Special Protection document should be modified as proposed below and in the attached Exhibit A redline of the document,<sup>1</sup> which reflects specific comments and suggested improvements.

This modified exception would provide needed protections to the ASBS while at the same time avoiding the problems posed by the proposed Special Protections document, which unfortunately does not take into account the results of studies showing minimal impacts on ASBS water quality from discharges and would require dischargers to install expensive and potentially wasteful best management practices (BMPs) without any demonstrated link between those BMPs and the attainment of natural ocean water quality (NOWQ) in the ASBS. Moreover, the proposed Special Protections would require a compliance schedule which does not take into account the actual time required to attain compliance.

Since the key to ASBS compliance is the maintenance of NOWQ, the County's comments are focused on the need to conduct monitoring to establish NOWQ, which was recommended by the Natural Water Quality Committee (NWQC) established by the State Water Board. In its proposal, the County suggests that as a Phase I task, monitoring be conducted to establish NOWQ either on a regional or ASBS-specific basis. Then, if NOWQ is being materially affected by ASBS discharges, Phase II of the Special Protections would require dischargers to implement BMPs to address the

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<sup>1</sup> Exhibit A also includes a redline of the draft Resolution to be adopted by the State Water Board, incorporating various comments and clarifications.

constituents of concern that are adversely affecting NOWQ. Both Phases are proposed to include milestones, so that reasonable further progress can be attained as required for each ASBS.

#### **A. Need for Special Protections That Reflect ASBS Conditions**

The County, the Los Angeles County Flood Control District (LACFCD) and 26 other dischargers have been waiting several years for the State Water Board to grant the exception requested by these dischargers. One positive aspect of these delays has been the completion of important studies assessing the existing condition of the ASBS. These studies reflect that even in strong storm conditions, water quality measured near discharge points into the ASBS is no different, statistically, than water quality measured at reference sites. Thus, the supposition that the Special Protections are vitally required to protect beneficial uses in the ASBS is not supported by these studies.

These studies were conducted by the stakeholders in collaboration with the State Water Board and research institutions such as the Southern California Coastal Water Research Project (SCCWRP) and the academic community. The studies assessed the chemical, physical, toxicological, and biological health of the ASBS and, importantly, found no difference between conditions at reference sites and sites receiving runoff. A brief discussion of these studies and their findings follows.

A biological community monitoring was conducted between fall 2009 and winter 2010 at 21 rocky intertidal sites spanning the Southern California ASBS,<sup>2</sup> including the "Laguna Point to Latigo Point" ASBS. The study was conducted by the coastal biodiversity research team of the University of California at Santa Cruz, with funding from ASBS stakeholders. The study found no statistically significant difference in biological composition and diversity between reference sites and sites receiving urban and stormwater runoff.

Also, a state-wide monitoring program was conducted between February and April 2009 at 33 sites to compare water quality at or near storm drain outfalls and at sites more than 500 meters away.<sup>3</sup> About 100 chemical constituents (consisting of metals, nutrients, bacteria, organics, and solids) as well as toxicity were measured at the sites before and after storm events. The study found that none of the constituents measured exceeded the instantaneous Ocean Plan Table B criteria and that toxicity was not observed. Further, the study concluded that average constituent concentrations were statistically similar comparing the discharge and non-discharge sites as well as the pre- and post-storm measurements, indicating that storm water discharges into the ASBS are *not* impacting the receiving water. In fact, the PEIR concluded that the survey "illustrated generally good chemical water quality in mainland ASBS sites." PEIR at 211.

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<sup>2</sup> Initial Assessment of South Coast ASBS (Rocky Intertidal). PowerPoint Presentation, UC Santa Cruz, 2010.

<sup>3</sup> Status of California's Marine Water Quality Protected Areas. SCCWRP, Technical Report 631, September 2010.

Finally, a regional ASBS monitoring program was implemented as part of the 2008 Southern California Bight (Bight '08) program, with the goal of determining the range of natural water quality at reference locations and comparing them with receiving water quality at sites receiving dry weather and stormwater runoff.<sup>4</sup> Sixteen sites were sampled (six reference and ten discharge sites) for over 100 constituents and for up to three storm events. Samples were collected before and after storm events at both reference and discharge sites. The study found statistically similar water quality between reference and discharge sites and that there were no increases in constituent concentrations from pre- to post-storm conditions. No toxicity or chlorinated hydrocarbons were detected.

In short, these studies uniformly show that the State's ASBS are basically healthy, and that their ecological integrity is not being altered by urban and stormwater runoff.<sup>5</sup> It is thus imperative that the provisions of the Special Protections reflect this science and do not impose requirements that are not justified by any potential threat to the ASBS. The studies outlined above indicate that this threat does not exist.

It is for these reasons, and others, that the County is proposing that the Special Protections be revised to ensure that NOWQ and the actual impact, if any, of discharges into the ASBS are determined before expensive and environmentally detrimental BMPs are constructed in the sensitive coastal zone. It would be arbitrary and capricious for the State Water Board to adopt the Special Protections as proposed. In light of the results of the surveys conducted to date, the County's proposed modifications focus on monitoring to gather more data to help establish a clear definition of NOWQ and to better understand the conditions of the ASBS. Once NOWQ has been established, and the monitoring data evaluated, the modified Special Protections call for development of BMPs, if required, to ensure that discharges do not adversely affect NOWQ.

#### **B. Proposed Modified Special Protections Document**

Exhibit A to these comments is a redline of the draft Special Protections document prepared by State Water Board staff, modified to reflect the alternative suggested by the County. The key highlights of the approach are:

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<sup>4</sup> Assessing Water Quality Conditions of Southern California's Areas of Special Biological Significance. SCCWRP, Draft Report, January 2011.

<sup>5</sup> The County disagrees with the PEIR's statement that the reduction of pollutants in stormwater to the Maximum Extent Practicable (MEP) standard, the standard applicable to discharges from the municipal separate storm sewer system (MS4) to receiving waters, including the Ocean, "is not adequately protective of natural water quality in ASBS." PEIR at 57. Nothing in the record before the State Water Board supports this conclusion. As discussed in greater detail, the studies of discharges to the ASBS do not reflect impacts to "natural water quality." The studies to date indicate that the reference locations reflect chemical, toxicological, and biological conditions that are statistically similar to those at ASBS discharge locations.

- Requiring a monitoring program to establish both NOWQ either regionally or for an individual ASBS as well as the impacts, if any, on NOWQ by discharges into the ASBS;
- Replacing the current requirement to install BMPs prior to understanding the impacts on NOWQ, if any, with a requirement to install BMPs specifically designed to address constituents that are confirmed to be impacting ASBS quality. This will result in a focused, less environmentally impactful, approach to protecting the ASBS;
- Replacing the current unjustified and unworkable compliance schedule (immediate compliance for dry weather discharges, compliance in four years for wet weather discharges) with a schedule that will allow dischargers to monitor and construct BMPs that may be required, yet still allow for design, permitting, Regional Water Board approvals, construction and other delays; and
- Providing three compliance options for dischargers that will achieve the same protections for the ASBS but avoid the requirement for BMP implementation if ASBS dischargers already are meeting NOWQ.

The County believes that these modifications to the Special Protections improve the original proposed Protections, as they do not presuppose impacts on the ASBS by discharges and allow for a more focused, flexible and less environmentally impactful approach to addressing discharges that may harm water quality and marine life in the ASBS. We urge the State Water Board to adopt this approach.

### **C. Response to Issues Raised at Public Hearing**

County representatives attended the public hearing held before the State Water Board on May 18, 2011 to discuss the Special Protections and the PEIR. We appreciated the opportunity to present the County's comments and to outline the modified approach set forth in these comments and in Exhibit A. The County also would like to address three specific issues raised at the public hearing.

#### **1. NOWQ Must Be Determined**

A common theme in the hearing expressed by numerous commenters, including both non-governmental organizations (NGOs) and dischargers, was the need to better determine what conditions constitute NOWQ. The NWQC itself recognized this need in its report, which called for additional monitoring to capture the true range of natural variability of the ocean before quantifying NOWQ.

The proposed modification of the Special Protections suggested by the County and included in Exhibit A address this need through a requirement for monitoring and establishment of NOWQ through a formal process by the State Water Board.

## **2. A General Exception is Appropriate**

NGO representatives commented that the use of an exception was not appropriate because granting an exception would not be effective in protecting ASBS beneficial uses and the public interest would not be served.

These arguments are not persuasive. First, as shown in the monitoring done to date, there is no evidence that discharges into the ASBS are in fact degrading the beneficial uses protected in the ASBS. The mere discharge into the ASBS in and of itself is not an "illegal" discharge, as alleged by the NGOs, absent such evidence. Second, that the public interest will be served by granting an exception is clear; the discharges at issue are largely for the purposes of flood control, slope stability and other important purposes. Preventing such discharges would lead to flooding, landslides, loss of property and potential injury or loss of life. A clearer case for serving the public interest could not be made.

The NGOs argued that the State Water Board should, instead of issuing an exception, issue enforcement orders, accompanied by a time schedule order. As noted above, this assumes, erroneously, that a violation of law is occurring. More importantly, the issuance of enforcement orders would involve a substantial outlay of State Water Board staff effort, and the complete waste of the resources already invested in the development of the exception process. Moreover, enforcement orders imposed by the Board would most likely engender legal opposition, meaning that matters that should be worked out among scientists would more likely be litigated. The County also takes issue with the assertion by the NGOs that the already unattainable time schedule in the Special Protections needs to be more stringent.

The County does not necessarily oppose eventual amendment of the Ocean Plan to incorporate the exception. However, as pointed out by State Water Board staff at the hearing, such an amendment "is the hardest" to achieve, and would involve not only the expenditure of substantial staff time but also the waste of the effort already expended in developing the exception process and the Special Protections. Finally, an Ocean Plan amendment would be a lengthy process, and the dischargers are entitled to the prompt approval of an exception, several years after being informed that they must obtain one and having made applications.

## **3. "Impaired" ASBS Should Not Receive Different Treatment**

The NGO representatives suggested that given that several of the ASBS were on the state's 303(d) list of impaired water bodies, those ASBS should be given special emphasis. There is no reason for such treatment, as being placed on the 303(d) list (which relates to water quality objectives for human health), and designation as an ASBS (which relates to the protection of biological resources), is a matter of "apples and oranges." First, as noted by State Water Board staff, the purpose of the ASBS designation is the protection of biological resources, not human health. In the case of

the Laguna to Latigo Point ASBS, for example, the impairment relates to beach bacteria standards. These standards have no relation to the biological resources in the ASBS. Moreover, the conditions that led to the 303(d) listing in this ASBS are being addressed in a separate process, the Santa Monica Bay Beaches Bacteria TMDL. There is no need for the State Water Board to place any special focus on this ASBS. In fact, the Bight '08 monitoring conducted in this ASBS shows it has better water quality than most Southern California ASBS.

The remainder of the County's comments focus on specific concerns associated with Special Protections proposed by State Water Board staff and on the PEIR. For reasons described below, the County is concerned that staff's approach is unjustifiably restrictive, environmentally detrimental and more costly and does not address the key requirement of the Special Protections – to protect the beneficial uses in the ASBS. In particular, the County is concerned with the Special Protections' requirement that the NOWQ be defined as the 85<sup>th</sup> percentile of chemical constituent concentrations at reference sites, with no scientific or regulatory rationale to support such threshold setting. The County also is concerned with requirements to monitor discharges at end-of-pipe, unless a discharger chooses to adopt a compliance option that would justify such monitoring, because compliance with the Ocean Plan must be measured in the receiving water wave wash. The County further is concerned about the schedule for compliance set forth in the Special Protections, which ignores the actual time required to establish structural BMPs that may be required to attain/maintain NOWQ. Moreover, the cost of complying with the general exceptions is far greater than that estimated by State Water Board staff, a fact that is even more critical when compared to the de minimis impact of ASBS discharges and the scarcity of public funds during recessionary times.

Some of these concerns, and others, were discussed in a letter dated March 15, 2010, submitted by the County and the LACFCD to the State Water Board, including the need for an effective date of the exception retroactive to the dischargers' application. To the extent that those comments have not been addressed, they are hereby incorporated by reference.

## **II. CONCERNS WITH PROPOSED SPECIAL PROTECTIONS**

### **A. The Proposed Special Protections Are Unjustifiably Prescriptive, Without Support in the Record and Are Not Warranted by the Science**

As noted above, the County is concerned that the proposed Special Protections are unduly prescriptive, not justified by evidence in the record and ignore the findings regarding ASBS conditions summarized above. Those studies demonstrate that the health of the ASBS is good and that discharges are not making a noticeable impact. More work needs to be done to establish NOWQ criteria and to determine for each ASBS whether discharge controls or reductions are appropriate. It is vital, however, that the assumption that controls are required not be made until further monitoring is completed and impacts are identified, as this will avoid potential significant costs, as



well as the environmental degradation caused by construction of unneeded structural BMPs. The County's proposed modifications of the Special Protections provide for such a "monitoring-first" approach.

### **B. The Proposed Compliance Schedule is Unattainable**

The proposed Special Protections require the immediate cessation of non-stormwater discharges upon the adoption of the exception and the achievement and documentation of the maintenance of NOWQ within four years after adoption of the exception, including the completion of the construction of structural BMPs identified in a SWMP or SWPPP. Meeting these timelines is infeasible, as has already been pointed out by dischargers in previous comments to staff.

First, it is completely unreasonable to require dischargers to eliminate non-stormwater discharges effective upon the adoption of the exception. The final scope of the exception (including the manner in which the State Water Board would address non-stormwater discharges) is not yet known, and planning to address non-stormwater discharges cannot be finalized until after the effective date, which will occur when U.S. EPA concurrence is received. Structural BMPs will likely be required for the cessation of non-stormwater discharges (as noted in the PEIR at 58-59) and the acquisition of land, design, construction and other requirements associated with such BMPs, including potential Coastal Commission permitting and CEQA review, could take several years. This is true for the Laguna Point to Latigo Point ASBS, where several pipes may need diversion. Moreover, modifications to a SWMP or SWPPP would have to be approved by Regional Water Boards, entailing additional delay. In Exhibit A, the County suggests a longer, but still aggressive, time period to address non-stormwater discharges.

Second, the County strongly disagrees with staff's conclusion in the PEIR that "full compliance can be accomplished by addressing and controlling the highest threat discharges within a four-year period from the effective date of the General Exception." PEIR at 67. This statement, of course, assumes that there are in fact "highest threat" discharges, when monitoring to date has not shown identifiable adverse effects on beneficial uses or biological resources. In fact, multiple dischargers have commented to staff that the four-year time frame is too short, based on their prior experience. For example, the County and the LACFCD commented in their March 15, 2010 letter that the four-year compliance period for stormwater was too short. The City of San Diego and others also made detailed comments to the same effect. San Diego has projected a 20-year schedule for meeting ASBS requirements set forth in its Watershed Management Plan, whose development was authorized and funded by the State Water Board under Proposition 13 Grants.

The planning, coordination, land acquisition, environmental permitting (including Coastal Commission and CEQA review), design and construction of structural BMPs for stormwater controls will take much longer than the proposed four years, and possibly more than a decade. For example, the LACFCD has constructed storm drain diversions in response to the Santa Monica Bay Beach bacteria TMDL. These diversions were for

dry weather flow, not stormwater flow. Still, the process of land acquisition and Coastal Commission permitting alone took four to five years for a single diversion. With respect to the work required to construct BMPs for stormwater diversion and treatment, the County believes that the process could easily take up to three to five years or more for a typical project involving a single drain. And, as noted in the PEIR, "[s]torm water management plans . . . require considerable thought on the part of the discharger, considering a multitude of factors. Typically, these planning documents must then be approved by their respective management bodies, and approved by Regional Water Boards." PEIR at 66. Moreover, and most importantly, *until NOWQ is defined for the ASBS*, the appropriate suite of structural and non-structural BMPs cannot be devised. Therefore, in the modified Special Protections set forth in Exhibit A, the County sets forth a longer but still aggressive time frame that reflects the actual requirements for construction in Coastal Zone.

**C. Using the 85<sup>th</sup> Percentile Threshold to Define Natural Ocean Water Quality Is Unsubstantiated**

At the heart of the Special Protections is the requirement that "[d]ischarges composed of storm water runoff shall not alter natural ocean water quality in an ASBS." Special Protections, Section I.A.1(b).

In 2006, the State Water Board established the NWQC to develop a working definition of NOWQ. In its final report released in September 2010,<sup>6</sup> the NWQC provided a narrative definition of NOWQ and recommended using the reference area system approach for each ASBS as a basis for defining NOWQ. The NWQC, however, did not establish numeric criteria for NOWQ but rather recommended that "further work needs to occur for quantitatively defining natural water quality." SCCWRP Technical Report 625 at 18. The committee also acknowledged that "maintenance of natural water quality conditions in an ASBS is probably not always an achievable goal." *Id.* at 13. NOWQ criteria must be established, either for each ASBS or for regional (Northern, Central and Southern California) areas, a goal which can only be accomplished through further monitoring. Thus, the general exception for ASBS discharges cannot truly be finalized until NOWQ has been established through monitoring and scientific review.

The proposed Special Protections, however, inappropriately define the 85<sup>th</sup> percentile of reference water quality condition as a threshold for NOWQ. Neither the NWQC nor the Bight '08 ASBS committee recommended this approach as a measure of NOWQ. The use of the 85<sup>th</sup> percentile threshold is, moreover, unsubstantiated by the results of ASBS receiving water monitoring, which indicates that there is no statistical difference between water quality at the reference sites and sites receiving runoff discharges.

