

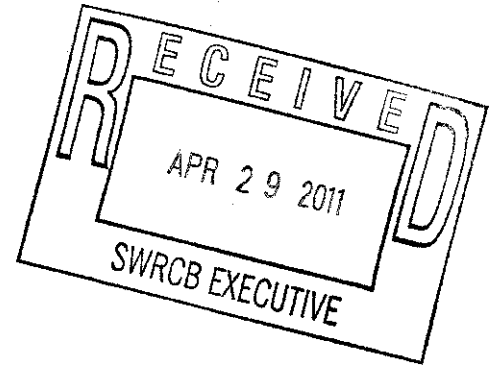
# City of Carmel-by-the-Sea

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

April 25, 2011

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



**Subject:** Comment Letter – ASBS Special Protections  
**Reference:** Notice of Public Hearing for the General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance, and Associated Draft Program EIR

Dear Ms. Townsend:

This letter responds to the SWRCB's Notice of Public Hearing dated January 20, 2011, subject as above.

Exhibit 1 to this letter contains the comments of the City of Carmel-by-the-Sea on the proposed Special Protections that would be imposed on dischargers under the General Exception, and the Associated Draft Program EIR (DPEIR). Adoption of the General Exception and the Special Protections are collectively referred to herein and in the DPEIR as the "Project."

The City previously submitted comments on the Notice of Preparation of the DPEIR in its letter dated March 12, 2010. As highlighted in boldface italics in the excerpts from that letter contained in Exhibit 2 hereto, virtually none of the comments the City submitted were addressed in the DEIR. Without addressing those issues, many of which pertain to the lack of clarity of the terms and requirements contained in the Special Protections in Appendix 1 of the DPEIR, it is impossible for either the dischargers or the SWRCB to accurately assess the impacts of the Project.

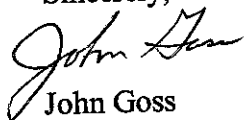
Consequently, the City continues to contend that it is premature for the SWRCB to consider adopting the proposed mitigated negative declaration contained in the DPEIR, because the issues raised by the City, and by numerous other entities throughout the State, remain unaddressed.

The City has worked with a number of other ASBS dischargers to develop an alternative approach to addressing water quality protection within ASBSs, rather than using the approach described in the Special Protections. This alternative approach is contained in Exhibit 3 hereto. We appreciate that considerable time and effort has gone into the preparation of the current Special Protections. However, we believe that there are serious drawbacks to many of the terms, conditions, and requirements contained in them. We believe that the approach described in

Exhibit 3 is a more efficient, cost-effective, and scientifically sound means of achieving the desired levels of water quality protection.

The City urges that the SWRCB give strong consideration to adopting the alternative approach described in Exhibit 3 in lieu of adopting the as-proposed Special Protections in order to address and respond to the City's and a host of other ASBS dischargers' comments, in particular those pertaining to reducing the costs of compliance by the affected dischargers. Following this, the DPEIR should be revised to reflect the changes and be recirculated for public comment before bringing any action to adopt the selected approach for providing water quality protection to the State Water Board.

Sincerely,



John Goss  
Interim City Administrator

Encl.

1. Exhibit 1 – The City of Carmel-by-the-Sea's Comments
2. Exhibit 2 – Excerpts from the City of Carmel-by-the-Sea's Comment Letter Dated March 12, 2010
3. Exhibit 3 – Alternate Approach to Providing Protection to ASBS

# EXHIBIT 1

## THE CITY OF CARMEL-BY-THE-SEA'S COMMENTS ON THE GENERAL EXCEPTION TO THE CALIFORNIA OCEAN PLAN WASTE DISCHARGE PROHIBITION FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE AND THE ASSOCIATED DRAFT PROGRAM EIR FOR THESE EXCEPTIONS

### Abbreviations Used in This Exhibit:

City = City of Carmel-by-the-Sea

DPEIR = Draft Programmatic EIR

Special Protections = Special Protections for Areas of Special Biological Significance,  
Governing Point Source Discharges of Storm Water and Nonpoint Source Discharges

(Attachment 1 to the DPEIR)

SWRCB = State Water Resources Control Board

### COSTS

One of the many areas of controversy about the Special Protections is "The costs associated with compliance with the Special Protections," which is one of the bulleted items in Section S.7 of the DPEIR. The very brief response to this simply states that "There will be costs for controls, but there is a set-aside in Proposition 84 (\$35 million) to address ASBS discharges.

It should immediately be recognized that this \$35 million of Proposition 84 money is not "free." It is bond money for which all of the State's taxpayers will be paying. So while grants lighten the financial load on the individual entities that would be grant recipients, it does not relieve the State's taxpayers from this financial burden.

The SWRCB staff's own estimate (in Section 7.7) is that the capital costs alone to implement the BMPs necessary to begin complying will be between \$43 AND \$54 million. It is our understanding that only \$32 million of the \$35 million in Prop. 84 will be used to fund grants to help the Dischargers comply with the Special Protections. This would leave the dischargers having to pay out of their own funds between \$11 and \$22 million to install those BMPs. In Section 7.7 it also states that the first year start-up costs of the Regional Monitoring Programs will be about \$2.5 million (all of which will have to be paid by the Dischargers). Additional millions of dollars will have to be spent by the Dischargers to indefinitely continue conducting those monitoring programs.

It is clear that there are huge expenses associated with the Special Protections, most of which will have to be borne by the Dischargers, many of which are small communities that are already struggling with extreme economic challenges. Because of their budgetary impacts, imposing these requirements will lead to cutbacks in public services that are currently provided to the residents of these communities.

Section 5.7 goes on to state that "These issues [the areas of controversy] were considered in the preparation of this DEIR and, where appropriate, are addressed in the environmental impact analysis presented in Chapter 6." The high costs of the Special Protections were certainly not addressed anywhere in the DPEIR, they were merely described and discussed in Section 7.0. However, as evidenced by the fact that no cost-saving changes whatsoever were made to the Special Protections from their March 3, 2008 version to the current version contained in Appendix 1 of the DPEIR, it is apparent that no effort was made to mitigate these significant socio-economic impacts. CEQA §15382 specifically provides for considering such impacts in conjunction with the action being taken (the Project), with the obvious intent that the agency taking the action will address those impacts through mitigations.

Section 8.4 of the DPEIR contradicts this by stating that "The State Water Board staff has balanced the economic, legal, social, technological and other benefits of this proposed Project against the unavoidable environmental risks in determining whether to recommend that the State Board approve this project." This is clearly an erroneous statement, based on the facts presented in these comments.

