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March 10, 2010

Via E-mail and FedEx

Constance Anderson
Environmental Scientist
State Water Resources Control Board
Division of Water Quality, Ocean Unit
1001 I Street
Sacramento, California 95812-0100

Re: Comments Concerning the Scope and Content of the Program Environmental Impact Report as Stated in the "Notice of Preparation of a Statewide Program Environmental Impact Report for a General Exception to the California Ocean Plan Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance (ASBS), Including Special Protections for Beneficial Uses and the Associated Initial Study

Dear Ms. Anderson:

The City of Pacific Grove (PG) appreciates the opportunity to review and comment upon the Initial Study (IS) for the ASBS Special Protections (SPs) as included in Attachment A to the IS. We also applaud and sincerely appreciate the efforts of the State Water Resources Control Board and staff to develop the General Exception and Special Protections. As this program continues to be shared during the CEQA review, we would like to take this opportunity to request that the exceptions be retroactive when issued. Once finalized, they will deliver faster results and reduce the costs associated with individual exception applications.

The SPs have changed significantly from the versions used for the public workshops that were held over three years ago. How the SPs 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 are designed to better understand the scope of the "Project" for which the Environmental Impact Report (EIR) will be prepared.

In the past, your agency has invited comments regarding the Special Protections and we sincerely appreciate the time that the staff has put towards this effort. One of the comments made during the public input process is that these Special Protections will certainly place a great economic burden on the municipalities and other stakeholders that must comply. This will lead to tough decisions and in many cases, lead to the curtailment or complete elimination of certain

city services that will impact the quality of lives in our community. A compounding factor that will only increase the economic impact is the short time frame given in the SPs to comply. Below are our comments for your consideration on the scope and content of the Notice Of Preparation (NOP) with the associated IS for the preparation of an EIR.

General Initial Study Comments:

1. 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 (California Environmental Quality Act (CEQA) Code Sections 15063(d)(3), 15064(d), 15168(c)(5)).
2. The approach taken in the Initial Study to evaluate the environmental impacts seems to change throughout the various environmental categories in the Initial Study, 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 project” position, and in other instances, the evaluation appears to be from a “during implementation” approach. We recommend following a consistent approach to the environmental impact analyses, which we believe should be from a “program implementation” approach, not a “no project” approach. Please clarify the approach to the impact analysis in the project description or where most appropriate.
3. The project description appears to be inadequate to properly evaluate and analyze potential environmental impacts of this program. Additionally, and as noted in the *Initial Study Attachment A – Revised Draft Special Protections* section below, Attachment A of the Initial Study, which is proposed as the guiding document for implementation of the project being evaluated, contains internal inconsistencies, lacks clarity in definitions, expectations, and standards.
4. 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 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.
5. 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, “[d]ischarges 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.

6. 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. This in turn, may result in the need for a stakeholder such as ours to shift funds/resources from important and/or necessary functions and operations to accommodate the implementation of the proposed program. With this in mind, we recommend the EIR include an Economic and Social Effects evaluation section (CEQA Code Section 15131).
7. For the evaluation of environmental impacts and per the 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).
8. A brief explanation of the noted impacts should be provided for all Initial Study answers except those elements of the checklist marked as “no impact”. Many of the answers provided in the Initial Study provide no explanation for the potential impacts as marked in the check boxes (excluding the “no impact” answers), nor are supporting information sources provided. Often, the same general statement is utilized, which states, “However, the State Water Board believes that mitigation is available to reduce any potential impacts to (insert impact name here) to less than significant”. In these instances, the statement provided is not adequate in properly evaluating: 1) the foreseeable impacts, 2) the mitigation proposed, and 3) the supporting information sources (CEQA Guidelines Appendix G, Evaluation of Environmental Impacts). Please provide the above listed three items for all discussion sections in the Initial Study for disclosure clarity and understanding. Without this information, which is necessary to properly and initially evaluate impacts envisioned, we question the adequacy of this Initial Study for its intended disclosure purposes and in support of an EIR.
9. 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 Special Protections.

