COMMENT NO.	SUBJECT	COMMENT OR SEE KEY[1]	COMMENT	RESPONSE
1.	**Biological Monitoring**	**19.**	**Existing Biological Surveys Provide Inadequate Data** Of the biological surveys submitted by Applicants, only 4 reports provided data sufficient to statistically compare impacts from reference locations. State Water Board should insure that future biological monitoring is conducted over an appropriate range, for a sufficient amount of time and that enough data is collected to determine whether discharges are having an effect of ASBS biota.	The data received varied dependent on the consultant and methods used to collect data. We realize that this made it difficult to analyze and compare data sets. We agree.
2.	**Biological Monitoring**	**19.**	**The DPEIR states that additional biological monitoring must be performed in order to insure protection of marine aquatic life.** When would additional biological monitoring take place? We recommend both individual and regional ASBS monitoring, with a frequency that would alert biological community impacts, and that mitigation measures can be implemented as soon as possible.	Biological monitoring would occur during the discharger's permit cycle. All of the dischargers are responsible for monitoring. There are individual core monitoring requirements as well as options for receiving water monitoring: individual or regional. Ideally we agree that the information derived from both individual and regional receiving water monitoring would be beneficial, it would also be cost prohibitive to the responsible parties.
3.	**Water Quality Monitoring**	**19.**	**Similar to biological monitoring, the Applicants provided water quality data, some inadequate, both in methodology and replicate sample size.** We recommend monitoring both at the regional and individual scale and with adequate sample size.	We agree this was one problem the applicants faced. A more coordinated approach should be carried out for future monitoring events. We agree this would be a good approach.

[1] Key to Commenter located at end of document

4.	**Significant Impacts of Mitigation Measures**	**19.**	**The DPEIR does not provide information on other types of projects as well as mitigation measures such as LID and dry-weather diversions.** Why were the potentially significant impacts of these types of projects not included in the DPEIR?	We agree these are excellent alternatives that a discharger could select to implement. There are hundreds of BMPs to choose from. A select group was chosen as representative that could be commonly used for most ASBS.
5.	**Alternatives - Individual Exceptions**	**2. 19. 23. 29.**	**Individual Exceptions provide the best protections for ASBS, The proposed General Exception should be limited.** Alternative "C" Implement Individual Exceptions for Each Storm Water and Nonpoint Source Discharger, would provide the best long-term preservation for ASBS, and provide the rigorous assessment necessary to tailor terms and conditions unique to each ASBS. The DPEIR verifies that each applicant has a unique set of runoff issues. **To be granted an exception, the discharger must prove that the discharge will not have an adverse impact on the environment.**	We agree. State Water Board staff resources are limited and the collective approach to adopting exceptions to address the illegal discharges were thought to be the most efficient approach. We agree that each applicant has a unique set of runoff issues.
6.	**General Exception - fails ASBS Protection**	**19. 23.**	The General Exception is incapable of assigning Special Protections designed to address the unique circumstances surrounding each ASBS discharge, fails to identify specific significant impacts and appropriate mitigation measures, thus fails to preserve and enhance ASBS in the long-term. It is not clear how "adverse impact" is determined.	The General Exception is a Program-level document and serves to address a broad suite of illegal discharges. At the unique circumstances surrounding each ASBS, the Applicant will be responsible for carrying out corrective action, collect water quality and biological monitoring data and implement site-specific and appropriate mitigation measures to preserve and enhance the ASBS. While the commenter refers to "adverse impact" as the relevant standard for granting an exception, this is incorrect. The Ocean Plan allows that exceptions may be granted where the Board determines that the exception will not compromise protection of ocean waters for beneficial uses, and the public interest will

				be served. State Water Board staff considers that the exception will not compromise beneficial uses if natural water quality is maintained.
7.	**Storm water - per se waste**	**6. 11. 26. 30.**	**Storm water is not *per se* waste.** The proposed project is based on a categorical approach which would regulate storm water as waste. We contend that this foundation is fundamentally flawed and is not a legal mandate that the State Water Board must apply to storm water and other forms of runoff to ASBS.	If pollutants are contained within the storm water then the entire volume of storm water is waste, within the meaning of the Ocean Plan. Since urban runoff is generally known to contain pollutants at some concentration, staff considers storm water runoff from developed areas to be waste unless given analytical information to the contrary. The proposed project implements the Ocean Plan requirement of the waste discharge prohibition. The Water Boards draw authority for storm water regulation from the federal Water Pollution Control Act (Clean Water Act) and from direction within the Clean Water Act which puts the framework for regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) Permit system. California has several storm water regulatory program areas such as construction, industrial and municipal. The Water Boards have been focused for more than 20 years in the area of storm water quality management and regulation. The Water Boards continue to strive to ensure that California's water resources remain useful and managed in a sustainable manner for generations to come.
8.	**Waste Discharge Prohibition – unnecessary**	**7.**	**Maintenance of the outdated Ocean Plan ASBS Prohibition is unnecessary.** The existing water quality standards are effectively protecting the beneficial uses in the ASBS. Recent scientific studies have shown that the State's ASBS's are healthy and their integrity is not being altered by urban and storm water runoff. The exception and its special protections should be fluid enough to reflect the current science and focus on an	ASBS is an existing special protection category created by the State Water Board in 1972. The Ocean Plan is a water quality control plan adopted pursuant to the authority contained in Water Code Sections 13170 and 13170.2 (Stats. 1971, Chap. 1288.) The State Water Board is responsible for protecting the quality of the ocean waters for use and enjoyment by the people of the State and requires control of the discharge of waste to ocean waters in

			iterative approach of monitoring and assessment to maintain the ecological integrity in the ASBS.	accordance with the provisions contained in the Ocean Plan. The State Water Board reviews the Plan at least every three years to guarantee that the current standards are adequate and are not allowing degradation to marine species or posing a threat to public health. ASBS are accorded special protection because of their inherent fragility and valuable resources. Data submitted by dischargers, both water quality and biology, scientifically peer- reviewed has shown some Ocean Plan water quality objectives are not being met, and biological differences between discharge and reference locations.
9.	**DPEIR – Waste Discharge prohibition interpretation**	**5. 6.**	**How to interpret the waste discharge prohibition is unclear.** Definition of waste is not clearly defined in the prohibition of waste discharge to ASBS.	The language is straightforward and clear. Waste is defined in the Ocean Plan as a discharger's total discharge, of whatever origin, i.e. gross, not net, discharge.
10.	**DPEIR – impacts analysis How to interpret development is unclear**	**1.**	**A table of typical development types, and how they would be treated under the new regulations, would be helpful to include in the PEIR.** Examples that would demonstrate how the regulations would be used include: • If a new single family residence not within an MS4 proposes to discharge roof and driveway storm water directly to an ASBS would it be allowed, or would a treatment control BMP be required in all cases? Why or why not? **b.** Is there a definition of "direct" in terms of runoff to an ASBS? Example: If an existing residence would add impervious surface, but is unable to infiltrate runoff would it be allowed? Why or why not? How much impervious surface or runoff would be considered as thresholds for regulation under the exceptions?	The State Water Board is not considering regulations at this time. The General Exception is not a regulation or an amendment to a regulation. Instead it is a variance from the requirements of the Ocean Plan, and allowed only if beneficial uses are protected and the public interest is served. a. A new single family residence not within an MS4 would not be subject to the exception, which is applicable to only specific municipalities and others who have applied for coverage. The PEIR only describes the impacts and other information relative to the general exception. b. State Water Board staff has always considered direct discharges as those that drain through a conveyance, or in some cases sheet runoff, to the ocean, seaward of coastal

			c. If a new residence were proposed in an area not included in an existing general application covered in the PEIR, but still would discharge to an ASBS, would this applicant need to file for a new exception? Why or why not? **d.** If an existing discharge to an ASBS did not have an exception filed will it be allowed to continue? Why or why not? **e.** If a new discharge that met Table B Ocean Plan requirements was proposed, and it would enter an MS4 whose discharge is not yet consistent with Table B Ocean Plan requirements, would it be allowed? Why or why not?	roads such as Highway One. The general exception only provides terms and conditions for those municipalities and other parties that have applied for the exception. None of these parties are individual homeowners, so the example given is not applicable. c. Any party can request coverage under an exception, however, State Water Board staff would need to consider the protection of beneficial uses before it made any recommendations. State Water Board staff is not supportive of new discharges to ASBS, in order to protect water quality in ASBS, and therefore would not likely support such a request. d. Currently all waste discharges to ASBS are prohibited unless covered by an exception. Dischargers without an exception are subject to enforcement action. e. State Water Board staff assumes that the commenter is referring to a new structure or development that drains to an existing storm drain. The General Exception is not intended to regulate land use; land use planning is not within State Water Board authority. The MS4, if it has coverage under the General Exception, would be required to meet Natural Water Quality, not Table B, in the receiving water.
11.	**DPEIR - No proof of impacts from storm water**	**6. 7. 11. 17. 20. 26. 30.**	No proof has been provided that all storm water discharges to ASBS are harmful to justify the extreme measures proposed in the DPEIR. Available evidence indicates that storm water discharges to ASBS do not generally alter natural water quality within ASBS.	The State Water Board has the authority to carry out the Federal CWA, under which storm water is regulated and it is known that storm water carries pollutants. The measures proposed in the DPEIR were developed collaboratively between the responsible parties and the environmental groups for this project. The commenter did not provide supporting documentation that standard industry-wide

				BMPs and monitoring are extreme measures. Recent legislation and awareness of environmental challenges have led to innovative approaches in storm water runoff management and regulation. In addition, the State Water Board has established an online database to allow regulated entities to view reports and information on water quality control efforts with storm water. The Responsible Parties of the General Exception herein the DPEIR will be part of the permitted storm water group.
12.	**Lack of Sound Technical Basis**	**7. 26. 30.**	The DPEIR infers that there are existing inadequate controls of discharges to ASBS and that these are somehow causing impacts on water quality and the public will be served by implementing the Special Protections. Imposing the Special Protections will cause great public harm due to the cost of compliance. The DPEIR completely ignores the fact that Raimondi's surveys and report do not support the contention that runoff to Carmel Bay is having a negative impact of marine life and beneficial uses.	The DPEIR relies on the SCCWRP 2003 discharge report which identified all direct and untreated discharge conveyances or flows to ASBS waters. The State Water Board is carrying out the Federal and State laws to protect the beneficial uses of waters of the U.S. held in the Public Trust. No evidence of "causing great public harm" was accompanied with this comment. The discharger is responsible for attaining, monitoring and maintaining compliance with the provisions in the Ocean Plan. Monitoring data from Carmel Bay showed chronic toxicity (TUc) levels eight times higher (8.0TUc) than the Table B objective of 1.0 TUc necessary for the protection of marine aquatic life. State Water Board staff maintains that storm water contains waste, and waste discharges to ASBS are prohibited unless an exception is adopted. Dr. Raimondi's work was not intended to prove that there are no negative impacts to marine life. An in depth examination of effluent, toxicity, sediment biota and receiving water would be needed to develop a cause/effect study.

13.	**Natural Water Quality Committee – 85th percentile compliance**	**7. 13. 14. 15. 33.**	Ocean receiving water must be less than 85th **percentile** of reference conditions, which is not supported by studies conducted to date. Site specific studies are needed to define natural water quality. There is no scientific or regulatory rationale to support such threshold setting. **Using the 85th percentile threshold to define Natural Ocean Water Quality is unsubstantiated.** The proposed Special Protections inappropriately define the 85th percentile of reference water quality condition as a threshold for Natural Water Quality. Neither the Natural Water Quality Committee nor the Bight 08' ASBS committee recommended this approach as a measure of Natural Water Quality. The use of the 85th percentile threshold is, moreover, unsubstantiated by the results of ASBS receiving water monitoring, which indicated that there is no statistical difference between water quality at the reference sites and sites receiving runoff discharges. Setting Natural Water Quality at the 85th percentile threshold implies that water quality at the reference sites will exceed standards at least 15 percent of the time. In fact, the Bight 08' study indicated that water quality concentrations at reference sites exceeded the concentrations at the discharge sites *more frequently* than vice versa, giving an overall difference of about 3 percent. Thus, adoption of the 85th percentile threshold means that dischargers will be required to meet standards that are not even regularly achievable at the reference sites, which are supposed to represent areas of the ASBS that are not affected by the dischargers. DOD is concerned that the proposed Natural Water Quality threshold of the 85th percentile value of the reference pool data was made arbitrarily and that the designation of outliers was not conducted with any scientific or statistical validation. This arbitrary choice further reinforces the need for a more robust dataset to identify the appropriate thresholds. We	The State Water Board must take a precautionary approach to remove the influence of outlier data points on Natural Water Quality when using reference site data. State Water Board staff disagrees that the 85th percentile is inappropriate. The use of the 85th percentile is not substantiated because it is a policy recommendation, rather than a scientifically derived value, proposed by State Water Board staff to address the uncertainty in the use of reference site data. While the Natural Water Quality Committee did not include a discussion of the recommended percentile in their final findings, the 85th percentile was suggested as one approach by the Natural Water Quality Committee at a meeting reviewing the Bight 08 Study. The Bight 08' ASBS committee, made up of regulated parties and regulators, did not make a formal recommendation for this approach as a measure of Natural Water Quality. However, the report of the Bight 08 water quality survey, approved by the Bight 08 Committee, did include the 85th percentile as one means of comparing discharge and reference data. While it is true that average conditions are statistically similar between reference and discharge sites, certain discharge sites had elevated levels of some constituents that were of higher magnitude than those at reference sites. The 85th percentile is being recommended in the Special Protections to exercise the precautionary principle, addressing the uncertainty in accepting the reference site data range. We agree that a robust data set is needed, and that is required under the proposed Special Protections. However, as explained above the State Water Board must take a precautionary approach to remove the

			are also concerned that utilizing the 85th percentile as representing Natural Water Quality is tantamount to establishing a water quality objective and question whether due process requirements have been adequately followed. **85th Percentile-Use the determination of Natural Water Quality, Not for Compliance.**	influence of outlier data points on Natural Water Quality when using reference site data. The 85th percentile is proposed by staff as a policy recommendation to address this.
14.	**Natural Water Quality Committee**	**13. 20. 26. 30.**	The Natural Water Quality Committee's work shows that little to no impact on ASBS water quality arose from discharges.	The Natural Water Quality Committee never stated that little or no impact arose from discharges. Instead, the Committee stated, among other things, that: while average water quality in ASBS was very similar to reference sites, "Poor water quality in southern California ASBS was observed, but typically limited to a small number of discharges and/or constituents." The Committee went on to say that while exceedances of natural water quality conditions were relatively infrequent at discharge sites, "general constituents, nutrients, and trace metals were the most frequent groups of constituents to exceed natural water quality conditions identified in this study."
15.	**Natural Water Quality Committee**	**13. 20. 26. 30.**	The SCCWRP and Natural Water Quality Committee Reports demonstrate that existing measures are generally protective of ASBS. The Special Protections approach is unjustified.	The SCCWRP statewide and targeted survey reports both: 1) find that there is generally good water quality in ASBS, but there are exceptions, and 2) those exceptions were identified during the surveys where certain constituents exceeded objectives and/or (more importantly) natural water quality. This supports the fact that existing measures do not protect all ASBS waters all the time, and that additional measures are required.
16.	**Natural Water Quality Committee**	**13. 20. 26. 30.**	The Natural Water Quality Committee Report's findings contradict the DPEIR statement that the Special Protections will result in improved water quality in ASBS, and this statement is unsupported by facts.	The Natural Water Quality Committee Report does not contradict the DPEIR. The Special Protections will result in improved water quality by further identifying and reducing those constituents associated with

