PEBBLE BEACH
COMPANY

Via Email and FedEx

May 20, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
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Re: COMMENTS CONCERNING THE PROGRAM DRAFT ENVIRONMENTAL IMPACT REPORT - EXCEPTION TO THE CALIFORNIA OCEAN PLAN FOR AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE WASTE DISCHARGE PROHIBITION FOR STORM WATER AND NONPOINT SOURCE DISCHARGES, WITH SPECIAL PROTECTIONS

Dear Members of the State Water Board:

Pebble Beach Company (PBC) appreciates the opportunity to review and comment upon the draft program environmental impact report (DPEIR) for exception (Exception) to the California Ocean Plan (COP) for Areas of Special Biological Significance (ASBS) waste discharge prohibition for storm water and nonpoint source discharges, with special protections, released for comment on January 18, 2011. While the State Water Board's (SWB) proposed action raises some serious concerns, and warrants some material adjustment, we appreciate staff's efforts to create an Exception program, and staff's recognition as to the limits of the National Pollution Discharge Elimination System (NPDES) permit program.

PBC previously submitted comments on the Notice of Preparation of the DPEIR in its letter dated March 15, 2010. As highlighted in boldface italics in the excerpts from that letter contained in Exhibit 2 hereto, virtually none of the comments PBC submitted were addressed in the DPEIR. 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 SWB to accurately assess the impacts of the Project.

In Exhibit 1, we present detailed comments related to the DPEIR and Special Protections. We also offer a new alternative, not considered in the DPEIR, which we feel is responsive to the COP by protecting natural water quality and the beneficial uses of the oceans. We encourage SWB staff to examine this alternative during its environmental review.

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As drafted in the DPEIR, we find that the proposed Special Protections are unrealistically stringent, inadequately defined, and in a number of respects technologically infeasible. There is no water quality rationale that possibly could justify the extraordinary measures proposed, as existing measures have been demonstrated to be protective. ASBS water quality is known to be excellent; even following storm events, ASBS are consistently protective of natural water quality. In fact, the Southern California Coastal Water Research Project (SCCWRP) 2010 annual report on ASBS receiving water quality concludes that, "[b]ased on the data collected during this study, ASBS in Southern California are consistently protective of natural water quality following storm events" (Schiff, et al., 2010; see page 256 in Attachment 1). Stormwater off the Monterey Peninsula reasonably can be anticipated to have pollutant concentrations no more than (and probably less than) stormwater off the heavily developed southern California communities. Therefore, proposed end-of-pipe limitations, prohibitions on new stormwater and non-stormwater, and related conditions should be modified to reflect the absence of threat from existing coastal discharges. The fact that SWB interprets the ASBS waste discharge prohibition of the COP to apply to stormwater generally does not justify imposing such extreme conditions.

PBC does not argue that runoff to ASBS should be allowed where it harms ASBS. Rather, PBC contends that specific stormwater and non-stormwater discharges found to be harmful to ASBS should be ameliorated through a reasonable regulatory framework based on proven harm, not assumptions of harm, and clearly defined compliance points. The approach recommended by SWB staff in the DPEIR fails to create such a framework, placing the burden of defining the compliance point (natural water quality) on the dischargers, and applying blanket prohibitions to stormwater and non-stormwater discharges regardless of a lack of proven harm.

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). PBC recommends the five-step approach outlined below as a rational means of being responsive to the COP by protecting natural water quality and the beneficial uses of the oceans. This approach is supported by the Monterey County cities of Carmel-By-The-Sea, Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Monterey, Pacific Grove, Salinas, Sand City, Seaside, and Soledad, and by the County of Monterey.

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 natural water quality (Degradation). Panel would be chosen by a group of ASBS stakeholders from southern, central, and northern California, working with SWB staff, and would be completely independent from both ASBS stakeholders and SWB. Panel's studies could initially be done on a rough-cut basis using a series of sampling transects within each ASBS.

Step 2: If it is shown that there is statistically significant water quality Degradation occurring within an ASBS such that it is harming beneficial uses, the location(s) and cause(s) of such Degradation would be mapped. A determination would be made by the Panel as to whether the Degradation was occurring due to the discharge of pollution into the ASBS, and, if so, what is the pollutant(s) of concern. If the

Degradation is not being caused by the discharge of pollutants, no restrictions or requirements would be imposed on the dischargers for purposes of mitigating the Degradation.

