

# MONTEREY COUNTY

## RESOURCE MANAGEMENT AGENCY

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### DEPARTMENT OF PUBLIC WORKS

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March 15, 2010

CONSTANCE ANDERSON, ENVIRONMENTAL SCIENTIST  
STATE WATER RESOURCE CONTROL BOARD  
DIVISION OF WATER QUALITY, OCEAN UNIT  
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**SUBJECT: Comments concerning the scope and content of the program EIR as stated in the Notice of Preparation and associated Initial Study for the Statewide Program Environmental Impact Report for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Dischargers into Areas of Special Biological Significance, including Special Protections for Beneficial Uses**

Dear Ms. Anderson:

Thank you for the opportunity to review and comment on the Initial Study (IS) for the General Exception to the California Ocean Plan and ASBS Special Protections (SPs) as included in Attachment A to the IS. We appreciate the State Water Resources Control Board's efforts to develop the General Exception and Special Protections, and we look forward to continuing our working relationship with the State Board through the remainder of the review and approval process.

We have noticed that the Special Protections have changed significantly from the versions that were used for the public workshops that were now held over three years ago. How the SP's are interpreted will have a significant influence on the impacts that will come from the impositions of these requirements. To that end, many of our comments regarding the SPs highlight our questions and reflect our desire to understand the scope of the "Project/Program" for which the Environmental Impact Report (EIR) will be prepared.

In the past, your agency has invited comments regarding the General Exception and Special Protections, and we sincerely appreciate the time that Water Board staff has invested in this effort. One of the comments made during the public input process is that these Special Protections will place an economic burden on the municipalities that must comply. This may lead to the curtailment or elimination of certain services that County residents have come to rely on, changing the quality of for some residents. We therefore take our role in this process very seriously.

Our comments on the scope and content of the Notice of Preparation (NOP) with the associated IS and Special Protections are presented below for your consideration.

**General Initial Study Comments:**

1. The program (or project) description does not appear to include a specific reasonably foreseeable project that may result from implementation of the program. It is our understanding that the CEQA (California Environmental Quality Act) process must describe the project and scope in sufficient detail that an analysis of a reasonably foreseeable project and its cumulative impacts could be assessed if this program were instituted.
2. The approach taken in the Initial Study to evaluate the environmental impacts seems to change throughout the various environmental categories, as evidenced by the discussions and potential impacts noted in the Initial Study. In some instances, it appears the evaluation approach is from a “no program position”, and in other instances, the evaluation appears to be from a “program implemented” approach. Again, our understanding is that project impacts be analyzed from a “program implemented” approach, not a “program deferred” approach.
3. The project description presents no specific description of any reasonably foreseeable projects that could be implemented that allows proper evaluation of potential environmental impacts of this program. Additionally, and as noted in the *Initial Study Attachment A – Revised Draft Special Protections* section below which is proposed as the guiding document for implementation of the program being evaluated, contains inconsistencies, lacks the definitions of several key terms, and is vague on the expectations and standards of the program.
4. The requirements of the program and the reasonably foreseeable projects that can be envisioned are expected to have a substantial economic impact on the County. This in turn, may result in the need to reallocate funds from other important functions and operations to accommodate the costs of implementing this program. We ask that the EIR include an Economic and Social Effects evaluation section as provided in the CEQA review process.
5. For the evaluation of environmental impacts and per the CEQA guidelines, we understand that 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.
6. It is our understanding that a brief explanation of the potential impacts should be provided for all Initial Study answers except for those elements of the checklist marked as “no impact”. Some answers provided in the Initial Study provide no explanation of the potential impacts as marked in the check boxes (excluding the “no impact” answers), nor are supporting information sources provided. Having this information will assist greatly in our understanding of the Board’s reasoning behind the issue being assessed.
7. We believe that 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, economic and social impacts that the implementation of this program may create.

The Special Provisions present vaguely defined goals and standards that, if implemented now, would cause confusion that we believe would be counter-productive to protecting the unique qualities of the ASBSs. We encourage the Board to more precisely define the scope and standards of the program prior to its implementation to avoid the unnecessary questions, confusion and expense that would result from enactment of a program without specific measurable and meaningful standards of performance.