Section 8.3 states that mitigation measures for the identified impacts are recommended in the DPEIR. In fact nearly all of the "mitigation" will fall to the dischargers during the project-level CEQA process, when they implement the necessary BMPs, as confirmed by the language in the third paragraph of Section 8.4. Virtually no "mitigation" in terms of modifying the requirements of the Special Protections has been done, as evidenced by there being no changes made to reduce costs between the March 3, 2008 version and the version contained in Appendix 1 of the DPEIR. The language later in Section 8.4 borders on taking on a punitive nature with the wording "The communities of the Responsible Parties should be responsible for bearing the burdens of their own waste discharges to ASBS, which also will have the effect of encouraging further reductions and enhanced improvements." Clearly, no evidence is presented in the DPEIR that these discharges are a "burden" to the ASBSs.

The closing paragraph of Section 8.4 states that "Implementation of the General Exception Project and Special Protections is both necessary and beneficial." There is only speculation at this point that doing so may provide some (albeit unknown) level of benefit, so this action is clearly not necessary and should not be undertaken, if at all, until the State has conducted further research to confirm or refute this speculation.

The SWRCB has an obligation to the residents of California to assess both the cost and the benefit of the requirements it imposes on them. The costs associated with the Special Protections have been estimated, but the corresponding "value" of the benefit that they will supposedly achieve has not. This is due to the fact that it is not possible to determine whether any benefit will be achieved in terms of appreciable water quality improvement. It is not reasonable for the SWRCB to impose such requirements without first having a firm scientific basis to conclude that doing so will improve water quality to such a high degree as to justify those expenditures.

### **LACK OF CLARITY AND DEFINITION**

The Special Protections lack clarity both in the definition of terms and in the descriptions of conditions and expectations. This lack of clarity makes it impossible for affected dischargers to fully comprehend what will be required of them to comply with the Special Protections. This in

turn makes it impossible for them to provide accurate comments in response to the DPEIR, and for the preparers of the DPEIR to accurately assess the impacts of the Project.

The terms and conditions which lack clarity were identified in the City's comments on the Notice of Preparation. They are included under the "Specific Comments – Initial Study" contained in the table in Exhibit 2.

### **LACK OF SOUND TECHNICAL BASIS**

There is language in numerous Sections of the DPEIR that implies and infers that there are currently "inadequate controls" on the discharges to the ASBSs, and that these are somehow causing adverse impacts on water quality. The Conclusions statements in Section 6.11 even state that if the requirements of the Special Conditions are imposed, only then will the discharges no longer compromise the protection of water quality in the ASBSs, and "the public interest will be served." This statement clearly fails to recognize the great public harm of imposing the Special Protections, due to the high costs and commitments of public resources that will be necessary to comply with them. As discussed above under "Costs" the public interest is not served by imposing on the residents of California very costly requirements lacking scientific basis.

### **Natural Water Quality**

The SWRCB created its own "Natural Water Quality Committee" which released a report in September 2010 titled "*Summation of Findings - Natural Water Quality Committee, 2006-2009*." The following are several excerpts from that report:

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

3) there were large geographic differences in mobile invertebrate species composition, once again reflecting natural biogeography, but no statistically significant differences between reference sites and the ASBS discharge sites.

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

This Committee's work shows that little to no impact on the quality of water in the ASBSs that were monitored was found to be occurring as a result of the current urban discharges into them. It also points out the lack of technical knowledge about natural water quality and how much, if any, impact those discharges are having on it. This is supported by the statements in Section 7.1 of the DPEIR which acknowledge that it is uncertain what constitutes natural water quality, which discharges alter it, and what the extent and magnitude of natural water quality impacts are on a statewide basis. It contradicts the statements in Section 8.4 of the DPEIR that imposing the Special Protections will "...result in improved water quality in the waters of the...ASBSs," "...will have significantly positive impacts to the environment..." and will result in "...enhancement of the economy..." while at the same time having "...positive social and economic benefits..." Those statements are completely unsupported by any facts whatsoever.

### **Issues Specific to the Carmel Bay ASBS**

This section of the City's comments pertains to the lack of a sound technical basis for imposing the Special Protections requirements on the Carmel Bay ASBS.

The SWRCB's document titled "*Areas of Special Biological Significance California's Marine State Water Quality Protection Areas*" (apparently originally prepared in the mid-1970s and reprinted and revised numerous times since then) provides historical information regarding the creation of the 34 ASBSs which currently exist. The ASBS "Nomination Procedure" (excerpted from Appendix IV of the 2001 California Ocean Plan) is described starting on page 63 of that document. One of the requirements for an area to be designated as an ASBS is that it "... needs protection beyond that offered by waste discharge restrictions or other administrative and statutory mechanisms." The document also states that data and information is to be provided to indicate whether the proposed designation may have a significant effect on the environment. If the designation will have a significant effect, then feasible changes to the designation are to be identified that will mitigate or avoid those impacts.

The Carmel Bay ASBS was created in 1975 by SWRCB Resolution No. 75-61. This was years before the SWRCB decided to consider storm water discharges to constitute "waste" and to therefore be prohibited from discharging into ASBSs.

The environmental impacts resulting from the high costs that will be associated with imposing the Special Protections requirements on the Carmel Bay ASBS are discussed above in the "Costs" section of these comments. Those were clearly not anticipated, and therefore not identified, when Carmel Bay was designated as an ASBS. Therefore, no consideration was given at that time to making changes to Carmel Bay's designation to mitigate or avoid those impacts.

However, now that the SWRCB is considering imposing the Special Conditions requirements on the Carmel Bay ASBS, it is an appropriate time to address the associated impacts by amending Carmel Bay's designation to mitigate or avoid those impacts. As the discussion below shows, there is (1) No scientific basis that the City's current storm water discharges are adversely impacting the ASBS, and (2) There is no basis for expecting the water quality in the ASBS to be improved if these discharges are eliminated or restricted.

Statements contained in the "*Whereas*" section of Resolution 75-61 include the following:

- “Waste quantities entering Carmel Bay are expected to increase as the population increases in the tributary watershed area...” [Note: As discussed below, the City of Carmel-by-the-Sea has had neither an increase in population nor service area since the Reconnaissance Report was prepared. Thus, waste quantities from the City have not increased.]
- “Need exists for the development of a plan for collection and treatment of municipal wastes...so that alternative methods of wastewater disposal or reclamation can be evaluated prior to the time when the capacity of the existing sewage treatment plant is exceeded.” [Note: This pertains to wastewater facilities, not to urban runoff.]
- “Need exists for the development of a plan for control of waste substances conveyed to Carmel Bay by runoff and drainage.
- “Priorities need to be established for the development of such plans and studies which will ensure that the biological community of Carmel Bay is not subjected to unnecessary risk and that problems do not occur because of waste control facilities not keeping pace with municipal and residential development.” [Note: This pertains to wastewater facilities, not to urban runoff.]