				exceedences of natural water quality.
17.	**Natural Water Quality Committee**	**13. 16. 17. 20. 26. 30.**	We recommend further studies be performed to identify specific discharges are harming the ASBS.	We agree that further comprehensive studies are needed, and those studies are required under the proposed Special Protections
18.	**Natural Water Quality**	**5. 17.**	**PRC 36700(f) and Ocean Plan definition of natural water quality need to be accurately referenced throughout the PDPEIR, Special Protections, and related documents.** Inclusion of the term "undesirable" relative to the definition of alteration of natural water quality incorporates the concept that some degree of water quality alteration may be able to occur while still reasonably protecting beneficial uses. The DPEIR and Special Protections use slight variations on the above "natural water quality" such as natural water quality must be maintained or discharges shall not alter water quality.	The term "undesirable" relative to alteration of natural water quality is interpreted by staff to generally mean an increase in constituent concentrations. For ASBS an increase in constituent concentrations above the range of natural water quality constitutes noncompliance. For ASBS the term "undesirable alteration of natural water quality" is not intended to allow an assimilative capacity or an allowable margin of degradation. The State Water Board's Antidegradation Policy requires that the highest water quality consistent with maximum benefit to the people of the State must be maintained. The terms "natural water quality must be maintained" and "discharges shall not alter water quality" are meant to be synonymous.
19.	**Natural Water Quality – alteration of**	**16. 17.**	**If the State believes that there is an undesirable alteration of natural water quality occurring in the ASBSs the State should fund any additional studies needed to prove that belief.**	Waste discharges into ASBS are prohibited without an exception. As a component of the exception the discharger is responsible for attaining, monitoring and maintaining compliance with the provisions in the Ocean Plan which include monitoring in the ocean receiving water to detect excursions above natural water quality.
20.	**Water Quality in Carmel Bay ASBS**	**26. 30.**	**The 1979 Carmel Bay Recon Report (SWRCB) concluded that water quality was excellent.** There is lack of credible information on the potential impact of non-point source discharges.	We concur with the conditions reported 40 years ago in these State Water Board funded studies in 1977-1979. US EPA and State Water Board scientific data show that general impacts to marine life and water quality

				are well-known throughout the scientific and regulatory community arising from non-point source land-based pollution.
			The original intent of establishing ASBS was to preserve and maintain natural water quality as practical. Imposing the Special Protections on ASBS that have excellent water quality is not practical	The Public Resources Code (PRC) classifies ASBS as a subset of State Water Quality Protection Areas that require "Special Protection" as determined by the State Water Board pursuant to the California Ocean Plan. In a State Water Quality Protection Area, any waste discharges must be prohibited or limited by the imposition of special conditions in accordance with the Water Code and the Ocean Plan. The Ocean Plan prohibits waste discharges to ASBS. In the mid-1970's the Regional Water Boards recommended certain candidate areas as ASBS to the State Water Board, and in Resolution No. 74-28, for the first time, the State Water Board designated 31 of those candidate areas as ASBS. Later in 1974, two more ASBS were designated (State Water Board 1974) and another in 1975 (State Water Board 1975). There are currently a total of 34 ASBS In 1972 the Ocean Plan stated: "Waste shall be discharged a sufficient distance from areas designated as being of special biological significance to assure maintenance of natural water quality conditions in these areas" (SWRCB 1972). No Areas of Special Biological Significance (ASBS) had yet been designated in 1972. Since 1983, the Ocean Plan has prohibited all waste discharges to ASBS (State Water Board 1983). Similar to previous versions of the Ocean Plan, the 2005 Ocean Plan (State Water Board 2005) states: "Waste shall not be discharged to areas designated as being of special biological significance. Discharges

				shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." The Public Resources Code (PRC) defines six categories of Marine Managed Areas (MMAs). These six categories are Marine Reserves, Marine Parks, Marine Conservation Areas, Marine Recreation Management Areas, Marine Cultural Preservation Areas, and State Water Quality Protection Areas (SWQPAs). Under state law the Reserves, Parks and Conservation Areas are further categorized as Marine Protected Areas (MPAs). The PRC states that ASBS are a subset of SWQPAs and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the California Thermal Plan. Specifically, PRC section 36700 (f): provides: "Areas of special biological significance are a subset of state water quality protection areas, and require special protection as determined by the State Water Resources Control Board pursuant to the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and pursuant to the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the State Water Board." Section 36710(f) of the PRC states as follows: "In a state water quality protection area, waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code)

				and implementing regulations, including, but not limited to, the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the State Water Board. No other use is restricted." This language replaced the prior language that required point sources into ASBS to be prohibited or limited by special conditions, but allowed nonpoint sources to be controlled to the extent practicable. In other words, the absolute discharge prohibition in the Ocean Plan is maintained, unless an exception is granted. It is important to note that many ASBS/SWQPAs occupy the same geographic areas as other State MMAs, including many MPAs. Furthermore, there are many ASBS that overlap Federal MPAs (e.g., National Marine Sanctuaries).
21.	**Natural Water Quality Committee – Assessment of So Cal ASBS Compliance**	**2.**	**The Natural Water Quality Committee's assessment of the compliance of So Cal ASBSs with the Ocean Plan Standards is flawed.** We have significant concerns with the process and conclusions with regard to the reference site exercise accurately reflecting natural water quality. Every ASBS examined reported exceedances of natural water quality with general constituents and metals.	We disagree. The State Water Board empanelled these ocean scientists who are highly regarded and well-known for their research in California's marine waters, and extensive knowledge of the biology, chemistry and oceanography. The process, study design, collection and analysis of data took several years to carry out. SCCWRP served as lead on the project and represents the best available collective of leaders in science and expertise. It is true that exceedances of natural water quality for certain constituents were reported in the southern

				California Bight 08 study. Regarding reference sites it is important to recognize that this data was limited to one storm season, and an additional study should be carried out which encompasses an additional storm season.
			Site selection for open space for reference site criteria included human land use including timber and grazing. A 10% developed space criteria is well beyond the threshold for injury or impairment of adjacent water bodies. Reference sites should have been selected on a no developed open space in the adjacent watershed.	State Water Board staff used best available data to compile site criteria in collaboration with SCCWRP and regional monitoring participants. While it is preferable to minimize the percent development in a watershed used for reference purposes, there are only a limited number of accessible representative southern California watersheds with low development. Still, State Water Board staff and the Natural Water Quality Committee were confident that the reference areas selected for the Bight 08 study are good proxies for natural water quality conditions.
22.	**Natural Water Quality Committee – Definition on Natural Water Quality**	**2.**	**The Natural Water Quality Committee in their definition of Natural Water Quality …"an absence of significant …constituents" fails to meet the Ocean Plan mandate of no alteration in natural water quality.**	The definition provided by the Natural Water Quality Committee for natural ocean water quality states: "That water quality (based on selected physical chemical and biological characteristics) that is required to sustain marine ecosystems, and which is without apparent human influence…" State Water Board staff agrees with this definition. The Natural Water Quality Committee did not state that natural water quality was being maintained in ASBS at all locations and at all times. Instead, they supported an approach to use reference areas as proxies for natural water quality, and to compare discharge sites with reference sites to determine if natural water quality is being met.
			A baseline of water quality that "sustains" marine ecosystems is insufficient to meet this mandate.	The Natural Water Quality Committee used the term "sustain marine ecosystems" in the definition in order to stress the fact that un-polluted ocean water is

				necessary for the health of marine biota. That specific term is intended to describe, in part, natural water quality. State Water Board staff does not see the relevance of the commenter's concern that this statement is insufficient, since it relates to the maintenance of natural water quality and not to an alteration of natural water quality.
23.	**Natural Water Quality – must be science driven**	**2.**	**The process for determining natural water quality must be independent and science-driven.** **The process for determining natural water quality for each ASBS needs to be completed by state regulators with input from independent scientists. A proposed strategy to develop natural water quality standards via the stakeholder processes around the state will result in haggling over how much the dischargers are willing to pay for improvements rather than the science of what the ASBSs require.** **This should be a priority task with input from the Natural Water Quality committee so that the resulting figures can be incorporated into discharger permits.**	The work to date has been transparent, independent and science driven, and this will continue under the exception. State Water Board staff is confident that the studies performed to date are scientifically defensible, and in fact work from these studies has been peer reviewed and published. We agree that additional studies and collection of ocean water data are needed to help refine natural water quality parameters relevant to each ASBS. Under the exception additional monitoring data will be used to examine and characterize natural water quality conditions.
24.	**Special Protections - Natural Water Quality – and Discharger Permits**	**2.**	**Discharger permits must include numeric effluents limits necessary to ensure maintenance of natural water quality** **Determination of natural water quality via reference sites is only the first step to finally protecting the health of ASBS. Discharger permits must then be amended to include requirements that swiftly implement controls that will achieve natural water quality as expeditiously as possible.**	Each discharger covered by the General Exception will be required to meet compliance with natural water quality in the receiving water. Numeric effluent limits will not be required by the exception. The Water Boards will analyze the monitoring data provided from the discharger or the regional monitoring effort. The exception requires that if natural water quality is not met due to discharges then the discharger must implement additional controls.
25.	**CEQA - Baseline**	**8. 11. 26. 30.**	**The proper CEQA baseline is the physical environment in place when the NOP was issued in 2010.**	While CEQA provides that the appropriate environmental setting is a description of the physical

			Concerned that the water quality Environmental Baseline as exists when the NOP was posted in 2010 was not the baseline used in the DPEIR.	environmental conditions existing at the time of the NOP, staff believes that the description contained in the DPEIR is sufficiently representative of that existing at the time of the NOP. That description comprises the physical environment when the CEQA process began collecting and analyzing data in 2003-2006 and beginning with SCCWRP 2003 discharge report.
26.	**DPEIR Environmental baseline**	**5. 11.**	This DPEIR section did not appear to identify any problems caused by the storm water discharges in ASBS. Since the intent of the project/program is to remove or treat these discharges, the EIR should identify the adverse impacts being addressed.	The DPEIR is intended to identify significant environmental effects that may result from the project, and identify ways to minimize any such effects, in accordance with CEQA. Relative to storm water permittees, the intent of the project is to provide Special Protections for the ASBS receiving waters while allowing the applicants to discharge clean storm water, thereby protecting the public against flooding. The DPEIR does state that all waste discharges are currently prohibited in ASBS; the DPEIR also discusses water quality data that shows that water quality has been altered in ASBS due to storm water runoff.
27.	**DPEIR Environmental baseline - inadequate**	**8.**	An EIR is required to describe "the physical environmental conditions in the vicinity of the project" as they exist when the Notice of Preparation for the EIR is published. The "watershed and land use characterization" fails to adequately and accurately describe the situation faced by the Cities of Monterey and Pacific Grove, which are substantially urbanized and where any additional facilities required as a result of the State Board's action will have significant land use and recreational impacts, among others.	We agree. The dischargers were responsible for providing the necessary material and data to staff in order to assess the physical environmental conditions of the area under their jurisdiction. The information presented in the DEIR is that information provided by the dischargers. The watershed and land use characterization presented in the DPEIR was the material provided by the dischargers.

			The DEIR discussion at pages 147-149 appear to not fully consider the findings of the 1979 SWRCB Report (No. 70-11) due to a perceived lack of comparable results to more recent studies. However, this 1979 Report has several significant results and findings about the biotic conditions and water quality of Pacific Grove ASBS, which are important baseline conditions that should be considered within this DEIR.	State Water Board staff evaluated and included in the DEIR all materials provided by the dischargers. Historical conditions as represented by the 1979 SWRCB commissioned Reports are an important part of the historical record. The physical environment conditions in the DEIR included the most recent information available and as provided by the dischargers.
28.	**DPEIR Environmental baseline - chemistry**	**5.**	Please provide more description of the data that was used to provide the results. About 49 of the discharge samples were from San Nicholas Island (Navy) and had exceptionally low concentrations. Were these used in the data assessment? Data should be assessed by subcategories so that we have a better idea of which types of discharges will have compliance problems. Appropriate categories might be: urban, highway/rural residential or could be based on percent impervious land in the watershed. We believe the dataset is not adequately robust to draw any conclusions regarding the potential compliance or non-compliance of the urban dischargers with requirements to comply with Table B and to not cause changes in natural water quality. It is not clear which data were used in Systat in this assessment. For example, were the 49 discharge samples from San Nicholas used or was a single data point assumed for San Nicholas. Some discussion of the approach and results would be useful.	All available data points were categorized as either storm water runoff, ocean receiving water, natural streams or ocean background water, and were loaded into Systat for the analysis. The San Nicolas Island (US Navy, under the General Industrial Permit) storm water runoff samples were used in the analysis. The storm drain discharge sample results for San Nicolas Island were individually loaded into the program and were not averaged prior to being loaded into the program. The data used in the assessment were supplied by the applicants (dischargers). This was the only data that State Water Board staff had to assess storm drain water quality.
29.	**Natural Water Quality –**	**2. 7. 31. 33.**	**Natural Water Quality has yet to be defined.**	Natural Water Quality has been defined by the Natural Water Quality Committee.

	lack of real definition		It has been 4 decades since ASBS were established, yet there is no working definition of Natural Water Quality for each ASBS.	State Water Board staff agrees that Natural Water Quality should not be a permutation of Table B objectives, and the Natural Water Quality Committee definition does not suggest such an approach. The Natural Water Quality Committee endorses a reference site approach.
			Natural Water Quality should not be equated with a permutation of Table B Objectives, rather, a defined background water quality metric of each ASBS, based on reference site evaluation	Natural Water Quality has only been determined extensively for one season and in only southern California. That is why additional monitoring at reference sites is required by the proposed Special Protections. State Water Board staff has proposed the dischargers perform additional monitoring of reference sites to better understand natural water quality.
			The Exception confusingly requires compliance with natural water quality while at the same time acknowledges that it is uncertain what constitutes natural water quality. Definition for natural water quality is ambiguous.	State Water Board staff disagrees. The definition provided by the Natural Water Quality Committee is clear.
			Recommend the State provide the definitive method for determining the reference and then provide the allowable range limitation. **The DPEIR fails to adequately describe and/or define "Natural Water Quality"**	The Special Protections would allow the reference sites to be determined through a stakeholder process with ultimate approval required by the Water Boards. This process has proven successful. State Water Board staff has proposed the use of the 85th percentile of reference conditions to define the allowable range.
			The DPEIR project description state that maintenance of natural water quality within the ASBS is one of the fundamental requirements, yet it is uncertain what constitutes natural water quality. How can the project be clearly defined in terms of monitoring requirements and/or mitigation	The DPEIR does address Natural Water Quality by describing the definition provided by the Natural Water Quality Committee. The maximum allowable concentrations are to be determined through monitoring of reference sites, which are proxies for natural water quality conditions. Only very little work on reference sites has been performed so far in northern California, but additional work would be required under the Special Protections.

