

Department of Public Works



COUNTY OF SAN MATEO

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February 21, 2012



By email: commentletters@waterboards.ca.gov

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

Dear Ms. Townsend:

Re: Comment Letter – ASBS Special Protections

The County of San Mateo (County) appreciates this opportunity to provide comments on the revised draft Special Protections policy dated February 3, 2012. The enclosed comments build upon and incorporate by reference comments previously submitted on earlier drafts of the Special Protections by the County¹.

We are concerned that the revisions to the Special Protections do not address critical issues raised in our comments. We are also concerned about the fiscal and logistical impacts of the new language added to the monitoring section of the Special Protections. Our specific concerns with the revised draft Special Protections are listed below:

1. No changes were made to scale the requirements based on characteristics of watersheds draining to Areas of Special Biological Significance (ASBS). For example, the Special Protections do not scale requirements based on population size, density, or land use and it continues to employ a one-size-fits-all urban-oriented approach.

More than two thirds of the James V. Fitzgerald ASBS watershed is unincorporated rural lands. There are two small communities, Montara and Moss Beach, with a combined population of less than 5,000. Given the rural setting of the James V. Fitzgerald ASBS, it is not likely to have the same water quality concerns and pollutant loading potential as densely populated, more urban-dominated ASBS, such as Laguna Point to Latigo Point or La Jolla (receiving waters of County of Los Angeles and City of San Diego), and should not be subject to the same monitoring approach and compliance requirements. The County requests that the Special Protections be revised again to include a set of compliance and

¹ The County submitted comments on August 15, 2006, on the first draft of the Special Protections policy titled *Working Draft – Staff Proposal: Special Protections – Areas of Special Biological Significance – Storm Water and Nonpoint Source Discharges – Jun 14, 2006*. The County submitted comments on the Notice of Preparation of a Statewide Program EIR for a General Exception, including Special Protections on March 15, 2010. On May 20, 2011, the County submitted comments on the PDEIR Exception to the California Ocean Plan for ASBS Waste Discharge Prohibition for Storm Water and Nonpoint Source Discharges, with Special Protections dated January 18, 2011.

monitoring tiers that are based on population density, land use, and identified water quality problems.

2. No changes were made to the Special Protections to address the scientific issues associated with determining and complying with the undefined standard known as “natural water quality”. The Special Protections will require the County to characterize natural water quality (NWQ), pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near the County’s discharge location. A meaningful comparison of ‘reference’ and discharge sites is likely impossible due to the statistical invalidity of simply comparing one reference site with one discharge site (i.e., no statistical power), and the high degree of natural variability in the ecosystem. For the James V. Fitzgerald ASBS, interpretation of receiving water quality results are likely to be confounded by the significant uncontrollable influence of outgoing flows from San Francisco Bay being conveyed to and through the ASBS depending on prevailing winds, tides, and currents. We again recommend that a state-funded panel is convened to define NWQ in each ASBS and to provide guidance and protocols for determining whether stormwater discharges are causing and contributing to degraded receiving water quality prior to implementation of the Special Protections.
3. Section I.A.2.f of the revised Special Protection includes the following new language “to control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspire storm water runoff on-site.” It should be acknowledged that infiltration on steep bluffs in many of our coastal areas could lead to an increased risk for slope instability and bluff erosion, which could in turn lead to a myriad of problems including increased sediment inputs to the ASBS.
4. Section I.A.3.f of the revised Special Protections includes changes and additions that add to the inflexibility of the Special Protections. In the January 18, 2011 version, additional time to comply with the special conditions could be granted, for good causes, by the Regional Water Board. The new language imposes a prescriptive and difficult method for obtaining additional time for compliance. The new language should be changed to allow more flexibility.

The County currently does not have a Storm Water Fee to fund new requirements that would be set forth by the Special Protections. NPDES-related fees, which currently only cover a portion of the costs needed for meeting the requirements of the NPDES Municipal Regional Permit, are currently assessed on the property tax bill. Proposition 218, passed in 1996, amended the California Constitution to include Article XIII D, Section 6(c), which requires voter approval for new or increased fees and charges: “Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area.” The revised language of the Special Protections requires a demonstration of a significant hardship to the ratepayers by showing the relationship of storm water fees to annual household income for residents within the jurisdictional area. We recommend that this section be revised to acknowledge that municipalities may not be able to increase or create fees to fund the Special Protections requirements if the rate payers, regardless of annual household income, do not approve.