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<sup>6</sup> Summation of findings of Natural Water Quality Committee 2006-2009. SCCWRP Technical Report 625, September 2010. The study also noted that "[t]ruly natural water quality probably does not now exist in California's coastal ocean . . . ." SCCWRP Technical Report 625, Preface.

Setting NOWQ at the 85<sup>th</sup> percentile threshold implies that water quality at the reference sites will exceed standards at least 15 percent of the time. In fact, the Bight'08 study indicated that water quality concentrations at reference sites exceeded the concentrations at the discharge sites *more frequently* than vice versa, giving an overall difference of about 3 percent. For example, the maximum total lead concentration at reference sites was 7 µg/L, but 3.1 µg/L at the discharge sites. The 85<sup>th</sup> percentile total lead concentration at the reference site was 0.7 µg/L. Thus, adoption of the 85<sup>th</sup> percentile threshold means that dischargers will be required to meet standards that are not even regularly achievable at the reference sites, which are supposed to represent areas of the ASBS that are not affected by the discharges.

Using the 85<sup>th</sup> percentile as the threshold for defining NOWQ is unjustified when, in fact, the water quality observed at reference sites was shown to be not statistically different from that of discharge sites. Given the importance of determining NOWQ, the County's modified Special Protections requires a monitoring program to establish NOWQ criteria. Please see Exhibit A.

**D. Defining Natural Water Quality Is Tantamount to Establishing Water Quality Criteria and Must Follow Appropriate Regulatory Processes**

The proposed 85<sup>th</sup> percentile threshold appears to be an attempt to provide an artificial definition of NOWQ through the proposed Special Protections and the general exception process. However, any definition of NOWQ, because it constitutes a water quality standard, must follow the requirements of 40 C.F.R. Section 131 and the requirements of Water Code § 13241. Under the federal regulations, a state must describe the methods used, the analyses conducted to support the standard and a certification that the change was adopted according to state law. Water Code § 13241 requires consideration of the past, present and probable beneficial uses of water, environmental characters of the hydrographic unit under consideration, water quality conditions that could "reasonably" be achieved through the "coordinated control of all factors which affect water quality in the area," economic considerations, the need for developing housing and the need to develop and use recycled water. These analyses have not been conducted with respect to the 85<sup>th</sup> percentile threshold. Defining NOWQ is effectively establishing a water quality standard with which dischargers must comply.

In the case of NOWQ, the criteria should be developed through a monitoring program overseen by the NWQC or another scientific advisory group with stakeholder input. Then, the developed criteria should be formally adopted by the State Water Board in a separate process from the general exception. The County's modified Special Protections call for such an approach, which is similar to the process followed by the State Water Board in its current efforts to establish sediment quality, nutrient and biological objectives.

## E. Prohibition of All Non-Stormwater Discharges is Unjustified

Staff's proposed Special Protections would prohibit the discharge of non-stormwater, with few exceptions. This prohibition is unjustified because there is no scientific evidence to suggest that non-stormwater discharges degrade either NOWQ or the beneficial uses protected in the ASBS. Forcing dischargers to expend scarce public funds to stop such discharges, without evidence of harm, would represent a waste of funds at a time of great financial pressure on municipalities.

This conclusion is shared by the NWQC. In its report,<sup>7</sup> the NWQC indicated that, in some cases (e.g., small drains), the complete stoppage of discharges would result in insignificant water quality improvement in the ASBS, and yet "the cost of terminating such discharges may be substantial." SCCWRP Technical Report 625 at 13. The committee recommended that "in order to avoid significant expenditures that do little to protect the ASBS, an assessment of existing and potential anthropogenic influences on each ASBS should be conducted." *Id.* at 14. The NWQC recommendation supports the approach suggested by the County, which is to consider non-stormwater discharges similarly to stormwater discharges, focusing on the impact (if any) of such discharges to the ASBS.

Staff has not assessed the impact (positive or negative) of non-stormwater discharges into the ASBS. Instead, an implied assumption was made that non-stormwater discharges must be prohibited. For example, the PEIR concludes that "[g]enerally, dry weather flow surface runoff accounts for a significant portion of the total mass of contaminants that enter the coastal ocean waters." PEIR at 58. However, no studies support this conclusion with respect to ASBS.

Moreover, MS4 permits in place in many of the ASBS, including in the Laguna Point to Latigo Point ASBS, specifically allow the discharge into MS4 systems of such flows as irrigation runoff, air conditioning condensate, non-commercial carwash runoff and sidewalk rinsing. See, e.g., Los Angeles County MS4 permit, Part 1.A. Despite the PEIR's statement that "such flows have the potential to mobilize household, industrial, and construction site wastes, used crankcase oil, pesticides, and bacteria and carry them untreated to the ocean through storm drains, streams and/or other conveyance systems" (PEIR at 58), there is in fact no such evidence to support this statement. The County's proposal for a modification of the Special Protections would, in the Phase I monitoring phase, require such studies and where there is an adverse impact on NOWQ in the ASBS, require appropriate controls.

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<sup>7</sup> Summary of findings of Natural Water Quality Committee 2006-2009. SCCWRP, Technical Report 625, September 2010.

#### **F. Naturally Occurring Groundwater Seepage Should Not Be Required To Meet Ocean Plan Objectives**

While the proposed Special Protections would allow the discharge of naturally occurring groundwater seepage via storm drains, the Protections still require that such discharge meet Ocean Plan objectives. This requirement is not supported by evidence in the record. In fact, groundwater seepage is a natural component of the coastal hydrologic cycle, natural flows into the ASBS which must be maintained. As a result, there should be no requirement that dischargers control the quality of this natural groundwater seepage. Accordingly, the Special Protections should allow such discharges without them having to meet the Ocean Plan objectives. This change is reflected in the County's modified Special Protections.

In addition, the definition of "stormwater" discharges should be clarified to include recession flows from precipitation events. Such flows are the result of stormwater being absorbed into the ground and then released into storm drain or stream channels over time through soil seepage, sometimes several days after the precipitation event. For example, the Los Angeles Regional Board defines wet weather as "days with greater than 0.1 inch of rain and three days following the rain event" in the Santa Monica Bay Beaches Bacteria wet weather TMDL. The Special Protections should also reflect such flows, and they have been addressed in Exhibit A, in a definition of "Wet Weather."

#### **G. The Prohibition of Post-January 2005 Discharges is Unjustified**

The proposed Special Protections would prohibit any discharges into the ASBS from outfalls that were not either already constructed or under construction prior to January 1, 2005. This prohibition effectively bans development tributary to an ASBS and may exceed the authority of the Ocean Plan. The exception provision in the Ocean Plan makes no distinction between existing and new discharges, so long as the discharge does not compromise beneficial uses or alter natural water quality. There is no authority for this provision in the Ocean Plan, and there is no factual support in the record to suggest that prohibition of new outfalls offers any additional protections to the ASBS.

The County believes that the exception process should be open to new discharges, so long as those discharges are in accordance with the provisions of the Special Protections. Moreover, the rerouting of existing storm drains to new locations in ASBS should not be considered to represent a "new" outfall, since the discharge would be from the same watershed and thus of the same quality and quantity as the old outfall. These concepts are included in the County's modified Special Protections.

#### **H. A "Triad" Approach Should Be Used to Assess Compliance**

The NWQC recommended that any compliance assessment for the ASBS must be made based on multiple lines of evidence. SCCWRP Technical Report 625 at 18. In particular, chemical, toxicological, physical, and biological information should be

collected and integrated using applicable methods to evaluate beneficial use impairment in the ASBS.

Chemical and physical information are needed to assess the external factors that could influence the ASBS, while toxicological information is needed to evaluate the toxicity and bioavailability of the contaminants present. Biological information, such as marine community composition, abundance and diversity, is needed to assess the condition of resident communities in the ASBS. Integration of these lines of evidence is needed to evaluate ASBSs in a holistic and scientifically based approach and to, eventually, identify and prioritize management measures. Chemical concentrations alone should not be used to evaluate ASBSs because the presence of chemical constituents does not necessarily imply biological effects. Since the ASBS were created to protect areas of special "biological" significance, any assessment of compliance must focus on those factors that adversely affect biological resources, and not focus merely on the chemical characteristics of the water.

The monitoring proposed in the County's Special Protections comments (Exhibit A) includes monitoring intended to obtain information from these multiple lines of evidence.

#### **I. End-of-Pipe Monitoring Should Not Be Mandatory**

The PEIR noted that compliance with ASBS water quality standards should be measured in the receiving water, but that end-of-pipe monitoring may be used to establish that exceedances in the receiving water were not caused by the discharger. PEIR at 67-68.

The proposed Special Protections, however, would mandate monitoring both at the end-of-pipe ("core discharge monitoring") and in the receiving water. If end-of-pipe monitoring is intended to establish non-compliance, this would contradict the requirements of the Ocean Plan, which indicates that compliance must be measured in the mixing zone, where "initial dilution is completed." Ocean Plan at 4. The Special Protections obviously must be consistent with the Ocean Plan, and require compliance to be measured *only* in the receiving waters, unless there is a valid reason to require such monitoring. Dischargers should have the option to conduct end-of-pipe monitoring to refute a showing of non-compliance in the receiving waters or to support the effectiveness of an end-of-pipe compliance option, but not be required to conduct such monitoring for compliance assessment.

The County's modified Special Protections allow end-of-pipe monitoring as a compliance option for dischargers which elect end-of-pipe compliance options or wish to use such data to establish their non-responsibility for receiving water exceedances.

#### **J. Indicator Bacteria Should Not Be Used For Compliance Assessment**

The Special Protections propose that indicator bacteria be included in the suite of constituents for monitoring. The NWQC determined that bacteriological monitoring is an

inappropriate indicator for assessing the impacts to the beneficial use that the ASBSs are intended to protect, which is marine aquatic life. SCCWRP Technical Report 625 at 5. Further, the NWQC recommended that monitoring be focused on the "most informative constituents" to minimize per-event costs. *Id.* at 18.

The County's modified Special Protections follow the recommendations of the NWQC and remove indicator bacteria from the list of constituents required for monitoring.

**K. The Prescribed Inspection Frequencies Are Unjustified**

Section I.A.2(c) of the proposed Special Protections would require certain minimum inspection frequencies for MS4 dischargers during the rainy season. This level of inspection is not justified by the results of the monitoring of ASBS. There is no evidence in the record (and no discussion in the PEIR) to support the rationale for the inspection frequency, especially where inspections may already be required under an MS4 permit. For dischargers covered by an MS4 permit, the County submits that inspection frequencies called for in the permit should be used. This concept is included in Exhibit A.

**L. Compliance Costs for the Proposed Special Protections Are Higher Than Estimated in the PEIR**

The approximately \$43 to \$54 million cost estimate set forth in the PEIR for state-wide compliance with the ASBS special exception in fact appears to represent only a fraction of the actual costs that would be required for dischargers to comply with the requirements of the proposed Special Protections. The cost to implement the Special Protections for the County- and LACFCD-owned storm drains alone has been preliminarily estimated to range from approximately \$50 million to \$70 million. The cost for the County and the LACFCD to implement the proposed monitoring program alone has been estimated to range from \$2.5 million to \$3.3 million over five years. In light of these estimates, which cover only one ASBS and only approximately 20 storm drains, as compared to more than 1600 discharge points identified by staff, the County believes that the compliance cost for all of these dischargers could be in the billions of dollars, and for local agencies, potentially represent an unfunded state mandate.

In light of the significant costs that potentially could be expended in implementing the Special Protections, it is critical that any required programs are designed to address actual impairments.

**M. Staff's Proposed Special Protections Do Not Clearly Require that BMPs Be Sized to a Design Storm**

The proposed Special Protections are ambiguous with respect to requirements relating to design storms. While the document defines "Design Storm" and includes this concept in the BMP requirement to be incorporated into SWMPs or SWPPPs, other provisions appear not to recognize the design storm concept. For example, in Section I.A.2.g and h, the discharger is required to ensure that natural water quality conditions

are maintained at all times and if not, that additional BMPs are required. It is thus unclear whether the discharger must design BMPs to capture a design storm or a peak flow. Meeting NOWQ at all times require designing BMPs to capture peak flows, which is technically infeasible and economically unwarranted. Otherwise, the system could be oversized for most conditions, causing unnecessary environmental degradation and wasting resources. The design storm concept is fundamental to ensuring that environmental protection is cost-effective. It is clear from the PEIR that State Water Board staff intend that BMPs be sized to the design storm. See PEIR at 66. The County's comments on the proposed State Water Board Resolution in Exhibit A clarify this intent.

## **N. Additional Comments**

### **1. The Proposed Special Protections Should Take Into Account Private Discharges**

The general exception covered by the Special Protections is only for drains owned by the dischargers covered by the exception. Such drains may only be a fraction of the total number of drains into the ASBS. In the Laguna Point to Latigo Point ASBS, for example, more than 80 percent of the drains identified as discharging into the ASBS are privately owned. Thus, there is the potential for an alteration of NOWQ to occur even where the public drains are controlled or are otherwise not contributing to a degradation of water quality. The Special Protections should make clear that any Exception covered thereunder applies only to those drains and that the entities covered by the Exception are not responsible for the compliance of other discharges with the Exception or any degradation of NOWQ in the ASBS caused thereby. Such private drains are the responsibility of the State Water Board or the Regional Water Boards, as they represent individual dischargers subject to regulation under the Clean Water Act or the Porter-Cologne Act.

### **2. Construction and Industrial Stormwater Permits Within ASBS Drainage Areas Should Be Re-issued**

The existing Construction and Industrial Stormwater General Permits do not reflect special requirements related to the ASBS. Given that discharges from construction sites and industrial facilities are required to have their own permits, the State Water Board, either acting on its own or directing the Regional Water Boards, should reissue all existing construction and industrial permits within the drainage area of an ASBS so that they contain conditions reflecting the Special Protections requirements or any other requirements that will ensure attainment and maintenance of NOWQ.

### **3. The Public Education Requirement is Vague**

The Special Protections require, in Section I.A.2(f), that the SWMP or SWPPP include "non-structural BMPs that address public education and outreach." This prescriptive requirement may violate Water Code § 13360(a), which provides that no order of the State Water Board "shall specify the design, location, type of construction, or particular



manner in which compliance may be had with that . . . order . . . , and the person so ordered shall be permitted to comply with the order in any lawful manner." While public education can be an excellent non-structural BMP, ASBS dischargers must be allowed to develop compliance in the fashion best suited to the particular facts.

In addition, the Special Protections are vague with respect to the following statement: "Education and outreach make it a recommendation that the public is adequately informed that direct waste discharges from private property not entering an MS4 are prohibited." This sentence is vague and ambiguous as to what it means to "make it a recommendation" and also how the public would be "adequately informed" and as to what "direct waste discharges" are being addressed, though it appears that the statement may be directed to private discharges to the ASBS. As noted above, dischargers from private properties are, under the governing statutes, the responsibility of the owner/operator of those properties, and not a municipality or public agency.

#### **4. Additional Requirements for Parks and Recreation Facilities Are Unjustified**

Section II of the Special Protections includes "special requirements" for "a discharger with parks and recreation facilities." The County has several concerns with this section. First, "parks and recreation facilities" are not defined in the Special Protections, which makes the provision void and ambiguous. Second, there is nothing in the record before the State Water Board to suggest that "parks and recreation facilities" pose special threats to the ASBS. The PEIR includes no discussion of this issue. Third, requirements in this section requiring BMPs or Management Measures/Practices "to ensure that trails and culverts are maintained to prevent erosion and minimize waste discharges to ASBS" are prescriptive and dictate the method of compliance, in apparent violation of Water Code § 13360(a).

### **III. COMMENTS ON COMPLIANCE OF PEIR WITH CEQA**

#### **A. Additional Project Alternatives Require Analysis**

The PEIR studied two alternatives in addition to the Preferred Alternative. One of these alternatives would entail amendment to the Ocean Plan to authorize discharges pursuant to an NPDES permit and the other is similar to the Preferred Alternative but would not allow for enforcement for noncompliance. The document does not, however, address any alternatives that would specify conditions that differ from the Special Protections proposed by State Water Board staff.

As discussed elsewhere in the County's comments, the PEIR should analyze an alternative that employs the exception process but with conditions modified from those set forth in the Special Protections. Without the consideration of more carefully tailored conditions as part of an exception process, informed decision making and public participation is not possible. This is especially important in the context of the Special Protections, given that a number of the conditions in the Special Protections as proposed are not necessary, do not reflect the science, are not supported by the record and would be very expensive to implement at a time when municipal budgets are under

great stress due to the recession. The County has suggested modifications to the Special Protections that calls for a two-phased approach, focusing on the crucial issue of determining NOWQ. See comments and the markup of the proposed Special Protections document attached as Exhibit A. This question is all the more important given the findings of the studies into ASBS discharges that there is no significant difference between the quality of the waters at reference beaches and those at or near ASBS discharge locations.

The County believes that the alternative it suggests would attain the project objectives, yet cause fewer environmental impacts due to its emphasis on focusing BMPs to address identified problems, which should reduce the construction of structural BMPs in the Coastal Zone.

The environmental effects of the project alternatives are not analyzed sufficiently. Section 15126.6 of the CEQA Guidelines requires that an EIR analyze the environmental advantages and disadvantages of a project and include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. The EIR lacks discussion of the environmental impacts associated with the alternatives in the event that the lead agency selects one of the non-preferred alternatives or how any identified impacts associated with the alternatives could be feasibly mitigated. Table S.1 indicates whether an alternative is expected to have a greater or lesser impact in each of the impact areas; however, without accompanying analysis there is inadequate support for the conclusions reached.