30.	**Ocean Plan Table B Objectives – Use in load reduction metric**	**2. 23.**	**The proposed use of Table B as the metric for loading reduction in storm water pollution does not equate to "no discharge" or even "natural water quality" and fails to protect ASBS beneficial use.** Table B objectives exceed natural background levels or are completely unavailable for pollutants of concern and provide a significantly inaccurate representation of natural water quality. The DPEIR fails to rationalize the Exception to not compromise protection of ocean waters for beneficial uses or justifies any alteration in natural water quality via the broad extent of existing impairments of ASBS. **NPDES monitoring requirements are for Ocean Receiving Waters, not ASBS** In Section 4.3.5 Monitoring and Compliance, NPDES permits are designed to assess compliance with effluent and receiving water limitations. We find this to be a problem because NPDES permits are promulgated for ocean receiving waters, not ASBS and this type of monitoring is not appropriate to uphold the waste discharge prohibition	Table B which is US EPA approved, and specifies requirements for ocean discharges pursuant to the State Water Board's authority to carry out Federal and State law, is the best available science metric we have as a measure of compliance with ocean water quality standards. It is based on a conservative estimate of chronic toxicity and is therefore protective of marine aquatic life. Staff agrees that it does not equate to "no discharge" or natural water quality, but is not intended as a final compliance point for determining alteration in natural water quality. Instead, receiving water measurements will be used as a determination of compliance with natural water quality. Additional natural water quality data is recommended, and is a data gap we are trying to close through the monitoring provisions of the proposed Special Protections. Stringent terms, prohibitions, and special conditions have been proposed by State Water Board staff that comprise the limitations on point source storm water and nonpoint source discharges, providing Special Protections for marine aquatic life and natural water quality in ASBS. These Special Protections are proposed for adoption by the State Water Board in an Ocean Plan Exception. The requirements in the proposed Special Protections may be summarized generally to eliminate dry weather runoff, ensure that wet weather runoff does not alter natural water quality in the ASBS, and that adequate monitoring be conducted to determine if natural water quality and the marine life beneficial use is protected.
31.	**General Exception**	**2. 19. 23. 29.**	**Exceptions to the Ocean Plan are intended for specific circumstances, such as Scripps, Wrigley Marine**	The State Water Board's Ocean Plan prohibits waste discharge into ASBS. If you are a discharger, you can

	- Fails to Serve Public Interest		**Science Center and Bodega Marine Lab, institutions which serve the public interest.** There is no similar special situation in the Exception that would justify blanket exceptions to more than 1,000 illegal discharges. An exception will not compromise protection of ocean waters and the public interest will be served. The State Water Board cannot reasonably find that a general Exception serves the public interest. The Exception impermissibly circumvents the requirement of having to find that an exception, as applied to each discharger, serves the public interest.	legally comply in 1 of 2 ways: stop discharging or get an exception. An exception in this case is a special permission, granted by the State Water Board, to discharge into the ASBS despite the discharge prohibition. It is not a discharge permit, however. So, if an entity is currently discharging into an ASBS, in order for the discharge to be legal, the discharger must have both a permit and an approved exception. The Ocean Plan grants the State Water Board authority to grant exceptions to any plan requirement provided three conditions are met. The State Water Board must provide public notice and hold a hearing before acting on an exception request. Second, the Board must comply with the California Environmental Quality Act. And, third, the Board must make two findings that: (1) The exception will not compromise protection of ocean waters for beneficial uses; and (2) The public interest will be served. There must be evidence that shows that allowing the discharge to continue will not compromise protection of ocean waters for beneficial uses. Note that one beneficial use is the preservation and enhancement of ASBS, which are defined as “those areas designated by the [State Water Board] as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.” This means that any data that you may have on natural background is relevant and should be submitted. State Water Board staff have reviewed available information for each of the ASBS and determined that if the Special Protections are adopted and appropriately implemented together with the requirements of a valid NPDES permit, allowing the

				discharge will not harm natural water quality and will preserve and enhance water quality in the ASBS. State Water Board staff have also considered whether the public interest will be served by allowing the discharges to continue despite the prohibition. As part of the process in developing the General Exception, staff have reviewed each application and concluded that the public interest would be served for a range of reasons. The public purposes associated with the discharges that would be covered by the exception are outlined further in the draft resolution and DPEIR but include flood control and slope stability, public health and safety, and essential military operations. Other relevant considerations might include the degree of environmental damage that would occur if each discharge were moved; for example, if the discharge were in a particularly fragile area and moving it would cause greater damage than leaving it. The staff proposal has attempted to evaluate each discharger application to determine whether granting coverage under the proposed general exception is in the public interest. The public interest will be served by cleaning up the discharges of waste to the ASBS, via implementing BMPs, eliminating dry-weather flows and requiring performance monitoring. The public interest is also served by establishing a mechanism to bring numerous prohibited discharges into ASBS into compliance with state law. Any discharge to public trust waters must be permitted and monitored. Under the current Ocean Plan provision, any discharge of waste to an ASBS is prohibited.

32.	**General Exception - Fails Ocean Plan - Triennial Review**	**2. 29.**	**The proposed Exception cannot be effectively reviewed Triennially as required by the Ocean Plan.** The Exception requires certain monitoring studies to be conducted once every 5 years and compliance points to be measured after 4 years. These timeframes preclude effective assessment at a triennial review. In light of the Board's concern over lack of resources it is hard to imagine how the Board will conduct meaningful reviews of dozens of exceptions into 26 distinct ASBS at every Triennial Review as mandated by the Ocean Plan. **The General Exception fails to recognize the Ocean Plan requirement for Triennial Review, review of exceptions every three years.** Compliance timeline does not consider the requirement for Triennial Review of the General Exception.	Once the State Water Board acts to approve an exception, it is sent to US EPA for concurrence. After that, depending on the permit, the State Water Board or the Regional Water Board will adopt a permit (or possibly revise a permit) for the discharge that incorporates the exception conditions adopted by the State Water Board. An approved exception grants permission to discharge into an ASBS but doesn't grant this privilege indefinitely. Exceptions generally are subject to review every 3 to 5 years. They are typically incorporated into discharge permits, which last for five years. When the permit expires, the exception is reviewed to determine whether it's still appropriate. The Ocean Plan sets forth a requirement that all exceptions issued by the State Water Board and in effect at the time of a Triennial Review will be reviewed at that time. For discharges subject to the General Exception, any information available will be included in such a review. A review of the general exception during the next triennial review will use available information to formulate recommendations. Core monitoring of effluent is effective once the exception is incorporated into the permit. There will be substantial runoff monitoring data available during the triennial review. In addition, regional monitoring will have been initiated, with a focus on receiving water and reference areas, and staff anticipates that data to be considered also in the triennial review. Given the involvement of State Water Board staff within the regional monitoring efforts and in providing grants for BMPs to municipalities, State Water Board staff does not anticipate a problem in conducting the triennial

				review.
33.	**General Exception - Compromise ASBS**	**2.**	**Significant data indicate that ASBS up and down the state are already impacted by pollution.** Storm water discharges in particular create ongoing alterations of natural water quality in direct violation of the Ocean Plan. Storm water pollution impacts coastal marine ecosystems and life and storm water that settles in sediment on the ocean floor is also a source of harmful pollutants Storm water impacts ASBS on a regular basis. The DPEIR admits that current storm water discharges only tend to meet Ocean Plan objectives just some of the time and that at least a quarter of ASBS waters were found to contain copper at levels above the 6-month median objective. The DPEIR shows that ASBS **receiving** waters do not even meet water quality objectives for the protection of marine life, even in dry weather samples.	Water quality data submitted by the Responsible Parties did reflect that some but not all ASBS do not meet certain Ocean Plan objectives. However, the statewide ASBS water quality survey also showed that remote areas away from discharges, pre and post storm, also did not always meet all objectives, possibly due to natural sources. Instead of relying on Table B objectives, natural water quality will be used for compliance purposes. It is generally well-known that urban storm water runoff conveys anthropogenic pollutants. Sediment monitoring is a requirement of the individual monitoring program in the Special Protections. The Special Protections are designed to address conditions when natural water quality is not met and to improve water quality within ASBS.
34.	**General Exception – conflicts with Ocean Plan**	**2.**	**Any policy implementing the Ocean Plan must effectuate the Plan's purpose and cannot alter the Plans scope.** It allows exceptions only in certain limited situations and no reasonable interpretation of the Ocean Plan could lead to the statewide proposed Exception for the major source of pollution in California's coastal waters.	The proposed General Exception would cover only specifically identified dischargers who are responsible for storm water and nonpoint source discharges into ASBS. The Ocean Plan exception process expressly allows the State Water Board to adopt exceptions where it is determined that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served. The proposed General Exception encompasses only those specified dischargers whose applications have been reviewed and approved, and the Special Protections will act as conditions to help determine and protect water quality within ASBS.

35.	**General Exception -Fails to Comply w/Clean Water Act**	**2.**	**The Ocean Plan discharge prohibition is a water quality standard, incorporated into and is an enforceable requirement of all NPDES permits.** In violation of the CWA, the State Water Board has taken no action to enforce this water quality standard and now proposed to reverse the standard by allowing these discharges via an Exception.	The Ocean Plan discharge prohibition is part of the description of the nature of actions necessary to achieve the ASBS water quality objective, under the Water Code [CWC §13242 (a)], and in this instance, a "prohibition of discharge." Although the draft EIR contained statements incorrectly identifying the discharge prohibition as a water quality standard, these have been revised as this does not represent State Water Board staff's current interpretation of the prohibition and its legal effect. The commenter also describes the prohibition as a water quality standard, citing to Order No. WQ 2001-08 (California Dept. of Transportation), which contained such a statement but did not rely upon it to reach its conclusions. The State Water Board staff now interprets the prohibition as an implementation tool intended to protect water quality, not a water quality standard. (See, Letter from Jonathan S. Bishop to Alexis Strauss, US EPA Regional 9, 7/9/09). Because the prohibition is not a water quality standard, adopting the exception does not represent the reversal or amendment of a water quality standard in violation of the Clean Water Act.
36.	**General Exception – Fails discharge prohibitio n**	**2.18. 29.**	**The General Exception weakens ASBS protection.** ASBS are threatened by illegal discharges of pollution, and ASBS are harmed from pollution sources. Polluted urban runoff and coastal pollution contribute to the ocean health crisis, and we discourage the Board from taking any action that would diminish ASBS protection	The applicants in the General Exception, once adopted, will now be required to stop discharging waste to ASBS, and must meet Ocean Plan requirements and permit requirements as issued by the Regional Water Board. We anticipate that the Special Protections will enhance and restore water quality of ASBS.
37.	**General Exception**	**2.**	**The General Exception fails each and every test for obtaining an exception from the discharge prohibition**	The purpose and intent of the General Exception and Special Protections is to collectively bring this group of

	– Fails tests for obtaining an exception		**in the Ocean Plan. It does not ensure attainment or maintenance of natural water quality, and therefore the Board cannot legitimately find that the exception will not compromise protection of the ASBSs for beneficial uses.**	dischargers into compliance with natural water quality. Their discharges will now be held to the requirements of the Special Protections and monitored under a permit issued by the Water Boards. The goal of this effort is to protect natural water quality within the ASBS and ensure that waste discharges do not cause an alteration of natural water quality.
38.	**General Exception – Fails test for marine impacts**	**18.**	**It is common knowledge that urban runoff and land based pollution impacts the marine ecosystem and species.** The sea otter is a key indicator for ocean health. 2010 was a record year for sea otter mortality, deaths directly linked to infectious diseases and parasites, and urban runoff. Our studies show that sea otter health strongly correlates with having stringent protections for ASBS.	We agree. We agree. We agree.
39.	**General Exception - Fails to Comply w/Clean Water Act Fails CWA Ocean plan**	**2.**	The State Water Board cannot make a *de facto* amendment to a water quality objective in a water quality control plan by refusing to take action necessary to achieve that objective.	The discharge prohibition is not a water quality standard, nor is it a water quality objective. The General Exception purpose and intent is to allow the identified selected group of dischargers who are in violation of a specific provision contained in the Ocean Plan to come into compliance via an appropriate permit issued by the Water Boards. Currently, these discharges are not covered under a permit. These discharges cannot be covered under a permit in the absence of an exception to the discharge prohibition in the Ocean Plan. It is only upon adopting an exception, that the Water Boards may then cover these discharges under a permit. Once a permit is in place, the Responsible Party must begin monitoring and implement controls required by the terms and conditions, or Special Protections of the General Exception.

40.	**General Exception-Fails to Meet 40 CFR 131.10 g and b Requirements**	**2.**	**EPA has only accepted WQS variances where specific criteria are met and involve the same substantive and procedural requirements such as removing a designated beneficial use.**	The citation from the commenter is as follows: § 131.10 Designation of uses. (b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters. g) States may remove a designated use which is *not* an existing use, as defined in §131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible. The PEIR and General Exception would not remove a beneficial use or establish a variance from a water quality standard. The discharge prohibition helps to protect water quality within ASBS but is not itself a water quality objective or standard. While beneficial uses of ocean waters include preservation and enhancement of designated ASBS, adopting a General Exception to the waste discharge prohibition within ASBS would not constitute removing the use or adopting a variance to a designated use.
41.	**General Exception -Fails CEQA - 40 CFR 131.10 g and b Requirements**	**2.**	The Exception fails to provide analysis required for variances which must be pollutant specific, for a limited period of time not greater than 3 years.	The DEIR presents all of the appropriate data required for applying for an exception, as required by the Ocean Plan, for this select group of responsible parties and their discharges. The biological and water quality data was scientifically peer reviewed for accuracy and analysis. The General Exception purpose and intent is to allow these dischargers to enroll into a permit so that then, the responsible parties are held accountable for implementing the monitoring and pollution prevention as directed by the Special Protections and any additional terms and

