

CITY HALL
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CARMEL-BY-THE-SEA, CALIFORNIA 93921

February 21, 2012

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



Electronic Delivery to: commentletters@waterboards.ca.gov

Subject: Comment Letter – ASBS Special Protections

Reference: Notice of Adoption Meeting for the General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses, and the Associated Program EIR

Dear Ms. Townsend:

This letter responds to the SWRCB's Notice of the Adoption Meeting dated February 9, 2012, subject as above.

The City contends that it is unreasonable and inappropriate for the SWRCB to limit comments in response to this Notice to only changes from the previously circulated version of the Special Protections. This is because the vast majority of the City's comments on the previously circulated version were either ignored, brushed over, inadequately responded to, or rejected without providing a reasonable explanation as to why.

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

The City previously submitted comments on the Notice of Preparation of the DPEIR in its letter dated March 12, 2010, and on the DPEIR itself on May 12, 2011. Very few of the comments the City submitted were addressed in the PEIR, or in the February 13, 2012 version of the Special Protections. Many of those comments pertain to the lack of clarity of the terms and requirements contained in the Special Protections, and on the technical and financial infeasibility of many of the proposed requirements.

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

As noted in the City's May 12, 2011 comment letter, it worked with a number of other ASBS dischargers to develop an alternative approach to addressing water quality protection within

ASBSs, rather than using the approach described in the Special Protections. This alternative approach was contained in Exhibit 3 to that comment letter. It is again attached to this letter as Exhibit 2. We appreciate that considerable time and effort has gone into the preparation of the current Special Protections. However, we continue to believe that there are serious drawbacks to many of the terms, conditions, and requirements contained in them. We believe that the approach described in our May 12, 2011 comment letter is a more efficient, cost-effective, and scientifically sound means of achieving the desired levels of water quality protection.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Stilwell", with a long horizontal stroke extending to the right.

Jason Stilwell
City Administrator

Encl.

1. Exhibit 1 – The City of Carmel-by-the-Sea's Comments
2. Exhibit 2 – Alternate Approach to Providing Protection to ASBS

EXHIBIT 1

**THE CITY OF CARMEL-BY-THE-SEA'S COMMENTS
ON THE
FEBRUARY 13, 2012 VERSION OF THE SPECIAL PROTECTIONS
FOR THE
GENERAL EXCEPTION TO THE CALIFORNIA OCEAN PLAN
WASTE DISCHARGE PROHIBITION
FOR
SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL
SIGNIFICANCE
AND THE
ASSOCIATED PROGRAM EIR FOR THESE EXCEPTIONS**

Abbreviations Used in This Exhibit:

City = City of Carmel-by-the-Sea

PEIR = Programmatic EIR

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

SWRCB = State Water Resources Control Board

The references below are to the paragraph numbers in the Special Protections.

I.A.2.d (2): It is not clear how the 90% reduction in pollutant loading is to be determined. It is based on the discharge's total mass emission rate of pollutants as a whole, or on each individual pollutant by itself? With the deletion of the previous reference in this paragraph to Table B parameters, to which pollutants does this 90% reduction apply?

I.A.2.i: This paragraph should be retained and not be deleted. As explained in some of the comments below, the City anticipates it will not be possible to meet the time schedule set forth in the Special Protections for reasons beyond the City's control. Therefore, the City should be allowed to propose a revised time schedule based on its circumstances.

I.A.3.e: This section refers to maintaining Natural Water Quality, but goes on to define Natural Water Quality within the ASBS as containing less than 85% of the threshold pollutant levels in the Reference stations. Since the Reference stations themselves are supposed to be selected to represent Natural Water Quality in the vicinity of the ASBS, this would require the water in the ASBS to be 15% cleaner than Natural Water Quality. This conflicts with the objective of the Special Protections to maintain Natural Water Quality.

I.A.3.f: The words "...or lack of sufficient Reference station water quality data to determine Natural Water Quality..." should be added as another basis for allowing the State to authorize additional time to comply with these special conditions. No Reference stations have yet been selected for the ASBS into which the City's storm drains discharge. Based on the experience in Southern California, it will likely take considerable time for Reference stations to be selected, and then for enough sampling of water quality to be performed in order to establish Natural Water Quality at those stations. Until that has been done, it will not be possible to compare

sampling data from the discharges or their receiving waters with Natural Water Quality in order to determine compliance with these conditions.

I.A.3.f(1): There is no nexus between the annual household income of residents and the ability of the City to generate funds to pay for complying with the Special Protections by imposing stormwater fees on those residents. This is because under Proposition 218 those residents must approve of having such fees imposed upon them, regardless of what their incomes are, in order for the City to be able to levy such fees. The language in this portion of this paragraph should be changed to state that the municipality has attempted to impose stormwater fees to fund compliance with the Special Protections in accordance with the requirements of Proposition 218 and has been unsuccessful in doing so.