Statements contained in the “*Therefore be it Resolved*” section of Resolution 75-6 1 include the following:

- “That the Carmel Sanitary District submit a feasibility level plan by July 1, 1978 for waste control facilities which will evaluate alternatives and their environmental impacts at the 1983 level of development...”
- “That the Executive Officer is directed to:
  - a. Develop, in cooperation with the Regional Board, a waste discharge monitoring program to be implemented by the Carmel Sanitary District that will determine if waste discharge constituents enter the boundaries of the Point Lobos area of Special Biological Significance and will evaluate the discharge effects on the receiving waters of Carmel Bay. [Emphasis added] [Note: The Carmel Sanitary District (now named the Carmel Area Wastewater District) owns and operates the wastewater facilities which serve the City. The City owns and operates the storm water system that manages its urban runoff. The City is not aware of any evaluation prepared by the Regional Board which found that the wastewater plant’s discharge of treated effluent to Carmel Bay was having any adverse impacts.]
  - b. Ensure that the Areawide Waste Treatment Management Planning conducted by the Association of Monterey Bay Area Governments adequately considers the problems of urban runoff, individual home waste disposal, community waste treatment and disposal, and use of reclaimed wastewater in the watershed to Carmel Bay with the objective that the Carmel Bay Area of Special Biological Significance and its biological community will not be impaired by waste substances.” [Note: This planning was completed and did not lead to any recommendations to eliminate or further restrict urban storm water discharges into the ASBS.]

These citations from the SWRCB Resolution that created the Carmel Bay ASBS are provided to illustrate that the concerns associated with creating this ASBS were primarily focused on the local wastewater treatment plant’s ability to continue its discharge into the ASBS without adversely impacting water quality in Carmel Bay, while at the same time treating increasing flows from anticipated population increases. Urban runoff was to be planned for, but no specific concerns regarding urban runoff were identified, because there was no evidence that urban runoff was adversely impacting water quality. Further, no prohibition on the continued discharge of urban runoff was imposed or even suggested.



The SWRCB published Water Quality Monitoring Report No. 79-10 titled "California Marine Waters - Areas of Special Biological Significance - Reconnaissance Survey Report - Carmel Bay, Monterey County" dated April 1979. This report was one of a series of ASBS survey reports prepared under an agreement with the California Department of Fish and Game.

Some of the key findings in that comprehensive report (over 150 pages in length) were:

#### **Issues with the Potential to Impact the ASBS**

- The City of Carmel-by-the-Sea had a population of approximately 5,000 and occupied an area of approximately one square mile at the time the report was prepared. [Note: The City's current population has gone down since then and now is approximately 4,000. Its jurisdictional boundaries have not changed since the Reconnaissance Report was prepared, with its area remaining at approximately one square mile.
- Non-point discharges included numerous outfalls flowing from the City's storm drainage system into the ASBS along Carmel Beach. These were reported to be "virtually dry" except during the rainy season. [Note: These outfalls discharged urban runoff from precisely the same areas as the City's current storm water outfalls do, the majority of which were the same ones in existence at the time the Reconnaissance Survey was conducted].
- The only industries that exist adjacent to or within one mile of the ASBS were restaurants, hotels/motels, and commercial businesses, all of which discharge their wastewater to the wastewater treatment plant.
- There are several major watersheds draining into the ASBS via the Cannel River and San Jose Creek.
- The coastline of the ASBS is nearly entirely exposed to the open ocean. Water circulation within the ASBS is poorly understood, but is strongly influenced by coastal currents, the Cannel Canyon, and wind patterns.
- Commercial fishing in the ASBS has been prohibited since 1977.
- Because of the great deal of natural variability that occurs over even short distances within the ASBS, it is not feasible to have a "control" station against which to measure water quality changes.

#### **Water Quality in the ASBS**

- There is a lack of credible information on the potential impact of non-point discharges. [Note: However, as documented in the findings listed below, all of the observations contained in the Reconnaissance Report resulted in the Report concluding that water quality was excellent.]
- Carmel each is a clean, white sand beach ideally suited for a variety of recreational uses.
- Sea otters are found in high densities.
- Water quality was found to be good, though there was some uncertainty regarding the impact of the wastewater treatment plant outfall discharge.
  - However, five years of monitoring did not identify any significant impacts on the ASBS from that discharge.
  - It was impossible to distinguish between naturally occurring fluctuations (such as those caused by flows from the Carmel River) and those that may have been caused by the discharge.
  - The variability in the monitoring data was felt to be attributable to the natural variability found in the ASBS, which is a well-mixed, high water movement area.
  - The levels of heavy metals found in sediments and shellfish near the outfall were of the order of magnitude that would normally be expected to be found in sediments and shellfish in this area, even if no such outfall existed.

- There were varied intertidal and subtidal habitats and good water quality, resulting in the existence of a highly diverse and abundant biota which the report authors described as being "rich". This biota was found not to have been significantly disturbed by human activity. The biological and geological diversity was characterized as being remarkable, and the subtidal flora and fauna in the ASBS were found to be some of the richest in the entire state of California.
  - There were diverse habitats for a rich invertebrate fauna, many of which are scarce or not generally encountered elsewhere.
  - The giant kelp bed along Carmel Beach is one of the most extensive in central California.
  - A profusion of plant and animal life covered the rocks along the shoreline.
  - Brown algae were abundant.
  - Palm kelp was common.
  - Large areas of delicate filamentous red algae were noteworthy.
  - Anemones occurred by the hundreds along the base of the rocks along the shoreline, and numerous fish were observed in these areas.
  - Growths of tunicates were remarkable.
  - Feather duster worms were unusually abundant.
  - Sponges and tunicates were ubiquitous and abundant.
- There are as variety of relatively unspoiled habitats in close proximity to each other.
- Water clarity was remarkable, and water quality was found to be adequately protected, with the only uncertainty pertaining to the wastewater treatment plant outfall discharge (which is discussed above).
- Information on physical and chemical parameters and nutrient levels within the ASBS was largely non-existent.
- Sand transport within the ASBS had not been studied and the origin of sediments had not been determined.
- Numerous academic and public agencies have utilized the ASBS in biological and oceanographic studies. These include Hopkins Marine Station, Moss Landing Marine Laboratories, U.C. Santa Cruz, and the U.S. Naval Postgraduate School.