			The proposed Exception fails to comply with the Clean Water Act in a number of ways because the waste discharge prohibition is a water quality standard, any deviation must meet the legal requirements for a variance in 40C.F.R. §131.10. Yet the proposed Exception has failed to even address these applicable regulations, let alone perform the necessary analysis. Moreover, as a downward departure from the strict waste discharge prohibition, the proposed Exception must comply with Clean Water Act's antidegradation requirements, The Exception fails to conduct this analysis.	conditions required by the Regional Water Board. Moreover, as outlined above, the General Exception is not a variance to an objective or beneficial use. Federal antidegradation requirements are triggered by a lowering of water quality. It does not appear that the proposed General Exception with Special Protections will result in a lowering of water quality.
42.	**DPEIR Fails CEQA –**	**4.**	**California Environmental Quality Act (CEQA) Draft EIR Improvements** **a.** Since subsection 1.3 (Purpose and Focus of the Draft EIR) emphasizes that the Draft EIR is a program-level and that "subsequent project level CEQA compliance and environmental analysis at a regional or local level may be required," Caltrans requests that the Draft EIR incorporates tiering references and an appropriate description consistent with the CEQA Tiering Guidelines.	a. CEQA provides that a program EIR may be prepared for a series of related actions that are characterized as one large project or program (CEQA Guidelines §15168). Activities which relate to and follow the specific plan must be examined in light of the program EIR to determine if additional limited environmental analysis is warranted. Later activities which have been adequately analyzed under the program EIR will not require additional environmental documentation. If an activity may result in additional effects, or new mitigation measures are needed, a subsequent or supplemental EIR, or negative declaration must be prepared (CEQA Guidelines §15162 and 15163). Lead agencies for specific projects seeking coverage under the General Exception may decide to tier off of the program EIR for their CEQA compliance. When tiering is used, the later EIRs or negative declarations must refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that the EIR or negative declaration is being tiered from the earlier specific plan EIR (CEQA Guidelines §15152(e)). Since tiering is not the only

				option for subsequent environmental documents, a formal discussion of tiering in the program draft EIR is unnecessary.
			b. Caltrans believes that Section 2.0 Project Description is incomplete. The discussion is brief and is not clear as to the relationship with the Summary Chapter. Possibly it is intended for Sections 3.1-3.5 to be considered as part of the project description, as depicted in the Table of Contents. Section 15124 of the CEQA Guidelines describes the content of the Project Description, including (In summary): • Location, boundaries and graphics • Project Objectives-Included in the Summary Subsection (.3) but not mentioned in this chapter • Project characteristics • Intended use of the Draft EIR-Discussed in Section 1.0 but should be cross-referenced here	b. The draft PEIR has been amended to correct the discrepancies between the summary section and the main body of the EIR. All of the affected ASBS are listed in Table 2 of the draft EIR. A map has been added showing the location of all of the ASBS considered under the proposed General Exception.
			c. Caltrans requests that the provisions of CEQA Guidelines Section 15126.6 are carefully considered regarding the Environmentally Superior Alternative and Alternative sites. In addition, the Project Description with the Environmental Analysis sections should be revised to clearly link how Section 4.0 is represented.	c. CEQA does not require the identification of an "Environmentally Superior Alternative." Since the illegal discharges are already existing, there are no alternative sites available to analyze. Furthermore, since the State Water Board is not authorized to dictate the method of compliance that a discharger may use to comply with the General Exception, it is impractical to speculate as to where a discharger may try to move their discharge point.
			d. Caltrans requests that the Draft EIR identify potential permit jurisdictions and consider any reasonably foreseeable regulatory hurdles to compliance, and identify a process to assure compliance with all regulatory requirements. For example, regulatory overlaps in the coastal zone can and will present many challenges, but ultimately, no construction will take place without a Coastal Development Permit issued by the Locally Certified Coastal Program or the California Coastal Commission. The	d. The State Water Board has included a listing of potential approvals that dischargers covered under the General Exception may require. Furthermore, staff believes that Caltrans already possesses the information being requested. They have expertise and knowledge about building in the coastal areas that no other entity has. Because of the large number of projects undertaken, they are well aware of and familiar with the permitting requirements and any

			proposed Draft Special Protection requirements will trigger construction projects in the coastal zone that will need Coastal Development Permits.	regulatory overlap that may exist.
			e. Caltrans requests that the environmental analysis directly assess the reasonably foreseeable impacts of a ban on new outfalls and assess the benefits of allowing new outfalls when environmentally preferable.	e. The Ocean Plan currently prohibits any waste discharge outfalls within the ASBS unless an exception is granted. New outfalls are not allowed under the Ocean Plan and any discussion of allowing new outfalls would require an amendment to the Ocean Plan or a new, individual exception and is not a part of this proposed action. The proposed action is to develop a mechanism where existing illegal discharges can be allowed to continue to discharge to ASBS.
			f. Caltrans requests that the Draft EIR identify reasonably foreseeable environmental impacts from diversion of these flows around the ASBS. The Project Description, as well as the Environmental Analysis, should also identify the water quality standards to be attained, and the reasonably foreseeable impacts of locating new treatment facilities in the coastal zone. Hydrology and Water Quality-The Hydrology and Water Quality Impacts section of the Draft EIR discusses project types that underscore the feasibility question regarding Caltrans' implementation of the proposed Draft Special Protections. Caltrans believes that it is highly probable that wet weather flow diversions to alternative discharge locations will also be necessary to comply with the Table B (90% reduction options), as well as the requirements for the preservation of natural water quality.	f. The State Water Board has already determined that compliance with the Ocean Plan prohibition on discharges to ASBS by existing discharges would have greater significant impacts on the environment than developing a General Exception that will allow the existing discharges to continue. The DPEIR provides an evaluation of a variety of methods dischargers may use to comply with the General Exception. Since the State Water Board cannot specify what measures any individual discharger may use to come into compliance with the General Exception, evaluation of specific measures decided upon by the discharger will need to be addressed in subsequent environmental documents if not specifically covered in the program EIR.
			g. Caltrans requests that the Traffic Impacts Analysis take into consideration the impacts associated with limited rights-of-way along segments of SR-1 and SR-101, and the potential for road closures to construct measures to address the proposed Draft Special Protections. Traffic Impacts Analysis-Caltrans does not agree with the determination that	g. The environmental impacts associated with potential measures taken by dischargers to comply with the General Exception are the same whether rights-of-way are limited or not. If a discharger decides to implement measures that will require a greater right-of-way, they will need to negotiate with property

			mitigation is available to reduce any potential impacts to transportation to less than significant levels based on the threshold listed as exceeding the capacity of the existing circulation system.	owners to increase the right-of-way. Since the State Water Board cannot dictate the measures to be used by dischargers (or their location), it would be speculative to try and evaluate where right-of way adjustments would be needed. Furthermore, right-of-way adjustments are not of themselves environmental impacts.
			h. Caltrans requests that the Draft EIR's estimate cost reflect the reasonable estimated costs of constructed facilities that meet Table B and ambient receiving water requirements as the proposed Draft Special Protections require. In addition, the reasonable estimate should consider the costs associated with delays to the traveling public and movement services due to the disruption of traffic, which could require road closures along SR-1 and SR-101. Caltrans alone has several hundred outfalls along 70 miles of roadway, and the cost to comply with the proposed Draft Special Protections requirements will far exceed this estimate.	h. The DPEIR identifies a number of potential measures that dischargers may use to comply with the General Exception and the potential costs associated with those measures. Since the State Water Board cannot dictate which measures individual dischargers will use, the estimates provided in the DPEIR are general and actual costs will be different. The main purpose of the economic analysis was to show that the cost of compliance with the General Exception was far lower than the cost of complying with the Ocean Plan prohibition on discharges to ASBS. Potential costs associated with delays to the traveling public and services movement would not significantly change this conclusion. The cost estimate in the DPEIR is based upon the estimate that Caltrans provided to staff. Without specific information regarding the exact type of BMPs or treatment control devices that will implemented, it is not possible to provide more than an estimate.
			i. Caltrans requests that the State Water Board review the Draft Resolution to correct its inconsistencies with the Draft EIR. The Draft Resolution in Appendix 1 of the Draft EIR notes that it authorizes the General Exception and approves the Mitigated Negative Declaration.	i. Thank you for noticing this error. This was corrected.
43.	**DPEIR Fails CEQA –**	**2. 7. 8.**	**The DPEIR does not contain a clear project description.**	The project is the adoption of the General Exception with specified conditions.

	project descriptio n			
44.	**DPEIR Fails CEQA – statement of objectives**	**2.**	Does not have a statement of objectives that include the underlying purposes of the project.	See Section S.3 Project Objectives begin on page 8 of the DPEIR.
45.	**DPEIR Fails CEQA- water quality baseline**	**2. 17.**	Fails to establish what water quality is, rendering the project description impermissibly vague, is subjective, and difficult to enforce.	It is not within the purview of the DPEIR to establish a uniform description of existing water quality within applicable ASBS. That duty was performed by State Water Board staff in consultation with the Natural Water Quality Committee.
46.	**Special protection – inconsiste nt w/Ocean Plan**	**2.**	The requirement that dischargers ensure maintenance of natural water quality is inconsistent with the language of the Exception, to meet Table B objectives or a 90% pollutant load reduction.	See Section III Program IMPLEMENTATION of the Ocean Plan, subsection H. 2. a. for consistency and also Section II. WATER QUALITY OBJECTIVES subsection D. Table B, water quality Objectives, for the chemical characteristics requirement for dischargers. The 90% pollutant load reduction is part of the iterative timeline approach formulated during the Special Protections Stakeholder meetings, allowing time for responsible parties covered by the General Exception to comply with the ASBS discharge prohibition, Ideally, the responsible parties would eliminated all pollutant load to ASBS.
47.	**DPEIR Fails CEQA – project descriptio n**	**2.**	**The DPEIR does not contain a clear project description.** Does not have a statement of objectives that include the underlying purposes of the project.	The project is the adoption of the General Exception with specified conditions. See Section S.3 Project Objectives begin on page 8 of the DPEIR.
48.	**Fails CEQA no defined**	**2.**	Fails to establish what water quality is, rendering the project description impermissibly vague, is subjective, and difficult to enforce.	It is not within the purview of the DPEIR to establish a uniform description of existing water quality within applicable ASBS. That duty was performed by staff in

	natural water quality			consultation with the Natural Water Quality Committee.
49.	**DPEIR Fails CEQA - Economic Impacts**	**31.**	**Economic impacts were not adequately analyzed.** A monitoring discussion initiates the economic section by noting the "lack of" information available to both the dischargers and the regulators. It is uncertain which discharges cause alteration in natural water quality, thus leads to open ended and unknown potential costs, for monitoring and BMPs. The projected annual costs of $60,000 for monitoring at Sea Ranch, derived from the 12 northern California Regional monitoring estimated of $720,000, is a significant burden for us. Data has shown that there is little impact on the biological integrity of the Del Mar Landing ASBS, yet the monitoring costs present an impact, not analyzed. The DPEIR must balance the potential economic costs to the discharger vs. potential environmental impact.	In the monitoring discussion in Section 7 (economics) the term "lack of information" relates to the shortage of data based on comprehensive discharge receiving water, and reference sampling; until recently there have been no comprehensive monitoring in ASBS with a focus on ASBS water quality and beneficial use. Therefore one of the main components of the Special Protections is to require an adequate monitoring approach. The monitoring requirements in the Special Protections will allow sufficient information to determine any alterations in natural water quality and which discharges are responsible. The monitoring requirements are proposed to balance the need for local core monitoring and regional monitoring data necessary to determine impact to ASBS. Accommodation on monitoring requirements with Regional Water Boards is available if data is sufficient to show lack of current impact. State Water Board staff maintains that while water quality at Del Mar Landing ASBS, and other ASBS statewide, is generally good, there are certain constituents which do not meet water quality standards. Furthermore, while intertidal communities are sustained, there is still insufficient evidence that there are no impacts due to water quality. Therefore a comprehensive and standardized monitoring approach is necessary for those seeking to get coverage under the general exception to the waste discharge prohibition. State Water Board staff disagrees with the comment that the DPEIR must balance costs and potential impacts.

50.	**DPEIR Fails CEQA – Range of Alternatives**	**6. 7. 8. 11. 17. 26. 28. 30.**	The DPEIR fails to adequately analyze a reasonable range of alternatives. An EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project.	The DPEIR analyses the reasonable range of alternatives at the Program-level. These alternatives include amending the Ocean Plan to address existing discharges into ASBS, implementing individual exceptions to address these discharges, as well as the no project alternative. The DPEIR also covers alternatives to the conditions imposed on storm water and non-storm water dischargers.
51.	**DPEIR – Alternatives**	**8. 32.**	**The No-Project Alternative is confusing. No-Project implies No Action, which would be to enforce the OP and that discharges must be terminated. Yet the No-Project Alternative is described as the Status Quo. Status Quo implies that discharges will continue.** The No-Project Alternative is described as not being protective of water quality and not recommended. If discharges were terminated, this would result in improved water quality. This is confusing. **The General Exception Alternative lacks clearly defined terms necessary for compliance.** Page 54 state that Special Protections would be implemented through storm water mgt plans of WDRs, however 3 main questions arise: A continued prohibition of non–storm water discharges and runoff; is not clearly defined. Does this mean no discharge during the dry season of April-Oct? **Non-storm water discharger and runoff:** Allowed v. non – allowed discharges of dry season discharges; how does one determine whether a dry weather flow is from a ground water sump pump or a no –point source? Who is going to determine where the flow is coming from?	A clarification to the project description was made. A clarification to the project description was made. Currently all waste discharges, including non-storm runoff, are prohibited. The Special Protections would maintain the prohibition on non-storm runoff, not only during the dry season, but year round. Please note that storm runoff would not be prohibited, just non-storm runoff (e.g., construction washdown, car wash runoff, runoff due to excessive irrigation, etc.) The MS4 permittee is responsible for determining the causes of non-storm runoff.

52.	**DPEIR Fails CEQA – no-project alternative**	**2. 26. 30.**	**The DPEIR fails to include a clearly defined no-project alternative.** The environmental impacts of the Exception should be compared to the no project alternative which is the existing regulatory structure of the Ocean Plan's no-discharge prohibition. The no-project alternative is improperly framed as a no-Exception alternative.	The DPEIR has been revised to clarify the parameters of the no project alternative. The project is the General Exception. A no-project alternative would be a no-General Exception alternative.
53.	**DPEIR – Alternatives, No-Project, yes**	**31.**	**The no-project Alternative may be a viable site-specific alternative for many dischargers.** The termination or relocation of discharges may be a practical solution/option for some discharges given the wide-variety of settings, site conditions, by project type. The no-project alternative was not analyzed in the DPEIR. It should be considered an option for some to be able to meet the terms and conditions of the Special Protections, by terminating or relocating a discharge.	Those parties wishing to eliminate their waste discharges entirely are encouraged to do so. However, until those discharges are eliminated permanently parties without an exception are in violation of the prohibition and subject to enforcement. The No-Project alternative was discussed in the DPEIR. However, it is not required that the No-Project alternative receive the same level of analysis as the preferred alternative. It should also be noted that we added some clarifying language.
54.	**DPEIR – Alternatives,- Reject Alternative A - no**	**16. 17.**	**The DEIR provides no technical basis of rationale for rejecting Alternative A.** Alternative A would allow permitted storm water and nonpoint source discharges with no additional conditions.	Allowing discharges into the ASBS would conflict with the Ocean Plan ASBS waste discharge prohibition and increase the risk of degradation to natural water quality and marine communities. State Water Board staff's rationale for this is that storm water NPDES permits require the discharger to develop and implement a SWMP or SWPPP with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). However, reduction of pollutants to MEP is not adequately protective of natural water quality in ASBS.

