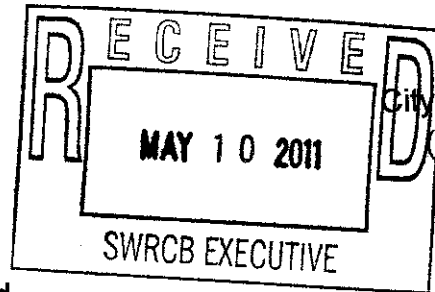




CITY OF NEWPORT BEACH



City Manager's Office
(949) 644-3000

May 2, 2011

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

Subject: Comment Letter - Areas of Special Biological Significance (ASBS)
Special Protections

Dear Ms. Townsend:

Beginning in 2005, the City of Newport Beach ("City") has expended significant effort toward implementing a viable ASBS protection program. A comprehensive set of assessments¹ commissioned by the City for the ASBS along Newport Coast² found good water quality conditions in the near-shore mixing zone while noting that trampling and collection activities are problematic in certain rocky-intertidal areas. Figure 1 attached hereto summarizes the findings of these City-sponsored assessments. Studies performed by other agencies also found good water quality at other ASBS and concluded that the ecological integrity of the ASBS has not been altered by urban or stormwater runoff.^{3,4}

Surprisingly, the Special Protections, as now proposed by the State Water Resource Control Board (State Board), do not reflect the positive results of these recent studies.

¹ Newport Coast Flow and Water Quality Assessment – Addendum 2 (<http://newportbeachca.gov/index.aspx?page=1334>), Weston Solutions, June 2009. The studies included assessments of wet and dry weather water quality impacts from local drains and creeks, wet and dry weather water quality impacts from Newport Harbor, public impacts, and rocky-intertidal restoration efforts. Water quality impacts were assessed through water and sediment chemistry testing, toxicity studies and bio-accumulation studies.

² There are two contiguous ASBS along Newport Coast: Robert E. Badham Marine Life Refuge (ASBS No. 32) and Irvine Coast Marine Life Refuge (ASBS No. 33).

³ Status of California's Marine Water Quality Protected Areas. SCCWRP, Technical Report 631, September 2010.

⁴ Assessing Water Quality Conditions of Southern California's Areas of Special Biological Significance, SCCWRP, Draft Report, January 2011.