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

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

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

If the sampling finds that a discharge is a significant contributor of the pollutant(s) associated with the Degradation, then requirements to mitigate those impacts would be imposed on the discharger via new discharge permitting requirements issued by the SWB. The permitting requirements would apply to only those discharges that are found by the Panel to be causing the Degradation. The requirements would include a monitoring plan for ASBS receiving water and end-of-pipe sampling to assess the performance of mitigation measures taken by the discharger. Those mitigations could take a variety of forms such as structural/treatment Best Management Practices (BMPs) and/or enhanced source-control measures. Compliance with the requirements would be limited to receiving water quality beyond the zone-of-initial-dilution, not at end-of-pipe. The discharger would be required to continue implementing more and more stringent BMPs until such time as additional monitoring shows 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.

Please contact me at (831) 625-8449 if you have any questions concerning these comments.

Sincerely,

PEBBLE BEACH COMPANY

Mark Stilwell
Executive Vice President
General Counsel

EXHIBIT 1

PEBBLE BEACH COMPANY'S COMMENTS ON THE GENERAL EXCEPTION TO THE CALIFORNIA OCEAN PLAN WASTE DISCHARGE PROHIBITION FOR STORM WATER AND NONPOINT SOURCE DISCHARGES, WITH SPECIAL PROTECTIONS, AND THE ASSOCIATED DRAFT PROGRAM ENIVORNMENTAL IMPACT REPORT

I. STORMWATER IS NOT PER SE WASTE

The proposed project is based on a categorical approach which would regulate stormwater as waste. We contend that this foundation is fundamentally flawed and is not a legal mandate that the State Board must apply to stormwater and other forms of runoff to ASBS. Below are excerpts from a legal review article published in Spring 2008 in Environs, Environmental Law and Policy Journal, "When Water Becomes Waste: A Call for a Practical Approach to Regulating Stormwater Discharges," which has been subject to peer review (see Attachment 2).

> *"An analysis of Porter-Cologne, the PRC, the Ocean Plan, the ASBS rule making history, prior State Board precedent, and case law indicates that a detection-based approach, or any other approach that categorically regulates stormwater as waste, is not a legal mandate that the State Board must apply to stormwater and other forms of runoff to ASBS.[44] ... In the context of ASBS, regulations must protect beneficial uses from harmful concentrations of pollutants contained in stormwater, and from undesirable change that may result from such runoff[47]"*
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> *"[44] This article generally refers to "stormwater" and "runoff" synonymously. The analysis described herein for stormwater discharges to ASBS is similarly applicable to other discharges that naturally flow, or are hydraulically connected, to ASBS, including de minimis dry weather flows..."*
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> *"Both Porter-Cologne and the PRC focus on receiving waters – such that runoff is rendered a discharge of "waste" only if it contains harmful concentrations of pollutants[48]."*
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> *"[48] See Building Industry Association of San Diego County, Order WQ 2001-15, 12 (State Water Resources Control Board 2001), available at http://www.waterboards.ca.gov/resdec/wqorders/2001/wq2001_15.pdf [hereinafter Order 2001-15] (concluding that stormwater is not waste per se, rather, it is the pollutants in urban runoff that is waste)."*
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> *"B. The Legislative History of Porter-Cologne Indicates That Stormwater Is Not Per Se Waste... Thus, in defining "waste," the State Board never intended to include all runoff,*

regardless of its constituents. Rather, the focus was, and should continue to be, on whether there are harmful concentrations of pollutants in the runoff."

"Porter-Cologne expounds the purpose of the Ocean Plan, which is the primary regulatory document governing ASBS regulation... under Porter-Cologne, wastewater discharges to the coastal marine environment are to be "treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters." The statute, however, does not require the categorical elimination of discharges to "biologically sensitive sites" in the coastal marine environment, such as ASBS. Rather, the "highest priority" is to be accorded to those discharges that "adversely affect" such sensitive waters.
Thus, Porter-Cologne focuses on the subset of discharges that adversely affect ASBS, and requires such discharges to be eliminated or improved. The language of these provisions confirms that the focus of Porter-Cologne with respect to the coastal zone is identifying and addressing discharges that adversely impact coastal water, and protecting beneficial uses from degradation."

"We do not argue that runoff should be allowed where it harms beneficial uses of the ASBS. The analysis is not complete, however, upon a determination that runoff contains detectable concentrations of chemicals. Instead, it is necessary to take the additional step of determining whether the runoff may adversely affect the receiving ASBS. Applying a categorical approach regardless of the potential impact (or lack thereof) on beneficial uses would be inconsistent with Porter-Cologne because it ignores the probability that in many cases runoff may have little or no effect on the ASBS. It also disregards the important economic and social values subverted by requiring coastal entities to comply with such an extreme standard. Clearly, a categorical approach is not only not legally mandated, but also contradicts numerous Porter-Cologne requirements that are expressly incorporated into ASBS governance."