				Except for the agricultural discharges at the Año Nuevo ASBS in the Central Coast Region (covered under the conditions of an Agricultural Waiver of Waste Discharge Requirements), no other nonpoint source direct discharges into ASBS are currently covered under a WDR or Waiver. Even in the case of the Año Nuevo ASBS agricultural runoff via State Park property, the conditions in the waiver are not adequately protective of natural water quality in ASBS. This alternative, would allow all discharges into ASBS under existing conditions that are not adequately protective of natural water quality in ASBS.
55.	**DPEIR Fails CEQA – improper baseline**	**2.**	**The Description of the Environmental Setting/Baseline fails to comply with CEQA and skews the CEQA analysis.** By including into the baseline the over 1600 illegal discharges, the DPEIR inappropriately finds that the proposed Exception will generally improve water quality. An inappropriate baseline invalidates the subsequent analysis of air, water and noise impacts.	See Section 5.0 Environmental Baseline of the DPEIR section 5.7 Baseline Discharges beginning at page 184. The Baseline of this Project is the data submitted by the Responsible Parties, as their baseline. Title 15, CCR §15125 (CEQA Guidelines) provides that the environmental setting for use as the baseline is a description of the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published. CEQA has not been interpreted to require a baseline reflecting earlier conditions, even where prior illegal activity has occurred.
56.	**DPEIR CEQA – Baseline incomplete**	**26.30.**	**The DPEIR record of relevant information is incomplete.** The SCCWRP 2010 Report for So Cal ASBS receiving water concludes that it is consistently protective of natural water quality following storm events. This SCCWRP Annual Report is not included in the DPEIR Record, yet it is a key finding.	The Responsible Parties who are violating the Ocean Plan are responsible to provide the STATE WATER BOARD adequate data in support of applying for an exception. This Report was not completed or published at the time the DPEIR was released for public comment. However, the key findings were presented to the Board.

57.	**DPEIR Fails CEQA – real impacts analysis**	**8. 34.**	The DPEIR does not provide the public with an accurate picture of the impacts of its proposed action**.** **The DPEIR fails adequate CEQA analysis and assumes all Applicants are equal in their known or potential impact to ASBS receiving waters.** All of the impact discussions in the DEIR suffer from the failure to consider the full range of compliance measures that may need to be undertaken by dischargers The DEIR also generally fails to identify the specific mitigation measures that would be available to address these impacts, and draws unsupported conclusions that mitigation will be available to reduce impacts to a less than significant level.	All scientific data was peer-reviewed by the Natural Water Quality Committee, and by Dr. Peter Raimondi of UC Santa Cruz. The DPEIR was prepared to evaluate the potential environmental effects of the adoption and implementation of the proposed General Exception to the Ocean Plan waste discharge prohibition for this select group of Applicants. Applicants submitted data as required when applying for an Ocean Plan Exception. The Ocean Plan considers all discharges containing waste to be prohibited to ASBS, thus are equal in their known or potential to impact ASBS. An exhaustive accounting of all compliance measures which could be undertaken by the dischargers to comply is beyond the reach of the Program EIR. However, what is included are some of the most generally employed measures. Specific mitigation measures would most appropriately be identified concurrent with adequate monitoring data. Based on sufficient monitoring data, measures could then be identified to reduce or eliminate water quality excursions and reduce potential impacts to a less than significant level. The Water Boards may incorporate these measures into a permit condition.
58.	**DPEIR fails CEQA – cumulative impacts**	**2. 5. 7. 14. 15. 34.**	**The cumulative impacts analysis is legally inadequate.** The only attempt the DPEIR makes to analyze cumulative impacts is to discuss the intersection of ASBS and 303(d) listed impaired waters. The DPEIR ignore the cumulative impact of all 27 dischargers exemption from the Ocean Plan waste	State Water Board staff disagrees that the cumulative impacts analysis is inadequate. Currently, the only significant regulatory process requiring structural BMPs on the relatively small drains on the coast in ASBS, other than the exception/waste discharge prohibition, are TMDLs. State Water Board staff does not foresee other types of significant impacts resulting from adoption of the Special Protections.

			discharge prohibition; no analysis on impacts on over 1600 outfalls discharging to ASBS.	The PEIR's preferred alternative, the General Exception with Special Protections, will result in a return to natural water quality in the ASBS, a more protective situation than what is currently taking place.
59.	**DPEIR fails CEQA – cumulative impacts**	**5. 11.**	**The cumulative substantial adverse impacts of diversion pipes, pump stations, holding ponds and treatment facilities have not been addressed.** Section 6. Environmental Analysis focuses on only four BMPS to look at. The analysis should focus on those BMPs and implementation measures needed for compliance and likely to have major impacts such as pipelines and treatment facilities such as sand filters and disinfection systems.	That level of detail would be discussed at the individual project level. We agree there is a wide range of choices out there. The DPEIR discusses some of the more common BMPs.
60.	**DPEIR fails CEQA – cumulative impacts**	**1. 11. 14. 15.**	**A thorough cumulative impacts evaluation should be included in the PEIR, particularly because individual project environmental reviews projected to occur will not share the same regional perspective afforded by a programmatic evaluation.** The brevity of the cumulative analysis provided makes it difficult to meaningfully evaluate coastal resource issues that may be affected by the proposed rulemaking.	State Water Board staff disagrees. The cumulative impacts associated with the project are relatively minor, and an expanded cumulative impacts section is not warranted.
61.	**DPEIR fails CEQA – statement of overriding considerations**	**14. 15.**	The PEIR states that "most" of the impacts associated with the proposed project would be reduced to a "less than significant" level. The impact analyses do not, however, include a discussion of any significant adverse effects expected to remain after the incorporation of mitigation measures. Additionally, a conclusion that all dischargers would be able to reduce impacts to below the level of significance in each impact area is highly speculative, given the nature of the complexity of the projects required to be constructed.	State Water Board staff analyzed and presented all the materials and data provided by the dischargers as part of their exception application. Best professional judgment was used to evaluate and discuss the potential for impacts. Factors to consider when assessing the need to evaluate significant permanent and adverse impacts from a "high complexity' project was not foreseen.

62.	**DPEIR Fails CEQA – Environmental Impact analysis**	**8.**	DEIR glosses over some very significant and foreseeable environmental impacts. The report attempts to address construction impacts and a few of the less important on-going impacts, yet it completely avoids many significant and foreseeable long-term impacts. This lack of sufficient analyses and disclosure of environmental consequences is in conflict with CEQA	State Water Board staff assessed all materials and data provided by the dischargers and evaluated potential impacts arising from compliance with the Special Protections. Based on this information, it was not reasonably foreseeable that permanent significant adverse impacts would arise with implementation of compliance measures.
63.	**DPEIR Fails CEQA – inadequate AG analysis**	**8.17.**	**Agriculture and Forest Resources** The DEIR fails to evaluate potential impacts to agriculture and forest resources. Although not pertinent to the City of Monterey, impacts may result from the implementation of this program in coastal agriculture and forest lands where a reasonably foreseeable project, such as a structure BMP or treatment infrastructure, may need to be constructed and thus, would result in the conversion of farmland or forest land.	State Water Board staff disagrees. The State Water Board cannot dictate the methods that dischargers will use to be in compliance with the proposed exception. While some methods may be constructed on farmland or forest land, the impact would be minimal and would not cause the remaining farmland or forest land to be converted to some other use.
64.	**DPEIR Fails CEQA – inadequate aesthetics analysis**	**6. 8. 17.**	**Aesthetics** In our scoping comments, we indicated our view that all four elements of the analysis of aesthetics in the initial study checklist 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 projects may substantially adversely impact a scenic vista, damage a scenic resource, degrade existing visual character of 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 was shown in the City's scoping comments. The discussion of aesthetics in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measure such as detention/retention/infiltration basins and end – of-pipe treatment facilities, relying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding	State Water Board staff has identified a variety of measures and potential impacts of those measures for dischargers to use to be in compliance with the proposed exception. If a discharger decides to use methods that are detrimental to aesthetic resources (i.e., end-of-pipe projects along the Monterey Peninsula) rather than the less offensive BMPs identified in the DPEIR, then the discharger will be responsible for identifying and mitigating the impacts associated with those methods.

			the resulting impacts. The DEIR's assertion that these impacts can only evaluated in the future at the project level is incorrect, since typical compliance measures could be described and analyzed now. For example, regarding potential impacts on scenic vistas, the DEIR indicates that, "if, during the project analysis phase, a proposed project is determined to have a significant visual resource impact under CEQA, the CEQA dictates that mitigation measures must be incorporated into the project unless such measures are not feasible." DEIR at page 23. Such deferral of analysis is prohibited by CEQA where a more substantive discussion could be provided now. Quite clearly, the visual impacts of detention basins and end-of-pipe treatment facilities could be evaluated in the context of typical coastal settings. That evaluation, if done honestly, would conclude that in many contexts mitigation will be unavailable to reduce the impacts to a less than significant level. In minimizing the potential impacts, the DEIR also makes assumptions about the compliance measures that are unsupported, such as the assertion that "most elements of conventional treatment systems are located underground," that any above-ground components will "have relatively low profile" and that the facilities "may also be small relative to the conveyance they serve." DEIR at page 232. None of these statements are true with respect to several of the more substantially impacting measures that they may be needed.	
65.	**DPEIR Fails CEQA – inadequate air analysis**	**8. 17.**	**Air quality** On page 236 of the DEIR under the heading "Impacts Of The Proposed Mitigation Measures" the author states: "As part of the scoping and environmental analysis conducted for the General Exception project, these environmental resources, were considered, but no potential for adverse	The potential impacts to air quality related to detention/retention/infiltration basins, discharging relocation facilities, or end-of-pipe treatment facilities, would be similar to the treatment methods analyzed in the DPEIR. Most emissions, greenhouse gases or otherwise, would be related to construction and

			impacts to these resources were identified." Then on the following page under Chapter 6.2-1, the author states that "The General Exception Project has the potential to have a potentially significant adverse effect on **air quality.**" DEIR Chapter 6.2 discusses impacts from construction activities and maintenance for the most benign BMPs. The air quality analysis switches between impacts during construction to impacts after construction on a seemingly arbitrary basis. The analysis does not address the green house gases that will be emitted, or the energy supply necessary, as a result of the statewide pumping and treating of all of the dry weather and wet season, dry weather ASBS flows. **Air quality** The discussion of air quality impacts in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measures such as detention/retention/infiltration basins and end-of-pipe treatment facilities, relying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding the resulting impacts. The DEIR's assertion that these impacts can only evaluated at a project level is incorrect, since typical compliance measures could be described and analyzed now. For example, with respect to construction period air quality impacts, a set of typical projects and their associated construction requirements could have been described and analyzed. In fact, this is what the DEIR DOES FOR SEVERAL OF THE LESS IMPACTING MEASURES SUCH AS CATCH BASIN INSERTS, STREET SWEEPING AND PUBLIC EDUCATION. The same thing could be done for the construction of detention/retention/infiltration basins. Discharging relocation facilities, or end-of-pipe treatment facilities. Without undertaking such as analysis, it is impossible to draw valid conclusions regarding the potential air pollution impacts of the State Water Board's proposal.	maintenance vehicle use and would be similar for most of the BMPs available.

66.	**DPEIR Fails CEQA – inadequate biological analysis**	**8. 14. 15. 17.**	**Biological Resources** The discussion of biological resources in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measures such as detention/retention/infiltration basins and end-of-pipe treatment facilities, relying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding the resulting impacts. The DEIR's assertion that these impacts can only be evaluated in the future at the project level is incorrect, since typical compliance measures could be described and analyzed. In addition to the unsupported assumptions regarding compliance measures discussed above, the biological resources discussion adds another assumption:" BMP repairs, replacement, and upgrades… would occur on sites that already have been disturbed…and by virtue of their ongoing use are highly unlikely to support sensitive habitat that could be affected…" DEIR at page 245-246. This assumption is not going to be the case in many circumstances. In many locations, we anticipate that currently undisturbed open space and recreationally lands may be the only available options for certain of the measures that may be required. The biological resources analysis, in particular the discussion on page 247, also applies an incorrect baseline. Generally, under CEQA, the baseline for analysis consists of the existing physical conditions present as of the filing of the notice of preparation. Instead, however, the analysis appears to apply a hypothetical baseline comprised of a natural water quality condition. From this incorrect baseline, the DEIR then incorrectly concludes that continuation of the status would result in a potentially significant impact. The DEIR also vacillates on the question of whether the existing condition presents an environmental problem,	State Water Board staff has identified a variety of measures and potential impacts of those measures for dischargers to use to be in compliance with the proposed exception. If a discharger decides to use methods that are detrimental to biological resources (i.e., end-of-pipe projects along the Monterey Peninsula) rather than the less offensive BMPs identified in the DPEIR then the discharger will be responsible for identifying and mitigating the impacts associated with those methods. As to the environmental baseline, the DPEIR contains an extensive discussion on the current conditions based on the information from SCCWRP and the data submitted by the applicants.

			broadly describing certain research results and suggesting some adverse effects on ASBSs from storm water discharges but then offering conclusions like: "there is some question whether the differences are due to discharges" and "the data was inadequate to attribute the variation to the impacts of the discharge." DEIR at page 247: see also DEIR at page 310. The DEIR also states that the existing controls are "inadequate"- a conclusory statements unsupported by the factual information available. Hence, the biological evaluation fails to provide information or explanations regarding the source of this assumption, and includes internally inconsistent statements regarding this conclusion. The DEIR also fails to address the biological impacts that would result if program implementation and compliance necessitates diversions of flow away from, and in some instance into, the Areas of Special Biological Significance (ASBS), which may have impacts on the existing marine environments flora and faun and the nutrients provided from this runoff.	
67.	**DPEIR Fails CEQA – Cumulative Impacts**	**1. 2. 5. 8. 14. 15.**	**Cumulative Impacts** The DEIR introduces the subject of cumulative impacts on page 304, but then inexplicably omits any substantive analysis. This is a major statewide program that could involve, in the State Water Board's own estimation, tens of millions if not billions of dollars in capital improvement actions, which will have significant cumulative impacts in a number of environmental areas, including at minimum biology, hydrology and water quality, land use and public services (including recreation_. These impacts need to be analyzed and it is clear error for the DEIR to have failed to do so. The total failure to evaluate cumulative impacts cannot be cured in the final EIR, since the public is entitled to comment on that analysis.	In State Water Board staff's opinion the cumulative impacts section is appropriate to the relatively minor cumulative impacts that are reasonably expected.