FIGURE 1. IMPACT METRIC SUMMARY FOR LITTLE CORONA DEL MAR

Water Quality					
Frequency of water quality exceedances	Contaminants exceeded WQO	5			
Magnitude of WQ exceedances	Ratio of measured concentration to WQO	2.5	4.17	●	
Wet weather particulate tracking - Buck Gully	Intertidal Zone is influenced by Buck Gully	5			
Bioaccumulation					
Elevated constituent concentrations	Treatment significantly different from controls	5			
Toxic levels of constituents	Comparison to ERAD Database	0			
Total coliform bacteria concentration in tissue	EPA methods/comparison to controls	0			
Faecal coliform bacteria concentration in tissue	EPA methods/comparison to controls	0	0.63	●	●
<i>Vibrio</i> spp. concentration in tissue	Comparison to controls	0			
F-coliphage concentration in tissue	EPA methods/comparison to controls	0			
Adenovirus concentration in tissue	Comparison to controls	0			
Domoic acid concentration in tissue	Comparison to controls	0			
Toxicity					
Toxicity to <i>Strongylocentrotus purpuratus</i>	Significant toxicity in post-storm samples	0	0.00	●	
		MEAN SCORE:			
			1.60		
Water Quality					
Frequency of water quality exceedances	Contaminants exceeded WQO	5			
Magnitude of WQ exceedances	Ratio of measured concentration to WQO	2.5	3.33	●	
Dry weather particulate tracking - Buck Gully	Intertidal Zone is influenced by Buck Gully	2.5			
Bioaccumulation					
Elevated constituent concentrations	Treatment significantly different from controls	5			
Toxic levels of constituents	Comparison to ERAD Database	0			
Total coliform bacteria concentration in tissue	EPA methods/comparison to controls	0			
Faecal coliform bacteria concentration in tissue	EPA methods/comparison to controls	0	0.63	●	●
<i>Vibrio</i> spp. concentration in tissue	Comparison to controls	0			
F-coliphage concentration in tissue	EPA methods/comparison to controls	0			
Adenovirus concentration in tissue	Comparison to controls	0			
Domoic acid concentration in tissue	Comparison to controls	0			
Toxicity					
<i>Macrocystis pyrifera</i> reproduction	EDGE - EPA methods/comparison to controls	0			
<i>Macrocystis pyrifera</i> reproduction	MIX - EPA methods/comparison to controls	0			
<i>Macrocystis pyrifera</i> Growth	EDGE - EPA methods/comparison to controls	0			
<i>Macrocystis pyrifera</i> Growth	MIX - EPA methods/comparison to controls	0	0.36	●	
<i>Mytilus</i> spp. chronic toxicity	Concentrations below NOED levels	0			
<i>Mytilus</i> spp. chronic toxicity	Selenium concentrations elevated, effects unclear	2.5			
<i>Mytilus</i> spp. acute toxicity	Sensitivity of larvae compared to controls	0			
		MEAN SCORE:			
			1.44		
Harbor Cross Contamination					
Dry weather influence	Model indicates potential toxicity to ASBS	2.5	2.50	○	○
Wet weather influence	Model indicates potential toxicity to ASBS	2.5			
		MEAN SCORE:			
			2.60		
Shoreline Fishing/Consumption					
Frequency of occurrence per visitor	Observations/comparison to control site	2.5	2.50	○	
Treading					
Public Use Intensity - Weekdays	Observations/comparison to control site	5			
Public Use Intensity - Weekends	Observations/comparison to control site	5			
Walking and Trampling	Observations/comparison to control site	5	5.00	●	●
Sitting and Standing	Observations/comparison to control site	5			
<i>Silvetia compressa</i> Cover	Observations/comparison to control site	5			
Capture/Handling					
Handling/Touching Organisms	Observations/comparison to control site	5	5.00	●	
Collecting Shells, live organisms, rocks	Observations/comparison to control site	5			
		MEAN SCORE:			
			4.17		
Habitat Restoration					
<i>Silvetia compressa</i> Transplant Success	Transplant success rate > 25%	0	0.00	●	●
		MEAN SCORE:			
			0.00		

- ≤ 1 ● No Observed Impact or Positive Effect
- > 1 ≤ 2 ●
- > 1 ≤ 2 ○ Impact Present But Extent Unclear
- > 3 ≤ 4 ●
- > 4 ● Clear Negative Impact

The proposed Special Protections, whose text appears largely recycled from the protections proposed four years ago, have stimulated discussions among affected agencies and entities concerned with protecting ASBS. The City has considered comment letters written by the City of San Diego and County of Los Angeles and agrees with the issues raised by those agencies. We have also reviewed the City of Monterey's alternative approach proposal and find that it has merit. The City recommends three modifications in support of making the proposed Special Protections meaningful and effective.