"While the PRC allows the State Board to regulate waste discharges to ASBS, either by prohibition or the limitation of discharges through special conditions, it does not define "waste."[117] Therefore, the PRC does not require the State Board to prohibit or limit the discharge of stormwater or other de minimis dry weather flows that do not constitute and should not be considered "waste" (Singarella and Richardson, 2008).

The prohibition of non-stormwater discharges (DPEIR Attachment B, p. 2, I.A.1.e.) is based on a categorical approach which would regulate stormwater (and non-stormwater) as waste. We refer to the statements and legal article cited above. No proof of adverse impact to coastal waters from non-stormwater discharges has been provided by SWB staff. Additionally, no proof has been provided that all stormwater discharges to ASBS are harmful to justify the extreme measures proposed in the DPEIR.

Non-stormwater discharges have occurred in ASBS for decades and are now part of the current natural state of ASBS. These discharges can often be attributed to year-round groundwater contributions to the storm drain conveyance system, as many storm sewer systems were installed to route pre-existing streams and creek beds underneath roads and developments. Groundwater can also enter the storm sewer

system within a development along the same stretch that the stream is conveyed. Of course, there are a number of possible sources of non-natural non-storm water discharges; however, if they are combined with natural flows, it is not possible to separate them. Elimination of non-stormwater discharges will result in a portion of the natural flows and associated natural minerals being diverted. Cessation of these discharges would affect the hydrologic cycle and in turn ASBS equilibria, natural water quality, and marine life. These impacts have not been sufficiently analyzed or mitigated in the DPEIR. Furthermore, efforts to establish natural water quality and the health of ASBS would be complicated by cessation of non-stormwater flows. This is also not addressed in the DPEIR.

Further State-funded studies are needed to determine if any stormwater and non-stormwater discharges are harming ASBS. If some of these discharges are found to be harmful, then mitigation of those specific discharges would be warranted. An appropriate form of mitigation could be accomplished through new discharge permitting requirements issued by the SWB that are structured to address only specific discharges that are found to be harmful to ASBS.

II. COSTS

One of the many areas of controversy about the Special Protections noted in Section S.7 of the DPEIR is "[t]he costs associated with compliance with the Special Protections." The very brief response to this simply states, "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.

Section 7.7 estimates the capital costs alone to implement the BMPs necessary to begin complying will be between $43 AND $54 million. Capital expenditures in Pebble Beach alone have been estimated to be above $5 million. We find it hard to believe that the total costs for all 34 ASBS is limited to $54 million. We request that SWB staff provide itemized detail to account for their $43 to $54 million estimate.

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, "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." PBC contends that the high costs of the Special Protections were 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.

But the DPEIR does not comply with this section of CEQA. As noted in Section 8.4, "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 statement is unsupported by any analysis done in the DPEIR, and is therefore merely conclusory in nature.

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." However, no evidence is presented in the DPEIR that these discharges are a "burden" or have any significant detrimental impact to the ASBSs that would warrant the extremely expensive nature of the BMP's and other mitigations being proposed.

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 SWB 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, and likely substantially underestimated, 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 without first determining whether or not any of the ASBS are actually being harmed by discharges. It is not reasonable for the SWB to impose the requirements proposed in the DPEIR without first having a firm scientific basis to conclude that doing so will improve water quality to such a degree as to justify those expenditures.

III. 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 assert that if the requirements of the special mitigating conditions (i.e., Special Protections) 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. It also fails to recognize that "ASBS… are consistently protective of natural water quality following storm events" (SCCWRP 2010 annual report). As discussed above under Section II "Costs," the public interest is not served by imposing on the residents of California very costly requirements lacking scientific basis.