			The cumulative impacts analysis is legally inadequate. The only attempt the DEIR makes to analyze cumulative impacts is to discuss the intersection of ASBS and 303(d) listed impaired waters. The DEIR ignore the cumulative impact of all 27 dischargers exemption from the Ocean Plan waste discharge prohibition; no analysis on impacts on over 1600 outfalls	State Water Board staff disagrees that the cumulative impacts analysis is inadequate. It is clear to staff that the only significant regulatory process requiring structural BMPs on the relatively small drain drains on the coast in ASBS, other than the exception/waste discharge prohibition, are TMDLs. The DPEIR's preferred alternative, the General Exception with Special Protections, will result in a return to natural water quality in the ASBS, a more protective situation than what is currently taking place.
68.	**DPEIR Fails CEQA – inadequate cultural resource analysis**	**6. 8. 9. 11.12. 26. 27. 28.**	**Cultural Resources** The discussion of cultural resources in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measures such as detention/retention/infiltration basins and end-of-pipe treatment facilities, replying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding the resulting impacts. Significant portions of the Monterey Peninsula, and thus the City of Monterey and City of Pacific Grove, are historically significant and contain extensive archaeologically sensitive areas and historic resources. For the City of Monterey, this is evidenced in the City's general Plan Historic Preservation Element. Historic Preservation Ordinance and General Plan EIR. The Monterey Peninsula's archaeologically sensitive areas include most of the coastal area (and extend inland), where reasonably foreseeable projects of the proposed program would be required to be constructed and implemented, Per CEQA Sections 21100(e) and 15126.4(b), we request known historic and archaeological resources affected by the likely placement of compliance measures in the on-shore coastal areas, and as demonstrated in previously approved land use documents, be described in the environmental baseline, and fully evaluated for	State Water Board staff disagrees. We acknowledge that in some instances there may be potential cultural resource impacts, in particular for the installation of large structural BMPs. However, this is a Program level EIR, and specific BMP installation projects, such as those on the Monterey Peninsula, will need to be addressed by the discharger through CEQA at the individual project level. Since the State Water Board does not know what measures individual dischargers will use to comply with the exception nor where they will be located, potential impacts to cultural resources cannot be determined at this time. CEQA sets forth the steps that must be taken when a project may have a significant effect on archeological resources (Public Resources Code Section 21083.2). The Lead Agency for individual projects will need to ensure that cultural resources are protected.

			significant impacts (cumulative ad otherwise) and impacts reduces or feasible mitigation measures proposed.	
69.	**DPEIR Fails CEQA – Economic and Social Effects**	**8.**	The DEIR does not adequately evaluate the economic impacts resulting from the cost of sampling, analyses, reporting, transporting and treating water that currently flows into the ocean. As our neighbor in ASBS, we're aware the City of Pacific Grove has and is constructing millions of dollars worth of dry weather diversion facilities. In addition to these costs, dischargers in the Monterey region are expected to shoulder the cost of sampling and analysis at a cost of well over $1 million for the first five years. Then there are the costs that the local sewer agencies require for capacity, pumping, and treating of the diverted water. The DEIR glosses over these issues in Chapter 6.9. The Monterey Peninsula cities do not have discretionary funds to apply towards the ASBS. These additional costs will have a definite, profound and potentially devastating impact on our ability to deliver services to our citizens. These significant impacts were not adequately addressed in Chapter 7.0 of the DEIR.	State Water Board staff based their assessment on known costs and included in that assessment the monitoring information provided by the dischargers in their exception applications. The State Water Board has awarded Prop 84 grants to several projects in the Pacific Grove and Carmel ASBS areas. The other costs and concerns presented in the DEIR and Special Protections were derived and compiled from the stakeholder process.
70.	**DPEIR Fails CEQA – greenhouse gas**	**8. 14. 15.**	**Comments on compliance of PEIR with CEQA, greenhouse gas emissions.** The threshold of significance identified for greenhouse gas emission does not appear to be a threshold, in that it would lead to a significance finding for virtually any project that would generate greenhouse as emissions, either directly or indirectly. Further, there is no attempt to quantify the emissions from project implementation pursuant to Section 15064.4 of the CEQA Guidelines, which requires an agency to make a good faith attempt to calculate or estimate the amount of greenhouse gas emissions resulting from a project. There is no information to support a finding that	The identified threshold of significance should read: "generating greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment." Despite the omission, the DEIR analysis is based upon this threshold. In September 2006, Governor Arnold Schwarzenegger signed Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006, enacting Sections 38500–38599 of the Health and Safety Code). AB 32 establishes regulatory, reporting, and market mechanisms to achieve quantifiable reductions in

			construction and implementation of projects in the areas identified would lead to no generation of greenhouse gases.	GHG emissions and a cap on statewide GHG emissions. AB 32 requires that statewide GHG emissions be reduced to 1990 levels by 2020. This reduction will be accomplished through an enforceable statewide cap on GHG emissions that will be phased in starting in 2012. To effectively implement the cap, AB 32 directs the California Air Resources Board (ARB) to develop and implement regulations to reduce statewide GHG emissions from stationary sources. AB 32 specifies that regulations adopted in response to AB 1493 (which regulates GHG emissions from vehicles, but is currently the subject of litigation) should be used to address GHG emissions from vehicles. However, AB 32 also includes language stating that if the AB 1493 regulations cannot be implemented, then ARB should develop new regulations to control vehicle GHG emissions under the authorization of AB 32. AB 32 does not specifically apply to the proposed project. Any vehicles used for construction or maintenance of BMPs will need to comply with any future regulations developed by the ARB. Compliance with ARB regulations should reduce GHG emissions to less than significant levels.
71.	**DPEIR Fails CEQA – Hydrology and water quality**	**8.**	The discussion of hydrology and water quality in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measures such as detention/retention/infiltration basins and end-of-pipe treatment facilities, relying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding the resulting impacts. The DEIR's assertion that these impacts can only be evaluated in the future at the project level is incorrect, since typical compliance measures could be described and analyzed now.	Site-specific pollution prevention measures and BMPs would most appropriately be analyzed and evaluated by the responsible party

			DEIR applies an incorrect baseline to the analysis of hydrology and water quality. Generally, under CEQA, the baseline for analysis consists of the existing physical conditions present as of the filing of the notice of preparation. Instead, however, the analysis appears to apply a hypothetical baseline comprised of a natural water quality condition. From this incorrect baseline, the DEIR then incorrectly concludes that continuation of the status quo would result in a potentially significant impact.	The appropriate baseline for use in an EIR includes a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective. In order to determine the environmental conditions comprising the baseline, State Water Board staff evaluated and presented all the hydrology and water quality data and materials provided by the dischargers as part of their exception application.
72.	**DPEIR Fails CEQA – Land Use and Planning**	**8.**	The environmental analysis of the proposed project does not address this topic. Likewise, land use impacts are disregarded in the comparative analysis of alternatives The 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 indicated our position that "no impact" would not be a viable conclusion The land area of our City that flows into the City of Pacific Grove and eventually to the ASBS is mostly residential with no open space parcels 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 existing land use policy and zoning.	The proposed General Exception and general conditions do not require actions that will conflict with existing land use policy and zoning. Non structural BMPs should not have an impact on land use. The Special Protections require structural BMPs on only those discharges considered to be priorities for control. There are a variety of structural BMPs that are subtle in appearance and modest in size, and would not impact housing and land use. The discharger is responsible for identifying appropriate actions that will comply with local laws and policies.
73.	**DPEIR Fails CEQA – Public Services**	**8.**	The discussion of public services impacts in the DEIR suffers from the general failure of the DEIR to evaluate the more highly impacting potential compliance measures such as detention/retention/infiltration basins and end-of-pipe treatment facilities, relying on largely unspecified mitigation measures to arrive at unsupported conclusions regarding the resulting impacts. The DEIR's assertion that these impacts can only be evaluated in the future at the project	It would be presumptive to State Water Board staff to evaluate a detention/retention/infiltration basin and end-of-pipe treatment facilities, absent sufficient monitoring data. State Water Board staff considered it more prudent to evaluate the data provided by the dischargers and consider a range of typical and broad in scope measures which could be employed. As the Regional Board writes the discharger's permit,

			level is incorrect, since typical compliance measures could be described and analyzed now.	additional chemical specific testing may be added as a permit condition or simultaneously a range of reasonable measures to employ to meet water quality criterion.
74.	**DPEIR Fails CEQA – Utilities/Services**	**8.**	We believe the proposed program would have potentially significant impacts on utilities and service systems This program could have substantial impacts on existing local wastewater treatment facilities (DEIR at page 59, footnote 3) and/or result in the construction of new storm water drainage facilities or expansion of existing facilities, all of which may cause significant environmental impacts.	State Water Board staff evaluated and presented all the data and materials provided by the dischargers as part of their exception application. State Water Board staff used best professional judgment and did not reasonably foresee potential for such impacts as part of the materials provided by the discharger.
75.	**DPEIR Fails CEQA – inadequate Significant and Unavoidable Impacts analysis**	**8.**	The discussion of significant and unavoidable impacts largely repeats the analysis of biological resources and hydrology and water quality impacts, addressed above. Defining the existing baseline as a significant and unavoidable impact reflects an incorrect analysis under CEQA. This discussion also fails to address the significant and unavoidable impacts of the construction, implementation, and long-term operation and maintenance of reasonably foreseeable compliance measures that may be necessitated by the State Board's proposed action on the contemplated project. This failure is evident throughout the discussion of the environmental analyses.	State Water Board staff evaluated and presented all data and materials provided by the dischargers as part of their exception application and included additional relevant water quality and biological data on the ASBS conditions. State Water Board staff used best professional judgment and did not reasonably foresee potential for such impacts as part of the materials provided by the discharger.
76.	**DPEIR Fails CEQA – inadequate bmp analysis**	**1. 2. 8.13. 14. 15.**	**The DPEIR asserts w/o support that impacts to water quality will be mitigated to insignificance by the BMPs to be implemented by the Responsible Parties.** The DPEIR should have evaluated in detail the effectiveness of the BMP programs proposed by each applicant. The DPEIR should have evaluated the effectiveness of monitoring programs of BMPs implemented and impacts to	Each applicant will be required to propose the BMP programs at the site-specific level, and as part of their permit issued by the Regional Water Board. Thus, applicants proposed programs were not available at this time. Monitoring programs for proposed BMPs to be implemented will develop effectiveness monitoring.

			ASBS. **The types of BMPs analyzed for impact in this environmental document are education, street sweeping, and vortex separators and drain inlet protection.** These BMPs, used in the PEIR to describe anticipated impacts and to propose mitigation, omit inclusion of large footprint and physically disruptive BMPs, such as infiltration trenches, vegetated use (e.g., locations with low permeability soil or areas with steep slopes), redirection of storm water by installing collections systems, conduits and pump stations also may need to be considered. These types of BMPs appear to be "reasonably foreseeable mitigation" and, as such, should be discussed in the PEIR. Where these BMPs would have significant impacts, alternate solutions for protecting water quality should be examined.	Based on State Water Board staff experience with storm runoff into ASBS, and the physical terrestrial environmental conditions adjacent to ASBS, we identified those BMPs that are the most likely to be employed for priority discharges. While we do not think such solutions will be applied in most cases, the dischargers are not precluded from using these other larger footprint BMPs, although we do not think such solutions will be applied in most cases. In those rare cases the impacts should be addressed in the individual project CEQA process.
77.	**General Exception - fails anti-degradation**	**2. 5.**	**Exception fails to comply w/CWA anti-degradation requirements.** Fails to comply with Tier 3 anti-degradation requirements. Fails to comply with minimally-required Tier 2 anti-degradation analysis.	Federal antidegradation requirements are contained in 40 C.F.R. §131.12. The regulation establishes a three-part test that applies to activities that lower water quality. The first tier requires that instream water uses be protected and maintained. The second tier applies where water quality is higher than necessary to protect instream uses. Under this tier, the state can allow a lowering of water quality, provided that instream uses are protected and that the state finds that the lowering "is necessary to accommodate important economic or social development" in the area. The third tier applies to outstanding national resource waters (ONRW). While ASBS are afforded protections similar to ONRW, they are not designated as ONRW on that basis. Federal antidegradation requirements are triggered by a lowering of water

				quality. It does not appear that the proposed General Exception with Special Protections will result in a lowering of water quality.
78.	**General Exception - fails discharge prohibition**	**2. 18. 29.**	**The Ocean Plan and the PRC prohibit the discharge of waste to ASBS in order to protect natural water quality.** The Ocean Plan mandates no alteration in natural water quality and specifically recognizes that any pollution discharged to ASBS alters natural water quality so must be banned. The Ocean Plan approach is not to base the waste discharge prohibition on actual impacts to marine life, and doing so illegally flips the burden of proof onto the state and the public, and is inconsistent with the straightforward language in the Ocean Plan. The Ocean Plan presumes impacts if there is any alteration in water quality **ASBS protection from the alteration of natural water quality can only be achieved via an outright waste discharge prohibition.**	We agree that the Ocean Plan and PRC prohibit waste discharges. While the Ocean Plan requires that natural water quality conditions are not to be altered in areas designated as ASBS, it also provides for a process by which the State Water Board may grant an exception to the otherwise applicable discharge prohibition where it is determined that the exception will not compromise protection of ocean waters for beneficial uses, and the public interest will be served. State Water Board staff considers that implementation of the Special Protections will ensure that natural water quality is achieved within the ASBS. State Water Board staff is implementing the exception process consistent with the language of the Ocean Plan. These provisions set forth the approach by which the State Water Board may make appropriate determinations regarding protection of natural water quality. The Natural Water Quality committee reviewed and approved the approach to using reference stations as proxies for natural water quality, and their Report is provided in Appendix 8 of the DPEIR.
79.	**General Exception Threatens Water Quality**	**2. 29.**	**The adoption of the proposed General Exception will threaten the water quality of California's 34 ASBS.** **a.** The General Exception does not uphold the Ocean Plan waste discharge prohibition, and continues unpermitted and unlawful discharges of pollution.	The overall purpose of this EIR is to fulfill the following CEQA objectives: ► identify the project's significant environmental effects on the environment, ► indicate the manner in which these significant effects can be mitigated or avoided,

			The General Exception does not reflect the importance of ASBS. The Ocean Plan recognizes that pollution discharged into ASBS alter natural water quality, and allows for a narrow exception provision. The General Exception threatens water quality and impacts sensitive communities and species within ASBS. **General Exception diminishes the intent of each designated ASBS for pollution protection and rewards discharges with exception.** The State Water Board should uphold the Ocean Plan waste discharge prohibition and issue enforcement orders in the form of CDOs or CAOs, providing compliance schedules and interim milestones and a final deadline. **Existing outfalls contribute to water degradation of southern California ASBS, especially the Irvine Coast and Robert E. Badham ASBSs.**	► identify alternatives to the project, ► facilitate public involvement, and ► foster coordination among various governmental agencies. The General Exception is intended to address currently unauthorized discharges and require Special Protections to protect water quality within the ASBS. This EIR is a program EIR intended to provide information at a general (or programmatic) level of detail on the potential impacts of implementing the proposed project. As described by Section 15168(a) of the State CEQA Guidelines, a program EIR is one that may be prepared on a series of actions that can be characterized as one large project and that are related (1) geographically; (2) as logical parts in a chain of contemplated actions; (3) in connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or (4) as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar effects that can be mitigated in similar ways. Because the proposed project involves the adoption and implementation of a General Exception and Special Protections policy associated with a statewide (coastal and waters surrounding islands) program, a program-level EIR is the appropriate framework in which to address the project's environmental impacts. Subsequent, project-level CEQA compliance and environmental analysis at a regional or local level may be required if subsequent actions implementing the Special Protections policy are proposed that do not fall within the scope of this EIR.