#### **Creation of the Carmel Bay ASBS**

- The intent of creating ASBSs is to preserve and maintain natural water quality conditions to a practical extent. This is to be achieved in part through prohibiting point source discharges of sewage or industrial process wastes if that would alter water quality, and by controlling to a practical extent the discharge of wastes from nonpoint sources such as storm water. [Emphasis added] [Note: Imposing the Special Protections requirements on an ASBS that already has excellent water quality, and has had the current urban runoff discharges flowing into it for years, is not necessary and certainly is not practical.]
- The Reconnaissance Report was prepared to evaluate the status of protection of the Carmel Bay ASBS.

#### **More Practical Approaches**

There are more practical ways of ensuring that the City's urban runoff discharges will not threaten water quality within the Carmel Bay ASBS, without having to impose the myriad of complex and costly requirements contained in the Special Protections. Examples of some such practical solutions that the SWRCB has already granted to other ASBS dischargers are cited below.

- The exception granted by the SWRCB in its Resolution No. 77-11 for the U.S. Navy's San Clemente Island wastewater treatment plant, which discharges into the San Clemente Island ASBS, requires that monitoring be performed to demonstrate that that discharge "...does not alter natural water quality beyond a radius of 1,000 feet from the end of the outfall..." This is a much more practical approach than the Special Protections requirements, which are applied to end-of-outfall (point-of-discharge) locations.

- The exception granted by the SWRCB in its Resolution No. 90-105 for the continued discharge of brine from the U.S. Navy's San Nicholas Island desalination plant into the San Nicholas Island ASBS was granted because: (1) The SWRCB found that the discharge would not adversely impact biological communities in the ASBS, and (2) That providing fresh water by another means would be more costly than providing it from the desalination plant, and (3) That the public interest would be served by allowing that discharge to continue.

Similar to the San Clemente Island exception, this exception requires that monitoring be performed to demonstrate that that discharge "...does not alter natural water quality beyond a radius of 1,000 feet from the end of the outfall..." This is another illustration of a much more practical approach than the Special Protections requirements, which are applied to end-of-outfall (point-of-discharge) locations.

This exception also made the practical acknowledgement that the existing brine discharge was not adversely impacting the ASBS, and that the public interest would best be served by allowing the discharge to continue, rather than incurring the high costs of providing water by a means that would allow the discharge to be eliminated. This approach could also be taken for the Carmel ASBS, because the Carmel Bay Reconnaissance Survey Report that found that there were no adverse impacts from Carmel's existing storm water discharges.

- The SWRCB's Resolution No. 84-78, which revised in part its Resolution No. 75-61, includes the following statements:

- "Results of the monitoring program required by the State...indicate that current discharges of secondary treated wastewater in the Carmel Bay ASBS have had no significant adverse impacts on Bay ecosystems."
- "Imposition of the entire cost of advanced treatment on the Carmel Sanitary District may not be financially and economically feasible."

As a result of those findings, the SWRCB rescinded its prior requirement that the Carmel Sanitary District eliminate its wastewater effluent discharge during the period May through October (the dry weather period). This is a much more practical approach than requiring that its discharge be eliminated during the dry weather period. Similar to the San Nicholas Island exception, this exception acknowledged (1) That the existing wastewater plant discharge was not adversely impacting the ASBS, and (2) That it might not be financially and economically feasible for the discharger to bear the cost of providing advanced treatment, which would have been necessary to reclaim all of the plant's effluent, in order to eliminate its dry weather discharge to the ASBS.

## CONCLUSIONS

All of comments in this letter point out the need for further study of a number of issues to be conducted in order for the SWRCB to develop a fair, practical, and effective program to preserve natural water quality in ASBSs to an extent that is reasonably achievable.

The SWRCB has both a moral and a fiduciary responsibility to the citizens of California to carefully determine what requirements it imposes on them. This is especially critical during these financially troubled times when the costs associated with those requirements will be significant. Imposing the proposed Special Protections at this time, with so much technical knowledge lacking to support many of the requirements contained within them, is clearly premature. It would lead to the expenditure of huge sums of money with no assurance that any appreciable change in water quality will be achieved.

The burden of conducting general research on water quality along California's coastline should not be placed on the backs of a few dischargers whose discharges happen to lie within ASBSs. Rather, such work should be undertaken along the full length of the coast in order to maximize protection of ASBSs, as recommended by the Natural Water Quality Committee, and funded at the State level (SWRCB), not at the local level. At most dischargers could be asked to provide reasonable monitoring of their discharges, and the State should monitor the receiving waters to determine if the discharges are having any appreciable impact on them.

## EXHIBIT 2

**EXCERPTS FROM THE CITY OF CARMEL-BY-THE-SEA'S COMMENT LETTER DATED  
MARCH 12, 2010  
ON THE NOTICE OF PREPARATION OF AN EIR  
FOR THE  
SWRCB'S EXCEPTIONS TO THE OCEAN PLAN  
IDENTIFYING COMMENTS/ISSUES THAT REMAIN UNADDRESSED**

Abbreviations Used in This Table:

City = City of Carmel-by-the-Sea

Special Protections = Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Discharges (Attachment A to the Notice of Preparation Initial Study)

SWRCB = State Water Resources Control Board

### **GENERAL COMMENTS**

1. The documents should be edited to make it clear that any exceptions to the Ocean Plan prohibition against waste discharges to ASBS which are granted to entities that submitted their applications for a general exception to the in response to the SWRCB's October 18, 2004 notification will be retroactive to that October 18, 2004 date. This is necessary in order to clearly implement those exceptions in the spirit in which they were applied for by the applicants, and in which they were intended by the SWRCB. ***THIS CLARIFICATION WAS NOT INCLUDED.***
2. The issuance of the Notice of Preparation at this time is premature, inappropriate, and not consistent with CEQA Guidelines, because the "Project" has not been sufficiently developed so that an adequate Initial Study can be prepared. The "Project" description does not include reasonably foreseeable implementation projects, and their impacts, that will be necessary for the applicants to implement, and which will therefore be a direct result of the "Project." The Project Description and scope of the analysis needs to disclose and analyze reasonably foreseeable projects and their cumulative impacts if this "project" were instituted (CEQA Code Sections 15063(d)(3), 15064(d), 15168(c)(5)). ***THIS COMMENT WAS NOT ADDRESSED.***