## **B. Cumulative Impacts**

The PEIR does not identify related projects which may be implemented previous to, concurrent with or in the probable future in relation to implementation of the proposed project, as required in Section 15130 of the CEQA Guidelines. The discussion, found in Section 8.1 "Cumulative Impacts," states that projects considered include "past, present and probable future projects that may contribute to discharge-related cumulative impacts, including local projects outside of the regulatory purview of the state." Additionally, Section 8.4 of the PEIR acknowledges that resulting projects in the ASBS areas "may have a significant effect upon life and the environment," without identifying the nature of the impacts. Information regarding projects which may be cumulatively considerable would not be speculative and is currently available for each ASBS area, as they relate to discharge activities and also to other likely environmental effects. Further, no conclusion is reached regarding the potentially cumulative effects of the project's incremental contribution when analyzed together with the effects of other projects and no mitigation is proposed to address potential cumulative effects assuming they are determined to be significant. Section 15130(b) of the CEQA Guidelines requires the EIR discussion to include the severity of the impacts and their likelihood of occurrence as well as "...reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects."

### **C. Statement of Overriding Considerations**

Section 8.3 of the PEIR states that "most" of the impacts associated with the proposed project would be reduced to a "less than significant" level. The impact analyses do not, however, include a discussion of any significant adverse effects expected to remain after the incorporation of mitigation measures. Additionally, a conclusion that all dischargers would be able to reduce impacts to below the level of significance in each impact area is highly speculative, given the nature of the complexity of the projects required to be constructed.

Examples of the types of facilities/projects that may be anticipated to be conducted by dischargers in order to meet the Special Protections may include: infiltration trenches, underground water storage vaults, diversion structures, pump stations (requiring power supply), pipelines, wastewater treatment plants, water quality monitoring equipment, and mechanical/electrical control panels. General impacts due to construction of these types of projects may include impacts such as air emissions from trucks and heavy equipment, aesthetics, noise, traffic, and recreational impacts associated with the need to obtain access to public beaches and parking lots. There may be a need for new power supply and control cabinets to run pumps, which could create potential aesthetic impacts due to glare off cabinets (a previously identified problem at other field facilities), as well as potential noise impacts from pumping. In the Laguna Point to Latigo Point ASBS, for example, slope stability issues will need to be considered for infiltration type projects due to the increased load in the soils and geology and the history of landslides in the Malibu area. In order to build any projects in the ASBS, multiple permits may be required from various regulatory agencies.

### **D. Greenhouse Gas Emissions**

The threshold of significance identified for greenhouse gas emission does not appear to be a threshold, in that it would lead to a significance finding for virtually any project that would generate greenhouse gas emissions, either directly or indirectly. Further, there is no attempt to quantify the emissions from project implementation pursuant to Section 15064.4 of the CEQA Guidelines, which requires an agency to make a good faith attempt to calculate or estimate the amount of greenhouse gas emissions resulting from a project. There is no information to support a finding that construction and implementation of projects in the areas identified would lead to no generation of greenhouse gases.

# EXHIBIT A

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-\_\_\_

### APPROVING EXCEPTIONS TO THE CALIFORNIA OCEAN PLAN FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES, AND APPROVING A MITIGATED NEGATIVE DECLARATION

#### WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the California Ocean Plan (Ocean Plan) on July 6, 1972 and revised the Ocean Plan in 1978, 1983, 1988, 1990, 1997, 2000, and 2005.
2. The Ocean Plan prohibits, with certain exceptions, the discharge of waste to designated Areas of Special Biological Significance (ASBS).
3. ASBS are areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.
4. Under the Marine Managed Areas Improvement Act, all ASBS are designated as a subset of state water quality protection areas and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (Thermal Plan).
5. In state water quality protection areas, waste discharges must be prohibited or limited by special conditions, in accordance with the Porter-Cologne Water Quality Control Act, Water Code §13000 et seq., and implementing regulations, including the Ocean Plan and Thermal Plan.
6. The Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served.
7. On October 18, 2004, the State Water Board notified several parties that they must cease the discharge of storm water and nonpoint source waste into ASBS or request an exception to the Ocean Plan.
8. The State Water Board has now received 287 applications for an exception to the Ocean Plan prohibition against waste discharges into an ASBS. The applicants, who are listed in Attachment A to this resolution, discharge point storm water and nonpoint source runoff waste into ASBS.

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9. The State Water Board finds that granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply with the prohibitions and special conditions that comprise the Special Protections contained in this resolution. The prohibitions and special conditions in the Special Protections, contained in Attachment B to this resolution, are intended to ensure that storm water and nonpoint source discharges are controlled to protect the beneficial uses of the affected ASBS, including marine aquatic life and habitat, and to maintain natural water quality within the ASBS. The Special Protections are also intended to maintain the natural hydrologic cycle and coastal ecology by allowing the flow of clean precipitation and other runoff into the ocean, while preserving coastal slope stability and preventing anthropogenic erosion.
10. The State Water Board finds that granting the requested exceptions is in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, the public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security).
11. The State Water Board finds that a number of scientific studies have been conducted to assess the health of ASBS across the State. These studies were conducted by the ASBS stakeholders along with the State Water Board and research institutions such as the Southern California Coastal Water Research Project and the University of California. The studies assessed the chemical, physical, toxicological, and biological health of ASBSs. These studies found no difference in water quality conditions between reference sites and sites receiving runoff
- ~~11.~~12. The State Water Board conducted scoping meetings on August 1, 8, and 15, 2006. The comment period for CEQA scoping closed August 15, 2006. Furthermore, the State Water Board heard a status report on ASBS at the April 1, 2008 meeting.
- ~~12.~~13. The State Water Board prepared and circulated an Initial Study and Mitigated Negative Declaration for the proposed exceptions in accordance with the California Environmental Quality Act (CEQA) and implementing regulations.
- ~~13.~~14. The State Water Board held a public hearing on \_\_, 2011 to receive comments on the proposed exceptions and the Mitigated Negative Declaration. The written comment period ended on \_\_, 2011. The State Water Board has considered the comments and prepared written responses to the comments. The State Water Board finds, based on the whole record, including the applications, Initial Study and Mitigated Negative Declaration, comments, and responses, that there is no substantial evidence that approval of the exceptions will have a significant effect on the environment because of the terms, special conditions, and prohibitions that comprise the Special Protections in this resolution. The Mitigated Negative Declaration reflects the State Water Board's independent judgment and analysis.

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~~14-15.~~ Granting the exceptions is consistent with federal and state antidegradation policies, in 40 C.F.R. §131.12 and State Water Board Resolution No. 68-16, respectively. The terms, special conditions, and prohibitions that comprise these Special Protections will not authorize a lowering of water quality, but rather will improve water quality conditions in the affected ASBS.

~~15-16.~~ This resolution only grants an exception from the Ocean Plan prohibition against waste discharges into ASBS to the applicants listed in Attachment A. It does not authorize waste discharges to state waters. In order to legally discharge waste into an ASBS, the applicants must have both coverage under this resolution and an appropriate authorization to discharge. Authorization to discharge for point source waste discharges to navigable waters consists of coverage under the National Pollutant Discharge Elimination System (NPDES) permit program. Nonpoint source discharges of waste must be regulated under waste discharge requirements, a conditional waiver, or a conditional prohibition. This resolution does not authorize discharges into ASBS by any discharger not listed in Attachment A. The dischargers listed in Attachment A are not responsible for controlling discharges by any other dischargers, whether or not listed in Attachment A, or for addressing pollutants in the ASBS generated by other dischargers.

~~16-17.~~ The exceptions will be reviewed during the triennial review of the Ocean Plan. If the State Water Board finds cause to revoke or re-open the exceptions, the board may do so during the triennial review or at any other time.

~~17-18.~~ The State Water Board's record of proceedings in this matter is located at 1001 I Street, Sacramento, California, and the custodian is the Division of Water Quality.

THEREFORE BE IT RESOLVED:

The State Water Board:

1. Adopts the Mitigated Negative Declaration for the proposed exceptions.
2. Approves the exceptions to the Ocean Plan prohibition against waste discharges to ASBS for discharges of storm water and specified non-storm water runoff and nonpoint source runoffwaste by the applicants listed in Attachment A to this resolution effective on the date the applicants applied for the exception, provided that:
  - a. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit or waste discharge requirements;
  - b. The authorization incorporates all of the Special Protections, contained in Attachment B to this resolution, which are applicable to the discharge; and

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- c. Only storm water, specified non-storm water and nonpoint source waste discharges by the applicants listed in Attachment A to this resolution are covered by this resolution. All other waste discharges to ASBS are prohibited, unless they are covered by a separate, applicable Ocean Plan exception.
3. Authorizes the Executive Director or designee to file the Notice of Determination with the Governor's Office of Planning and Research.
4. Authorizes the Executive Director or designee to transmit the exceptions to the United States Environmental Agency (U.S. EPA) for concurrence.



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## CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on XXXXX.

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Jeanine Townsend  
Clerk to the Board

## Attachment A - Applicants

Applicant	ASBS
Carmel by the Sea, City of Connolly-Pacific Company	Carmel Bay Southeast Santa Catalina Island
Department of Parks and Recreation	Redwoods National Park, Trinidad Head, King Range, Jughandle Cove, Gerstle Cove, James V. Fitzgerald, Año Nuevo, Carmel Bay, Point Lobos, Julia Pfeiffer Burns, Laguna Point to Latigo Point, Irvine Coast
Department of Transportation (CalTrans)	Redwoods National Park, Saunders Reef, James V. Fitzgerald, Año Nuevo, Carmel Bay, Point Lobos, Julia Pfeiffer Burns, Salmon Creek Coast, Laguna Point to Latigo Point, Irvine Coast
Humboldt County	King Range
Humboldt Bay Harbor District Irvine Company	King Range Irvine Coast
Laguna Beach, City of	Heisler Park
Los Angeles County	Laguna Point to Latigo Point
<u>Los Angeles County Flood Control District</u>	<u>Laguna Point to Latigo Point</u>
Malibu, City of	Laguna Point to Latigo Point
Marin County	Duxbury Reef
Monterey, City of	Pacific Grove
Monterey, County of	Carmel Bay
Newport Beach, City of, and on behalf of the Pelican Point Homeowners	Robert E. Badham and Irvine Coast
Pacific Grove, City of	Pacific Grove
Pebble Beach Company, and on behalf of the Pebble Beach Stillwater Yacht Club	Carmel Bay
San Diego, City of	La Jolla
San Mateo County	James V. Fitzgerald
Santa Catalina Island Company, and on behalf of the Santa Catalina Island Conservancy	Northwest Santa Catalina Island and Western Santa Catalina Island
Sea Ranch Association	Del Mar Landing
Trinidad, City of	Trinidad Head
Trinidad Rancheria	Trinidad Head
U.S. Dept. of Interior, Point Reyes National Seashore	Point Reyes Headlands, Duxbury Reef
U.S. Dept. of Interior, Redwoods National and State Park	Redwoods National Park
U.S. Dept. of Defense, Air Force	James V. Fitzgerald
U.S. Dept. of Defense, Navy	San Nicolas Island & Begg Rock
U.S. Dept. of Defense, Navy	San Clemente Island

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## **Attachment B - Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges of Storm Water and Non-Storm Water**

### **I. PROVISIONS FOR POINT AND NON-POINT SOURCE DISCHARGES OF STORM WATER AND NON-STORM WATER NONPOINT SOURCE WASTE DISCHARGES**

The following terms, prohibitions, and special conditions (hereafter collectively referred to as special conditions) comprise the limitations on point source storm water and non-storm water and nonpoint source discharges that provide Special Protections for marine aquatic life and natural water quality in Areas of Special Biological Significance (ASBS). These Special Protections are adopted by the State Water Board in a California Ocean Plan (Ocean Plan) Exception.

The special conditions are organized by category of discharge. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) will determine categories and the means of regulation for those categories [e.g., Point Source Storm Water National Pollutant Discharge Elimination System (NPDES) or Nonpoint Source].

#### **A. PERMITTED POINT SOURCE DISCHARGES OF STORM WATER AND NON-STORM WATER**

##### **1. General Provisions for Permitted Point Source Discharges of Storm Water and Non-Storm Water**

- a. Existing storm water discharges into an ASBS are allowed only under the following conditions:
  - (1) The discharges are authorized by an NPDES permit issued by the State Water Board or Regional Water Board;
  - (2) The discharges comply with all of the applicable terms, prohibitions, and special conditions contained in these Special Protections; and
  - (3) The discharges:
    - (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;
    - (ii) Are designed to prevent soil erosion;
    - (iii) Occur only during wet weather;
    - (iv) Are composed of only storm water runoff.

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- b. Discharges composed of storm water runoff shall not alter Natural Ocean Water Quality in an ASBS as measured in the receiving waters.
- c. The discharge of trash is prohibited.
- d. Only Except as provided, only discharges from existing storm water outfalls are allowed. Any To the extent feasible, any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls and shall not result in any new combination of waste to an ASBS (i.e., no additional pollutant loading)— materially change the quality of an existing discharge that complies with these Special Protections. "Existing storm water outfalls" are those that were constructed or under construction prior to the effective date of the exception January 1, 2005. "New contribution of waste" is defined as any addition of waste beyond what would have occurred as of January 1, 2005.
- e. Non-storm water discharges are prohibited except as provided below:
- (1) The term "non-storm water discharges" means any waste discharges from a municipal separate storm sewer system (MS4) or other NPDES permitted storm drain system to an ASBS that are not composed entirely of storm water.
  - (2) The following non-storm water discharges are allowed, provided that the discharges are associated with essential for emergency response purposes, structural stability, or slope stability:
    - (i) Discharges associated with emergency Operations required for public safety, including fire fighting operations and maintenance activities.
    - (ii) Foundation and footing drains.
    - (iii) Water from crawl space or basement pumps.
    - (iv) Hillside dewatering.
    - (v) Naturally occurring groundwater seepage via a storm drain.
    - (vi) Storm water runoff that is diverted for treatment and discharged during Dry Weather.
    - (vii) Non-storm water discharges allowed to be discharged into an MS4 under the terms of a MS4 Permit covering the discharger.
  - (3) Except for the discharge of groundwater, which shall not be required to meet standards, a Authorized non-storm water discharges shall not cause or contribute to a receiving water violation of the water quality objectives in Chapter II of the Ocean Plan nor materially alter Natural Ocean Water Quality in an ASBS.

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## 2. Storm Water Management Plans (SWMP) and Storm Water Pollution Prevention Plans (SWPPP)

The discharger shall specifically address the ~~prohibition of non-storm water runoff and the requirement to maintain Natural Ocean Water Quality~~ for storm water discharges to an ASBS in a SWMP or a SWPPP, as appropriate to permit type.

- a. The SWMP or SWPPP shall include a map of surface drainage of storm water runoff, showing areas of sheet runoff, prioritize discharges, and describe any structural Best Management Practices (BMPs) already employed ~~and/or BMPs to be employed in the future~~. The map shall also show the storm water conveyances in relation to other features such as service areas, sewage conveyances and treatment facilities, landslides, areas prone to erosion, and waste and hazardous material storage areas, if applicable. The SWMP or SWPPP shall also include a procedure for updating the map and plan when changes are made to the storm water conveyance facilities.
- b. The SWMP or SWPPP shall describe the measures by which all non authorized non-storm water runoff (e.g., dry weather flows) has been eliminated, how these measures will be maintained over time, and how these measures are monitored and documented.
- c. For dischargers that own or operate MS4s covered by NPDES permits, inspections of construction sites, industrial facilities, commercial facilities and MS4 facilities within watersheds that discharge into the ASBS shall conform to the inspection requirements of the NPDES permit. For dischargers subject to other types of permits, the SWMP or SWPPP shall require minimum inspection frequencies as follows:
  - (1) The minimum inspection frequency for construction sites shall be weekly during rainy season;
  - (2) The minimum inspection frequency for industrial facilities shall be monthly during the rainy season;
  - (3) The minimum inspection frequency for commercial facilities (e.g., restaurants) shall be twice during the rainy season; and
  - (4) Storm water outfall drains equal to or greater than 18 inches (457 mm) in diameter or width shall be inspected once prior to the beginning of the rainy season and once during the rainy season and maintained to remove trash and other anthropogenic debris.
- d. Following completion of Phase I monitoring (as set forth in Section I.A.3.(a) of the Special Protections), The SWMP or SWPPP shall if the discharger is directed by the Regional Board to develop an Implementation Plan, such Plan shall be incorporated into the SWMP or SWPPP. The goal of the Implementation Plan shall be to achieve, within the compliance schedule set forth in Section I.A.3, one of the following compliance objectives, which may

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~~be selected at the discharger's discretion; address storm water discharges (wet weather flows) and, in particular, describe how pollutant reductions in storm water runoff, that are necessary to comply with these special conditions, will be achieved through BMPs. BMPs to control storm water runoff discharges (at the end of pipe) during a design storm shall be designed to achieve the following target levels:~~

- ~~(1) Achieve and maintain Natural Ocean Water Quality in the receiving waters, as measured in the near-shore mixing zone, during dry weather and during storm events not exceeding the Design Storm (Compliance Option 1); Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or~~
  - ~~(2) Capture and treat the total flow (during Dry Weather) and the Design Storm flow (during Wet Weather) so as to meet Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan measured at the end of the pipe (Compliance Option 2); or~~
  - ~~(2)(3) An 85% (eighty-five percent) 90% reduction in pollutant loading for constituents of concern identified during Phase I monitoring the Table B for the discharger's total flow (during Dry Weather) and Design Storm discharges (during Wet Weather), measured at the end of the pipe, parameters during storm events, for the applicant's total discharges. The baseline for the reduction is the effective date of the Exception (Compliance Option 3). The baseline for these determinations is the effective date of the Exception, and the reductions must be achieved and documented within four (4) years of the effective date.~~
- e. The SWMP or SWPPP shall address erosion control and the prevention of anthropogenic sedimentation in ASBS. The natural habitat conditions in the ASBS shall not be materially altered as a result of anthropogenic sedimentation.
  - f. The SWMP or SWPPP shall describe the non-structural BMPs currently employed by the discharger, and planned in the future (including those for construction activities), and include an implementation schedule. The SWMP or SWPPP shall include non-structural BMPs that address public education and outreach. Education and outreach make it a recommendation that the public is adequately informed that direct waste discharges from private property not entering an MS4 are prohibited, unless covered by special protections and an authorization to discharge. The SWMP or SWPPP shall also describe the structural BMPs, including any low impact development (LID) measures, currently employed and planned for higher threat discharges and include an implementation schedule.
  - g. The BMPs and implementation schedule shall be designed to ensure that natural water quality conditions in the receiving water are achieved and maintained by either reducing flows from impervious surfaces or reducing pollutant loading, or some combination thereof.