IV. – Second paragraph: This paragraph states that both State and Regional Board must be notified of certain Safety conditions affecting sampling. Elsewhere throughout the Special Protections there are similar requirements to receive approval from both the State and the Regional Board for various things. This makes the process unnecessarily cumbersome and time consuming. Point dischargers with Regional Board permits should only be required to obtain approval from, or give notices to, their respective Regional Board, and not to also have to do this with the State Board. This language should be changed here and in the other locations in which it appears, so as to be consistent with the other paragraphs in the Special Protections in which obtaining only Regional Board approval is necessary for Regional Board issued permits.

IV.A.2.a: Some examples of “acceptable methods” of calculating flows should be provided, since it will rarely be possible to actually measure the flows from the outfalls. For example will use of the Rational Method based on tributary drainage area, estimated subarea-weighted runoff coefficients, and rainfall intensity charts be an acceptable method?

IV.A.2.b: What is the purpose of calculating the flows? How does that information pertain to complying with the other provisions of the Special Protections, none of which appear to have any correlation to flowrates?

IV.A.4: The language in the last sentence of this paragraph stating that “...this is best made after the monitoring results from the first permit cycle are assessed” should be deleted. The Regional Board should have the authority to determine when and if a reduction or suspension of monitoring is appropriate, and should not be influenced by language such as this. This comment also applies to paragraph IV.B.1.f. Also, the term “permit cycle” is not defined. How long is the permit cycle expected to be?

IV.B.1.a: Language in this paragraph indicates that Reference stations will be determined by the State. Elsewhere in the Special Protections (see paragraph IV.B.2.a and the definition of “Representative sites and monitoring procedures” in the Glossary) there are indications that Reference stations are to be proposed to the State by the discharger, for State approval. The process of determining Reference stations should be clarified and the language pertaining to this process should be made consistent throughout the Special Protections.

IV.B.1.b: It is not clear whether sediment sampling is to be performed at every outfall, or only at certain outfalls. Because of the costs associated with performing this sampling and analyses, it would seem adequate to perform this at most at only a few locations along the shoreline where the outfalls are located.

IV.B.1.c: It is not clear whether a qualitative survey is to be performed at every outfall, or only at certain outfalls. Because of the costs associated with performing this surveying, it would seem adequate to perform this at most at only a few locations along the shoreline where the outfalls are located. Also in this paragraph the requirement for both Regional Board and State Board approvals to be obtained should be deleted, as mentioned in the comment above pertaining to paragraph IV. – **Second paragraph.**

IV.B.1.d: The requirement for both Regional Board and State Board approvals to be obtained should be deleted in two places in this section, as mentioned in the comment above pertaining to paragraph IV. – **Second paragraph.**

IV.B.2: The requirement for both Regional Board and State Board approvals to be obtained should be deleted, as mentioned in the comment above pertaining to paragraph IV. – **Second paragraph.**

IV.B.2.a: It is not clear what is meant by “...at the drainages of flowing watersheds...” In the preceding paragraph the term “...near the mouths of identified open space watersheds...” appears to be used for this. Although this paragraph contains some additional conditions pertaining to this topic, a more understandable and complete description of what will constitute an acceptable “reference area” is needed to assist dischargers in making this selection. Providing some examples to illustrate this would be helpful.

In this same section is it not clear how many reference stations need to be established by each discharger and for each ASBS. Providing some examples to illustrate the intent would be helpful.

In this same section and elsewhere in the Special Protections the terms “reference area” and “reference station” seem to be used interchangeably. However, the term area is a broad description of a location whereas the term station would be a very specific location. This discrepancy should be clarified or eliminated so that the two terms are clearly defined.

IV.B.2.c: As mentioned above under the comment on paragraph I.A.3.f, it appears unlikely that reference stations for Central Coast ASBSs will be able to be selected and approved prior to the 2012 rainy season. This is one reason why compliance with the time schedule in the Special Protections will likely be impossible for dischargers in that area. This needs to be addressed in the language in the Special Protections by adding the language suggested in the comments for that paragraph.

Glossary – Definition of the term “Surface Water Ambient Monitoring Program (SWAMP) comparable”: The definition of this term includes in its final sentence a reference to the Southern California Bight QAPP and data base management as being “SWAMP comparable.” Please clarify exactly what this statement means. Also, please state how one can obtain a copy of that documentation and describe how it is “SWAMP comparable.” Also describe other forms of documentation that would be “SWAMP comparable,” as there certainly must be other documentation forms that would meet this requirement.

Overall Comment

As previously commented, there continues to be a need for further study of a number of issues to be conducted in order for the SWRCB to develop a fair, practical, and effective program to preserve natural water quality in ASBSs to an extent that is reasonably achievable.

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

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

EXHIBIT 2

ALTERNATE APPROACH TO PROVIDING PROTECTION TO ASBS

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

Rationale

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

Alternate Approach

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

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

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

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

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

Step 5:

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