**SPECIFIC COMMENTS – INITIAL STUDY**

		<b>COMMENTS</b>
<b>INITIAL STUDY PAGE NO.</b>	<b>INITIAL STUDY PARA NO.</b>	
7	2nd and 4 <sup>th</sup> paras on this page	<p>These paras contain citations from the Ocean Plan pertaining to the term “waste.” Since the Special Protections result directly from the prohibition of discharging “waste” to the ASBS, it is essential that this term be much better defined than it currently is in the Ocean Plan and in the Special Protections. For example if “waste” is construed to include even the smallest amount of urban stormwater runoff, regardless of its water quality, then the consequences of imposing the Special Protections will be enormous. If “waste” is construed to mean pollutants at concentrations in excess of Ocean Plan Table B levels, the consequences would be lower. Without better definition of this term, and how it is applied in the Special Protections, it is not clear what the “project” really is. Therefore, better definition is necessary in order for the public and affected ASBS dischargers to provide meaningful and appropriate comments. <b><i>THIS CLARIFICATION WAS NOT INCLUDED IN THE SPECIAL PROTECTIONS CONTAINED IN APPENDIX 1 OF THE DPEIR.</i></b></p>
7	Last para of the Introduction Section	<p>The statement is made that the conditions in the Special Protections will allow the continuation of essential public services. As noted in the comments below pertaining to Initial Stud para 18.c), it is likely that imposing the Special Protections will result in ASBS dischargers having to discontinue providing some of their essential public services due to the costs associated with complying with the Special Protections. This language should be edited to reflect this reasonably foreseeable consequence of imposing the Special Protections. <b><i>THIS ISSUE WAS NOT ADDRESSED IN SECTION 6.9 OF THE DPEIR, EVEN THOUGH THE OPENING SENTENCE IN THAT SECTION READS “CEQA REQUIRES AN ANALYSIS TO ASSESS WHETHER A PROPOSED PROJECT WOULD HAVE PUBLIC SERVICES IMPACTS.” (EMPHASIS ADDED)</i></b></p>

**SPECIFIC COMMENTS – INITIAL STUDY**

**COMMENTS**

INITIAL STUDY PAGE NO.	INITIAL STUDY PARA NO.	COMMENTS
9	1.a), b), and c)	<p>Aesthetics could be significantly impacted through the construction of facilities necessary to comply with the Special Protections. Examples of this are contained in photographs provided by CalTrans in their presentation on projects they constructed to manage their storm water discharges in several locations along the California coast. Therefore, each of these should be assigned a Potentially Significant Impact. <b>THIS ISSUE WAS NOT ADDRESSED IN SECTION 6.1 OF THE DPEIR. RATHER, BLANKET STATEMENTS, UNSUPPORTED WITH ANY FACTS OR JUSTIFICATION, ARE MADE THROUGHOUT THAT SECTION THAT "...NO POTENTIAL FOR ADVERSE IMPACTS...WERE IDENTIFIED" AND "STATE WATER BOARD BELIEVES THAT MITIGATION IS AVAILABLE TO REDUCE AN POTENTIAL IMPACTS TO AESTHETICS TO LESS THAN SIGNIFICANT LEVELS" AND "THE MITIGATION MEASURES WOULD BE IMPLEMENTED AT THE PROJECT-SPECIFIC LEVEL." WITHOUT FIRST KNOWING WHAT ALL OF THE PROJECTS ARE THAT WOULD BE NEEDED IN ORDER TO COMPLY WITH THE SPECIAL PROTECTIONS, IT IS IMPOSSIBLE TO JUSTIFY THESE STATEMENTS.</b></p>
11	5, narrative under "Cultural Resources"	<p>It is reasonably foreseeable that cultural resources will be impacted by having to install facilities particularly along the coastline in Monterey County where many Indian archeological resources are known to exist. This was found to be the case during the construction of Monterey Regional Water Pollution Control Agency's Regional Wastewater System pipelines and pump stations in the late 1970s and early 1980s. In some instances such impacts may be extremely difficult if not impossible to mitigate, since the locations of the discharges subject to the Special Protections already exist. Without knowing what types of projects applicants may end up needing to implement to comply with the Special Protections, it is not reasonable to state that "...the State Board believes that mitigation is available to reduce any potential impacts to cultural resources to less than significant levels." <b>THIS ISSUE WAS NOT ADDRESSED IN SECTION 6.4 OF THE DPEIR. RATHER, STATEMENTS ARE SIMPLY MADE THROUGHOUT THAT SECTION THAT THE LOCAL ENTITIES CONSTRUCTING THE BMPS NECESSARY TO COMPLY WITH THE SPECIAL PROTECTIONS WILL HAVE TO INCORPORATE MITIGATION MEASURES SUFFICIENT TO REDUCE ANY IMPACTS TO "LESS THAN SIGNIFICANT." WITHOUT FIRST KNOWING WHAT ALL OF THE PROJECTS ARE THAT WOULD BE NEEDED IN ORDER TO COMPLY WITH THE SPECIAL PROTECTIONS, IT IS IMPOSSIBLE TO KNOW IF THE IMPACTS OF ALL SUCH PROJECTS CAN BE MITIGATED TO BECOME LESS THAN SIGNIFICANT, AND IT IS ALSO IMPOSSIBLE TO ESTIMATE WHAT THE COST OF PROVIDING THESE MITIGATIONS WILL BE..</b></p>