Numerous reports in Section 5.6 seem to contradict the statement from Section 6.11 that "only then will the discharges no longer compromise the protection of water quality in the ASBSs…" In Section 5.6.8, we highlight the following two reports regarding the Carmel Bay ASBS, "A report by Dr. Richard Ford, dated April 30, 2005, was reviewed…Dr. Ford's report concluded that runoff caused no discernible impact on marine life in the Carmel Bay ASBS. The State Water Board staff asked Dr. Raimondi (2008) to evaluate this report regarding Carmel Bay ASBS. According to Raimondi, there is no direct support for Dr. Ford's conclusion. The design is inadequate for the determination of impact (or lack of impact) from golf course runoff in Carmel Bay." Yet, in 5.6.8.1 PISCO/MARINe (Raimondi 2006), "Stillwater Cove… Dr. Raimondi conducts biodiversity surveys (2001, 2005), abalone surveys (since 2001), and community dynamics surveys (since 2000) at this site. Ninety species were found at this site and species trends and abalone populations appear healthy." Raimondi's own findings in his biodiversity surveys and report referenced appear to add support to Dr. Ford's report (see Attachment 3) that runoff causes no discernible impact to marine life in the Carmel Bay ASBS. The DPEIR completely ignores the fact that Raimondi's surveys and report do not support the contention that runoff to Carmel Bay is having a negative impact on marine life and beneficial uses.

The proposed conditions should be modified to clarify the general applicability of the design storm. In Attachment B, 1.A.2.d, please clarify that the BMPs referenced will apply to the 90% test and BMPs loop.

The Special Protections require that BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm be designed to achieve the following target levels: (1) Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the COP; or (2) a 90% reduction in pollutant loading for the COP Table B parameters. However, Table B objectives were intended for samples collected at locations where initial dilution by ocean waters is completed rather than from the end-of-pipe. It would be okay to assert that no discharge of "waste" shall cause or contribute to an exceedance of Table B, but, the proposal goes much further, and is not legally or scientifically justifiable. Table B cannot be applied to end-of-pipe because doing so assumes material in stormwater is "waste," which may not be the case for many naturally occurring substances found in stormwater. Such a proposal also assumes ASBS have no assimilative capacity for these compounds, but the findings of SCCWRP's "Natural Water Quality Committee" report (see Attachment 4), which is discussed in detail in Section IV

of this letter, show that ASBS do have substantial assimilative capacity. "In fact, reasonable potential analysis indicated that many constituents were not a threat to ASBS water quality." Furthermore, the Porter-Cologne Act (PCA) requires assimilative capacity to be taken into account. (See, e.g., Water Code §§13241 (allows for some degradation; however, we are not asking for that here); 13000 (highest water quality that is reasonable).) In addition, there is no demonstration that Table B end-of-pipe requirements are reasonably achievable; in fact they may be impossible to achieve. Finally, the proposal turns Table B into end-of-pipe performance standards such that special CEQA review is warranted for this proposed new requirement.

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

Due to technological limitations it may not be possible to achieve a 90% reduction in pollutant loading for Table B. In such cases, diversion to local wastewater treatment plants may be required; however, wastewater treatment plants may not have the extra capacity to accept stormwater flows into treatment systems, e.g. treatment plants within the Monterey Peninsula. To accommodate these flows, millions of dollars would be required to expand capacity. Operation and maintenance costs would also increase at each treatment plant required to expand capacity. Such scenarios are not considered in the DPEIR and should be addressed.

IV. NATURAL WATER QUALITY

The SWB 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 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 stormwater 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; and

  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.

- A SWB-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 or isolated from the whole of California's coastal waters, and water, biota, and substances move between ASBS and surrounding coastal waters. Providing a higher level of protection to California coastal waters as a whole would also provide a higher level of protection to the ASBSs.

- The Committee made these four recommendations:

  1. Further work needs to occur for quantifying natural variability, because insufficient information was collected to have certainty in assigning natural water quality ranges throughout the State.

  2. Effort should be spent identifying the most appropriate monitoring indicators, because not all indicators need to be measured at all times.

  3. The SWB 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 SWB 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. The report's findings contradict 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.

Furthermore, the SCCWRP 2010 annual report on ASBS receiving water quality in Southern California's ASBS concludes that,

> **"[b]ased on the data collected during this study, ASBS in southern California are consistently protective of natural water quality following storm events.** On average, the range of post-storm pollutant concentrations in receiving waters sampled near ASBS discharge sites were not significantly different from post-storm concentrations at reference drainage sites, which included stormwater inputs free of (or minimally influenced by) anthropogenic sources. No conservative tracer could be used to track natural constituents such as salinity, TSS, or DOC, in large part because pollutant concentrations were so low. Furthermore, synthetic anthropogenic contaminants such as total DDT or total PCB were not detectable across the wide variety of

reference drainage sample locations in ASBS, and were rarely detectable at discharge sites in ASBS. Moreover, no post-storm samples collected near ASBS discharges exhibited toxicity."