Initial Study Checklist Comments

1. Aesthetics: We believe that all four components of this item should be considered potentially significant impacts. Additionally, the impacts may not be mitigated, especially in our jurisdictional area 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, degrade existing visual character of the surroundings, or create new light or glare that may adversely affect views in the area. An example of likely impacts of a treatment system and its aesthetic impacts is shown in Attachment 1. As noted in General Comment 6 above, a brief explanation of this issue's foreseeable impacts, mitigation proposed, and supporting information sources for the conclusion, is requested.
2. Agriculture and Forest Resources: Although not pertinent to PG, impacts may result from the implementation of this program in coastal agricultural and forest lands where a reasonably foreseeable project, such as a structural BMP or treatment infrastructure, may need to be constructed and thus, would result in the conversion of farmland or forest land to non-agricultural uses. An example of impacts such as these is contained in Attachment 1. Please evaluate this potentially significant impact in Part e) in this section.
3. Air Quality: The potentially cumulative air quality impacts from the implementation of this program statewide should be evaluated. This section does not disclose this, and we believe it should be evaluated as a part of this statewide project/program.
4. Biological Resources:
 - i. This discussion and its conclusions appear 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". Please utilize a consistent "program implementation" approach throughout when evaluating the potential environmental impacts.
 - ii. The discussion states that the existing controls are "inadequate". Please provide more information and a brief explanation how you arrived at this position and provide a source for the conclusion drawn for greater clarity and understanding with regard to impacts.
 - iii. Program implementation may also incur terrestrial biological impacts in the Monterey Peninsula area. Such reasonably foreseeable impacts should be evaluated, and do not appear to be considered.
 - iv. Program implementation may cause diversions of stormwater and non-stormwater flow away from, and in some instances into, an ASBS, which may have impacts on the hydrologic cycle between terrestrial and marine ecosystems, thereby possibly impacting the existing terrestrial and marine environments' flora and fauna that are dependent on these waters. Please evaluate these potentially significant impacts.

5. Cultural Resources: Significant portions of the Monterey Peninsula are archaeologically sensitive areas, including most of the coastal area where reasonably foreseeable projects of the proposed program may need to be implemented. As a result, we feel strongly 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 potentially cumulative greenhouse gas impacts from the implementation of this program statewide should be evaluated. This section does not disclose this, and we believe it should be evaluated as a part of this statewide program.
8. Hazards and Hazardous Materials: The explanation provided is not sufficient. It does not provide information or disclosure, even in brief, as to the nature of the potentially significant impacts as noted in Part b). Please provide more information for clarity, understanding, and disclosure.
9. Hydrology and Water Quality:
 - i. The discussion, its conclusions, and check marks for this issue appear to approach the potential impacts from a “no project” perspective. Please describe the reasonably foreseeable impacts from the perspective of program implementation and describe the associated mitigation measures.
 - ii. The discussion states that the existing controls are “inadequate”. Please provide more information and a brief explanation how you arrived at this assumption and provide a source for the conclusion drawn for greater clarity and understanding with regard to impacts.
 - 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 and river/stream courses, place structures in the 100-year flood hazard area that may impede flood flows, and structural BMPs may be constructed in areas of inundation by tsunamis.
10. Land Use and Planning:
 - i. 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 or 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.
 - ii. The area of our City that contributes to storm water entering the ASBS is primarily residential, with the exception of approximately 27 acres of the Pacific Grove Golf

Links, which is the only open space parcel for the future 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:
 - i. Potential significant impacts could result from physical improvements to parks to accommodate the project/program objectives. In a mostly developed, or built-out, community like ours no other viable location may be available for structural BMPs except those lands designated as open space or parks. Therefore, we believe this impact should be evaluated in Part d).
 - ii. 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.
15. Recreation: No comment.
16. Transportation/Traffic: No comment.
17. Utilities and Service Systems: Of great concern is the evaluation of this issue. We believe the proposed program would have potentially significant impacts on utilities and service systems, specifically for the evaluations of Parts 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.
18. Mandatory Findings of Significance:
 - i. We recommend that Parts b) and c) be marked as potentially significant impacts. As noted throughout the body of these comments, we feel that this program will have a substantial impact on the environment in many respects, and indirectly cause substantial adverse effects on human beings, when the program is viewed from a

- cumulatively considerable approach and evaluated on the impacts of probable future projects and their impact on our jurisdiction and statewide.
- ii. As mentioned earlier, we recommend the Environmental Impact Report (EIR) also include an Economic and Social Effects evaluation section to address the significant financial burden placed on local jurisdictions, and subsequently the residents, development community, and businesses, for the physical improvements necessary to be implemented to achieve compliance with the subject program. Also as mentioned earlier, the shift of resources (funds and staffing) from other important and/or necessary City functions and operations to accommodate the physical implementation of the proposed program could directly or indirectly impact human beings. As stated in *Guide to CEQA*, by Remy et al., “Where an EIR does identify significant environmental effects, related economic and social impacts are not irrelevant.”