**SPECIFIC COMMENTS – INITIAL STUDY**

		<b>COMMENTS</b>	
<b>INITIAL STUDY PAGE NO.</b>	<b>INITIAL STUDY PARA NO.</b>		
14	9, narrative under "Hydrology and Water Quality Impacts"	<p>In the 1st para on this page the statement "Further, the terms and conditions of the special protections provide for continued water quality improvements over time if all of the conditions designed to limit discharges of waste from the 27 applicants are implemented." is made. No proof or basis for stating that these terms and conditions will provide for continued water quality improvements over time, since it has not been shown that the existing discharges in their current states are in fact causing a degradation of water quality. For these reasons this statement should be removed. <b>THIS ISSUE WAS NOT ADDRESSED IN SECTION 6.7 OF THE DPEIR. THE LANGUAGE IN THAT SECTION CONTINUES TO IMPLY AND INFER THAT THERE ARE INADEQUATE CONTROLS ON DISCHARGES TO ASBSs, AND THAT THESE ARE CAUSING ADVERSE IMPACTS ON WATER QUALITY. THE REPORT ISSUED BY THE SWRCB'S OWN NATURAL WATER QUALITY COMMITTEE IN SEPTEMBER 2010 DOES NOT SUPPORT THESE STATEMENTS. RATHER, THAT REPORT INDICATED THAT NO CLEAR CONCLUSIONS COULD BE DRAWN WITH REGARD TO WHETHER EXISTING DISCHARGES TO ASBSs ARE HAVING ANY ADVERSE IMPACTS ON WATER QUALITY.</b></p>	
14	9, narrative under "Hydrology and Water Quality Impacts"	<p>In the 2nd para on this page the statement "Granting the general exception will not violate federal antidegradation requirements because water quality will not be lowered, but rather, will be improved within the ASBS affected." The City is not aware of any federal or state requirement that water quality in the ASBS be improved, only not degraded. The basis for this statement and its conclusion are unclear. To date the City is unaware of any studies which indicate that the current storm water discharges to ASBS are contributing to a deterioration of water quality, and thus it is not clear how imposing the Special Protections will result in improved water quality conditions within the ASBS. In fact to the contrary, studies to date and most recently the October 2009 study conducted on selected ASBS outfalls in southern California indicate that there are little to no detectable impacts on the receiving water from the discharges from those outfalls during storm events. <b>THIS ISSUE WAS NOT ADDRESSED IN SECTIONS 6.7 OR 6.11 OF THE DPEIR. THE LANGUAGE IN THOSE SECTIONS CONTINUES TO IMPLY AND INFER THAT THERE ARE INADEQUATE CONTROLS ON DISCHARGES TO ASBSs, AND THAT THESE ARE CAUSING ADVERSE IMPACTS ON WATER QUALITY. THE REPORT ISSUED BY THE SWRCB'S OWN NATURAL WATER QUALITY COMMITTEE IN SEPTEMBER 2010 DOES NOT SUPPORT THESE STATEMENTS. RATHER, THAT REPORT INDICATED THAT NO CLEAR CONCLUSIONS COULD BE DRAWN WITH REGARD TO WHETHER EXISTING DISCHARGES TO ASBSs ARE HAVING ANY ADVERSE IMPACTS ON WATER QUALITY.</b></p>	



**SPECIFIC COMMENTS – INITIAL STUDY**

		<b>COMMENTS</b>	
<b>INITIAL STUDY PAGE NO.</b>	<b>INITIAL STUDY PARA NO.</b>		
17	17.a), b), c), and e)	<p>Storm drainage and wastewater systems, which are utilities, will definitely be impacted by restrictions imposed under the Special Protections. This will occur in part as a result of having to construct dry weather storm water diversion facilities that in many instances will need to be diverted to the wastewater systems. These types of projects will be significant capital improvement projects, which is contrary to the conclusion made in the Initial Study explanation provided for this item. Therefore, these items in this section should be assigned Potentially Significant Impact. <b><i>THIS ISSUE WAS NOT ADDRESSED IN THE DPEIR, AND THERE IS NO SECTION IN THE DPEIR FOR AN ANALYSIS OF IMPACTS ON UTILITIES AND SERVICES, WHICH WAS INCLUDED IN SECTION 17 OF THE INITIAL STUDY. BECAUSE OF THE SIGNIFICANT FINANCIAL IMPACTS ON THE DISCHARGERS IN ORDER TO CONSTRUCT AND OPERATE BMPs TO COMPLY WITH THE SPECIAL PROTECTIONS, IT CAN BE REASONABLY FORSEEN THAT THIS WILL HAVE AN ADVERSE IMPACT ON THE ENTITIES' ABILITY TO FUND UTILITIES AND SERVICES THAT THEY CURRENTLY PROVIDE.</i></b></p>	
18	18.a)	<p>This item is assigned a Potentially Significant Impact, thus implying that the existing ASBS stormwater discharges are degrading the quality of the environment. This finding is inaccurate and unsubstantiated. In fact to the contrary, studies to date and most recently the October 2009 study conducted on selected ASBS outfalls in southern California indicate that there are little to no detectable impacts on the receiving water from the discharges from those outfalls during storm events. Hence, an assignment of Less Than Significant should be assigned to this item. <b><i>THIS ISSUE WAS NOT ADDRESSED IN THE DPEIR. ALSO, SECTION 8.3 OF THE DPEIR STATES THAT "...IMPACTS ON ASBS OCEAN WATER QUALITY...WOULD REMAIN SIGNIFICANT AND UNAVOIDABLE IF EXISTING <u>INADEQUATE CONTROLS</u> CURRENTLY IN FORCE ARE ALLOWED TO CONTINUE."</i></b> (EMPHASIS ADDED). <b><i>THERE IS NO SUBSTANTIATION OR JUSTIFICATION PROVIDED IN THE DPEIR FOR MAKING SUCH A STATEMENT.</i></b></p>	

**SPECIFIC COMMENTS – INITIAL STUDY**

**COMMENTS**

INITIAL STUDY PAGE NO.	INITIAL STUDY PARA NO.	
18	18.c)	<p>There will be significant capital and operations/maintenance costs associated with having to construct and operate the facilities necessary to comply with the Special Protections. A preliminary estimate of the City's costs to comply with the earlier (March 3, 2008) version of the Special Protections was prepared. That estimate indicated that the City's ongoing annual costs to comply could easily be more than \$75,000, and that there could easily be one-time costs on the order of \$3 million, some of which might be covered by a grant from the SWRCB. However, even with a grant the local share of the one-time costs could easily be on the order of \$150,000. In addition to these costs for the most clearly defined requirements, there are unknown costs associated with a number of the other requirements which are currently vague and unclear in the Special Protections (as discussed in the comments below). The costs of compliance with those requirements could well be as much as if not much greater than the costs cited in the preceding sentences. These costs will be incurred by entities that are already struggling financially to provide both essential and desirable public services to their residents. The additional costs that will be imposed on these dischargers through the Special Protections will foreseeably result in the entities having to discontinue providing some of the services they currently provide to their residents. This will likely include such things as closing or cutting back on public libraries, parks and recreation activities, and road and other infrastructure maintenance. This will have substantial adverse effects on human beings (residents and visitors), and should therefore be assigned a Potentially Significant Impact. Given these reasonably foreseeable consequences of the "Project," the City and the public in general have good reason to question the wisdom of the SWRCB in imposing the Special Protections, particularly with the lack of evidence that the current storm water discharges are having any adverse effects on the receiving waters.</p> <p>The requirements of the Project, and the reasonably foreseeable projects that are not discussed in the Project Description and which will inevitably have to be implemented by the applicants to comply with the Special Protections, will definitely have a substantial economic impact on the City. This may well cause the City to shift funds/resources from important and/or necessary functions and operations to accommodate the implementation of the proposed Project. Because of these significant impacts, the EIR must include an Economic and Social Effects evaluation section (CEQA Code Section 15131).</p>