Stormwater off the Monterey Peninsula reasonably can be anticipated to have pollutant concentrations no more than (and probably significantly less than) stormwater off the heavily developed southern California communities. The SCCWRP 2010 annual report combined with the Natural Water Quality Committee's recommendations support PBC's contention that there is no water quality rationale that possibly could justify the extraordinary measures proposed in the DPEIR, as existing measures have been demonstrated to be consistently protective of ASBS of natural water quality. Based on this information, the approach recommended by SWB staff in the DPEIR, which would apply blanket prohibitions to stormwater and non-stormwater discharges regardless of a lack of proven harm, is unjustified.

At the very least, further studies are needed to identify which specific discharges are harming the beneficial uses of ASBS. "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" (*excerpt from Summation of Findings – Natural Water Quality Committee, 2006-2009*). This can be done through focusing on addressing "priority" discharges that are found to be harmful to ASBS through either: (1) additional requirements in MS4 Stormwater Discharge Permits or (2) waste discharge requirements.

V. WATER QUALITY IN THE ASBS

There is a lack of credible information on the potential impact of non-point source discharges. However, as documented in the findings listed below, all of the observations contained in the SWB's Carmel Bay Reconnaissance Survey Report resulted in the Report concluding that water quality was excellent (Siogren, K. et. al., 1979).

- Carmel Beach 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 identity 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 a 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.

VI. CREATION OF THE CARMEL BAY ASBS

The original intent of creating the designation of ASBS was to preserve and maintain natural water quality conditions to a practical extent. This was to be achieved in part through prohibiting point source discharges of sewage or industrial process wastes 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] PBC contends that 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 many years, is not necessary and certainly is not practical.

VII. COMPLIANCE TIMELINES

In S.5.2 of the DPEIR, the timeline for compliance in the "Prescriptive Alternative" should be changed so that it is consistent with the "Preferred Alternative." The compliance deadline for Stormwater Management Plans (SWMP) should be changed to 1 year to be consistent with the Special Protections in Attachment B. In Attachment B, p.12, III.A.5, the compliance timeline in waterfront and marine operations should be changed to 1 year from 6 months to be consistent with the deadline for SWMP and SWPPP.

VIII. CEQA FLAWS

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

The DPEIR fails to provide a "no project" alternative, as required by CEQA. The "no project" alternative is improperly framed as the "no exception" alternative. See page 52 of the DPEIR. In fact, the "no project" alternative should represent the status quo, including current discharges, because it is the current environmental baseline. The "no exception" alternative is a separate alternative, which would provide no exceptions to the Ocean Plan and would study the environmental consequences of that policy.

The DPEIR's record of relevant evidence is incomplete. The SCCWRP 2010 annual report on ASBS receiving water quality in Southern California's ASBS concludes that, **"[b]ased on the data collected during this study, ASBS in Southern California are consistently protective of natural water quality following storm events"** (Schiff, et al., 2010; see page 256 in Attachment 1). This important finding should be part of the environmental baseline, against which the proposed project (Special Protections) is measured. See pages 211-18 of DPEIR, where the DPEIR discusses SCCWRP technical report 625, "Summation of Findings – Natural Water Quality Committee, 2006 – 2009," but

does not include SCCWRP's 2010 annual report and this key finding. Also, the report is not listed in references section of the DPEIR. Is it included in the record? (See page 322, listing two SCCWRP reports but not the 2010 annual report).

A reasonable range of alternatives to the proposed project is not provided in the DPEIR. All alternatives break into two groups: (1) cease discharges immediately or (2) permit discharges under conditions. No alternative has been studied that would call for future study and evaluation to refine knowledge as to what, if any, discharges are harming ASBS. Such determinations could provide for a more focused and reasonable alternative, targeting discharges proven to be harmful to ASBS. For reference, the following are the alternatives presented in the DPEIR:

- Alternative A: No exception, cease all discharges immediately.
- Alternative B: Amend ocean plan to allow existing discharges under special conditions
- Alternative C: Implement individual exceptions to each stormwater and nonpoint source discharger
- Alternative D: Implement general exception for selected dischargers

IX. MORE PRACTICAL APPROACHES

There are more practical ways of ensuring that 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 SWB has already granted to other ASBS dischargers are cited below.

- The exception granted by the SWB 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 SWB 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 Regional Board found and SWB concurred that the discharge would not adversely impact biological communities in the ASBS, (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 the 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 proposed 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 Bay ASBS, because the Carmel Bay Reconnaissance Survey Report found that there were no adverse impacts from Carmel Bay's existing stormwater discharges.