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~~h.g.~~ If, after completion of BMPS required by an Implementation Plan and completion of the process described on the attached Flowchart, the results of the receiving water monitoring described in Section IV.B. of these special conditions indicate that the storm water runoff is causing or contributing to an a material alteration of Natural Ocean Wwater Qquality in the ASBS for a discharger that selected Compliance Option One, or exceedances of Table B constituents for a discharger that selected Compliance Option Two or a failure to meet the 85% load reduction for a discharger that selected Compliance Option Three, the discharger shall submit a report to the Regional Water Board within 1830 days of receiving the results.

- (1) The report shall identify any~~the~~ constituents of concern leading to the material alteration, exceedance or failure to meet the load reduction, and the suspected in-storm water runoff that alter natural water quality and the sources of these constituents.
- (2) The report shall describe BMPs that are currently being implemented to address such constituents and, ~~BMPs that are identified in the SWMP or SWPPP for future implementation, and any additional BMPs consistent with flows expected during a Design Storm that may be added to the SWMP or SWPPP to address the constituents.~~ alteration of natural water quality. The report shall include an ~~new or modified~~ implementation schedule for such~~the~~ BMPs.
- (3) Within 930 days of Regional Water Board approval of the report, the discharger shall revise its SWMP or SWPPP to incorporate any new or modified BMPs that have been or will be implemented, the implementation schedule, and any additional monitoring required.
- (4) As long as the discharger has complied with the procedures described above and is implementing the revised SWMP or SWPPP, the discharger is in compliance with the exception and is not required ~~does not have to~~ repeat the same procedure for continuing or recurring alterations, exceedances or failures ~~exceedances of natural water quality conditions~~ due to the same constituent.

~~h.h.~~ If the discharger anticipates that it will fail to meet the implementation schedule in the approved SWMP or SWPPP, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to implement the approved SWMP or SWPPP, and propose a revised implementation schedule.

### 3. Compliance Schedule

#### a. Phase I (Monitoring Phase)

~~On the effective date of the Exception, all non-authorized, non-storm water discharges (e.g., dry weather flow) are effectively prohibited.~~

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- (i) Within 12 months of the effective date of the exception, the dischargers shall submit a Monitoring Plan to the Regional Water Board. The Monitoring Plan shall be designed to collect data for characterizing the ambient water quality conditions of the ASBS receiving water and for defining Natural Ocean Water Quality. A Monitoring Plan may be submitted by an individual discharger for a single ASBS or by multiple dischargers for multiple ASBS.
- (ii) Within six (6) months of approval of the Monitoring Plan by the Regional Water Board, the discharger shall start implementing the Monitoring Plan.
- (iii) The monitoring conducted under the Monitoring Plan shall continue for three (3) years. All reports generated under the Monitoring Plan shall be provided to the State Water Board and Regional Water Board.
- (iv) Within twelve (12) months of the completion of monitoring under the Monitoring Plan, the State Water Board shall determine criteria for Natural Ocean Water Quality in accordance with applicable requirements of federal and state law. Such criteria may, depending upon the monitoring results, be made on a regional basis (for Northern, Central and Southern California ASBS) or may be specific to an individual ASBS.
- (v) Within ninety (90) days of the determination by the State Water Board of Natural Ocean Water Quality criteria for the ASBS, the discharger shall submit a report summarizing the data collected under the Monitoring Plan and identifying the constituents of concern (if any) that exceed the Natural Ocean Water Quality criteria established pursuant to Section I.A.3(a)(iv).
- (vi) The discharger shall undertake the design, installation and construction of any structural or non-structural BMPs required to address the prohibition against the discharge of trash into the ASBS. Such BMPs may include "Full Capture Devices" as defined by the Regional Water Board. Any such BMPs must be completed and operational by no later than five (5) years after the effective date of the exception.
- (vii) For good cause, the Regional Water Board may grant a discharger additional time to meet the compliance schedule set forth in Section I.A.3(a)(i-vi).

## b. Phase II (Implementation Phase)

- (i) If based upon its review of the report submitted pursuant to Section I.A.3.(a)(v), the Regional Water Board determines that a discharger's discharges of storm water and non-storm water are causing a material alteration of Natural Ocean Water Quality, it shall so indicate in writing to the discharger, and shall direct the discharger to prepare an Implementation Plan that proposes structural and non-structural BMPs sufficient to meet Compliance Options One through Three set forth in Section I.A.2.(d)(1-3).



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(ii) Within eighteen (18) months after receipt of the Regional Water Board's directive, the discharger shall submit an Implementation Plan to the Board describing the strategy to achieve compliance by the deadlines established in Section I.A.3.(b)(iii-v). The Plan shall include a time schedule to implement BMPs for inclusion in the discharger's SWMP or SWPPP.

(iii) Within five (5) years of receiving the Regional Water Board's approval of the Implementation Plan, any BMPs identified in the Implementation Plan as necessary to address non-storm water discharges shall be operational.

(iv) Within ten (10) years of receiving the Regional Water Board's approval of the Implementation Plan, any BMPs identified in the Implementation Plan as necessary to address storm water discharges shall be operational.

(v) Within twelve (12) years of receiving the Regional Water Board's approval of the Implementation Plan, the discharger shall be in compliance with Compliance Options One, Two or Three. Compliance with Natural Ocean Water Quality shall be measured in the receiving waters following the procedures described in the attached Flowchart.

(vi) For good cause, the Regional Water Board may grant a discharger additional time to meet the compliance schedule set forth in Section I.A.3.(b)(i-v).

- ~~a. Within one year from the effective date of the Exception, the dischargers shall submit a written report to the Regional Water Board that describes their strategy to comply with these special conditions, including the requirement to maintain natural water quality in the affected ASBS. The report shall include a time schedule to implement appropriate non-structural and structural controls to comply with these special conditions for inclusion in the discharger's SWMP or SWPPP.~~
- ~~b. Within 18 months of the effective date of the Exception, any non-structural controls that are necessary to comply with these special conditions shall be implemented.~~
- ~~c. Within four (4) years of the effective date of the Exception, any structural controls identified in the SWMP or SWPPP that are necessary to comply with these special conditions shall be operational.~~
- ~~d. Within four (4) years of the effective date of the Exception, all dischargers must comply with the requirement that their discharges into the affected ASBS maintain natural water quality. If the initial results of post-storm receiving water quality testing indicate levels higher than the 85<sup>th</sup> percentile of reference water quality data, then the discharger must re-sample. If after re-sampling the poststorm levels are still higher than the 85<sup>th</sup> percentile of reference water quality data for any constituent, then natural water quality is exceeded. See attached Flowchart.~~

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- e. ~~Except as provided above for non-authorized non-storm discharges, the Regional Water Board, for good causes, may authorize additional time to comply with these special conditions.~~

## B. NONPOINT SOURCE DISCHARGES

### 1. General Provisions for Nonpoint Sources

- a. Existing nonpoint source waste discharges are allowed into an ASBS only under the following conditions:
- (1) The discharges are authorized under waste discharge requirements, a conditional waiver of waste discharge requirements, or a conditional prohibition issued by the State Water Board or a Regional Water Board.
  - (2) The discharges are in compliance with the applicable terms, prohibitions, and special conditions contained in these Special Protections.
  - (3) The discharges:
    - (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;
    - (ii) Are designed to prevent soil erosion;
    - (iii) Occur only during wet weather;
    - (iv) Are composed of only storm water runoff.
- b. Discharges composed of storm water runoff shall not alter Natural Ocean Water Quality in an ASBS.
- c. The discharge of trash is prohibited.
- d. Only existing nonpoint source waste discharges are allowed. "Existing nonpoint source waste discharges" are discharges that were ongoing as of the effective date of the exception. ~~prior to January 1, 2005. "New nonpoint source discharges" are defined as those that commenced on or after January 1, 2005.~~
- e. Non-storm water discharges from nonpoint sources (those not subject to an NPDES Permit) are prohibited except as provided below:
- (1) The term "non-storm water discharges" means any waste discharges that are not composed entirely of storm water.
  - (2) The following non-storm water discharges are allowed, provided that the discharges are associated with: essential for emergency response purposes, structural stability, or slope stability:

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- (i) Discharges associated with emergency Operations required for public safety, including fire fighting operations and equipment maintenance.
  - (ii) Foundation and footing drains.
  - (iii) Water from crawl space or basement pumps.
  - (iv) Hillside dewatering.
  - (v) Naturally occurring groundwater or springs, seepage via a storm drain.
- (3) Except for the discharge of groundwater or springs, which shall not be required to meet standards, a Authorized non-storm water discharges shall not cause ~~or contribute a receiving water to a~~ violation of the water quality objectives in Chapter II of the Ocean Plan nor materially alter Natural Ocean Water Quality in an ASBS.
- f. At the San Clemente Island ASBS, the discharge of military ordinance and explosives is allowed, except in the two military closure areas in the vicinity of Wilson Cove and Castle Rock. The discharge of explosives or deposition of waste ordinance is prohibited within ASBS waters at the two military closure areas. Discharges must not result in a violation of the water quality objectives, including the protection of the marine aquatic life beneficial use, anywhere in the ASBS.
  - g. At the San Nicolas Island and Begg Rock ASBS, the discharge of missiles is allowed. No other discharges of explosives or deposition of waste ordinance are allowed within ASBS waters. Discharges must not result in a violation of the water quality objectives, including the protection of the marine aquatic life beneficial use, anywhere in the ASBS.
  - h. All other nonpoint source discharges not specifically authorized above are prohibited.

## 2. Planning and Reporting

- a. The nonpoint source discharger shall develop a pollution prevention plan, including an implementation schedule, to address storm water runoff and any other nonpoint source discharges from its facilities. The Pollution Prevention Plan must be equivalent in contents to a SWMP as described in I (A)(2) in this document.
- b. The Pollution Prevention Plan shall address storm water discharges (Wwet Wweather flows) and, in particular, describe how pollutant reductions in storm water runoff that are necessary to comply with these Special Conditions, will be achieved through Management Measures and associated Management Practices (Management Measures/Practices). Management measures to control storm water runoff during a Design Storm shall be designed to achieve the following goaltarget levels:

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- (1) Set as the Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan as measured in the near-shore mixing zone; or
  - (2) By reducing pollutant loading for the Table B parameters during storm events, for the applicant's Design Storm discharges ~~total discharges~~, by 85%90%. The baseline for these determinations is the effective date of the Exception, ~~and the reductions must be achieved and documented within four (4) years of the effective date.~~
- c. If the results of the receiving water monitoring described in IV.B. of these special conditions indicate that the storm water runoff or other nonpoint source pollution is causing ~~or contributing to a material~~ alteration of Natural Ocean Wwater Qquality in the ASBS, the discharger shall submit a report to the Regional Water Board within 930 days of receiving the results.
- (1) The report shall identify the constituents that alter Natural Ocean Wwater Qquality and the sources of these constituents.
  - (2) The report shall describe Management Measures/Practices that are currently being implemented, Management Measures/Practices that are identified in the Pollution Prevention Plan for future implementation, and any additional Management Measures/Practices consistent with flows expected during a Design Storm that may be added to the Pollution Prevention Plan to address the alteration of natural water quality. The report shall include a new or modified implementation schedule for the Management Measures/Practices.
  - (3) Within 930 days of Regional Water Board approval of the report, the discharger shall revise its Pollution Prevention Plan to incorporate any new or modified Management Measures/Practices that have been or will be implemented, the implementation schedule, and any additional monitoring required.
  - (4) As long as the discharger has complied with the procedures described above and is implementing the revised Ppollution Pprevention Pplan, the discharger is not required ~~does not have to~~ repeat the same procedure for continuing or recurring exceedances of natural water quality conditions due to the same constituent and is in compliance with the Exception.
- d. If the discharger anticipates that it will fail to meet the implementation schedule in the approved Pollution Prevention Plan, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to implement the approved Pollution Prevention Plan and propose a revised implementation schedule.

### 3. Compliance Schedule

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- a. Upon incorporation of these Special Protections into Waste Discharge Requirements, On the effective date of the Exception, all non-authorized non-storm water discharges (e.g., dry weather flow) are effectively prohibited.
- b. Upon establishment by the State Water Board of the criteria for Natural Ocean Water Quality applicable to the ASBS, the discharger shall, within Within one year from the establishment of such criteria, from the effective date of the Exception, the dischargers shall submit a written Pollution Prevention Plan to the Regional Water Board that describes their strategy to comply with these special conditions, including the requirement to maintain Natural Ocean Wwater Qquality in the affected ASBS. The Pollution Prevention Plan shall include a time schedule to implement appropriate nonstructural and structural controls to comply with these special conditions for inclusion in the discharger's Ppollution Pprevention Pplan.
- c. Within 18 months of the approval by the Regional Water Board of the discharger's Pollution Prevention Plan, effective date of the Exception, any non-structural controls that are necessary to comply with these Special Protections shall be implemented.
- d. Within four (4) years of the approval by the Regional Water Board of the discharger's Pollution Prevention Planeffective date of the Exception, any structural controls identified in the Pollution Prevention Plan that are necessary to comply with these special conditions shall be operational.
- e. Within ~~fivefour~~ (54) years of the approval by the Regional Water Board of the discharger's Pollution Prevention Planeffective date of the Exception, all non-point source dischargers must comply with the requirement that their discharges into the affected ASBS do not materially alter Natural Ocean Water Qualitymaintain natural water quality. ~~If the initial results of post-storm receiving water quality testing indicate levels higher than the 85th percentile of reference water quality data, then the discharger must re-sample. If after re-sampling the poststorm levels are still higher than the 85th percentile of reference water quality data for any constituent, then natural water quality is exceeded. See attached Flowchart.~~
- f. Except as provided above for non-authorized non-storm discharges, the Regional Water Board may authorize additional time to comply with these special conditions.

## II. ADDITIONAL REQUIREMENTS FOR PARKS AND RECREATION FACILITIES

In addition to the provisions in Section I (A) or I (B), respectively, a discharger with parks and recreation facilities shall, upon the designation by the State Water Board of Natural Ocean Water Quality for the ASBS, comply with the following:

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- A. The discharger shall include a section in a SWMP (for NPDES dischargers) or Pollution Prevention Plan (for nonpoint source dischargers) to address storm water runoff from parks and recreation facilities.
1. The plan shall identify all pollutant sources, including sediment sources, which may result in waste entering storm water runoff. Pollutant sources include, but are not limited to, roadside rest areas and vistas, picnic areas, campgrounds, trash receptacles, maintenance facilities, park personnel housing, portable toilets, leach fields, fuel tanks, roads, piers, and boat launch facilities.
  2. The plan shall describe BMPs or Management Measures/Practices that have been or will be implemented to control soil erosion (both temporary and permanent erosion controls) and reduce or eliminate pollutants in storm water runoff ~~designed in order to achieve and maintain~~ Natural Ocean Water Quality conditions in the affected ASBS. The plan shall include BMPs or Management Measures/Practices to ~~maintain ensure that~~ trails and culverts, ~~if any, are maintained~~ to prevent erosion and minimize waste discharges to the ASBS.
  3. The plan shall include BMPs or Management Measures/Practices to prevent the discharge of pesticides or other chemicals, including agricultural chemicals, in storm water runoff to the affected ASBS that would materially alter Natural Ocean Water Quality.
  4. The plan shall include BMPs or Management Measures/Practices that address public education and outreach. The goal of these BMPs or Management Measures/Practices is to ensure that the public is adequately informed that waste discharges to the affected ASBS are prohibited or limited by special conditions in these Special Protections. The BMPs or Management Measures/Practices shall include signage at camping, picnicking, beach and roadside parking areas, and visitor centers, or other appropriate measures, which notify the public of any applicable requirements of these Special Protections and identify the ASBS boundaries.
  5. The plan shall include BMPs or Management Measures/Practices that address the prohibition against the discharge of trash to ASBS. The BMPs or Management Measures/Practices shall include measures to ensure that adequate trash receptacles are available for public use at visitor facilities, including parking areas, and that the receptacles are adequately maintained to ~~minimize~~ prevent trash discharges into the ASBS. Appropriate measures include covering trash receptacles to prevent trash from being wind blown and periodically emptying the receptacles to prevent overflows.
  6. The plan shall include BMPs or Management Measures/Practices designed to address runoff from parking areas and other developed features so that such to ensure that the runoff does not materially alter Natural Ocean Water Quality in the affected ASBS. BMPs or Management Measures/Practices ~~may~~ shall include measures to reduce pollutant loading in runoff to the ASBS through installation of natural area buffers (LID), treatment, or other appropriate measures.