### **Comments on the Initial Study Checklist**

1. Aesthetics: We believe that components a) through c) of this item should be considered potentially significant impacts. Additionally, the impacts may not be able to be mitigated, especially along the coastal areas of the Monterey Peninsula where end-of-pipe BMP projects may substantially adversely impact a scenic vista, damage a scenic resource, or degrade the existing visual character of the surroundings. The jurisdictional area of Monterey County that is located adjacent to the ASBS is completely residential and has been established for many years. The installation of any structural BMP or stormwater treatment system could impose a major visual impact onto an already highly visible and much used public area.
2. Agriculture and Forest Resources: Although the County of Monterey has no forested or agricultural uses within its jurisdiction along the ASBS, impacts could definitely result from the implementation of this program in coastal agricultural and forest lands. A reasonably foreseeable project, such as a structural BMP or treatment infrastructure, may need to be installed, resulting in the conversion of farmland or forest land to a non-agricultural or non-forest land use. We believe that items d) and e) could be potentially impacted significantly by the installation of such a project.
3. Air Quality: The potentially cumulative air quality impacts from implementation of this program statewide should be evaluated (item d). Should multiple stormwater treatment systems be required to be installed to meet the standards of the program, we believe that air quality could be affected by unavoidable traffic delays caused during construction and the construction equipment itself. Some of the treatment systems may need to be located in remote areas and may need generators to provide a reliable power source that could also impact local air quality.
4. Biological Resources:
  - i. This discussion and its conclusions appears to approach the potential impacts from a “no project” perspective, as evidenced by the opening statement that “the general exception project has the potential to impact...if existing inadequate controls currently in force are allowed to continue”. As mentioned earlier, a consistent “program implementation” approach throughout this evaluation would assist in analysis of the potential environmental impacts.
  - ii. The discussion states that the existing controls are “inadequate”. It is our understanding that, to date, there has been no conclusive evidence that stormwater has degraded an Area of Special Biological Significance. This statement appears to be unsubstantiated.

- iii. Program implementation may also incur terrestrial biological impacts that do not appear to be considered.
  - iv. Program implementation may cause diversions of flow away from, and in some instances into, Areas of Special Biological Significance (ASBS), which may impact the existing marine environment by altering the current flow of nutrients that are present in this runoff.
5. Cultural Resources: Significant portions of the Monterey Peninsula are archaeologically sensitive areas, including much of the coastal area where reasonably foreseeable projects of the proposed program may need to be implemented. As a result, we feel that all elements of this issue, a) through d), should be marked as potentially significant impact and the associated impacts of the program should be evaluated.
6. Geology and Soils: No comment.
7. Greenhouse Gas Emissions: The cumulative greenhouse gas emissions generated from implementation of this program statewide may have potentially significant impacts, and we believe that this program should be evaluated for their impacts.
8. Hazards and Hazardous Materials: It is entirely possible that the installation of stormwater treatment systems will be required by implementation of this program, filtering and collecting potentially hazardous materials that would otherwise enter Areas of Special Biological Significance. As such, these materials would need to be removed periodically from the treatment systems and disposed of at an appropriate approved location. Transport and disposal of these materials could create a potential hazard to adjacent residential areas or nearby biological preserves.
9. Hydrology and Water Quality:  
Because the entire nature of the Special Protections program involves treatment of stormwater and/or alteration of existing drainage patterns to prevent its discharge into Areas of Special Biological Significance, it appears that implementation of the program could present significant impacts to many of the Hydrology and Water Quality issues.
- i. The discussion, its conclusions, and check marks for this issue appear to approach the potential impacts from a “no project” perspective. As noted previously, it is our understanding that the CEQA documents be prepared to assess the effects of a “project implementation” perspective.
  - ii. The discussion states that the existing controls are “inadequate”. Also as noted previously, we understand that there has been no conclusive study that concludes that stormwater has degraded an Area of Special Biological Significance. The comment that existing controls are inadequate is confusing.
  - iii. We believe that parts c), d), h), and j) should be evaluated from a program perspective for their potentially significant impact. Program implementation may substantially alter natural drainage patterns, place structures in the 100-year flood hazard area that may impede flood flows, and structural BMPs may need to be constructed in areas of inundation by tsunami.