			According to the recent SCCWRP report, the Irvine Coast ASBS had the greatest number of target analytes that exceeded water quality standards and Robert E. Badham had the second highest target analytes. The DPEIR states that existing ocean conditions within ASBS have measured concentrations of constituents which exceed Table B water quality objectives. These exceedances were also found in the applicant's water quality samples. Granting an exception to these ASBS is contrary to the protection of natural water quality and safeguard the public interest.	State Water Board staff have reviewed the applicants' submissions and determined that the General Exception will not threaten water quality or impact sensitive communities and species within ASBS. With the implementation of the Special Protections, State Water Board staff believe that water quality will improve and that beneficial uses will be protected. We disagree. The General Exception and Special Protections are designed to improve water quality by implementing requirements to control discharges and will generate monitoring data needed to implement effective controls.
80.	**General Exception – Effective Date**	**5. 7. 14. 15. 33.**	**The General Exception should be retroactive, to the date the exception application was submitted. The prohibition of post-January 2005 discharges is unjustified.** It is not appropriate to apply such a requirement to municipal stormwater discharges that in most cases predate the designation of the ASBS. **The PEIR should clearly state the basis for using this date as a divide between "existing" and "new" discharges.** "New contribution of waste" is defined as any addition of waste beyond what would have occurred as of January 1, 2005. Considering the length of time that has passed since the exception applications have been filed by the discharger there should be consideration for minor facility changes that are not expected to significantly impact natural water quality. In some cases there may be water quality benefits of routing discharges to new outfalls rather than existing older outfalls.	The State Water Board must first approve the General Exception. Once the resolution is adopted, then the Regional Water Boards must begin to implement the Special protections through permits. **Retroactivity**: The General Exception process differs from other permitting actions such as coverage under a storm water general permit, whereby the effective date is receipt of a Notice of Intent (NOI). Unlike other discharges under the general permits for industrial and construction storm water discharges, discharges into an ASBS are specifically prohibited by the Ocean Plan unless an exception is granted. Such an exception cannot be made effective until approved by the State Water Board together with appropriate conditions to protect water quality, in accordance with the prescribed process. While there is non-binding case law from another jurisdiction providing that a discharger unable to obtain a permit for storm water discharges because none was yet available was not liable for discharging

				without a permit, the present situation is distinguishable. The General Exception addresses the discharge prohibition rather than liability for discharges without a permit, and a permit is separately required in order to discharge. Quasi-legislative administrative decision-making may not be applied retroactively unless authorizing legislation makes clear that an agency may do so. The General Exception, which is not rulemaking but has implications for administration of a water quality control plan, is not based upon legislation or other authority that would allow the State Water Board to apply decisions retroactively. The State Water Board Office of Chief Counsel has previously concluded that substantive "nunc pro tunc" amendments to a planning document (such as a basin plan) are impermissible. (See, Memorandum from William R. Attwater to Walt Pettit, September 4, 1997). Many discharges, including waste water discharges, predated the establishment of ASBS. Certain wastewater discharges were eliminated after the establishment of the ASBS. There is no legal entitlement for pre-existing storm drains to continue waste discharges. In October 2004 the State Water Board notified dischargers that they were to cease their ASBS dischargers or apply for an exception. In that letter, the deadline for notifying the State Water Board of the discharger's intentions was January 1, 2005. Since our October 2004 notified the dischargers that discharges to ASBS violated the waste discharge prohibition, and since January 1, 2005 was given as the deadline for notifying the State Water Board of the request for coverage under an exception, State Water

				Board staff assigned that date for delineating existing and new discharges.
81.	**General Exception – Effective Date**	**1.**	Would new or existing non-stormwater discharge currently allowed in stormwater permits (e.g., fire fighting runoff, footing and foundation drainage, basement pumps, hillside dewatering and natural groundwater seepage) be prohibited? Can exceptions be allowed for these non-stormwater discharges if they predate the 2005 cut off? Why or why not?	No, the nature of such authorized non-storm discharges are such that they protect health and welfare and in some cases occur during emergency situations. The General Exception allows coverage for these authorized non-storm discharges, regardless of their existence before or after January 1, 2005, for the parties that are included in the exception.
82.	**General Exception – Municipalities authority over private pipes**	**7.**	EPA regulations, require that cities demonstrate the legal authority to "control discharges to the municipal separate storm sewer system" (40 C.F.R. 122.26(d)(1)(ii); 40 C.F.R. 122.34(b)(3)(ii)(B). this includes a demonstration that the applicant can operate pursuant to legal authority established by statue, ordinance or a series of contracts which authorizes or enables the applicant at a minimum to: • Control through ordinance or similar means contribution of pollutants to the MS4 from discharges associated with industrial activity. • Prohibit illicit discharges to MS4. • Control spills, dumping or disposal of materials other than storm water. • Carry out inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance. 40 C.F.R. 122.26(d) (2) (i). For these reasons, the first section of the compliance schedule language should be modified to read: 3. Compliance Schedule a. On the effective date of the Exception, <u>the applicant must have adequate legal authority to effectively prohibit</u> all non-authorized non-storm water discharges (e.g., dry	The cited regulation pertains to NPDES permit application requirements for large and medium municipal separate storm sewer discharges. Those requirements include the need for a municipality to have legal authority to address flows from private property. Since the City has been operating under an NPDES permit it must have that authority. The Special Protections will be incorporated into a discharger's NPDES permit. It is State Water Board staff's intention that discharges from private property into a storm water conveyance be addressed through a municipality's existing authority, meaning the ability to pass an ordinance to address private property runoff. Since the City has been aware of its ASBS discharge responsibilities since 2004, State Water Board staff disagrees with the proposed edit to the compliance schedule language.

			weather flow) ~~are effectively prohibited.~~ While the City can obtain adequate legal authority to prohibit non-stormwater discharges under its Municipal Code; attaining compliance with those provisions for activities on private property is a time-consuming, legal process that can take years to accomplish. The City again requests that the Board acknowledge the City's jurisdictional limitations over activities on private property, and the judicial enforcement process necessary to achieve compliance, and amend the compliance schedule to reflect this limitation.	
83.	**General Exception – Municipalities not responsible for private pipes**	**5. 7. 13. 14. 15. 16.**	**Exception applicants should not be responsible for sheet flow and private pipes.** Municipalities should not be responsible for controlling discharges from private pipes or properties adjacent to the ASBS. There are privately owned drains and pipes, many of which existed before Malibu was incorporated as a City, and for which the City has no ownership or direct control. Many of these pipes do not discharge into the MS4, and discharge directly to the County-owned beach. Many of these pipes have been installed as safety measures, to prevent sheet flow from saturating the bluffs and causing landslides, or for flood control. The State should be responsible for either using individual NPDES permits to each of these pipes as "point sources" under a general NPDES permit under the Clean Water Act, and/or provide a separate exception from the general prohibition for these small, *de minimus* input sources. Only public entities are currently being held to the prohibition. Individual homeowners that have pipes discharging to state beaches should be directly regulated by the State as these discharges do not enter a MS4 and are beyond the regulatory control of MS4 agencies. Some have interpreted the prohibition as applying to every	Responsible parties identified herein are responsible for discharges within their jurisdiction and as identified in the SCCWRP 2003 Report. Cities and counties and their respective planning departments who issue permits are responsible for the terms and conditions of the Special Protections and the respective NPDES permit. The municipality issuing the permit for those pipes would be responsible for ensuring the Special Protections are followed. Any discharge to public trust water, within a municipality's jurisdiction, must be regulated and monitored. It is State Water Board staff's intention that private party discharges directly into the ASBS be addressed through education and outreach approaches identified in the municipality's SWMP. Staff contends that education and outreach are better conducted by a local storm water management agency, and not by the State. However, if education and outreach are not sufficient to prevent an alteration of natural water quality in the ASBS, then the municipality could rely on its legal authorities. Furthermore, nothing prevents the municipality from collaborating with the Regional Water Board on enforcement of discharges that

			pipe or channel discharging to the ASBS, whether public or private.	continue to alter natural water quality.
84.	**General Exception – conflicts w/Ocean Plan**	**34.**	The DPEIR is inconsistent in the application of requirements for an exception, irrespective of the source type or nature of the discharge. Applicants cover a range of land use, population densities, waste production, and transportation infrastructure.	The requirements to apply for an Ocean Plan exception have not changed since January 13, 2005 as presented at stakeholder meetings and on the State Water Board website. The same requirements to qualify for an exception were applied to all applicants. The exception is designed to consistently require control and monitoring of runoff, but allow for site specific prioritization of discharges. While the Special Protections include a consistent approach to runoff for all dischargers, there are also specific requirements for other discharge situations (parks/campgrounds, military impacts, and waterfront pollution sources) in order to address variable types of water quality impacts.
85.	**Special Protections - BMPs**	**19.**	**How will State Water Board ensure that Applicants employ Special Protections BMPs?** BMPs and mitigation measures be tailored to the discharges and to the ASBS, the water quality in the ASBS and respective biological community. Individual exceptions would be the most efficient way to do this.	The Special Protections are enforceable via their permit issued by the RB We agree the Individual Exceptions would be the most efficient way however, the State Water Board does not have staff resources to carry this out.
86.	**Individual Monitoring – Core Monitoring**	**6. 19. 23.**	**How often will Applicants be required to report their analysis of runoff samples from storm events to their respective Regional Water Board?** Does analyzing necessarily include reporting? For waterfront and marine operations, how often will samples be required to be reported? There appears to be no clear standard applies to all	Yes. Data is submitted to both the State and Regional Water Board staff. The State and Regional Water Boards will incorporate into permits the requirements of the Special Protections. The Regional Water Boards have the discretion to require the frequency of reporting the monitoring data.

			dischargers discharging into ASBS and should be required to add the monitoring requirements including State Mussel watch, sand crab tissue etc.	Sampling and reporting will continue during the life of the exception, unless and until subsequent modifications are made by the State Water Board. As prescribed in the Special Protections, again the Regional Water Board has the discretion to require additional frequency. State Water Board staff is confident that there is adequate consistency in the monitoring requirements for all dischargers. However, the Special Protections also recognize the differences between storm water dischargers and other nonpoint pollution sources such as marine operations, and addresses these with applicable monitoring requirements. Waterfront and marine operations are required to perform additional monitoring, in addition to the basic requirements for all dischargers, which includes bioaccumulation monitoring, unless participating in a regional monitoring program.
87.	**Monitoring Reporting, Enforcement**	**19.**	**Within 4 years, the Applicants will need the ability to compare receiving water samples to natural ocean water quality.** **How** soon will regional monitoring programs determine natural ocean water quality? How will information on what constitutes natural ocean water quality be made available to applicants not participating in a regional monitoring program?	State Water Board staff has provided clarification to the monitoring requirements in the Special Protections. These clarifications include receiving water monitoring conditions, which now would require that monitoring occur in the first storm season after adoption of the Exception. This would allow dischargers to better prioritize their outfalls to plan for controls.
88.	**Authorized non-storm water discharges**	**3.**	**Intermittent, temporary discharges and dewatering from service utility vaults and subsurface structures are included in their respective NPDES permits, but not referred to in the Exception.** These non-storm water discharges are substantially similar	NPDES permits/SWMPs will be modified to include the terms and conditions of the Special Protections. Discharges to ASBS are purposely more strictly regulated than non-ASBS discharges. Intermittent, temporary discharges from service vaults

			to those listed in the Exception (i.e. foundation and footing drains) and are authorized in their permits. We request inclusion that authorizes the discharge of waters to water of the U.S. or to MS4 from substructures that are permitted under an NPDES permit. Under the NPDES permit, the permittee is required to develop and implement plans and procedures to prevent contaminated water from being discharged. Contaminated waters are typically pumped to a truck and disposed off site. By not including permitted vault discharges as an authorized non-storm water discharge, this water will have to be trucked off site.	and subsurface structures may contain pollutants harmful to marine life. Furthermore these types of discharges are discreet and manageable by truck or even by diversion to sewer. State Water Board staff purposely did not include these types of discharges in its list of authorized non-storm wastes.
89.	**Storm Water - Per se waste**	**11. 26. 27. 28. 30.**	**The prohibition of non-storm water discharges is based on a categorical approach which would regulate storm water and on-stormwater as waste.** How stormwater itself has come to be viewed as waste. We reference a 2008 UC Davis School of Law Environmental Law and Policy Journal entitled "When water Becomes Waste: A Practical Approach to Regulating Stormwater Discharges" that discusses the distinction between stormwater and the wastes or pollutants that it carries. The County maintains that it is the waste within stormwater that adversely affect ASBS, not stormwater per se, and that the waste should be the focus of the Special Protections, not preventing stormwater from entering ASBS. Categorically preventing stormwater from entering the ASBS is an inefficient method of preventing wastes from entering the ASBS that may result in treatment facilities that are grossly oversized.	The State Water Board must carry out federal and state clean water legislation. Any entity responsible for discharging pollutants to waters held in public trust must be regulated. The Special Protections do not prevent storm water from entering an ASBS. On the contrary, the Special Protections allow the discharge of clean storm water (i.e., storm water that does not alter natural water quality in the ASBS.) Further, the Special Protections would allow the municipality to prioritize its discharges and design treatment BMPs for those priority discharges to meet reasonable targets. State Water Board staff does not anticipate the need for oversized treatment facilities.
90.	**Special Protections – Storm water is waste**	**2. 29.**	**Stormwater outfalls continue to contribute to water degradation in southern California ASBSs. Especially the Irvine Coast and Robert Badham.** The SCCWRP status report reflects post-storm water quality exceedances.	The State Water Board has worked with the southern California stakeholders to develop the first comprehensive snapshot of water quality in ASBS. That work showed that while water quality in ASBS is generally good for many constituents most of the time,

				there are times when constituents likely exceeded natural water quality. This was the case at the Irvine Coast and Badham ASBS for certain constituents. The Special Protections are designed to protect natural water quality by identifying and focusing on the sources of these "exceedances."
91.	**Special Protections – non-storm water is waste**	**29.**	**Discharges of continuous flows from non-storm water from excessive residential irrigation and other impervious surfaces carry pollution and turn previously ephemeral streams into year-round flowing pollutant streams.**	The discharge of continuous flows from non-storm water irrigation are prohibited discharges under the Special Protections.
92.	**Special Protection - non-storm water prohibition**	**6. 14. 15. 26.30. 33.**	No proof of adverse impact to coastal waters from non-stormwater discharges has been provided by State Water Board staff. Elimination of non-storm water discharges will result in a portion of the natural flows and associated natural minerals being diverted. Cessation of these discharges would affect the hydrologic cycle and in turn ASBS equilibria, natural water quality and marine life. These impacts have not been sufficiently analyzed or mitigated in the DPEIR.	Proof of impact prior to the regulation of the discharge is not part of Federal or State law. This comment is not accompanied with any supporting data to support its rationale. However, it is the anthropogenic pollutants and unnatural urban runoff that flow to the ASBS which much be removed as part of the Ocean Plan waste discharge prohibition. The Natural Water Quality Committee reviewed the work performed by SCCWRP, the Water Board, and responsible parties. The Committee found that while water quality at ASBS discharge sites was generally good, poor water quality in southern California ASBS was observed, but limited to a few discharges and/or constituents. Those sites and constituents were included those associated with certain urban stormwater runoff.
93.	**Special Protection - non-storm**	**5.**	**Limitations on allowable non-storm water discharges.** We request that certain natural water sources also be added to this list: diverted stream flows, springs, and flows from	Diverted streams are not naturally occurring fresh water flows into ocean waters. State Water Board staff does not intend to include these as authorized non-storm water discharges. However, springs and flows

	water prohibitio n		riparian habitats and wetlands.	from riparian habitats that are naturally occurring are not considered anthropogenic discharges and are therefore not prohibited or otherwise regulated under the Special Protections.
94.	**Special Protection - non-storm water prohibitio n**	**7. 33.**	**Prohibition Of Non-Authorized Non-Storm Water Discharges Is Unreasonable** The immediate elimination of non-authorized, non-storm water discharges will be infeasible for some discharges. It is completely unreasonable to immediately prohibit discharges without considering the time required for planning, contracting, environmental permitting, construction and other project related requirements. The Special Protections already require, within one year from the effective date of the Exception, that dischargers submit a written report that describes a strategy for compliance with the Special Protections. The Special Protections could be revised to require dischargers to submit a schedule to eliminate non-authorized discharges as part of the strategy. Unless there is scientific evidence demonstrating non-storm water discharges are degrading or could reasonably be expected to degrade ASBS water quality they should not be automatically prohibited.	This element of the Special Protections policy is consistent with federal and state law. The discharges are currently prohibited. Dischargers identified herein were notified in 2004 of the waste discharge prohibition, allowing the responsible parties time to plan and implement necessary compliance measures. Dischargers were notified in 2006 to begin implementation of protective measures. Proof of degradation is not required. The existing waste discharge prohibition applies to all discharges into ASBS unless covered by an exception. The commenter has not provided a basis for allowing the discharge of non-storm water flows as part of the exception.
95.	**Prohibitio n – dry weather flows**	**5. 6. 7.**	Immediate cessation is impossible and this requirement will mean that all MS4s are in noncompliance and subject to enforcement (or citizen suits) upon approval of the Special Protections. In addition, complete prohibition of these flows is not reasonably achievable.	All discharges, including dry weather flows, are currently prohibited. It is staff's experience that dry weather flows (i.e. non-storm water flows) are relatively infrequent in most ASBS. Dischargers were notified in 2004 of the waste discharge prohibition, allowing them to plan and implement necessary compliance measures.