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- B. Maintenance and repair of park and recreation facilities must not result in waste discharges to the ASBS. The practice of road oiling must be minimized or eliminated, and must not result in waste discharges to the ASBS.

### III. ADDITIONAL REQUIREMENTS – WATERFRONT AND MARINE OPERATIONS

In addition to the provisions in Section I (A) or I (B), respectively, a discharger with waterfront and marine operations shall comply with the following:

- A. For discharges related to waterfront and marine operations, the discharger shall develop a Waterfront and Marine Operations Management Plan (Waterfront Plan). This plan shall contain appropriate Management Measures/Practices to address nonpoint source pollutant discharges to the affected ASBS.
1. The Waterfront Plan shall contain appropriate Management Measures/Practices for any waste discharges associated with the operation and maintenance of vessels, moorings, piers, launch ramps, and cleaning stations in order to ensure that beneficial uses are protected and natural water quality is maintained in the affected ASBS.
  2. For discharges from marinas and recreational boating activities, the Waterfront Plan shall include appropriate Management Measures, described in The Plan for California's Nonpoint Source Pollution Control Program, for marinas and recreational boating, or equivalent practices, to ensure that nonpoint source pollutant discharges do not alter natural water quality in the affected ASBS.
  3. The Waterfront Plan shall include Management Practices to address public education and outreach to ensure that the public is adequately informed that waste discharges to the affected ASBS are prohibited or limited by special conditions in these Special Protections. The management practices shall include appropriate signage, or similar measures, to inform the public of the ASBS restrictions and to identify the ASBS boundaries.
  4. The Waterfront Plan shall include Management Practices to address the prohibition against trash discharges to ASBS. The Management Practices shall include the provision of adequate trash receptacles for marine recreation areas, including parking areas, launch ramps, and docks. The plan shall also include appropriate Management Practices to ensure that the receptacles are adequately maintained and secured in order to prevent trash discharges into the ASBS. Appropriate Management Practices include covering the trash receptacles to prevent trash from being windblown, staking or securing the trash receptacles so they don't tip over, and periodically emptying the receptacles to prevent overflow.
  5. The discharger shall submit its final Waterfront Plan to the Regional Water Board within six months of the effective date of these Special Conditions. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, will review the Plan. The plan must be fully implemented within 18 months of the effective date of the Exception.

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- B. The discharge of chlorine, soaps, petroleum, other chemical contaminants, trash, fish offal, or human sewage to ASBS is prohibited. Sinks and fish cleaning stations are point source discharges of wastes and are prohibited from discharging into ASBS. Anthropogenic accumulations of discarded fouling organisms on the sea floor must be minimized.
- C. Limited-term activities, such as the repair, renovation, or maintenance of waterfront facilities, including, but not limited to, piers, docks, moorings, and breakwaters, are authorized only in accordance with Chapter III.E.2 of the Ocean Plan.
- D. If the discharger anticipates that the discharger will fail to fully implement the approved Waterfront Plan within the 18 month deadline, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to meet the deadline and propose a revised schedule to fully implement the plan. The Regional Water Board may, for good cause, extend the deadline.

## IV. MONITORING REQUIREMENTS

Monitoring in the receiving water shall be is-mandatory for all dischargers. At their discretion, dischargers may also conduct end-of-pipe monitoring to identify and prioritize pollutant sources or to comply with end-of-pipe Compliance Options set forth in Section I.A.2.(d)(2-3) to assure compliance with the Ocean Plan. Monitoring requirements include both: (A) core discharge monitoring, and (B) ocean receiving water monitoring. The State and/or and Regional Water Boards must approve sampling site locations and any adjustments to the monitoring programs. All monitoring must be comparable\* with the Water Boards' Surface Water Ambient Monitoring Program (SWAMP).

Safety concerns: Sample locations and sampling periods must be determined considering safety issues. Sampling may be postponed upon notification to the Regional Water Board if hazardous conditions prevail. Analytical Chemistry Methods: All constituents must be analyzed using the lowest minimum detection limits comparable to the Ocean Plan water quality objectives. For metal analysis, all samples, including storm water effluent, reference samples, and ocean receiving water samples, must be analyzed by the approved analytical method with the lowest minimum detection limits (currently Inductively Coupled Plasma/Mass Spectrometry) described in the Ocean Plan.

Receiving water monitoring shall be designed such that compliance is assessed based on multiple lines of evidence involving chemical, physical, toxicological and biological information. These lines of evidences must be integrated using approved methods (to be developed in conjunction with the development of Natural Ocean Water Quality criteria) in making any final determination as to exceedances of Natural Ocean Water Quality in the receiving water.

### A. CORE DISCHARGE MONITORING PROGRAM



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Core discharge monitoring shall be conducted by dischargers choosing Compliance Options Two or Three and may be conducted by dischargers choosing Compliance Option One, under the following guidelines:

1. General sampling requirements for timing and storm size: Runoff must be collected during a storm event that is greater than 0.1 inch and generates runoff, and at least 72 hours from the previously measurable storm event.
2. Runoff Flow measurements
  - a. For municipal/industrial storm water outfalls in existence as of the effective date of the exception ~~December 31, 2007~~, 18 inches (457mm) or greater in diameter/width (including multiple outfall pipes in combination having a width of 18 inches (457mm)), runoff flows must be measured or calculated, using a method acceptable to and approved by the Regional Water Board.
  - b. This will be reported annually for each precipitation season to the Regional Water Board.
3. Water Quality Sampling ~~Runoff samples — storm events~~
  - a. For outfalls equal to or greater than 18 inches (0.46m) in diameter or width:
    - (1) ~~samples shall be analyzed annually for all Ocean Plan Table A constituents and indicator bacteria, and~~
    - (2) ~~samples of storm water runoff shall be analyzed to assess compliance with the for chronic toxicity (one invertebrate or algal species) objective in Table B of the Ocean Plan at least once every five (5) years. The chronic toxicity sampling may be performed on a rotating basis to ensure that each outfall or outfall group is measured once per five-year period.~~
  - b. For outfalls equal to or greater than 36 inches (0.91m) in diameter or width:
    - (1) ~~samples shall be analyzed annually for all Ocean Plan Table A constituents and indicator bacteria;~~
    - (2) ~~samples shall be further analyzed at least once annually during wet weather (storm events) for those pollutants with chemical water quality objectives for the protection of marine aquatic life in Table B of the Ocean Plan, and for PAHs, pyrethroids, OP pesticides, nitrates, and phosphates; and~~
    - (3) ~~samples of storm water runoff shall be analyzed to assess compliance with the for chronic toxicity (one invertebrate or algal species) objective in Table B of the Ocean Plan at least once every five (5) years. The chronic toxicity sampling may be performed on a rotating basis to ensure that each outfall is measured once per five-year period.~~

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- c. ~~For a applicant not participating in a regional monitoring program [see below in Section IV (B)] in addition to (a.) and (b.) above, a minimum of the two largest outfalls or 20 percent of the larger outfalls, whichever is greater, shall be sampled (flow weighted composite samples) at least three times during the wet weather and analyzed for all Ocean Plan Table A constituents, Table B constituents for marine aquatic life protection (except for toxicity, only chronic toxicity for three species shall be required), DDT, PCBs, PAHs, OP pesticides, pyrethroids, nitrates, phosphates, and Ocean Plan indicator bacteria. For applicants discharging to ASBS in more than one Regional Water Board region, at a minimum, one such discharge shall be sampled in each Region.~~

## B. OCEAN RECEIVING WATER MONITORING PROGRAM

~~In addition to performing the Core Discharge Monitoring Program in Section II.A above, All dischargers applicants having authorized discharges must perform ocean receiving water monitoring. In order to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS, dischargers may choose either (1) an individual monitoring program, or (2) participation in a regional integrated monitoring program.~~

1. Individual Monitoring Program: The requirements listed below are for those dischargers who elect to perform an individual monitoring program to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within the affected ASBS. ~~In addition to Core Discharge Monitoring, the following additional monitoring requirements shall be met:~~
  - a. Three times annually, twice during Wwet Wweather and once during Dry Weather (storm events), the receiving water at the point of discharge from the ~~outfalls described in section (IV)(A)(3)(c) above~~ shall be sampled and analyzed for Ocean Plan Table A constituents, Table B constituents for marine aquatic life, DDT, PCBs, PAHs, OP pesticides, pyrethroids, nitrates, phosphates, salinity and, chronic toxicity (onethree species), ~~and Ocean Plan indicator bacteria~~. The sample location for the ocean receiving water shall be in the surf zone along the line of at the discharge point ~~of discharges; this must be at the same location where storm water runoff is sampled. Storm water runoff~~ Discharge monitoring (if conducted) and receiving water shall be sampled at approximately the same time. Wet Weather sampling shall be performed prior to and during (or immediately after) the same storm.
  - b. Sediment sampling shall occur at least ~~once three times~~ during every five (5) year period. The subtidal sediment (sand or finer, if present) at the discharge shall be sampled and analyzed for Ocean Plan Table B constituents for marine aquatic life, DDT, PCBs, PAHs, pyrethroids, and OP pesticides. For sediment toxicity testing, only an acute toxicity test using the amphipod *Eohaustorius estuarius* must be performed.
  - c. A quantitative survey of intertidal benthic marine life shall be performed at the discharge and at a reference site. The survey shall be performed at least once

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every five (5) year period. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, must approve the survey design. ~~The results of the survey shall be completed and submitted to the Regional Water Board at least six months prior to the end of the permit cycle.~~

- d. Once during each five (5) year period, a bioaccumulation study shall be conducted to determine the concentrations of metals and synthetic organic pollutants at representative discharge sites and at representative reference sites. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, must approve the study design. The bioaccumulation study may include California mussels (*Mytilus californianus*) and/or sand crabs (*Emerita analoga* or *Blepharipoda occidentalis*). Based on the study results, the Regional Water Board, in consultation with the State Water Board's Division of Water Quality, may adjust the study design in subsequent permits, or add or modify additional test organisms (such as shore crabs), or modify the study design appropriate for the area and best available sensitive measures of contaminant exposure.
- e. Marine Debris: Representative quantitative observations for trash by type and source shall be performed along the coast of the ASBS within the influence of the discharger's outfalls. The design, including locations and frequency, of the marine debris observations should be acceptable to and approved by the Regional Water Board.
- f. ~~The monitoring requirements of the Individual Monitoring Program in this section are minimum requirements. For good cause shown based on specific findings made by the Regional Water Board, the Regional Water Boards may require additional monitoring. After the completion of Phase I monitoring of a minimum of one (1) year of continuous water quality monitoring of the discharges and ocean receiving waters, the Regional Water Board may adjust the list of minimum requirements for chemical constituents, if there is good cause to do so.~~

Regional Integrated Monitoring Program: Applicants may elect to participate in a regional integrated monitoring program, in lieu of an individual monitoring program, to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS. ~~This regional approach shall characterize natural water quality in ocean reference areas near the mouths of identified open space watersheds and the effects of the discharges on natural water quality (physical, chemical, and toxicity) in the ASBS receiving waters, and should include benthic marine aquatic life and bioaccumulation components.~~ The design of the ASBS stratum of a regional integrated monitoring program may deviate from the otherwise prescribed individual monitoring approach (in Section IV.B.1) if approved by the State Water Board's Division of Water Quality and the Regional Water Boards.

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3. The State Water Board, in conjunction with dischargers, shall conduct a study to define Natural Ocean Water Quality and to assess impacts on the marine communities in the ASBS. The study shall collect data on water and sediment chemistry, biota toxicity, marine community composition and diversity, and bioaccumulation at ASBS throughout the state. The study shall focus on areas of highest concern. The study shall be conducted under the supervision of persons with expertise in California coastal water quality using appropriate scientifically defensible protocols and be peer reviewed by independent experts.
  
4. Waterfront and Marine Operations: In addition to the above requirements for ocean receiving water monitoring, additional monitoring must be performed for marinas and boat launch and pier facilities:
  - g. For all marina or mooring field operators, in mooring fields with 10 or more occupied moorings, the ocean receiving water must be sampled for Ocean Plan indicator bacteria, residual chlorine, copper, zinc, grease and oil, methylene blue active substances (MBAS), and ammonia nitrogen.
    - (1) For mooring field operators opting for an individual monitoring program (Section IV.B.1 above), this sampling must occur weekly (on the weekend from May through October).
    - (2) For mooring field operators opting to participate in a regional integrated monitoring program (Section IV.B.2 above), this sampling must occur monthly from May through October on a high use weekend in each month.
  - h. For all mooring field operators, the subtidal sediment (sand or finer, if present) within mooring fields and below piers shall be sampled and analyzed for Ocean Plan Table B metals (for marine aquatic life beneficial use), acute toxicity, PAHs, and tributyltin. For sediment toxicity testing, only an acute toxicity test using the amphipod *Eohaustorius estuarius* must be performed. This sampling shall occur at least three times during a five (5) year period.

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## Glossary

At the point of discharge(s) – Means in the surf zone immediately where runoff from an outfall meets the ocean water (a.k.a., at point zero).

Areas of Special Biological Significance (ASBS) – Those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. All Areas of Special Biological Significance are also classified as a subset of State Water Quality Protection Areas.

Design storm – For purposes of these Special Protections, a Design Storm is defined as one inch of precipitation over a 24-hour period. If a Design Storm has been designated for a particular region containing one or more ASBS, that Design Storm shall be used for purposes of the exception, per day.

Dry Weather – Any weather that does not constitute "Wet Weather."

Effectively prohibited – Means that, to the knowledge of the discharger, prohibited discharges are controlled to the maximum extent practicable ~~have ceased~~. If prohibited discharges are discovered through the discharger's illicit connection and illegal discharge program, the discharger shall take action to identify the source and halt the discharge.

~~Higher threat discharges – permitted storm drains discharging equal to or greater than 18 inches, industrial storm drains, agricultural runoff discharged through an MS4, discharges associated with waterfront and marina operations (e.g., piers, launch ramps, mooring fields, and associated vessel support activities, except for passive discharges defined below), and direct discharges associated with commercial or industrial activities to ASBS.~~

Low Impact Development (LID) – A sustainable practice that benefits water supply and contributes to water quality protection. Unlike traditional stormwater management, which entails collecting and conveying storm water runoff through storm drains, pipes, or other conveyances to a centralized storm water facility, LID focuses on using site design and storm water management to maintain the site's predevelopment runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.

Marine Operations – Marinas or mooring fields that contain slips or mooring locations for 10 or more vessels.

Management Measure (MM) - Economically achievable and technically feasible measures for the control of the addition of pollutants from various classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other

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available alternatives. For example, in the "marinas and recreational boating" land-use category specified in the Plan for California's Nonpoint Source Pollution Control Program (NPS Program Plan) (SWRCB, 1999), "boat cleaning and maintenance" is considered a MM or the source of a specific class or type of NPS pollution.

Management Practice (MP) - the practices (e.g., structural, non-structural, operational, or other alternatives) that can be used either individually or in combination to address a specific MM class or classes of NPS pollution. For example, for the "boat cleaning and maintenance" MM, specific MPs may include, but are not limited to, methods for the selection of environmentally sensitive hull paints or methods for cleaning/removal of hull copper anti-fouling paints.

Municipal Separate Storm Sewer System (MS4) – A municipally-owned storm sewer system regulated under the Phase I or Phase II storm water program implemented in compliance with Clean Water Act section 402(p). Note that an MS4 program's boundaries are not necessarily congruent with the permittee's political boundaries.

Natural Ocean Water Quality - The water quality (based on selected physical, chemical and biological characteristics) that is required to sustain marine ecosystems, and which is without apparent human influence, *i.e.*, an absence of significant amounts of: (a) man-made constituents (e.g., DDT) and; (b) other chemical (e.g., trace metals), physical (temperature/thermal pollution, sediment burial), and biological (e.g., bacteria) constituents at concentrations that have been significantly elevated due to man's activities above those resulting from the naturally occurring processes that affect the area in question; and ~~(c) non-indigenous biota (e.g., invasive algal bloom species) that have been introduced either deliberately or accidentally by man. Discharges "shall not alter natural ocean water quality"~~ Natural Ocean Water Quality is as determined by a comparison to the range of constituent concentrations in reference areas agreed upon via the regional monitoring program(s). If monitoring information indicates that *natural ocean water quality* is not maintained, but there is sufficient evidence that a discharge is not contributing to the alteration of natural water quality, then the Regional Water Board may make that determination. In this case, sufficient information must include runoff sample data that has equal or lower concentrations for the range of constituents at the applicable reference area(s).

Nonpoint source – Nonpoint pollution sources generally are sources that do not meet the definition of a point source. Non-point source pollution typically results from land runoff, precipitation, atmospheric deposition, agricultural drainage, marine/boating operations or hydrologic modification. Nonpoint sources, for purposes of these Special Protections, include discharges that are not required to be regulated under an NPDES permit.