- The SWB'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 SWB 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.

X. PROPOSED NEW PROJECT ALTERNATIVE

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). PBC recommends the five-step approach outlined below as a rational means of being responsive to the Ocean Plan by protecting natural water quality and the beneficial uses of the oceans. This approach is also supported by the Monterey County cities of Carmel-By-The-Sea, Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Monterey, Pacific Grove, Salinas, Sand City, Seaside, and Soledad, and the County of Monterey.

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

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

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

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

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

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

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

XI. CONCLUSION

In light of the recent very favorable southern California ASBS results in the SCCWRP 2010 annual report, combined with the very high costs required to implement the preferred alternative in the DPEIR, PBC believes that a more targeted approach to regulating stormwater and non-stormwater discharges to ASBS will be more cost effective, practical, and protective of the ASBS, and their marine resources. We request that the SWB examine the new project alternative presented above as part of its environmental review. Additionally, we request a pause in the proceedings to provide an opportunity for the SWB and its staff to meet with us and other interested parties. We propose to work together to preserve and protect the ASBS in a realistic and reasonable way.

XII. CITATIONS

Dickson, A., Gosset, R., Gregorio, D., Jones, B., Murray, S., Posthumus, B., and Schiff, K., (2010). Summation of Findings – Natural Water Quality Committee, 2006 – 2009. *Southern California Coastal Water Research Project Technical Report 625.*

Ford, R., (2005). Evaluation Concerning The Environmental Health of the Carmel Bay Area of Special Biological Significance.

Schiff, K., Luk, B., Gregorio, D., and Gruber, S., (2010). Assessing Water Quality Conditions in Southern California's Areas of Special Biological Significance. *Southern California Coastal Water Research Project Annual Report 2010.*

Singarella, P.N., and Richardson, K.E., (2008). When Water Becomes Waste: A Call for a Practical Approach to Regulating Stormwater Discharges. Environs, *Environmental Law and Policy Journal, University of California, Davis School of Law,* Volume 31, Number 2: 123 – 154.

Siogren, K., McDonald, A., Casson, K., and Silberstein, M., (1979). California Marine Waters, Areas of Special Biological Significance Reconnaissance Report, Carmel Bay, *State Water Resources Control Board Water Quality Monitoring Report* 79-10.

EXHIBIT 2

EXCERPTS FROM PEBBLE BEACH COMPANY'S COMMENT LETTER DATED MARCH 15, 2010 ON THE NOTICE OF PREPARATION AND INITIAL STUDY FOR AN EIR REGARDING EXCEPTIONS TO THE OCEAN PLAN DISCHARGE PROHIBITION FOR SELECTED DISCHARGES INTO ASBS

IDENTIFYING COMMENTS THAT WERE NOT ADDRESSED IN THE DPEIR

1. As this program continues to be shaped during the California Environmental Quality Act (CEQA) review, we would like to take this opportunity to request that the exceptions be retroactive. ***THIS CLARIFICATION WAS NOT INCLUDED IN THE DPEIR.***

2. The program (or project) description does not include reasonably foreseeable projects that may result from the program. Please include sufficient detail in the project description and scope of the analysis that discloses reasonably foreseeable projects and their cumulative impacts if this program were instituted (CEQA Code Sections 15063(d)(3), 15064(d), 15168(c)(5)). ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

3. The term "waste" is used in the project description and the *Initial Study Attachment A – Revised Draft Special Protections*. In the project description, reference is made to the Ocean Plan; however, the original intent of this document was to address the discharges of treatment plants and not stormwater. This is reflected in the Ocean Plan definition of "waste," "[a]s used in this Plan, waste includes a discharger's total discharge, of whatever origin, i.e., gross, not net, discharge." This may be acceptable in reference to treatment plant discharges, but when applied to stormwater, this implies that all stormwater is waste, regardless of the presence or absence of anthropogenic pollutants. This interpretation is flawed and has the potential to disrupt the natural hydrologic cycle between terrestrial and marine ecosystems. Please clearly define "waste" as it pertains to stormwater. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

4. Please explain what an allowable or "sufficient" distance from ASBS is for discharges to occur (referenced on page 7 of the IS). The following language is unclear: "Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." Are the impacts of piping and diverting stormwater from ASBS to comply with the above language being examined? Again, such diversions may have significant harmful impacts to the hydrologic cycle and the biological communities within the affected ASBSs. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