1. First, as protection of biological resources is the goal, we recommended that marine life protection be defined in terms of multiple lines of evidence. The triad monitoring approach, that includes assessment of toxicity and the biological community (i.e., bioaccumulation, diversity, community structure, and population size), as well as water chemistry, is recommended. The triad approach is a widely accepted methodology for assessing water quality impacts and is consistent with the original monitoring design for the Bight 2008 studies. This data could also be used for defining natural water quality and quantifying natural variability. Note that intertidal and subtidal biological surveys were conducted as part of the Bight '08 monitoring effort, but have not yet been finalized. Moving forward with the Special Protections without considering these important assessments (paid for the City and other ASBS dischargers) undermines the stated goals of the California Ocean Plan for ASBS protection and wastes valuable resources. The City supports a cooperative monitoring program among the State Board and other interested parties to verify the current health of the ASBS.
2. Second, the provisions of the proposed Special Protections should be expanded to address all types of potential impacts, not just water chemistry. In fact, we believe that ASBS protection programs should be custom-tailored for each ASBS with protection actions prioritized and focused on beneficial uses. This will avoid the potential situation where regulations, narrowly focused on water chemistry alone, shift funds away from other more effective ASBS protection actions. The City's ASBS monitoring and protection program (see Table 1) provides an example of the different kinds of projects that have voluntarily been implemented to identify and address potential impacts to the Newport Coast ASBS. The City anticipates implementing the following ASBS protection projects over the next two years.
 - o The City is proposing to implement Phase 2 of its successful irrigation runoff reduction program that has installed over 600 smart irrigation controllers in the Newport Coast watershed since 2006. Irrigation runoff may be transporting contaminant loads down coastal canyons and into the ASBS. The Phase 2 program will include the repair and upgrade of irrigation systems and the promotion of water-thrifty landscaping palettes and be targeted toward homeowner association common-areas as well as larger residential lots.

Table 1: City of Newport Beach ASBS Protection Program Activities

	Monitoring/Studies	Projects and Programs
Completed	<ol style="list-style-type: none"> 1. Inter-tidal and subtidal monitoring along Newport Coast (Bight '08). 2. Newport Coast Groundwater Seepage analysis (2006). 3. Monitoring and assessments used in preparing the Newport Coast Flow and Water Quality Assessment (2006) and Addendum 2 (2009). 	<ol style="list-style-type: none"> 1. Implementation of Phase 1 – Smart irrigation controller program for Newport Coast (600 installed). 2. Tidepool restoration at Little Corona– Phase 1 3. Expanded tidepool docent program. 4. Promotion of water-thrifty plant palettes in partnership with Roger's Gardens. 5. Morning Canyon Restoration Project. 6. Upper Buck Gully Wetlands Project.
Currently Underway or Proposed (2011-2013)	<ol style="list-style-type: none"> 1. ASBS monitoring and effectiveness assessments. 2. ASBS improvement projects monitoring and effectiveness assessments. 3. Update of the Newport Coast Watershed Management Plan. 4. Participation in CASQA. 	<ol style="list-style-type: none"> 1. Outfitting of a "Travelling Tidepool" equipped with touch tanks. 2. Construction of a runoff infiltration gallery for one of the City's storm drain lines outletting to the ASBS. 3. Installation of Continuous Deflective Separation (CDS) units and catch basin screens. 4. Implementation of Phase 2 – Smart irrigation controller program for Newport Coast. 5. Implementation of a pesticide management outreach program. 6. Tidepool restoration at Little Corona– Phase 2 7. Construction of the Buck Gully erosion stabilization project. 8. Crystal Cove State Park parking lot water quality improvements. 9. Los Trancos Creek outlet improvements. 10. Active outreach program to promote non-toxic substitutes for copper boat paint in Newport Harbor. 11. Outreach to residents with private drains outletting to the ASBS.
Potential Future Actions	<p>Support a "triad-based" cooperative monitoring program led by the SWRCB to better define natural water quality and quantify impacts on the benthic community.</p>	<ol style="list-style-type: none"> 1. Construct infiltration galleries for the two remaining City's storm drain lines outletting to the ASBS. 2. Regulate copper boat paint. 3. Participate in the Bight 2013 inter-tidal and subtidal monitoring. 4. Adopt an ordinance that would provide the City with enforcement authority over private drains. 5. Consider tiered water rates.