Non-storm water discharge – Any runoff that is not the result of a precipitation event. This is often referred to as "dry weather flow."

Representative – Are to be proposed by the discharger, with appropriate rationale, and approved by Water Board staff.

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Sheet-flow – Runoff that flows across land surfaces at a shallow depth relative to the cross-sectional width of the flow. These types of flow may or may not enter a storm drain system before discharge to receiving waters.

Significant – means a statistically significant difference in the arithmetic means of two distributions of sampling results at the 95 percent confidence level.

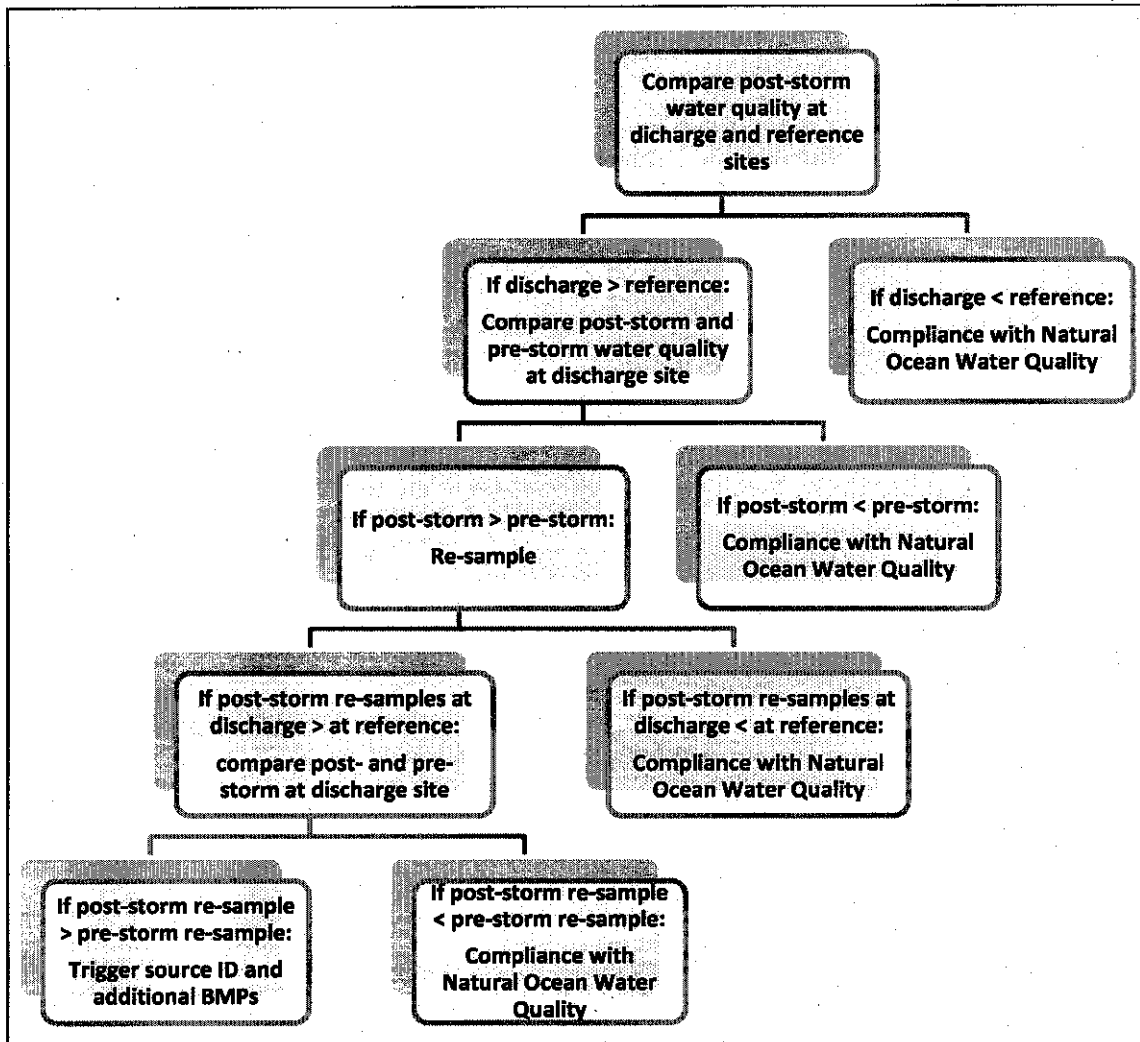
Surf Zone - The surf zone is defined as the area between the breaking waves and the shoreline at any one time.

Surface Water Ambient Monitoring Program (SWAMP) comparable – means that the monitoring program must 1) meet or exceed 2008 SWAMP Quality Assurance Program Management Plan (QAPP) Measurement Quality Objectives, or 2) have a Quality Assurance Project Plan that has been approved by SWAMP; in addition data must be formatted to match the database requirements of the SWAMP Information Management System.

Waterfront Operations - Piers, launch ramps, and cleaning stations in the water or on the adjacent shoreline.

Wet Weather – Any 24-hour period in which at least 0.1 inches of rain falls, as measured at the nearest official rain gauge to the ASBS, plus the three (3) calendar days following the last calendar day on which at least 0.1 inches of rain have fallen.

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Flowchart for Assessing Compliance with Natural Ocean Water Quality



# EXHIBIT A

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-\_\_\_

### APPROVING EXCEPTIONS TO THE CALIFORNIA OCEAN PLAN FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES, AND APPROVING A MITIGATED NEGATIVE DECLARATION

#### WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the California Ocean Plan (Ocean Plan) on July 6, 1972 and revised the Ocean Plan in 1978, 1983, 1988, 1990, 1997, 2000, and 2005.
2. The Ocean Plan prohibits, with certain exceptions, the discharge of waste to designated Areas of Special Biological Significance (ASBS).
3. ASBS are areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.
4. Under the Marine Managed Areas Improvement Act, all ASBS are designated as a subset of state water quality protection areas and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (Thermal Plan).
5. In state water quality protection areas, waste discharges must be prohibited or limited by special conditions, in accordance with the Porter-Cologne Water Quality Control Act, Water Code §13000 et seq., and implementing regulations, including the Ocean Plan and Thermal Plan.
6. The Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served.
7. On October 18, 2004, the State Water Board notified several parties that they must cease the discharge of storm water and nonpoint source waste into ASBS or request an exception to the Ocean Plan.
8. The State Water Board has now received 28 applications for an exception to the Ocean Plan prohibition against waste discharges into an ASBS. The applicants, who are listed in Attachment A to this resolution, discharge point and nonpoint source runoff into ASBS.

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9. The State Water Board finds that granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply with the prohibitions and special conditions that comprise the Special Protections contained in this resolution. The prohibitions and special conditions in the Special Protections, contained in Attachment B to this resolution, are intended to ensure that storm water and nonpoint source discharges are controlled to protect the beneficial uses of the affected ASBS, including marine aquatic life and habitat, and to maintain natural water quality within the ASBS. The Special Protections are also intended to maintain the natural hydrologic cycle and coastal ecology by allowing the flow of clean precipitation and other runoff into the ocean, while preserving coastal slope stability and preventing anthropogenic erosion.
10. The State Water Board finds that granting the requested exceptions is in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, the public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security).
11. The State Water Board finds that a number of scientific studies have been conducted to assess the health of ASBS across the State. These studies were conducted by the ASBS stakeholders along with the State Water Board and research institutions such as the Southern California Coastal Water Research Project and the University of California. The studies assessed the chemical, physical, toxicological, and biological health of ASBSs. These studies found no difference in water quality conditions between reference sites and sites receiving runoff.
12. The State Water Board conducted scoping meetings on August 1, 8, and 15, 2006. The comment period for CEQA scoping closed August 15, 2006. Furthermore, the State Water Board heard a status report on ASBS at the April 1, 2008 meeting.
13. The State Water Board prepared and circulated an Initial Study and Mitigated Negative Declaration for the proposed exceptions in accordance with the California Environmental Quality Act (CEQA) and implementing regulations.
14. The State Water Board held a public hearing on \_\_, 2011 to receive comments on the proposed exceptions and the Mitigated Negative Declaration. The written comment period ended on \_\_, 2011. The State Water Board has considered the comments and prepared written responses to the comments. The State Water Board finds, based on the whole record, including the applications, Initial Study and Mitigated Negative Declaration, comments, and responses, that there is no substantial evidence that approval of the exceptions will have a significant effect on the environment because of the terms, special conditions, and prohibitions that comprise the Special Protections in this resolution. The Mitigated Negative Declaration reflects the State Water Board's independent judgment and analysis.

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15. Granting the exceptions is consistent with federal and state antidegradation policies, in 40 C.F.R. §131.12 and State Water Board Resolution No. 68-16, respectively. The terms, special conditions, and prohibitions that comprise these Special Protections will not authorize a lowering of water quality, but rather will improve water quality conditions in the affected ASBS.
16. This resolution only grants an exception from the Ocean Plan prohibition against waste discharges into ASBS to the applicants listed in Attachment A. It does not authorize waste discharges to state waters. In order to legally discharge waste into an ASBS, the applicants must have both coverage under this resolution and an appropriate authorization to discharge. Authorization to discharge for point source waste discharges to navigable waters consists of coverage under the National Pollutant Discharge Elimination System (NPDES) permit program. Nonpoint source discharges of waste must be regulated under waste discharge requirements, a conditional waiver, or a conditional prohibition. This resolution does not authorize discharges into ASBS by any discharger not listed in Attachment A. The dischargers listed in Attachment A are not responsible for controlling discharges by any other dischargers, whether or not listed in Attachment A, or for addressing pollutants in the ASBS generated by other dischargers.
17. The exceptions will be reviewed during the triennial review of the Ocean Plan. If the State Water Board finds cause to revoke or re-open the exceptions, the board may do so during the triennial review or at any other time.
18. The State Water Board's record of proceedings in this matter is located at 1001 I Street, Sacramento, California, and the custodian is the Division of Water Quality.

## THEREFORE BE IT RESOLVED:

### The State Water Board:

1. Adopts the Mitigated Negative Declaration for the proposed exceptions.
2. Approves the exceptions to the Ocean Plan prohibition against waste discharges to ASBS for discharges of storm water and specified non-storm water runoff and nonpoint source runoff by the applicants listed in Attachment A to this resolution effective on the date the applicants applied for the exception, provided that:
  - a. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit or waste discharge requirements;
  - b. The authorization incorporates all of the Special Protections, contained in Attachment B to this resolution, which are applicable to the discharge; and
  - c. Only storm water, specified non-storm water and nonpoint source waste discharges by the applicants listed in Attachment A to this resolution are

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covered by this resolution. All otehr waste discharges to ASBS are prohibited, unless they are covered by a separate, applicable Ocean Plan exception.

3. Authorizes the Executive Director or designee to file the Notice of Determination with the Governor's Office of Planning and Research.
4. Authorizes the Executive Director or designee to transmit the exceptions to the United States Environmental Agency (U.S. EPA) for concurrence.

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## CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on XXXXX.

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Jeanine Townsend  
Clerk to the Board

## Attachment A - Applicants

Applicant	ASBS
Carmel by the Sea, City of Connolly-Pacific Company  Department of Parks and Recreation	Carmel Bay Southeast Santa Catalina Island  Redwoods National Park, Trinidad Head, King Range, Jughandle Cove, Gerstle Cove, James V. Fitzgerald, Año Nuevo, Carmel Bay, Point Lobos, Julia Pfeiffer Burns, Laguna Point to Latigo Point, Irvine Coast
Department of Transportation (CalTrans)	Redwoods National Park, Saunders Reef, James V. Fitzgerald, Año Nuevo, Carmel Bay, Point Lobos, Julia Pfeiffer Burns, Salmon Creek Coast, Laguna Point to Latigo Point, Irvine Coast
Humboldt County	King Range
Humboldt Bay Harbor District Irvine Company Laguna Beach, City of Los Angeles County Los Angeles County Flood Control District Malibu, City of Marin County Monterey, City of Monterey, County of Newport Beach, City of, and on behalf of the Pelican Point Homeowners Pacific Grove, City of Pebble Beach Company, and on behalf of the Pebble Beach Stillwater Yacht Club San Diego, City of San Mateo County Santa Catalina Island Company, and on behalf of the Santa Catalina Island Conservancy Sea Ranch Association Trinidad, City of Trinidad Rancheria U.S. Dept. of Interior, Point Reyes National Seashore U.S. Dept. of Interior, Redwoods National and State Park U.S. Dept. of Defense, Air Force U.S. Dept. of Defense, Navy U.S. Dept. of Defense, Navy	King Range King Range Irvine Coast Heisler Park Laguna Point to Latigo Point Laguna Point to Latigo Point Laguna Point to Latigo Point Duxbury Reef Pacific Grove Carmel Bay Robert E. Badham and Irvine Coast  Pacific Grove Carmel Bay  La Jolla James V. Fitzgerald Northwest Santa Catalina Island and Western Santa Catalina Island Del Mar Landing Trinidad Head Trinidad Head Point Reyes Headlands, Duxbury Reef  Redwoods National Park  James V. Fitzgerald San Nicolas Island & Begg Rock San Clemente Island

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## **Attachment B - Special Protections for Areas of Special Biological Significance, Governing Point Source and Nonpoint Source Discharges of Storm Water and Non-Storm Water**

### **I. PROVISIONS FOR POINT AND NON-POINT SOURCE DISCHARGES OF STORM WATER AND NON-STORM WATER**

The following terms, prohibitions, and special conditions (hereafter collectively referred to as special conditions) comprise the limitations on point source storm water and non-storm water and nonpoint source discharges that provide Special Protections for marine aquatic life and natural water quality in Areas of Special Biological Significance (ASBS). These Special Protections are adopted by the State Water Board in a California Ocean Plan (Ocean Plan) Exception.

The special conditions are organized by category of discharge. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) will determine categories and the means of regulation for those categories [e.g., Point Source Storm Water National Pollutant Discharge Elimination System (NPDES) or Nonpoint Source].

#### **A. PERMITTED POINT SOURCE DISCHARGES OF STORM WATER AND NON-STORM WATER**

##### **1. General Provisions for Permitted Point Source Discharges of Storm Water and Non-Storm Water**

- a. Existing storm water discharges into an ASBS are allowed only under the following conditions:
  - (1) The discharges are authorized by an NPDES permit issued by the State Water Board or Regional Water Board;
  - (2) The discharges comply with all of the applicable terms, prohibitions, and special conditions contained in these Special Protections; and
  - (3) The discharges:
    - (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;
    - (ii) Are designed to prevent soil erosion;
    - (iii) Occur only during wet weather;
    - (iv) Are composed of only storm water runoff.



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- b. Discharges composed of storm water runoff shall not alter Natural Ocean Water Quality in an ASBS as measured in the receiving waters.
  - c. The discharge of trash is prohibited.
  - d. Except as provided, only discharges from existing storm water outfalls are allowed. To the extent feasible, any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls and shall not materially change the quality of an existing discharge that complies with these Special Protections. "Existing storm water outfalls" are those that were constructed or under construction prior to the effective date of the exception.
  - e. Non-storm water discharges are prohibited except as provided below:
    - (1) The term "non-storm water discharges" means any waste discharges from a municipal separate storm sewer system (MS4) or other NPDES permitted storm drain system to an ASBS that are not composed entirely of storm water.
    - (2) The following non-storm water discharges are allowed, provided that the discharges are associated with:
      - (i) Operations required for public safety, including fire fighting operations and maintenance activities.
      - (ii) Foundation and footing drains.
      - (iii) Water from crawl space or basement pumps.
      - (iv) Hillside dewatering.
      - (v) Naturally occurring groundwater seepage via a storm drain.
      - (vi) Storm water runoff that is diverted for treatment and discharged during Dry Weather.
      - (vii) Non-storm water discharges allowed to be discharged into an MS4 under the terms of a MS4 Permit covering the discharger.
    - (3) Except for the discharge of groundwater, which shall not be required to meet standards, authorized non-storm water discharges shall not cause a receiving water violation of the water quality objectives in Chapter II of the Ocean Plan nor materially alter Natural Ocean Water Quality in an ASBS.
2. Storm Water Management Plans (SWMP) and Storm Water Pollution Prevention Plans (SWPPP)

The discharger shall specifically address the requirement to maintain Natural Ocean Water Quality for discharges to an ASBS in a SWMP or a SWPPP, as appropriate to permit type.