10. Land Use and Planning:

- i. 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 require structural BMPs in/around riparian and drainage areas that are may be protected open space or conservation areas, it is unclear whether mitigation would be viable for part c), as construction within these areas could have potentially significant impacts.
- ii. The area of the County that contributes to storm water entering the ASBS is a fully developed residential area with no dedicated open space parcel for the construction of BMPs. As a result, the implementation of BMPs in this area may result in the loss of housing and conflict with land use policy and zoning. We believe this is an example of a potentially significant land use impact of the program contemplated herein.

11. Mineral Resources: No comment.

12. Noise: No comment.

13. Population and Housing: No comment.

14. Public Services:

We question the validity of the statement that no new capital improvements would be included in the general exception project. Two of the most potentially available solutions to meeting the goals of this program are to treat stormwater before it is discharged into the Area of Special Biological Significance ("end of pipe" treatment), and re-routing stormwater discharges from their existing locations to a more appropriate location or treatment system, possibly more distant from the ASBS. Both of these scenarios will require capital improvements, and ongoing administration and maintenance of these facilities. As such, we believe that there could be potentially significant impacts to other public facilities.

15. Recreation: No comment.

16. Transportation/Traffic: No comment.

17. Utilities and Service Systems:

Again, we question the validity of the statement that no new capital improvements would be required to implement the program. Clearly, items b), c) and e) could contain potentially significant impacts since stormwater treatment will need to be accomplished by either treatment of the stormwater directly (item c) or by routing stormwater to existing treatment facilities where it can be treated with other wastewater flows (items b and e).

18. Mandatory Findings of Significance:

- i. We believe that part b) should be considered a potentially significant impact. The state-wide implementation of this program will have a cumulatively considerable impact on the environment in many respects, as noted above.
- ii. In the description of the Mandatory Findings of Significance, there appears to be a typographical error in that only the potential impacts to air quality are specifically mentioned as being mitigated to less than significant levels. We believe this to be an oversight rather than an implication that the other areas of analysis are to be approved as having less than significant impacts.

**Initial Study Attachment A - Revised Draft Special Protections:**

The following comments relate to Attachment A – Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges.

General Comments on the Special Protections:

- A. It is unclear whether there will be a uniform standard for Natural Ocean Water Quality applied across all Areas of Special Biological Significance statewide, or whether each ASBS will have its own standard based upon the naturally occurring water sampled within its borders. Further, will there be multiple standards throughout each ASBS, for example, for each municipality within the ASBS, or even further at each discharge location? Will the standard be based upon a single sample taken on the effective date of the Exception, or based upon a series of samples that may be able to detect quality control issues that may have occurred either during collection of the sample or during its subsequent analysis? Who will be responsible for performing the baseline sampling, and at what time of year will the samples be taken? Presumably, this would all be completed prior to the effective date of the Exception.
- B. We have a fundamental question regarding how the program will be established and structured. Stormwater and ocean water sampling will occur regularly in consistent locations to document changes to the quality of the waters within the ASBS. What remains confusing is which of these samples will be used to measure compliance with the Exception. It is protection of the ocean waters within the ASBS that is the ultimate goal of this entire program. However, ocean water sampling is a complicated process with multiple factors that affect the overall quality of the sample. Stormwater sampling is relatively consistent: sample in the same location under well defined conditions, and the samples can be reasonably assured of being accurately compared. Conversely, ocean water sampling is inherently more complicated as a result of independent factors that are not present in stormwater sampling. Specific guidelines for ocean water sampling should be provided in order to assure consistent conditions between sampling events that will allow an accurate and justifiable comparison of the results. For instance, an accurate location where all samples will be taken should be established within reasonable accuracy (of say, 50 yards).