5. The requirements of the program and the reasonably foreseeable projects that we envision (which are not yet defined in the project description or elsewhere), are believed to have a substantial economic impact on the community. These impacts in turn, may result in the need for

stakeholders to shift funds/resources from important and/or necessary functions and operations to accommodate the implementation of the proposed program. With these impacts in mind, we recommend the EIR include an Economic and Social Effects evaluation section (CEQA Code Section 15131). ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

6. For the evaluation of environmental impacts and per CEQA guidelines, all answers to the evaluation of the impacts should take into account the whole of the action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts (CEQA Guidelines Appendix G, Evaluation of Environmental Impacts). ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR. FOR EXAMPLE, THE DPEIR DOES NOT ADDRESS THE POTENTIAL IMPACTS TO TREATMENT PLANT INFRASTRUCTURE AND SERVICES CAUSED BY REQUIRED DIVERSION AND TREATMENT.***

7. Per CEQA Code Section 15021, there exists a duty to 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". We believe feasible alternatives may exist to the proposed Special Protections, and that 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 project implementation. 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". This supports the need to explore other broad policy alternatives and mitigation measures when problems or cumulative impacts are identified early on, which we feel is the case with these SPs. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR. THE ALTERNATIVES AND MITIGATION MEASURES PRESENTED IN THE DPEIR ARE LIMITED AND INCOMPLETE.***

INITIAL STUDY CHECKLISTS COMMENTS

1. Land Use and Planning: The potential exists for this program's requirements and the reasonably foreseeable projects that result to conflict with existing land use and coastal plans, policies, and zoning, or habitat and natural community conservation. As such, we believe that "no impact" is not a viable conclusion for parts b) and c) of this environmental issue. Mitigation, such as General Plan, Coastal Plan, and/or zoning revisions, may be possible and necessary to mitigate for part b). However, since the program may induce the need for structural BMPs in/around riparian and drainage areas that are typically open space and conservation areas, it is unclear if mitigation would be viable for part c), as revisions to a habitat/natural community plans to allow construction could have potentially significant impacts. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

2. Public Services: We do not agree with the statement "...nor would it create new demand for community services since no capital improvements are included in this general exception project". We believe this evaluation approach is flawed. The program approach should attempt to disclose the reasonably foreseeable projects that would result from the program to adequately assess potentially significant environmental impacts of the program. A vast majority of the reasonably foreseeable projects resulting from this program would be structural in nature. As such, they would, most likely, become a part of a local jurisdiction's capital improvement program burden. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

3. Utilities and Service Systems: The proper evaluation of this issue is of great importance. We believe the proposed program would have potentially significant impacts on utilities and service systems, specifically for the evaluations of part a), b), c), and e). Reasonably foreseeable projects directly related to the implementation of this program could have substantial impacts on existing local wastewater treatment facilities, result in the construction of new storm water drainage facilities or expansion of existing facilities, all of which may cause significant environmental impacts. Such projects could result in significant capital improvement program burden, as well, which is contrary to the conclusion made in the State's explanation provided for this issue. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR. THE RANGE OF IMPACTS AND BMPs CONSIDERED DOES NOT REFLECT ALL POTENTIAL IMPACTS AND BMPs THAT MAY BE REQUIRED WITH IMPLEMENTATION OF THE SPECIAL PROTECTIONS.***

INITIAL STUDY ATTACHMENT A – REVISED SPECIAL PROTECTIONS:

All of the comments below are directly linked to CEQA. Fundamental to the CEQA review process is transparency and a clear definition of what actions are being proposed. Section 15378 of CEQA and the definition of the "Project" is one of the cornerstones of CEQA. In order for there to be a valid analysis of the impacts of an action, the "Project" needs to be clearly defined. The "Project means the whole of an action, which has a potential for resulting in either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:..." (ref. PRC, Section 15378). In this same section of the code, it goes on to list "An activity directly undertaken by any public agency including but not limited to...". Adoption of the proposed Special Protections is an activity being directly undertaken by a public agency. Furthermore, the proposed SPs, and even the interpretation of the Ocean Plan which has led to this action, are ill-defined. Therefore, the environmental impacts from the Project are still unclear.