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- a. The SWMP or SWPPP shall include a map of surface drainage of storm water runoff, showing areas of sheet runoff, prioritize discharges, and describe any structural Best Management Practices (BMPs) already employed. The map shall also show the storm water conveyances in relation to other features such as service areas, sewage conveyances and treatment facilities, landslides, areas prone to erosion, and waste and hazardous material storage areas, if applicable. The SWMP or SWPPP shall also include a procedure for updating the map and plan when changes are made to the storm water conveyance facilities.
- b. The SWMP or SWPPP shall describe the measures by which all non authorized non-storm water runoff (e.g., dry weather flows) has been eliminated, how these measures will be maintained over time, and how these measures are monitored and documented.
- c. For dischargers that own or operate MS4s covered by NPDES permits, inspections of construction sites, industrial facilities, commercial facilities and MS4 facilities within watersheds that discharge into the ASBS shall conform to the inspection requirements of the NPDES permit. For dischargers subject to other types of permits, the SWMP or SWPPP shall require minimum inspection frequencies as follows:
  - (1) The minimum inspection frequency for construction sites shall be weekly during rainy season;
  - (2) The minimum inspection frequency for industrial facilities shall be monthly during the rainy season;
  - (3) The minimum inspection frequency for commercial facilities (e.g., restaurants) shall be twice during the rainy season; and
  - (4) Storm water outfall drains equal to or greater than 18 inches (457 mm) in diameter or width shall be inspected once prior to the beginning of the rainy season and once during the rainy season and maintained to remove trash and other anthropogenic debris.
- d. Following completion of Phase I monitoring (as set forth in Section I.A.3.(a) of the Special Protections), if the discharger is directed by the Regional Board to develop an Implementation Plan, such Plan shall be incorporated into the SWMP or SWPPP. The goal of the Implementation Plan shall be to achieve, within the compliance schedule set forth in Section I.A.3, one of the following compliance objectives, which may be selected at the discharger's discretion:
  - (1) Achieve and maintain Natural Ocean Water Quality in the receiving waters, as measured in the near-shore mixing zone, during dry weather and during storm events not exceeding the Design Storm (Compliance Option 1); or

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- (2) Capture and treat the total flow (during Dry Weather) and the Design Storm flow (during Wet Weather) so as to meet Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan measured at the end of the pipe (Compliance Option 2); or
  - (3) An 85% (eighty-five percent) reduction in pollutant loading for constituents of concern identified during Phase I monitoring for the discharger's total flow (during Dry Weather) and Design Storm discharges (during Wet Weather), measured at the end of the pipe. The baseline for the reduction is the effective date of the Exception (Compliance Option 3).
- e. The SWMP or SWPPP shall address erosion control and the prevention of anthropogenic sedimentation in ASBS. The natural habitat conditions in the ASBS shall not be materially altered as a result of anthropogenic sedimentation.
  - f. The SWMP or SWPPP shall describe the non-structural BMPs currently employed by the discharger.
  - g. If, after completion of BMPs required by an Implementation Plan and completion of the process described on the attached Flowchart, the results of the receiving water monitoring described in Section IV.B. of these special conditions indicate that runoff is causing a material alteration of Natural Ocean Water Quality in the ASBS for a discharger that selected Compliance Option One, or exceedances of Table B constituents for a discharger that selected Compliance Option Two or a failure to meet the 85% load reduction for a discharger that selected Compliance Option Three, the discharger shall submit a report to the Regional Water Board within 180 days of receiving the results.
    - (1) The report shall identify any constituents of concern leading to the material alteration, exceedance or failure to meet the load reduction, and the suspected sources of these constituents.
    - (2) The report shall describe BMPs that are currently being implemented to address such constituents and any additional BMPs consistent with flows expected during a Design Storm that may be added to the SWMP or SWPPP to address the constituents. The report shall include an implementation schedule for such BMPs.
    - (3) Within 90 days of Regional Water Board approval of the report, the discharger shall revise its SWMP or SWPPP to incorporate any new or modified BMPs that have been or will be implemented, the implementation schedule, and any additional monitoring required.
    - (4) As long as the discharger has complied with the procedures described above and is implementing the revised SWMP or SWPPP, the discharger is in compliance with the exception and is not required to repeat the same

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procedure for continuing or recurring alterations, exceedances or failures due to the same constituent.

- h. If the discharger anticipates that it will fail to meet the implementation schedule in the approved SWMP or SWPPP, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to implement the approved SWMP or SWPPP, and propose a revised implementation schedule.

### 3. Compliance Schedule

#### a. Phase I (Monitoring Phase)

- (i) Within 12 months of the effective date of the exception, the dischargers shall submit a Monitoring Plan to the Regional Water Board. The Monitoring Plan shall be designed to collect data for characterizing the ambient water quality conditions of the ASBS receiving water and for defining Natural Ocean Water Quality. A Monitoring Plan may be submitted by an individual discharger for a single ASBS or by multiple dischargers for multiple ASBS.
- (ii) Within six (6) months of approval of the Monitoring Plan by the Regional Water Board, the discharger shall start implementing the Monitoring Plan.
- (iii) The monitoring conducted under the Monitoring Plan shall continue for three (3) years. All reports generated under the Monitoring Plan shall be provided to the State Water Board and Regional Water Board.
- (iv) Within twelve (12) months of the completion of monitoring under the Monitoring Plan, the State Water Board shall determine criteria for Natural Ocean Water Quality in accordance with applicable requirements of federal and state law. Such criteria may, depending upon the monitoring results, be made on a regional basis (for Northern, Central and Southern California ASBS) or may be specific to an individual ASBS.
- (v) Within ninety (90) days of the determination by the State Water Board of Natural Ocean Water Quality criteria for the ASBS, the discharger shall submit a report summarizing the data collected under the Monitoring Plan and identifying the constituents of concern (if any) that exceed the Natural Ocean Water Quality criteria established pursuant to Section I.A.3(a)(iv).
- (vi) The discharger shall undertake the design, installation and construction of any structural or non-structural BMPs required to address the prohibition against the discharge of trash into the ASBS. Such BMPs may include "Full Capture Devices" as defined by the Regional Water Board. Any such BMPs must be completed and operational by no later than five (5) years after the effective date of the exception.

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- (vii) For good cause, the Regional Water Board may grant a discharger additional time to meet the compliance schedule set forth in Section I.A.3(a)(i-vi).
- b. Phase II (Implementation Phase)
- (i) If based upon its review of the report submitted pursuant to Section I.A.3.(a)(v), the Regional Water Board determines that a discharger's discharges of storm water and non-storm water are causing a material alteration of Natural Ocean Water Quality, it shall so indicate in writing to the discharger, and shall direct the discharger to prepare an Implementation Plan that proposes structural and non-structural BMPs sufficient to meet Compliance Options One through Three set forth in Section I.A.2.(d)(1-3).
- (ii) Within eighteen (18) months after receipt of the Regional Water Board's directive, the discharger shall submit an Implementation Plan to the Board describing the strategy to achieve compliance by the deadlines established in Section I.A.3.(b)(iii-v). The Plan shall include a time schedule to implement BMPs for inclusion in the discharger's SWMP or SWPPP. (iii) Within five (5) years of receiving the Regional Water Board's approval of the Implementation Plan, any BMPs identified in the Implementation Plan as necessary to address non-storm water discharges shall be operational.
- (iv) Within ten (10) years of receiving the Regional Water Board's approval of the Implementation Plan, any BMPs identified in the Implementation Plan as necessary to address storm water discharges shall be operational.
- (v) Within twelve (12) years of receiving the Regional Water Board's approval of the Implementation Plan, the discharger shall be in compliance with Compliance Options One, Two or Three. Compliance with Natural Ocean Water Quality shall be measured in the receiving waters following the procedures described in the attached Flowchart.
- (vi) For good cause, the Regional Water Board may grant a discharger additional time to meet the compliance schedule set forth in Section I.A.3.(b)(i-v).

## B. NONPOINT SOURCE DISCHARGES

### 1. General Provisions for Nonpoint Sources

- a. Existing nonpoint source waste discharges are allowed into an ASBS only under the following conditions:
- (1) The discharges are authorized under waste discharge requirements, a conditional waiver of waste discharge requirements, or a conditional prohibition issued by the State Water Board or a Regional Water Board.

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- (2) The discharges are in compliance with the applicable terms, prohibitions, and special conditions contained in these Special Protections.
- (3) The discharges:
  - (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;
  - (ii) Are designed to prevent soil erosion;
  - (iii) Occur only during wet weather;
  - (iv) Are composed of only storm water runoff.
- b. Discharges composed of storm water runoff shall not alter Natural Ocean Water Quality in an ASBS.
- c. The discharge of trash is prohibited.
- d. Only existing nonpoint source waste discharges are allowed. "Existing nonpoint source waste discharges" are discharges that were ongoing as of the effective date of the exception.
- e. Non-storm water discharges from nonpoint sources (those not subject to an NPDES Permit) are prohibited except as provided below:
  - (1) The term "non-storm water discharges" means any waste discharges that are not composed entirely of storm water.
  - (2) The following non-storm water discharges are allowed, provided that the discharges are associated with:
    - (i) Operations required for public safety, including fire fighting operations and equipment maintenance.
    - (ii) Foundation and footing drains.
    - (iii) Water from crawl space or basement pumps.
    - (iv) Hillside dewatering.
    - (v) Naturally occurring groundwater or springs.
  - (3) Except for the discharge of groundwater or springs, which shall not be required to meet standards, authorized non-storm water discharges shall not cause a receiving water violation of the water quality objectives in Chapter II of the Ocean Plan nor materially alter Natural Ocean Water Quality in an ASBS.
- f. At the San Clemente Island ASBS, the discharge of military ordinance and explosives is allowed, except in the two military closure areas in the vicinity of

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Wilson Cove and Castle Rock. The discharge of explosives or deposition of waste ordinance is prohibited within ASBS waters at the two military closure areas. Discharges must not result in a violation of the water quality objectives, including the protection of the marine aquatic life beneficial use, anywhere in the ASBS.

- g. At the San Nicolas Island and Begg Rock ASBS, the discharge of missiles is allowed. No other discharges of explosives or deposition of waste ordinance are allowed within ASBS waters. Discharges must not result in a violation of the water quality objectives, including the protection of the marine aquatic life beneficial use, anywhere in the ASBS.
- h. All other nonpoint source discharges not specifically authorized above are prohibited.

## 2. Planning and Reporting

- a. The nonpoint source discharger shall develop a pollution prevention plan, including an implementation schedule, to address storm water runoff and any other nonpoint source discharges from its facilities. The Pollution Prevention Plan must be equivalent in contents to a SWMP as described in I (A)(2) in this document.
- b. The Pollution Prevention Plan shall address storm water discharges (Wet Weather flows) and, in particular, describe how pollutant reductions in storm water runoff that are necessary to comply with these Special Conditions, will be achieved through Management Measures and associated Management Practices (Management Measures/Practices). Management measures to control storm water runoff during a Design Storm shall be designed to achieve the following goals:
  - (1) Set as the Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan as measured in the near-shore mixing zone; or
  - (2) By reducing pollutant loading for the Table B parameters during storm events, for the applicant's Design Storm discharges, by 85%. The baseline for these determinations is the effective date of the Exception.
- c. If the results of the receiving water monitoring described in IV.B. of these special conditions indicate that the storm water runoff or other nonpoint source pollution is causing a material alteration of Natural Ocean Water Quality in the ASBS, the discharger shall submit a report to the Regional Water Board within 90 days of receiving the results.
  - (1) The report shall identify the constituents that alter Natural Ocean Water Quality and the sources of these constituents.
  - (2) The report shall describe Management Measures/Practices that are currently being implemented, Management Measures/Practices that are

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identified in the Pollution Prevention Plan for future implementation, and any additional Management Measures/Practices consistent with flows expected during a Design Storm that may be added to the Pollution Prevention Plan to address the alteration of natural water quality. The report shall include a new or modified implementation schedule for the Management Measures/Practices.

(3) Within 90 days of Regional Water Board approval of the report, the discharger shall revise its Pollution Prevention Plan to incorporate any new or modified Management Measures/Practices that have been or will be implemented, the implementation schedule, and any additional monitoring required.

(4) As long as the discharger has complied with the procedures described above and is implementing the revised Pollution Prevention Plan, the discharger is not required to repeat the same procedure for continuing or recurring exceedances of natural water quality conditions due to the same constituent and is in compliance with the Exception.

d. If the discharger anticipates that it will fail to meet the implementation schedule in the approved Pollution Prevention Plan, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to implement the approved Pollution Prevention Plan and propose a revised implementation schedule.

### 3. Compliance Schedule

a. Upon incorporation of these Special Protections into Waste Discharge Requirements, all non-authorized non-storm water discharges are effectively prohibited.

b. Upon establishment by the State Water Board of the criteria for Natural Ocean Water Quality applicable to the ASBS, the discharger shall, within one year from the establishment of such criteria, submit a written Pollution Prevention Plan to the Regional Water Board that describes their strategy to comply with these special conditions, including the requirement to maintain Natural Ocean Water Quality in the affected ASBS. The Pollution Prevention Plan shall include a time schedule to implement appropriate nonstructural and structural controls to comply with these special conditions for inclusion in the discharger's Pollution Prevention Plan.

c. Within 18 months of the approval by the Regional Water Board of the discharger's Pollution Prevention Plan, any non-structural controls that are necessary to comply with these Special Protections shall be implemented.

d. Within four (4) years of the approval by the Regional Water Board of the discharger's Pollution Prevention Plan, any structural controls identified in the



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Pollution Prevention Plan that are necessary to comply with these special conditions shall be operational.

- e. Within five (5) years of the approval by the Regional Water Board of the discharger's Pollution Prevention Plan, all non-point source dischargers must comply with the requirement that their discharges into the affected ASBS do not materially alter Natural Ocean Water Quality.
- f. Except as provided above for non-authorized non-storm discharges, the Regional Water Board may authorize additional time to comply with these special conditions.

## II: ADDITIONAL REQUIREMENTS FOR PARKS AND RECREATION FACILITIES

In addition to the provisions in Section I (A) or I (B), respectively, a discharger with parks and recreation facilities shall, upon the designation by the State Water Board of Natural Ocean Water Quality for the ASBS, comply with the following:

- A. The discharger shall include a section in a SWMP (for NPDES dischargers) or Pollution Prevention Plan (for nonpoint source dischargers) to address storm water runoff from parks and recreation facilities.
  1. The plan shall identify all pollutant sources, including sediment sources, which may result in waste entering storm water runoff. Pollutant sources include, but are not limited to, roadside rest areas and vistas, picnic areas, campgrounds, trash receptacles, maintenance facilities, park personnel housing, portable toilets, leach fields, fuel tanks, roads, piers, and boat launch facilities.
  2. The plan shall describe BMPs or Management Measures/Practices that have been or will be implemented to control soil erosion (both temporary and permanent erosion controls) and reduce or eliminate pollutants in storm water runoff designed to achieve and maintain Natural Ocean Water Quality conditions in the affected ASBS. The plan shall include BMPs or Management Measures/Practices to maintain trails and culverts, if any, to prevent erosion and minimize waste discharges to the ASBS.
  3. The plan shall include BMPs or Management Measures/Practices to prevent the discharge of pesticides or other chemicals, including agricultural chemicals, in storm water runoff to the affected ASBS that would materially alter Natural Ocean Water Quality.

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4. The plan shall include BMPs or Management Measures/Practices that address public education and outreach. The goal of these BMPs or Management Measures/Practices is to ensure that the public is adequately informed that waste discharges to the affected ASBS are prohibited or limited by special conditions in these Special Protections. The BMPs or Management Measures/Practices shall include signage at camping, picnicking, beach and roadside parking areas, and visitor centers, or other appropriate measures, which notify the public of any applicable requirements of these Special Protections and identify the ASBS boundaries.
  5. The plan shall include BMPs or Management Measures/Practices that address the prohibition against the discharge of trash to ASBS. The BMPs or Management Measures/Practices shall include measures to ensure that adequate trash receptacles are available for public use at visitor facilities, including parking areas, and that the receptacles are adequately maintained to minimize trash discharges into the ASBS. Appropriate measures include covering trash receptacles to prevent trash from being wind blown and periodically emptying the receptacles to prevent overflows.
  6. The plan shall include BMPs or Management Measures/Practices designed to address runoff from parking areas and other developed features so that such runoff does not materially alter Natural Ocean Water Quality in the affected ASBS. BMPs or Management Measures/Practices may include measures to reduce pollutant loading in runoff to the ASBS through installation of natural area buffers (LID), treatment, or other appropriate measures.
- B. Maintenance and repair of park and recreation facilities must not result in waste discharges to the ASBS. The practice of road oiling must be minimized or eliminated, and must not result in waste discharges to the ASBS.

### III. ADDITIONAL REQUIREMENTS – WATERFRONT AND MARINE OPERATIONS

In addition to the provisions in Section I (A) or I (B), respectively, a discharger with waterfront and marine operations shall comply with the following:

- A. For discharges related to waterfront and marine operations, the discharger shall develop a Waterfront and Marine Operations Management Plan (Waterfront Plan). This plan shall contain appropriate Management Measures/Practices to address nonpoint source pollutant discharges to the affected ASBS.
1. The Waterfront Plan shall contain appropriate Management Measures/Practices for any waste discharges associated with the operation and maintenance of vessels, moorings, piers, launch ramps, and cleaning stations in order to ensure that beneficial uses are protected and natural water quality is maintained in the affected ASBS.

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2. For discharges from marinas and recreational boating activities, the Waterfront Plan shall include appropriate Management Measures, described in The Plan for California's Nonpoint Source Pollution Control Program, for marinas and recreational boating, or equivalent practices, to ensure that nonpoint source pollutant discharges do not alter natural water quality in the affected ASBS.
3. The Waterfront Plan shall include Management Practices to address public education and outreach to ensure that the public is adequately informed that waste discharges to the affected ASBS are prohibited or limited by special conditions in these Special Protections. The management practices shall include appropriate signage, or similar measures, to inform the public of the ASBS restrictions and to identify the ASBS boundaries.
4. The Waterfront Plan shall include Management Practices to address the prohibition against trash discharges to ASBS. The Management Practices shall include the provision of adequate trash receptacles for marine recreation areas, including parking areas, launch ramps, and docks. The plan shall also include appropriate Management Practices to ensure that the receptacles are adequately maintained and secured in order to prevent trash discharges into the ASBS. Appropriate Management Practices include covering the trash receptacles to prevent trash from being windblown; staking or securing the trash receptacles so they don't tip over, and periodically emptying the receptacles to prevent overflow.
5. The discharger shall submit its final Waterfront Plan to the Regional Water Board within six months of the effective date of these Special Conditions. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, will review the Plan. The plan must be fully implemented within 18 months of the effective date of the Exception.
  - B. The discharge of chlorine, soaps, petroleum, other chemical contaminants, trash, fish offal, or human sewage to ASBS is prohibited. Sinks and fish cleaning stations are point source discharges of wastes and are prohibited from discharging into ASBS. Anthropogenic accumulations of discarded fouling organisms on the sea floor must be minimized.
  - C. Limited-term activities, such as the repair, renovation, or maintenance of waterfront facilities, including, but not limited to, piers, docks, moorings, and breakwaters, are authorized only in accordance with Chapter III.E.2 of the Ocean Plan.
  - D. If the discharger anticipates that the discharger will fail to fully implement the approved Waterfront Plan within the 18 month deadline, the discharger shall submit a technical report as soon as practicable to the Regional Water Board. The technical report shall contain reasons for failing to meet the deadline and propose a revised schedule to fully implement the plan. The Regional Water Board may, for good cause, extend the deadline.