This may be more difficult than it sounds, especially with offshore sampling, when fighting the weather, wind, waves and tide while trying to locate a shifting reference point can combine to make finding the same location extremely difficult. The samples be taken at a specific tide (i.e., 2.00 hours after high tide), during a specific phase of the moon, at a specified time after or during a specific rain event, etc. Ocean water sampling has far more variables than stormwater sampling, and only under consistent sampling conditions should the results of such sampling be compared.

### **Specific Comments on the Special Protections:**

1. I.A.: A definition of “Point Source Discharge” is not found within the Special Protections.
2. I.A.1.b: A technical definition of “Storm Water Runoff” is not provided in the Glossary.
3. I.A.1.d: There is no technical definition of “Outfall” in the Glossary or within the document. Is it specifically a closed conduit of some minimum dimension, or will it include natural channels that receive stormwater runoff as well? What constitutes a stormwater outfall is critical to the scope of the County’s response to the Special Protections.
4. I.A.1.e(3): How will a violation of authorized non-stormwater discharges be determined?
5. I.A.2: Does the term “natural water quality” in this section refer to Natural Ocean Water Quality as defined in the Glossary?
6. I.A.2.a: Does the term “service areas” mean areas serviced by a storm drain system?
7. I.A.2.c: It is assumed that these inspections will be required of all such facilities located within the drainage areas tributary to the stormwater outfalls of concern. As noted previously in this letter, this could amount to a significant expense on the part of the Exception Permittee (Discharger) and an analysis of the economic impacts of the implementation of this program was not included in the Initial Study.
8. I.A.2.d(2): As noted above, base line conditions and sampling are assumed to be in place prior to the effective date of the Exception.
9. I.A.2.f: There is no definition of “Non-Structural BMPs” in the Glossary.
10. I.A.3.c: There is no definition of “Non-Structural Controls” in the Glossary.
11. I.A.3.d: There is no definition of “Structural Controls” in the Glossary.
12. I.B.1.b: It is understandable that stormwater can be responsible for the degradation of the natural ocean water quality, but what if it is in fact the rainfall itself that is degrading the Natural Ocean Water Quality, as in the case of a nearby wildfire? Will there also be a requirement to sample rain water periodically or under specific conditions to verify that the rain water itself is not the source of the degradation?
13. I.B.1.e(1): There is no definition of “Stormwater” in the Glossary.
14. I.B.1.h: Is sheet flow from rainfall specifically authorized under this section? It does not appear to be specifically exempted under this section.
15. I.B.3.e: As mentioned previously, does this require that stormwater discharged into the ASBS meet some specific standard, or that the Natural Ocean Water Quality meet a specific standard? The term used here, “natural water quality” is confusing because it is not defined and the discussion refers both to fresh and marine water.

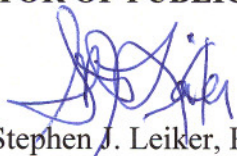
16. IV.A.2: Is this intended to require continuous measurement throughout the rainy season, or only specifically at the moment that the runoff samples are measured? The wording of section b) appears to imply that providing flow rates throughout the entire season to the Regional Water Board will be required. Is this intended to be an estimate of the total volume of rainfall entering the ASBS over the course of the wet season, or a log of instantaneous flows at specific outfalls? Also, the date in sub-heading a) appears to contain a typographical error.
17. Glossary: Is “Design Storm” used anywhere in the Special Protection document? The only reference to a specific storm occurs in IV.A.1 and differs from this definition.
18. Glossary: The term “Higher Threat Discharges” refers to “passive discharges” which is not defined.

Thank you again for the opportunity to comment on this Initial Study and the Special Exceptions that are under consideration for adoption by the State Water Resources Control Board. We appreciate the tremendous amount of effort that has gone into the preparation of this document, and we look forward to working with the State Water Resources Control Board to see it implemented. Our comments have been offered constructively and are solely intended to further define the scope of the program and remove the confusion and inconsistencies we have found in the document.

Feel free to contact Stephen J. Leiker, P.E. at (831) 755-4809 if you have any questions concerning these comments.

Sincerely,

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**DIRECTOR OF PUBLIC WORKS**

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