- In Fiscal Year 2011/2012, the City anticipates installing an infiltration gallery to eliminate dry-weather runoff from one of the three municipal drains outletting to the ASBS. The City also intends to install additional water quality screening devices (e.g. CDS and catch basin screens) in neighborhoods adjacent to the ASBS. Additionally, the City will continue to work with residents with private drains outletting to the beach to encourage better housekeeping measures to reduce/eliminate discharges.
 - A pesticide management program targeting Newport Coast property owners and landscapers is proposed for implementation.
 - To address public use impacts to tidepools, the City is proposing to bolster its successful docent program to continue to provide the public with tidepool interaction experience and also teach proper tidepool etiquette.
 - As the ASBS along Newport Coast are the receiving waters for Newport Bay, the City has teamed with Orange County Coastkeeper to promote a program to encourage boat owners in Newport Bay to transition from copper boat paints to non-toxic paints. Additionally, the City is participating in the California Stormwater Quality Association's (CASQA) efforts to promote removal of copper from brake pads.
 - In Fall 2011, the City anticipates it will start construction of its largest restoration project to date. This project in lower Buck Gully will include measures to stabilize the streambed to reduce sediment loads and other measures to reduce bacteria and metal loads that could potentially be transported to the ASBS.
3. Finally, the City's ASBS protection program is memorialized in the Coastal Watershed Management Plan⁵. This Coastal Watershed Management Plan is scheduled to be updated in 2013 based on future ASBS studies to be performed by the City, data exchange with other agencies in Southern California working to protect ASBS, and findings and recommendations from other ongoing studies (e.g. Marine Protection Agency Monitoring Enterprise and the NOAA mussel watch program).

It is important to recognize that community support is an essential component for the long-term viability of any ASBS protection program. With this in mind, the City of Newport Beach's results-oriented approach is custom designed for the impacts to and particular circumstances of our ASBS. We believe our program demonstrates to the community that public funds are being used judiciously to implement programs and projects that are expected to result in improved marine-habitat quality with corresponding increases in sea life population and diversity.

⁵ Coastal Watershed Management Plan (<http://newportbeachca.gov/index.aspx?page=1335>), City of Newport Beach, May 2007.

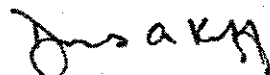
The City's third recommended change is to modify the proposed Special Protections to provide immediate discharge authorization⁶ for existing point sources and non-point sources.⁷ For point source discharges, the Special Protections should include a statement that the Exception amends the MS4 permit to allow discharge to the ASBS. For non-point sources, including private drains, the Exception will need to provide a conditional waiver to waste discharge requirements (WDRs) which will remain in effect as long as dischargers diligently pursue WDRs from the Regional Board.

To summarize, our key issues are:

1. Initiate a collaborative study to assess potential impacts to the ASBS associated with water quality using the triad testing approach (water chemistry, assessment of the biological community, and toxicity studies) to develop multiple lines of evidence. Use this data to assist in defining natural water quality and quantify natural variability. A collaborative effort will be more cost effective, a critical consideration under the current economic conditions.
2. Broaden the provisions of the proposed Special Protections to address all types of potential impacts, not just water chemistry. Each ASBS protection program should be customized with site-specific protection actions prioritized.
3. Modify the proposed Special Protections to provide immediate discharge authorization for point sources and non-point sources.

In conclusion, the City contends that with implementation of these three recommendations, critical issues affecting ASBS can be addressed thoughtfully and proactively, including the concern of many of the affected agencies and entities that the proposed Special Protections bypass the administrative rule-making appropriate for defining stormwater as "waste". Be assured that the City supports a collaborative effort with the State Board and all other agencies, entities and environmental groups and continues to look forward to working with these groups on the necessary components and details for an effective ASBS protection program.

Sincerely,



David Kiff
City Manager

⁶ As currently proposed, discharges need an exception plus a permit that incorporates the conditions of the Exception; the Exception is not sufficient. The permit could place additional conditions above those of the Exception.

⁷ For these proposed Special Protections, point sources are defined as discharge points covered under a NPDES MS4 permit. Non-point sources are defined as discharge points not covered by a NPDES permit.