

8/1 and 8/15 Meetings
ASBS Special Protections
Deadline: 8/15/06 5pm



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August 15, 2006

Via Facsimile: (916) 341-5620

Song Her
Clerk to the Board
Executive Office
State Water Resources Control Board
P O Box 100
Sacramento, CA 95812-0100



Re: *Comment Letter - ASBS Special Protections*

Dear Ms. Her:

We would like to submit the following comments to the State Water Resources Control Board's Proposal entitled, "Special Protections – Areas of Special Biological Significance, Stormwater and Nonpoint Source Discharges" dated June 14, 2006. The comments reflect the recommendations of the Departments within the County of San Mateo that assist in implementing the County's Stormwater Pollution Prevention Program (STOPPP) and are currently working on the Critical Coastal Area Pilot Program for the Fitzgerald Marine Reserve Area of Special Biological Significance (ASBS).

Attached for your information and reference are detailed comments from County staff. These include the following general concerns regarding this Proposal:

1. The Proposal defines the term "discharge" as all runoff. Based on the Proposal's definition, all non-stream water flows into an ASBS will trigger sampling of public and private outfalls, sampling in the ocean (water, sediment, biota), and expanded monitoring of storm drains and land-side construction, industrial, and commercial sites. This appears inconsistent with the definition and could conflict with requirements under the Clean Water Act.

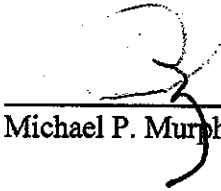
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2. The Proposal sets out requirements for an extensive monitoring program. Staff has many concerns. The objectives of the monitoring program are not explained in the Proposal. The uses and benefits of the collected data are not discussed and are unclear. The data will be used, at some point, to regulate land-side activities. It is unclear how the monitoring program described in the Proposal will actually reduce pollutant load to the ASBS. In fact, the proposal could divert resources away from implementation of practices that could reduce pollutant loads to the ASBS.
3. There is no mention in the Proposal of how this effort might be funded. The Proposal does not offer any source of funding from the State. Fees or charges to help pay for complying with the proposed requirements may have to be levied on property owners in the affected area if the Proposal is implemented.

Thank you for your consideration of these comments. For further information or contact regarding these comments, please contact Mary K. Raftery, Deputy County Counsel at (650) 363-4795.

THOMAS F. CASEY III, COUNTY COUNSEL

By: 
Michael P. Murphy, Assistant County Counsel

TFC/MPM/MKR/sw

cc: Supervisor Richard Gordon
John Maltbie, County Manager
Neil Cullen, Director of Public Works
Marcia Raines, Director, Environmental Services Agency
Charlene Silva, Director, Health Services

Detailed Comments from San Mateo County Staff on Working Draft – Staff Proposal, Special Protections – Areas of Special Biological Significance, Storm Water and Nonpoint Source Discharges, dated June 14, 2006

Prepared by Chris Shirley, August 7, 2006

The State Water Board Staff proposed a set of special conditions (called “Special Protections”) under which discharges to Areas of Special Biological Significance may be allowed. These comments are in response to the proposed Draft Special Protections, dated June 14, 2006 (referred to as the Proposal from here on out). These comments reflect the recommendations and positions of County Departments that assist in implementing the County’s Stormwater Pollution Prevention Program (STOPPP) and are currently working on the Critical Coastal Area Pilot Program for the Fitzgerald Marine Reserve ASBS.

Definition of “Discharge”

The Proposal misuses the terms “discharge” and “discharger.” The definition of “discharge” must be consistent with the Clean Water Act, which defines discharge as “the discharge of a pollutant” [40 CFR (Ch. 1, Sec 122.2)]. Language in the proposal (page 3 and page 4) suggests that all runoff is a discharge. (for example, from page 3: ‘Discharges “composed of natural precipitation runoff” are discharges that do not cause a statistically significant increase in pollutant concentrations in the receiving water adjacent to the storm water runoff as compared to the reference stream.’ By definition these are *not* discharges – but rather runoff.) Discharges should be defined as “discharge of a pollutant” to the ASBS and “dischargers” are persons that discharge pollutants to the ASBS.

Proposal Assumes All Storm Water is Contaminated with Waste

Misuse of the term “discharge” results in application of Special Protections to all point and non-point storm water flows into Areas of Special Biological Significance.

The Proposal should be modified so that the Special Protections focus on the discharge of *waste* into Areas of Special Biological Significance rather than runoff of storm water. Proposal sections entitled “NPDES PERMITTED STORM WATER POINT SOURCES” and “NONPOINT SOURCES” should be substantially modified to differentiate between clean runoff and contaminated discharges.

Allowable Discharges

Pages 3 and 4 of the Proposal describe allowable point and non-point discharges. These allowable “discharges” are not, by definition, discharges, but rather runoff. The last paragraph on page 3 should be reworded to replace the word “Discharges” with the word “Runoff.” The term “allowable nonpoint source waste discharges” on page 4 should be changed to the word “runoff.”

