



CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT

Stephen G. Badum, Director

March 15, 2010

Electronic Delivery to csanderson@waterboards.ca.gov

Constance Anderson, Environmental Scientist
State Water Quality Control Board,
Division of Water Quality, Ocean Unit
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Review and Comment - Notice of Preparation of a Statewide Environmental Impact Report (EIR) for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance (ASBS) - February 4, 2010.

Dear Ms. Anderson:

Since 2005 the City of Newport Beach has actively engaged in a program to protect the Areas of Special Biological Significance (ASBS) along Newport Coast. We have instigated one of the most robust runoff reduction programs in the state to decrease flow to the creeks and drains that ultimately discharge to the ASBS. We have bolstered our tidepool docent program to provide more monitoring of our rocky intertidal areas. We have sponsored a program in Newport Harbor to promote the use of non-toxic anti-fouling paint. And we funded the first tidepool restoration project in the state where rockweed was successfully reintroduced at Little Corona.

In coordination with this ASBS protection program, the City has worked with the State Water Resource Control Board to complete a comprehensive assessment of potential impacts to the ASBS. The report included multiple studies to assess impacts from public use, flows from the canyon creeks, and potential pollutant loads from Newport Bay. The report can be assessed at the City's website:

<http://newportbeachca.gov/index.aspx?page=1334>. The results of the study:

1. Show a clear impact from public use.

2. Suggest that contaminants associated with flow from the adjacent Newport Harbor (especially copper) during both dry and wet weather may have an influence on the ASBS biological community and require further study.
3. Show that while certain constituents (dissolved cadmium, dissolved copper and fecal indicator bacteria) somewhat exceed water quality criteria, the exceedences do not cause bioaccumulation or acute toxicity.

It should be noted that water quality exceedences in the surf zone cannot be attributed to the small drains as the potential loading from these small drains directly discharging to the ASBS is insignificantly small when compared to the loading from Newport Bay or the canyon creeks.

An appropriate ASBS protection program for the City should be built around the results of these assessments and our experience with prior restoration efforts. The task that is most likely to protect our ASBS is to increase staffing of the City's docent program to supervise public use of tidepools. While possible water quality exceedences have not been shown to impact the ASBS, the City is proactively looking at measures to improve water quality including:

- Continuing to support a program to encourage boat owners to use non-toxic alternates to copper anti-fouling paint.
- Continuing the runoff reduction program in Newport Coast centered on repairing irrigation system, using multi-port sprinkler heads, using SmarTimer Irrigation Controllers, and transitioning to water-thrifty landscapes to reduce transport of pollutants within the canyon creeks.
- Maintaining our enhanced frequency of street cleaning for the communities that border the beach area.
- Continuing monitoring of the harbor, creeks and drain outlets.
- Continuing restoration efforts in the rocky inter-tidal areas along the lines of the successful rockweed program at Little Corona and Morning Canyon.

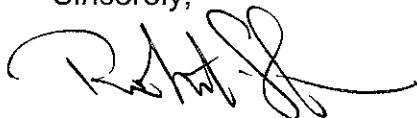
Given today's economic conditions and the limits of resources and funding, our ASBS protection program would prioritize tasks that most effectively protect and restore the ASBS. We would measure our performance by documenting improvements in the tidepools, reduced flows in the canyons and number of boats converting to non-toxic anti-fouling paints. The City thinks that the proposed Special Protections should be consistent with the scientific studies we have performed, tailored to the specific circumstances of our ASBS, structured to allow the City to take meaningful steps to protect the ASBS, and provide for a reasonable schedule for funding the effort.

We have read comments prepared by the City of San Diego and concur with its assessment of the Draft Special Provisions on all points. With respect to the 2nd Paragraph, 2nd Sentence of the Initial Study's **Biological Resource Impacts**, we would like to highlight that our comprehensive assessment of the Newport Coast ASBS does not support the idea that the regulations of the small drains as proposed would result in any measureable protection to the ASBS. The program to address the small drains as

currently envisioned in the Draft Special Provisions would actually harm protection and restoration of the ASBS as it would needlessly take funds away from tasks that would meaningfully address real impacts to the ASBS.

We think the spirit of the Ocean Plan regulations can only be met with a program that actually results in meaningful protection and restoration efforts. We look forward to continuing to work with you to develop that program. Please call (949-644-3322) if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Stein', with a stylized flourish extending to the right.

Robert Stein
Assistant City Engineer

cc: Dave Webb, City Engineer