**SPECIFIC COMMENTS – INITIAL STUDY**

INITIAL STUDY PAGE NO.	INITIAL STUDY PARA NO.	COMMENTS
18	18.c) (Cont'd)	<p>As required under CEQA Code Section 15021, the SWRCB must minimize environmental damage and balance competing public objectives. CEQA Code Section 15021(a)(2) states that "A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment." Additionally, CEQA Code Section 15021(b) states "In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors". Feasible alternatives exist to the proposed Special Protections, and other alternatives should be explored in light of the potentially significant and cumulative environmental impacts of this Project and the resulting economic and social ramifications of implementing it. Additionally, Code Section 15168(b)(4) states, "Allow the Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts". The SWRCB should explore other Project alternatives and mitigation measures because of the numerous problems and cumulative impacts which are described in the Comments below. <b><i>THIS ISSUE WAS NOT ADDRESSED IN THE DPEIR. THE ONLY APPARENT EFFORT TO RESPOND TO THE SUBSTANTIAL NUMBER OF COMMENTS THE SWRCB STAFF RECEIVED ON THE NOTICE OF PREPARATION REGARDING THE HIGH COSTS TO THE DISCHARGERS TO COMPLY WITH THE PROPOSED SPECIAL PROTECTIONS IS THE STATEMENT IN SECTION S.7 WHICH STATES: "THE COSTS ASSOCIATED WITH COMPLIANCE WITH THE SPECIAL PROTECTIONS. THERE WILL BE COSTS FOR CONTROLS, BUT THERE IS A SET-ASIDE IN PROP. 84 (\$35 MILLION) TO ADDRESS ASBS DISCHARGES. IN SECTION 7.7 THE SWRCB STAFF'S OWN ESTIMATE OF JUST THE CAPITAL COSTS OF IMPLEMENTING THE BMPs TO COMPLY WILL BE BETWEEN \$43 AND \$54 MILLION, LEAVING THE DISCHARGERS HAVING TO PAY OUT OF THEIR OWN FUNDS BETWEEN \$8 AND \$19 MILLION TO INSTALL THOSE BMPs. IN THAT SAME SECTION IT STATES THAT THE START-UP COSTS OF THE REGIONAL MONITORING PROGRAMS WILL BE ABOUT \$2.5 MILLION (ALL OF WHICH WILL HAVE TO BE PAID BY THE DISCHARGERS), AND ADDITIONAL MILLIONS OF DOLLARS WILL HAVE TO BE SPENT BY THE DISCHARGERS TO CONTINUE CONDUCTING THOSE MONITORING PROGRAMS INDEFINITELY, AS REQUIRED BY THE PROPOSED SPECIAL PROTECTIONS.</i></b></p>

<b>SPECIFIC COMMENTS – SPECIAL PROTECTIONS (ATTACHMENT A TO INITIAL STUDY)</b>	
<b>ATTACH- MENT A PAGE NO.</b>	<b>PARA NO.  COMMENTS</b>
	<b><u>NONE OF THE REQUESTED CLARIFICATIONS OR REVISIONS LISTED BELOW WERE ADDRESSED IN THE SPECIAL PROTECTIONS CONTAINED IN APPENDIX 1 TO THE DPEIR</u></b>
B-1	These items seem to require that 100% of non-stormwater discharges be eliminated. It is not clear how compliance with this requirement is supposed to be achieved or demonstrated by the discharger, and doing so could be extremely costly and difficult. This needs to be described and clarified in order to effectively comment on this item.
B-2	It is not clear how compliance with this requirement is supposed to be achieved or demonstrated by the discharger, and doing so could be extremely costly and difficult. This needs to be described and clarified in order to effectively comment on this item.
B-2	Clearly it will be impossible to comply with an absolute prohibition on trash discharge. In spite of signage and public education, some residents and tourists will discard paper products and other forms of trash which will end up in the storm drainage systems. In spite of regular cleaning of streets and storm water catch basins, some trash will undoubtedly be discharged from those systems. This requirement is unrealistic and should be reworded to be realistically achievable.
B-2	It is not clear whether the term "waste" could refer to flow alone, or only to pollutants contained in that flow. It is also unclear what the specific pollutants are that would constitute "waste." The term "waste" needs to be defined in order to effectively comment on this item.
B-3	Preparing the detailed mapping required under this item will be expensive and time-consuming. No justification of the need to perform such detailed mapping is provided and it is not clear why it would be necessary to achieve desired ASBS water quality levels. This needs to be described and clarified in order to effectively comment on this item.
B-3	This will add a substantial amount of inspection beyond that already required under the City's approved MS4 Storm Water Management Program. This major increase in the inspection frequency, and specifically for the numerous restaurants within the City, is not warranted as there is no connection between additional inspections and impacts on receiving water quality. Initial inspections of nearly all of the City's businesses found that the commercial facilities were being properly maintained and were not posing a storm water pollution threat. Those inspections rarely found violations, and those that were found were immediately corrected. This additional inspection requirement should be deleted, and the normal MS4 Storm Water Management Program business inspection program should be deemed to be sufficient.