Elimination of New Nonpoint Sources

Page 4 of the Proposal states, “Any new nonpoint source pollutant discharge is prohibited.” Compliance with this provision is impossible. By definition, nonpoint sources are dispersed and outside the control of any one person. No municipality, no matter how vigilant, can control all new sources of nonpoint pollution.

Monitoring

The monitoring program set forth in the Proposal does not appear to be based on a coherent hypothesis or set of objectives, nor is it clear what the collected data might be used for. Limited

resources should be used to control discharge of pollutants to the ASBS, and not be used to simply collect data.

It is not clear in the Proposal whether the State intends "allowable discharges" to trigger the monitoring set forth in pages 6 through 9 of this Proposal. Runoff of uncontaminated water into an ASBS should not trigger monitoring in the ASBS, nor in reference streams. Monitoring should only be required where there are documented discharges of pollutants to the ASBS. This suggests a tiered approach to monitoring, in which some monitoring in the ASBS would be required after measured pollutant concentrations in storm water runoff to the ASBS exceed pre-defined thresholds. Expanded monitoring might then be required if these discharges cannot be controlled over a defined period of time (to determine if the discharges are indeed harmful). Monitoring activities 4(a), 4(b), 5(a), 5(b), 5(c), 6(e), and 6(f), for example, should not be required if monitoring conducted according to activities 6(a), 6(b), 6(c), and 6(d) do not exceed Ocean Plan Table A effluent limitations and Ocean Plan indicator bacteria, or Ocean Plan Table B. Water Quality Objectives.

All persons who have the potential to release contaminated water into the an ASBS should have the opportunity to take actions to remove the contaminants prior to their release into the ASBS, without the imposition of an extensive and costly monitoring program. Persons should be allowed the opportunity to implement a street sweeping program, for example, if runoff can potentially pick up pollutants from a parking lot located adjacent to an ASBS, without also having to monitor bioaccumulation, reference streams, reference ocean sample sites, sub-tidal sediment, etc. This is especially true if there are a very small number of outfalls or potential nonpoint sources of contamination to the ASBS.

Remove Monitoring in Reference Streams

It could be difficult to identify local reference streams in urbanized areas with minimal anthropogenic impacts. Even more important, stream water quality may not represent natural background of point and non-point water flows at the ASBS point of compliance because collected (stream) water chemistry can be different from the water chemistry of sheet flow and roof runoff that enters the ASBS along the bluffs. Furthermore, page 5 of the Proposal, section "ASBS NATURAL WATER QUALITY," states "Compliance with these provisions will be determined in the ASBS receiving water."

Monitoring requirement 5.a should be removed from the proposal. All language referring to reference streams should be removed from the Proposal. Streams are not subject to these Special Protections, and they are not indicative of runoff water quality at the point of compliance.

Cost to Monitor

The monitoring program envisioned by this Proposal could be very costly to implement. How does the State Water Board envision these monitoring programs will be funded? San Mateo County does not have the financial resources to implement such a program. Sustainable funding for such a program would need to come from the property owners within a watershed and securing such funding is time consuming, costly, and uncertain in light of Prop 218. The Water Board needs to consider the fact that grants and cooperative agreements, while they have the potential to reduce costs to counties, require staff time and resources to secure and manage. Grants also are not permanent and sustainable sources of funding.

Private Property

The proposal anticipates that the Countywide Storm Water Management Plan would be updated to describe how the San Mateo Countywide Storm Water Pollution Prevention Program would work with individual property owners who have outfalls that direct storm water to the ASBS. The State needs to recognize that the STOPP Program is not organized or staffed to work with individual property owners. Nor is there budget to support such an activity. It is not feasible, or even legal, for municipal staff to enter private properties to identify or correct pollution sources.

Coordination with Related Programs

The Proposal requires a means to integrate existing and planned Watershed Plans into ASBS protections. Development of such plans is now underway in San Mateo County by organizations such as the Water Quality Working Group of the Gulf of the Farallones National Marine Sanctuary, Montara Water and Sanitary District, the San Mateo County Resource Conservation District, and others. The onerous monitoring suggested by the Proposal may jeopardize implementation of these community-based plans by diverting resources away from agreed-upon pollution prevention strategies.

Comments on the Section entitled, "STORM WATER MANAGEMENT PLANS (SWMP) AND STORM WATER POLLUTION PREVENTION PLANS (SWPPP)"

The Proposal suggests costly changes to the STOPPP SWMP. Water Board staff must address how these changes might be funded.

The proposed minimum inspection frequencies would require significant resources, staff, and funding to implement. Water Board staff must address how this increased inspection frequency might be funded.

The aim of these increased inspection frequencies are not provided. Could these aims be accomplished by means other than inspection, such as use of targeted BMPs, or training programs? Over what area are these minimum inspection frequencies expected to be applied (how far away from the ASBS point of compliance)?

It is not clear that the term "receiving water" in this section means waters of the ASBS.