The deadlines in the policy will be difficult to achieve and should be amended to allow more time for acquiring grant funds and for completing the planning, permitting, and implementation that may be required based on water quality monitoring results. We previously requested that flexibility be added to the Compliance Schedule since NWQ has not yet been defined and storm discharges have not been adequately characterized for ASBS along the Central Coast. Water quality monitoring to characterize storm runoff should be conducted before an ASBS Compliance Plan, detailing specific BMPs, is developed. BMPs should not be designed until a specific water quality problem has been identified. NWQ and reference site monitoring should be conducted by the Water Board prior to implementation of the Special Protections rather than concurrently.

5. Section IV.A.1. of the revised Special Protections, Core Discharge Monitoring Program, includes the following new language “Runoff samples shall be collected when post-storm receiving water is sampled”. Please add language to this section that clarifies the length of time that is allowed between sample collection of receiving water and stormwater outfall runoff. We recommend that at least 12 hours are allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.
6. We recommend that sections IV.A.3.a.(1) and (2) and IV.A.3.b.(1) and (2) of the revised Special Protections, Core Discharge Monitoring Program, are revised to state "samples of stormwater runoff shall be analyzed collected during the same storm as receiving water samples annually and analyzed for oil and grease...". The previous version required that samples be collected “annually”. The new language makes it difficult to determine the required stormwater runoff sampling frequency.
7. Section IV.A.3.b.(3) of the revised Special Protections was modified to require stormwater runoff toxicity testing annually as opposed to once every five years. This will increase monitoring costs and may not be necessary. If the results show no toxicity after one year of sampling, we recommend that the sampling frequency is reduced to once every five years.
8. Section IV.B.2 of the revised Special Protections, Regional Integrated Monitoring Program, also contains revised language in need of clarification. Section IV.B.2.a states that “A minimum of one reference location shall be sampled for each ASBS receiving water site sampled per responsible party.” We recommend that language is added to make it clear that participants in a Regional Integrated Monitoring Program will be allowed to co-sample or share reference locations.
9. Section IV. of the revised Special Protections, Monitoring Requirements, contains substantial revisions that will increase monitoring costs (annual toxicity testing for runoff samples as opposed to once every five years, pre- and post-storm monitoring three times per year for the Regional Integrated Monitoring Programs). It is not clear if the increased costs associated with the revised monitoring requirements were included in CEQA Economic Analysis. If the Special Protections is adopted on March 6, 2012, as planned, the County of San Mateo will need time to assess the full cost of the monitoring program. By the time of adoption, preliminary budgeting will be complete for the 2012-2013 fiscal year. The County is already faced with difficult fiscal constraints requiring substantial budget reductions across the board. We recommend that water quality monitoring is not required until the 2013-2014 rainy season to allow time to assess and budget for the cost of compliance once the Special Protections are adopted. The

Ms. Jeanine Townsend, Clerk to the Board, State Water Resources Control Board

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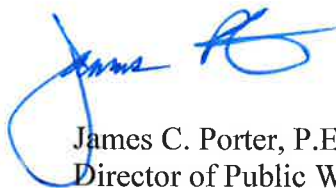
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water quality monitoring results are critical to the design of effective BMPs. Therefore, we also request that the Compliance Plan and BMP Implementation Schedule be adjusted accordingly.

As of Friday, February 17, 2012, a revised PEIR and completed Response to Comments were not available for public review. Based upon the timeline for the consideration of adopting the General Exception, including Special Protections (Water Board March 6, 2012 meeting), it is clear that the Water Board does not intend to recirculate a revised PEIR and that significant new information was therefore not added to the PEIR, as it would have warranted recirculation of the PEIR (per CEQA Section 15088.5 *Recirculation of an EIR Prior to Certification*). This is concerning and indicates that our previous comments, as well as other comments received by testimony from dischargers throughout the State at the October 18, 2011 hearing, have not been adequately addressed. CEQA Section 15088 *Evaluation of and Response to Comments* requires the lead agency to evaluate comments on environmental issues and prepare written responses to the public at large and public agencies. CEQA requires that a good faith, reasoned analysis must be provided in the Response to Comments and that conclusory statements in response that are unsupported by factual information will not suffice. We request that Water Board first address the comments received through written and verbal public comment according to the CEQA standards and then revise and recirculate the PEIR accordingly before proceeding with adoption of the General Exception.

The County remains committed to protecting beneficial uses and ensuring that County discharges are not degrading water quality or negatively impacting biological resources within the James V. Fitzgerald ASBS. However, the Special Protections must be both achievable and based on sound science. We appreciate the opportunity to provide these comments. Please contact Julie Casagrande (650-599-1457) if you have any questions.

Very truly yours,



James C. Porter, P.E.
Director of Public Works

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cc: Mr. Matt Fabry, Program Coordinator, San Mateo Countywide Water Pollution Prevention Program