**SPECIFIC COMMENTS – SPECIAL PROTECTIONS (ATTACHMENT A TO INITIAL STUDY)**

ATTACHMENT A PAGE NO.	PARA NO.	COMMENTS
B-3	A.2.c(4)	<p align="center"><b><u>NONE OF THE REQUESTED CLARIFICATIONS OR REVISIONS LISTED BELOW WERE ADDRESSED IN THE SPECIAL PROTECTIONS CONTAINED IN APPENDIX I TO THE DPEIR</u></b></p> <p>It is not clear whether the term "outfall drains" refers to the outlet of the outfalls themselves, or to all of the drain inlets, e.g. catch basins, that are connected to those outfalls. What is expected of dischargers in order to demonstrate compliance with the requirement that outfall drains are to be "...maintained to remove trash an other anthropogenic debris..." is not made clear. These issues need to be described and clarified in order to effectively comment on this item.</p>
B-3	A.2.d(2)	<p>There is no known "baseline" data in the ASBS to which the City discharges, nor in the discharges themselves. It is not clear how achieving a 90 percent reduction in pollutant loading for the Table B parameters during storm events would be demonstrated, nor how it could even be achieved. These issues need to be described and clarified in order to effectively comment on this item.</p>
B-4	A.2.e	<p>The requirements for the SWMP or SWPPP to address erosion control and the prevention of anthropogenic sedimentation in the ASBS, and for the natural habitat conditions in the ASBS not to be altered as a result of anthropogenic sedimentation, are vague and no explanation as to how these will be achieved or demonstrated for compliance is provided. These issues need to be described and clarified in order to effectively comment on this item.</p>
B-4	A.2.f	<p>Many requirements for the SWMP (such as the City's SWMP which was approved for its MS4 permit by the RWQCB) are listed. This language should be revised to provide for an SWMP that has been approved by the RWQCB for the MS4's permit as constituting fulfillment of this requirement, rather than leaving that unresolved, by adding a sentence at the end of this item reading: "If an applicant has an SWMP that has been approved by its RWQCB and whose storm water discharges have been permitted under the provisions of that SWMP, then the applicant will be considered to have complied with this requirement of the Special Protections as long as it has fulfilled the BMPs and Measurable Goals of its SWMP that pertain to these requirements.</p>
B-4	A.2.g	<p>No explanation of how this requirement will be achieved, or how compliance will be demonstrated is provided. This needs to be described and clarified in order to effectively comment on this item.</p>
B-13	IV.A.1	<p>It is believed that the requirement is for runoff samples to be collected once per year. The words "collected once per year" should be inserted in this section to clarify this.</p>
B-13	IV.A.1	<p>It is believed that the requirement applies to a storm event that results in greater than 0.1 inch of precipitation in 24 hours. Therefore, the words "0.1 inch in 24 hours" should be inserted to replace the words "0.1 inch" in this section..</p>
B-13	IV.A.1	<p>The term "measurable storm" is not defined. A definition of "measurable storm" should be included in the Glossary as being a storm event in which precipitation is at least 0.1 inches in a 24 hour period, in order to clarify the intent of this requirement.</p>

**SPECIFIC COMMENTS – SPECIAL PROTECTIONS (ATTACHMENT A TO INITIAL STUDY)**

ATTACH- MENT A PAGE NO.	PARA NO.	COMMENTS
		<b><u>NONE OF THE REQUESTED CLARIFICATIONS OR REVISIONS LISTED BELOW WERE ADDRESSED IN THE SPECIAL PROTECTIONS CONTAINED IN APPENDIX I TO THE DPEIR</u></b>
B-14	IV.A.3.c	The term "larger outfalls" is not defined. Define "Larger outfalls" as being those greater than 36 inches diameter.
B-14	IV.B.1.a	The term "storm event" is not defined. Define a storm event as being the same as a "measurable storm" per the comment above.
B-14	IV.B.1.a	There is no requirement to sample the discharge 2X or 3X per year in this section, i.e. "prior to and during (or immediately after) a storm. The only requirement is to sample "... during storm events..." This discrepancy needs to be clarified. Also, applicants will have to rely on weather forecasts to obtain the "prior to" sample, but what if the forecasted rain does not occur? If that happens, needless sample collection costs will be incurred. These issues need to be discussed and clarified in order to effectively comment on the requirements of this section.
B-15	IV.B.1.c	A comprehensive and concise definition of what will constitute an acceptable "quantitative survey" must be provided. This term is too vague and is subject to wide interpretation. Therefore, it is impossible to effectively comment on the requirements of this section.
B-15	IV.B.1.e	The "source" of trash is generally not known, only the "type." This item needs to be rewritten so as to be clear and achievable, so that effective comments can be submitted. The term "along the coast" is vague. How much of the coast is intended needs to be specified in order to provide effective comments.
B-15	IV.B.1.f	The allowance for Regional Water Boards to "...require additional monitoring..." is extremely open-ended, i.e. unlimited. Applicants need to have a clear understanding of what is being proposed and what will be required of them in order to provide effective comments. Giving "carte balance" to RWQCBs to add <u>any</u> requirements they wish is not reasonable and makes it impossible to provide effective comments on this section.
Glossary	N/A	The term "design storm" is not used in these Special Protections, so this definition should be deleted.
Glossary	N/A	The term "Point Source" is not defined. A definition of "Point Source" such as the one included in the definitions section of the State's General Permit for MS4s should be included in the Glossary.

## EXHIBIT 3

### **ALTERNATE APPROACH TO PROVIDING PROTECTION TO ASBS**

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

#### **Rationale**

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

#### **Alternate Approach**

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

**Step 2:** If it is shown that there is statistically significant water quality degradation occurring within an ASBS such that it is harming beneficial uses, the location(s) and cause(s) of such degradation would be mapped. A determination would be made as to whether the degradation was occurring due to the discharge of pollution into the ASBS, and, if so, what is the pollutant(s) of concern. If the degradation is not being caused by the discharge of pollutants, no restrictions or requirements would be imposed on the dischargers for purposes of mitigating the degradation.

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

**Step 4:** If the location(s) of degradation that is determined to be caused by the discharge of pollutants is in reasonable proximity to an existing storm drain discharge, then the entity responsible for that discharge would be directed to perform end-of-pipe sampling to determine

whether or not the pollutant(s) of the type determined to be causing the degradation are being discharged at that location.

Step 5:

- (a) If this sampling finds that the storm drain discharge does not contain appreciable amounts of the pollutant(s), then the discharge would be deemed not to be causing the degradation. No restrictions or requirements would be imposed on the discharger for purposes of mitigating the degradation.
- (b) If the sampling finds that a discharge is a significant contributor of the pollutant(s) associated with the degradation, then requirements to mitigate those impacts would be imposed on the discharger via new discharge permitting requirements issued by the SWB. The permitting requirements would apply to only those discharges that are found by the Panel to be degrading natural water quality and harming the beneficial uses of ASBS. They would include a monitoring plan for ASBS receiving water and end-of-pipe sampling to assess the performance of mitigation measures taken by the discharger. Those mitigations could take a variety of forms such as structural/treatment Best Management Practices (BMPs) and/or enhanced source-control measures. Compliance with the requirements would be limited to receiving water quality beyond the zone-of-initial-dilution, not at end-of-pipe. The discharger would be required to continue implementing more and more stringent BMPs until the point that additional monitoring after the BMPs were implemented show that the BMPs have effectively reduced the discharge of the pollutant(s) of concern to a less-than-appreciable level. Once that has been achieved, the discharger would be allowed to reduce or stop monitoring. Possible permitting vehicles could come in the form of either: (1) additional requirements in MS4 Stormwater Discharge Permits or (2) waste discharge requirements.