1. I.A.1.a(3)(iv): Please define "Storm Water". The definition of what is "storm water" is very crucial to understanding the scope of the Project. When read in a literal fashion, this term could mean that water being discharged from a storm drain cannot contain any amount of anthropogenic pollutants, even if the great majority of the water is rain directly from the sky. If this is the case, then the scope of the Project will be entirely different than if a more reasonable interpretation of storm water is made, such as any water being discharged during or shortly after a rain event that exceed certain limits on anthropogenic pollutants. The definition of this key term is vague and, therefore, the Project is vague. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

2. I.A.1.b: Referring to the comment above, if the literal interpretation of the term storm water is used (i.e. absolutely no amount of anthropogenic pollutants is allowed), then this requirement wouldn't seem to make sense, unless the requirement is to also treat even the unadulterated rainfall. The environmental implications of this interpretation could be far-reaching. As a result, the definition of the Project is vague. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

3. I.A.1.d(2): This provision states that a 90% reduction of pollutants is to be accomplished as measured from a baseline that is effective on the date that the SPs are approved. This condition assumes that the baseline data will be available on the date that the SPs are approved. If this data is not available, it's unclear where the starting point for comparison will be. And since this baseline data isn't available today, it's unclear what measures would need to be taken to comply. Therefore, the scope of the Project is unclear. Please clarify. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

4. I.A.1.e(2): These exceptions do not include inevitable occurrences such as water main breaks. Is this intentional? This will influence the Environmental analysis. Please clarify. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

5. I.A.1.e(2): During wet years, similar to what we are currently experiencing in California, how can we determine when "[n]aturally occurring groundwater seepage via storm drain" starts and stops. This seems problematic. Please clarify. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

6. I.A.1.e(3): This provision if taken literally would negate a number of the exceptions stated in the preceding listing of exceptions. For example, flows from fire fighting activity will certainly "contribute" to a violation of the Ocean Plan and alter the "natural water quality". Therefore, the definition of the Project is vague. Please resolve this inconsistency. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

7. I.A.2.c(4): The term "outfall drains" is not clear. Please define this term. Does this mean the end of pipe where water enters into the ASBS or is this to also include the outlet pipes from upstream drains and catch basins? This lack of clarity will influence the analysis of the environmental impacts of the Project. Therefore, the definition of the Project is vague. Please clarify the point(s) in the storm drain system where this applies. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

8. I.A.2.g and throughout the SPs: The water quality standard for discharges is vague. One standard is "natural water quality", which we now know through scientific studies does not always meet the other water quality standards contained in the Ocean Plan such as Tables "A" and "B". This can have a direct impact on the extent of infrastructure needed to attain the objectives. Please describe how the "natural water quality" is going to be determined. Without having "natural water quality" clearly defined before the environmental review is conducted, the

reviewers cannot understand the goals and therefore the impacts of the Project. The scope of the Project is vague. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

9. I.B.1.b: It is unclear how this statement applies to the treatment of storm water and therefore what the environmental impacts will be from preventing an alteration to the "natural water quality". If the flows are only storm water containing no anthropogenic pollutants, then how could it "alter natural ocean water quality"? If the intention is that storm water cannot alter natural water quality even if it is beneficial, then this will have drastically different environmental impacts than polluted storm water having the potential of detrimentally impacting the natural water quality. Therefore, the Project definition is vague. Please explain for Project clarity. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

10. I.B.2.c: As with comment 3, this condition assumes that the baseline data will be available on the date that the SPs are approved. If this data is not available, it's unclear where the start point for comparison will be. Therefore, the scope of the Project is unclear. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

11. I.B.3.a through .e: As with comment 3, this condition assumes that the baseline data will be available on the date that the SPs are approved. If this data is not available, it's unclear where the start point for comparison will be. Therefore, the scope of the Project is unclear. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

12. II. "Additional Requirements For Parks And Recreation Facilities": "Parks and Recreation Facilities" are not defined in the SPs. Therefore, the scope of the Project is unclear. Please define for Project clarity and environmental analysis. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

13. IV "Monitoring Requirements": The scope and definition of what is to be done under this part of the proposed Exception and SPs will have considerable bearing on the costs to the permittees. Most small agencies will need to curtail or eliminate services to the public in order to afford the costs associated with the proposed Exception and SPs. Therefore, finding number 18 of the IS "Mandatory Findings of Significance" and specifically subpart c) will need to be analyzed. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***

<u>The comments below pertaining to this part of the proposed SPs are directed towards finding number 18 in the IS.</u>

14. IV.A.2.a: The proposed SPs do not state how often the runoff flows must be measured or calculated. Please clarify for environmental analysis. ***THIS COMMENT WAS NOT ADDRESSED IN THE DPEIR.***