Initial Study Attachment A - Revised Draft 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 Special Protections and even the interpretation of the Ocean Plan which has led to this action is malleable. Therefore, the environmental impacts from the Project are still malleable.

1. I.A.1.a(3)(iv): Please define “Storm Water”. The definition of what is “storm water” is crucial to understanding the scope of the Project. When read in a literal fashion, this 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 stormwater is made, such as any water being discharged during or shortly after a rain event with certain limitations on anthropogenic pollutants. The definition of this key term is vague and therefore, the Project is vague.
2. I.A.1.b: Referring to the comment above, if the literal interpretation of the term stormwater is used (i.e., absolutely no amount of anthropogenic pollutants are 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 could be far-reaching. The definition of the Project is vague.
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 these data are not available, it’s unclear where the starting point for

comparison will be. And since the baseline data aren'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.

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.
5. I.A.1.e(2): During wet years, similar to what we are currently experiencing in California, how do we determine when, "[n]aturally occurring groundwater seepage via storm drain," starts and stops? This seems problematic. Please clarify.
6. I.A.1.e(3): If taken literally, this provision 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.
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.
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.
9. I.A.3.a: It is unclear how the impacts from the cessation of all non-authorized, non-storm water discharges on or before the "effective date" are going to be analyzed if the EIR is going to analyze the foreseeable impacts that will result and presumably, be completed after the "effective date". How then does this apply and what will the Project scope be in this regard? Please explain for project clarity and environmental analysis.
10. 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 (i.e. non-storm

water) having the potential of detrimentally impacting the natural water quality. Therefore, the Project definition is vague. Please explain for Project clarity.

11. 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 these data are not available, it is unclear where the start point for comparison will be. Therefore, the scope of the Project is unclear.
12. I.B.3.a through .e: As with comments 3 and 11, this condition assumes that the baseline data will be available on the date that the SPs are approved. If these data are not available, it's unclear where the start point for comparison will be. Therefore, the scope of the Project is unclear.
13. 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.
14. III. "Waterfront And Marine Operations": Where is the term "Waterfront and Marine Operations" defined? Does it include incidental uses such as sea kayak launching or a davit for launching individual boats? Without a definition, the scope of the Project is unclear. Please provide definitions for Project clarity and environmental analysis.
15. IV "Monitoring Requirements": The scope and definition of what is to be done under this part of the proposed 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 these proposed SPs. Therefore, finding number 18 of the Initial Study "Mandatory Findings of Significance" and specifically subpart c) will need to be analyzed.

The comments below, which pertain to this part of the proposed SPs, are directed towards this finding in the Initial Study.

16. IV.A.1: The term "measurable storm event" is not defined. Please define for Project clarity and environmental analysis.
17. 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.
18. IV.B.1.e: It's not clear how far up or down the coast the marine debris study would need to be conducted. Some types of marine debris can stay afloat for many miles. Source tracking for marine debris will likely result in onerous costs. Please clarify the scope for this element of the Project.
19. Glossary: As noted above, there are numerous issues with the definition of the Project and many are related to terms that are not defined or described adequately to assess the

environmental impacts from the Project. Please provide definitions for clarity in Project scope and environmental review.

We recognize the considerable work that the Staff has put into the preparation of the Special Protections and this Initial Study. Our comments are made in the spirit of having a thorough and solid environmental analysis, as well as the resulting program.

Please contact Celia Perez-Martinez at (831) 648-5722 if you have any questions concerning these comments.

Sincerely,

A handwritten signature in cursive script that reads "Carmelita Garcia".

Carmelia Garcia, Mayor
City of Pacific Grove

Attachment: Aesthetic impacts example

cc: Thomas Frutchey, City Manager
Celia Perez-Martinez, Public Works Business Manager