## IV. MONITORING REQUIREMENTS

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Monitoring in the receiving water shall be mandatory for all dischargers. At their discretion, dischargers may also conduct end-of-pipe monitoring to identify and prioritize pollutant sources or to comply with end-of-pipe Compliance Options set forth in Section I.A.2.(d)(2-3) The State and/or Regional Water Boards must approve sampling site locations and any adjustments to the monitoring programs. All monitoring must be comparable\* with the Water Boards' Surface Water Ambient Monitoring Program (SWAMP).

Safety concerns: Sample locations and sampling periods must be determined considering safety issues. Sampling may be postponed upon notification to the Regional Water Board if hazardous conditions prevail. Analytical Chemistry Methods: All constituents must be analyzed using the lowest minimum detection limits. For metal analysis, all samples, including storm water effluent, reference samples, and ocean receiving water samples, must be analyzed by the approved analytical method with the lowest minimum detection limits (currently Inductively Coupled Plasma/Mass Spectrometry) described in the Ocean Plan.

Receiving water monitoring shall be designed such that compliance is assessed based on multiple lines of evidence involving chemical, physical, toxicological and biological information. These lines of evidences must be integrated using approved methods (to be developed in conjunction with the development of Natural Ocean Water Quality criteria) in making any final determination as to exceedances of Natural Ocean Water Quality in the receiving water.

## A. CORE DISCHARGE MONITORING PROGRAM

Core discharge monitoring shall be conducted by dischargers choosing Compliance Options Two or Three and may be conducted by dischargers choosing Compliance Option One, under the following guidelines:

1. General sampling requirements for timing and storm size: Runoff must be collected during a storm event that is greater than 0.1 inch and generates runoff, and at least 72 hours from the previously measurable storm event.
2. Flow measurements
  - a. For municipal/industrial storm water outfalls in existence as of the effective date of the exception, 18 inches (457mm) or greater in diameter/width (including multiple outfall pipes in combination having a width of 18 inches (457mm), runoff flows must be measured or calculated, using a method acceptable to and approved by the Regional Water Board.
  - b. This will be reported annually for each precipitation season to the Regional Water Board.
3. Water Quality Sampling
  - a. For outfalls equal to or greater than 18 inches (0.46m) in diameter or width:

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- (1) samples shall be analyzed annually for all Ocean Plan Table A constituents, and
  - (2) samples of storm water runoff shall be analyzed for chronic toxicity (one invertebrate or algal species) at least once every five (5) years. The chronic toxicity sampling may be performed on a rotating basis to ensure that each outfall or outfall group is measured once per five-year period.
- b. For outfalls equal to or greater than 36 inches (0.91m) in diameter or width:
- (1) samples shall be analyzed annually for all Ocean Plan Table A constituents;
  - (2) samples shall be further analyzed at least once annually during wet weather (storm events) for those pollutants with chemical water quality objectives for the protection of marine aquatic life in Table B of the Ocean Plan, and for PAHs, pyrethroids, OP pesticides, nitrates, and phosphates; and
  - (3) samples of storm water runoff shall be analyzed to for chronic toxicity (one invertebrate or algal species) at least once every five (5) years. The chronic toxicity sampling may be performed on a rotating basis to ensure that each outfall is measured once per five-year period.

## B. OCEAN RECEIVING WATER MONITORING PROGRAM

All dischargers must perform ocean receiving water monitoring. In order to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS, dischargers may choose either (1) an individual monitoring program, or (2) participation in a regional integrated monitoring program.

1. Individual Monitoring Program: The requirements listed below are for those dischargers who elect to perform an individual monitoring program to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within the affected ASBS:
  - a. Three times annually, twice during Wet Weather and once during Dry Weather, the receiving water shall be sampled and analyzed for Ocean Plan Table A constituents, Table B constituents for marine aquatic life, DDT, PCBs, PAHs, OP pesticides, pyrethroids, nitrates, phosphates, salinity and chronic toxicity (one species). The sample location for the ocean receiving water shall be in the surf zone along the line of the discharge point. Discharge monitoring (if conducted) and receiving water shall be sampled at approximately the same time. Wet Weather sampling shall be performed prior to and during (or immediately after) the same storm.
  - b. Sediment sampling shall occur at least once during every five (5) year period. The subtidal sediment (sand or finer, if present) at the discharge shall be sampled and analyzed for Ocean Plan Table B constituents for marine aquatic

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life, DDT, PCBs, PAHs, pyrethroids, and OP pesticides. For sediment toxicity testing, only an acute toxicity test using the amphipod *Eohaustorius estuarius* must be performed.

- c. A quantitative survey of intertidal benthic marine life shall be performed at the discharge and at a reference site. The survey shall be performed at least once every five (5) year period. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, must approve the survey design.
- d. Once during each five (5) year period, a bioaccumulation study shall be conducted to determine the concentrations of metals and synthetic organic pollutants at representative discharge sites and at representative reference sites. The Regional Water Board, in consultation with the State Water Board's Division of Water Quality, must approve the study design. The bioaccumulation study may include California mussels (*Mytilus californianus*) and/or sand crabs (*Emerita analoga* or *Blepharipoda occidentalis*). Based on the study results, the Regional Water Board, in consultation with the State Water Board's Division of Water Quality, may adjust the study design in subsequent permits, or add or modify additional test organisms (such as shore crabs), or modify the study design appropriate for the area and best available sensitive measures of contaminant exposure.
- e. Marine Debris: Representative quantitative observations for trash by type and source shall be performed along the coast of the ASBS within the influence of the discharger's outfalls. The design, including locations and frequency, of the marine debris observations should be acceptable to and approved by the Regional Water Board.
- f. For good cause shown based on specific findings made by the Regional Water Board, the Regional Water Boards may require additional monitoring. After the completion of Phase I monitoring of ocean receiving waters, the Regional Water Board may adjust the list of minimum requirements for chemical constituents, if there is good cause to do so.

Regional Integrated Monitoring Program: Applicants may elect to participate in a regional integrated monitoring program, in lieu of an individual monitoring program, to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS. The design of the ASBS stratum of a regional integrated monitoring program may deviate from the otherwise prescribed individual monitoring approach (in Section IV.B.1) if approved by the State Water Board's Division of Water Quality and the Regional Water Boards.

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3. The State Water Board, in conjunction with dischargers, shall conduct a study to define Natural Ocean Water Quality and to assess impacts on the marine communities in the ASBS. The study shall collect data on water and sediment chemistry, biota toxicity, marine community composition and diversity, and bioaccumulation at ASBS throughout the state. The study shall focus on areas of highest concern. The study shall be conducted under the supervision of persons with expertise in California coastal water quality using appropriate scientifically defensible protocols and be peer reviewed by independent experts.
4. Waterfront and Marine Operations: In addition to the above requirements for ocean receiving water monitoring, additional monitoring must be performed for marinas and boat launch and pier facilities:
  - g. For all marina or mooring field operators, in mooring fields with 10 or more occupied moorings, the ocean receiving water must be sampled for Ocean Plan indicator bacteria, residual chlorine, copper, zinc, grease and oil, methylene blue active substances (MBAS), and ammonia nitrogen.
    - (1) For mooring field operators opting for an individual monitoring program (Section IV.B.1 above), this sampling must occur weekly (on the weekend from May through October).
    - (2) For mooring field operators opting to participate in a regional integrated monitoring program (Section IV.B.2 above), this sampling must occur monthly from May through October on a high use weekend in each month.
  - h. For all mooring field operators, the subtidal sediment (sand or finer, if present) within mooring fields and below piers shall be sampled and analyzed for Ocean Plan Table B metals (for marine aquatic life beneficial use), acute toxicity, PAHs, and tributyltin. For sediment toxicity testing, only an acute toxicity test using the amphipod *Eohaustorius estuarius* must be performed. This sampling shall occur at least three times during a five (5) year period.

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## Glossary

At the point of discharge(s) – Means in the surf zone immediately where runoff from an outfall meets the ocean water (a.k.a., at point zero).

Areas of Special Biological Significance (ASBS) – Those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. All Areas of Special Biological Significance are also classified as a subset of State Water Quality Protection Areas.

Design storm – For purposes of these Special Protections, a Design Storm is defined as one inch of precipitation over a 24-hour period. If a Design Storm has been designated for a particular region containing one or more ASBS, that Design Storm shall be used for purposes of the exception.

Dry Weather – Any weather that does not constitute "Wet Weather."

Effectively prohibited – Means that, to the knowledge of the discharger, prohibited discharges are controlled to the maximum extent practicable. If prohibited discharges are discovered through the discharger's illicit connection and illegal discharge program, the discharger shall take action to identify the source and halt the discharge.

Low Impact Development (LID) – A sustainable practice that benefits water supply and contributes to water quality protection. Unlike traditional stormwater management, which entails collecting and conveying storm water runoff through storm drains, pipes, or other conveyances to a centralized storm water facility, LID focuses on using site design and storm water management to maintain the site's predevelopment runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.

Marine Operations – Marinas or mooring fields that contain slips or mooring locations for 10 or more vessels.

Management Measure (MM) - Economically achievable and technically feasible measures for the control of the addition of pollutants from various classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other available alternatives. For example, in the "marinas and recreational boating" land-use category specified in the Plan for California's Nonpoint Source Pollution Control Program (NPS Program Plan) (SWRCB, 1999), "boat cleaning and maintenance" is considered a MM or the source of a specific class or type of NPS pollution.



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**Management Practice (MP)** - the practices (e.g., structural, non-structural, operational, or other alternatives) that can be used either individually or in combination to address a specific MM class or classes of NPS pollution. For example, for the "boat cleaning and maintenance" MM, specific MPs may include, but are not limited to, methods for the selection of environmentally sensitive hull paints or methods for cleaning/removal of hull copper anti-fouling paints.

**Municipal Separate Storm Sewer System (MS4)** – A municipally-owned storm sewer system regulated under the Phase I or Phase II storm water program implemented in compliance with Clean Water Act section 402(p). Note that an MS4 program's boundaries are not necessarily congruent with the permittee's political boundaries.

**Natural Ocean Water Quality** - The water quality (based on selected physical, chemical and biological characteristics) that is required to sustain marine ecosystems, and which is without apparent human influence, *i.e.*, an absence of significant amounts of: (a) man-made constituents (e.g., DDT) and (b) other chemical (e.g., trace metals), physical (temperature/thermal pollution, sediment burial), and biological (e.g., bacteria) constituents at concentrations that have been significantly elevated due to man's activities above those resulting from the naturally occurring processes that affect the area in question; "Natural Ocean Water Quality is determined by a comparison to the range of constituent concentrations in reference areas agreed upon via the regional monitoring program(s). If monitoring information indicates that *natural ocean water quality* is not maintained, but there is sufficient evidence that a discharge is not contributing to the alteration of natural water quality, then the Regional Water Board may make that determination. In this case, sufficient information must include runoff sample data that has equal or lower concentrations for the range of constituents at the applicable reference area(s).

**Nonpoint source** – Nonpoint pollution sources generally are sources that do not meet the definition of a point source. Non-point source pollution typically results from land runoff, precipitation, atmospheric deposition, agricultural drainage, marine/boating operations or hydrologic modification. Nonpoint sources, for purposes of these Special Protections, include discharges that are not required to be regulated under an NPDES permit.

**Non-storm water discharge** – Any runoff that is not the result of a precipitation event. This is often referred to as "dry weather flow."

**Representative** – Are to be proposed by the discharger, with appropriate rationale, and approved by Water Board staff.

**Sheet-flow** – Runoff that flows across land surfaces at a shallow depth relative to the cross-sectional width of the flow. These types of flow may or may not enter a storm drain system before discharge to receiving waters.

**Significant** – means a statistically significant difference in the arithmetic means of two distributions of sampling results at the 95 percent confidence level.

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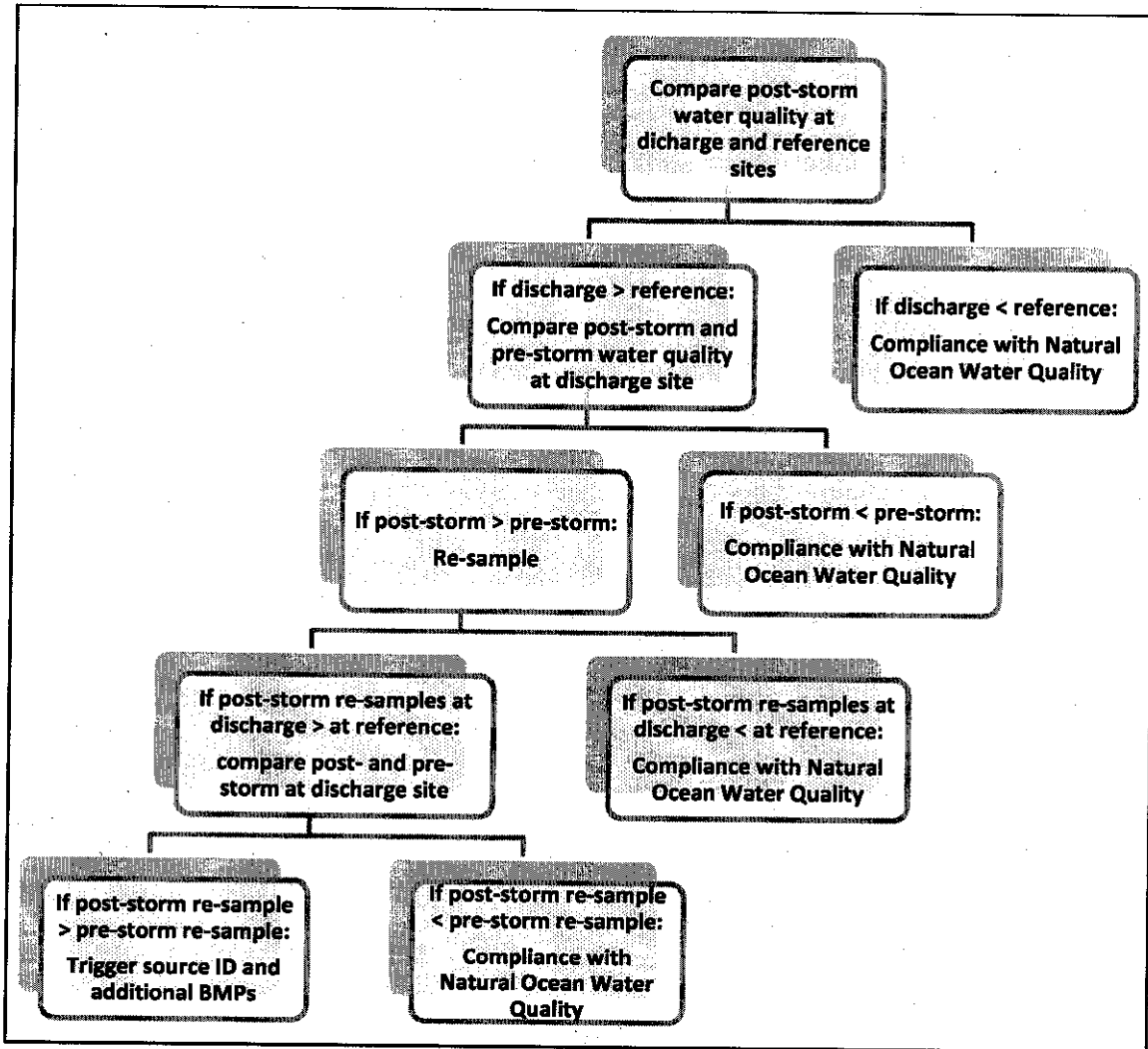
**Surf Zone** - The surf zone is defined as the area between the breaking waves and the shoreline at any one time.

**Surface Water Ambient Monitoring Program (SWAMP) comparable** – means that the monitoring program must 1) meet or exceed 2008 SWAMP Quality Assurance Program Management Plan (QAPP) Measurement Quality Objectives, or 2) have a Quality Assurance Project Plan that has been approved by SWAMP; in addition data must be formatted to match the database requirements of the SWAMP Information Management System.

**Waterfront Operations** - Piers, launch ramps, and cleaning stations in the water or on the adjacent shoreline.

**Wet Weather** – Any 24-hour period in which at least 0.1 inches of rain falls, as measured at the nearest official rain gauge to the ASBS, plus the three (3) calendar days following the last calendar day on which at least 0.1 inches of rain have fallen.

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Flowchart for Assessing Compliance with Natural Ocean Water Quality