96.	**Prohibition – dry weather flows**	**6. 11. 13.**	No proof of adverse impact to coastal waters from non-stormwater discharges has been provided by State Water Board staff to prohibit these flows. The immediate prohibition of dry weather non-point sources is inconsistent with the recent NPDES Permit requirements. The immediate prohibition of dry weather flows (even if treated) is also unreasonable since potential impacts of dry weather flows have not been determined. Storm drainage and wastewater systems which are utilities will definitely be impacted by restrictions imposed under the Special Protections, due to having to construct dry weather flow diversion.	The prohibition of storm water waste discharges has been effect since the 1980s. While not addressed by the typical NPDES requirements, ASBS require stricter provisions to maintain natural water quality. ASBS are state water quality protection areas that require Special Protections for natural water quality to be maintained. Proof of adverse impacts is not required to enforce the prohibition. Nevertheless, runoff contains pollutants that have harmful effects to marine life. The Special Protections do not prohibit all dry weather flows. Certain essential non-storm flows are authorized.
97.	**Special Protections – storm water**	**6.**	Implying that the existing ASBS stormwater discharges are degrading water quality or the environment is inaccurate and unsubstantiated. We question the wisdom of SWRCB in imposing the SP with the lack of evidence that the current storm water discharges are having any adverse effects on the receiving waters.	The current Ocean Plan prohibition does not allow waste discharges into ASBS. The Special Protections are designed to allow clean storm water discharges as long as natural water quality is not altered. The available water quality data shows that, while ASBS water quality is generally good for most constituents, other constituents occasionally exceed natural water quality and/or water quality objectives. These constituents that occasionally exceed objectives are known to be harmful to marine life.
98.	**Special Protections – non storm water discharges**	**14. 15.**	**Prohibition of non-storm water is unjustified because there is no scientific evidence that these discharges impact Natural Water Quality or beneficial uses of the ASBSs**	Non-storm water urban runoff is anthropogenic and therefore not natural. The Special Protections are designed to maintain natural water quality in ASBS. All waste discharges are currently prohibited, and the Special protections do not exempt most non-storm flows because of their anthropogenic nature and potential to alter natural water quality.
99.	**Special Protection**	**6.**	It is not clear how compliance with the elimination of 100% of non-stormwater discharges is supposed to be achieved.	The Special Protections do not prohibit all dry weather flows. Certain essential non-storm flows are

	s – non storm water discharges			authorized. For those non-stormwater discharges that are not authorized, the responsible parties have known since originally notified by the State Water Board in 2004 that these discharges are illegal, and measures should have been employed to control them.
100.	**Special Protections – non storm water discharges**	**33.**	**Discharges associated with fire fighting activities should be exempt from all permit and special protection requirements.** Fire fighting training and fire system maintenance activities should be allowable non-storm water discharges. Discharges from potable water system operations and maintenance activities should be listed as allowable discharges. These discharges are essential to protecting property and human health and safety and are consistent with Item 10 on page 2 of the Special Protections and with the Project Objectives listed in the PEIR. **Dewatering from construction activities in compliance with water quality standards should not be a prohibited discharge into ASBS, especially if the discharge meets water quality objectives.** This puts an undue burden on property owners. This also could be problematic for discharges who will be installing structural BMPs as prescribed by the PEIR and Special Protections.	The Special Protections do authorize runoff associated with fire fighting. However, dry weather flows due to planned training and maintenance should be conducted either outside of an ASBS or in areas that drain to diversions to sewage. Excessive flows of fresh water to the marine environment during dry weather can have a harmful effect on marine life. Many marine organisms are not tolerant to osmotic shock. Furthermore excessive flows of potable water to the ocean can be considered a waste of a resource. The Ocean Plan currently allows a Regional Water Board to approve a limited term discharge associated with certain construction activities on existing coastal structures adjacent to ASBS, such as the repair/replacement of storm water pipes, seawalls and bridges. The installation of BMPs would be allowed in this situation. This will not change if the Special Protections are adopted. Also, under the Special Protections, water from foundation drains and basement pumps would be authorized. Regional and State Water Board staff will assist in technical advice when needed as structural BMPs are planned and implemented.

				Discharges from new construction that require extensive dewatering flows would not be allowed under the Special Protections and would need to be diverted to sewer or out of the ASBS.
101.	**Dry weather flows**	**1.**	How are springs and/or groundwater seepage that do not meet Table B Ocean Standards that discharge to ASBS viewed/regulated under the proposed exceptions?	Naturally occurring springs are not regulated under the Special Protections. Ground water seepage via storm drains is an authorized non-storm discharge.
102.	**Dry weather flows**	**1.**	Since one of the goals of the Special Protections is to eliminate dry weather flow into ASBS, the PEIR should emphasize that such efforts will also need to be consistent with Coastal Act and LCP policies	State Water Board staff agrees that any construction associated with eliminating dry weather flows will need to be consistent with the Coastal Act and Local Coastal Plans.
103.	**Special Protections Prohibition – new outfalls**	**1.**	If a highway culvert were to be relocated to a less erosive discharge location, would it require a new exception application? Why or why not?	The intention of this requirement of no new discharges is to prevent the proliferation of discharges and waste contributions to ASBS. Simply moving a discharge point from one place to another in the same vicinity would be allowable if approved through the SWMP. Therefore a relocation of a highway culvert would not require a new exception.
104.	**Special Protections Prohibition – new outfalls**	**4. 5. 11. 26. 33.**	**Allow for the new outfalls with the State Water Board and Regional Board's approval at discharge locations where other engineering solutions are unreasonable or are infeasible.** The general provision that new or increased discharges should not occur, we disagree with the prohibition on moving them and request that it be revised that there be no prohibition on moving discharges. **Prohibition On New Storm Water Outfalls Is Too Inflexible** Not allowing additional outfalls encumbers property owners' rights. This is too inflexible and does not account for potential changes to outfalls that may have little/no effect on or improve the quality of discharges to the ASBS.	The Special Protections state that only existing storm drain outfalls are allowed, and that any new storm discharges should be routed to existing outfalls. The Special Protections also state that there be no new contribution of waste to ASBS. The intention of this requirement is to prevent the proliferation of discharges and waste contributions to ASBS. Simply moving a discharge point from one place to another in the same vicinity would be allowable if approved through the SWMP. The General Exception DPEIR and Special Protections for this select group of dischargers were based on the SCCWRP 2003 Report which identified more than 1600 discharge points to ASBS. Based on

			There could also be a need to install outfalls to prevent flooding that could endanger property and/or human health and safety. If dischargers are prohibited from installing new storm water outfalls they could be liable for any property damage or injuries resulting from flooding. **Outfalls should be allowed** with the stipulation that they must not result in a violation of water quality objectives.	this Report and identified Responsible Parties who are applying for an Ocean Plan exception, the discharger submitted as required, monitoring data for those existing discharges, included in this exception. Any new ocean outfall, or conveyance as described in the Ocean Plan, is not legally allowed and must separately apply for an exception authorizing a discharge to waters of the State.
105.	**Special Protections – allowable discharge types**	**33.**	**Fire fighting And Potable Water Discharges Should Be Allowable Discharges** Discharges associated fire fighting training, and the maintenance of fire fighting and potable water systems should be included in the Special Protections as allowable non-storm water discharges. In addition, there is no finding or evidence provided in the Special Protections or PEIR regarding impacts to natural water quality that would justify a prohibition on these discharges. We request that these discharges be included in the Special Protections as allowable non-storm water discharges.	Only emergency fire fighting is included into the Special Protections. State Water Board staff determined that allowing these additional discharges would not be fully protective of ASBS and would fail to meet the requirements for granting an exception. Because the Ocean Plan mandates that waste shall not be discharged to ASBS unless an exception is granted, there is no requirement for a finding that discharges affect natural water quality.
106.	**Special Protections – construction inspections**	**33.**	**Prescribed Inspections Are Unnecessary.** The prescribed inspections for construction, industrial, and commercial facilities are already addressed in other permits and programs such as the General Construction Permit Order 2009-0009 DWQ and Industrial Storm Water General Permit Order 97-03-DWQ, and provide adequate inspection requirements to ensure activities are not impacting the ASBS. Minus evidence justifying the increased inspections as necessary to protect the ASBS these burdensome	Where these permits are otherwise applicable, the Regional Water Board would apply the Special Protections as part of the relevant permit/SWMP. ASBS are areas deserving of special protections under Public Resources Code. These measures were developed with assistance from the stakeholders during the stakeholder process of developing the Special Protections. Based upon stakeholder input State Water Board staff have determined that these measures are appropriate and

			requirements should be eliminated from the Special Protections. If Regional Boards determine that additional inspections are necessary for a particular ASBS they can be added to applicable NPDES permits. Request deletion of items 1 though 4.	necessary to ensure consistent and effective protection of water quality in ASBS.
107.	**Special Protections - Inspections**	**6.**	There is no connection between increased inspections beyond what is already required in MS4, and impacts on receiving water quality.	Increasing the number of inspections will necessarily decrease the risk of discharges that may alter natural water quality in the ASBS receiving water.
108.	**Special Protections - Inspections**	**15.**	**Nature of LACFCD authority** Section I.A.2(c) of the Special Protections requires inspections of construction sites, industrial facilities and commercial facilities during the rainy season. As a flood control agency, the LACFCD lacks authority to conduct any site or facility inspections within the jurisdiction of a municipality. All land areas, and thus any industrial, commercial or construction sites, draining to the LACFCD storm drains that empty into the Laguna Point to Latigo Point ASBS are under the jurisdiction of upstream municipalities. (It should also be noted that land in the upstream watersheds may also be part of State or federal park land.) The LACFCD does not and cannot control land uses within these municipalities and thus has no authority to conduct inspections. Moreover, the LACFCD storm drains function solely as a conveyance for runoff from these upstream municipalities and do not generate any pollutants. The LACFCD does not have jurisdiction over land uses within the municipalities and, therefore, cannot require controls on land uses or facilities that generate pollutants that may flow from those land uses or facilities and eventually enter the ASBS.	In cities where LACFCD does not have direct jurisdiction, collaboration with those other municipalities is not precluded. The LA County MS4 permit has a number of co-permittees that should cooperate in general on permit compliance.
109.	**Special Protection**	**2.**	Discharger permits must include numeric effluents limits necessary to ensure maintenance of natural water quality	The Special Protections require compliance with natural water quality in the receiving water and

	s - Natural Water Quality – and Discharge r Permits		Determination of natural water quality via reference sites is only the first step to finally protecting the health of ASBS. Discharger permits must then be amended to include requirements that swiftly implement controls that will achieve natural water quality as expeditiously as possible.	therefore will not require numeric effluent limits. If monitoring results show that discharges are not meeting natural water quality, then the discharger will need to implement controls to reduce pollutants, with the goal of attaining and maintaining natural water quality.
110.	**Special Protections – Numeric Effluent Limits and Permits**	**2.**	While the DEIR discusses use of structural BMPs it fails to also discuss imposition of numeric effluent limits (NELs) in storm water permits as an appropriate and accountable tool. We ask that NELs be specifically incorporated into stormwater permits to ensure expeditious achievement of natural water quality in all ASBS.	State Water Board staff disagrees with the use of numeric effluent limits for storm runoff into ASBS. Instead compliance with natural water quality will be required in the receiving water. The Ocean Plan requires that natural water quality be maintained un ASBS, and therefore staff considers this the appropriate compliance measure.
111.	**State-funded studies**	**26. 30.**	**Further State-funded studies are needed to determine if any storm water and non-storm water discharges are harming ASBS.**	The discharger is the party responsible for monitoring their discharge for impacts. Federal and State law places the onus on the responsible party to monitor their discharges. Most anthropogenic non-storm water flows are prohibited.
112.	**Special Protections - costs**	**26. 27. 28.**	**Pollutant Source Reduction** The vast majority of harmful wastes that enter the ASBS are generated well inland of the coastline. Because ocean wastes are generated throughout the entire State and not only in the coastal communities, the County questions whether more equitable ways of distributing the cost of the ASBS program can be developed that pass these costs onto all those who generate the pollutants. As designed in the current Special Protections, the bulk of the costs of maintaining the ASBS program will fall onto the shoulders of the coastal communities who happen to own the final drainage pipes that flow into ASBS. In the SCCWRP report, copper and zinc were identified as having elevated concentrations in stormwater. If a method to generate income from the sources of these pollutants could be	While the commenter questions the relative contribution in polluting loading from inland areas, the prohibited discharge occurs where there is "any addition of a pollutant to navigable waters from any point source [.]" 33 U.S.C. § 1362(12). The Exception is designed to address the waste discharge prohibition from direct discharges while protecting natural water quality. Because the General Exception is intended to provide relief from the existing Ocean Plan discharge prohibition, alternative approaches to equalizing the burden of storm water regulation on coastal areas are beyond the scope of the current proceeding.

			established, some of the revenues generated could be used to fund the ASBS and other stormwater pollution programs. Eliminating these pollutants will benefit not only the ASBS but all surface waters of the State.	
113.	**Costs – capital expenditures**	**5. 6. 7. 11.13. 14. 15.26. 27. 28. 30.**	**Capital expenditures in [Pebble Beach] [Monterey] have been estimated to be above $5 million to implement compliance BMPs.** We request that State Water Board staff provide itemized detail to account for their $43-$54 million estimate for all ASBS. The high costs of the Special Protections were not addressed anywhere in the DPEIR, they were merely discussed in Section 7.0. State Water Board staff's conclusion that costs/benefits have been analyzed is unsupported by any analysis done in the DPEIR and is merely conclusory in nature. No mitigation in terms of modifying the requirements of the	The comment was not accompanied with any supporting data. This would appear to be an upper limit if all discharges required full BMPs. Until monitoring is conducted and results assessed it is unknown to what extent such mitigation measures will be necessary. Dischargers are allowed to prioritize their discharges for structural BMPs, and will use monitoring results in making that determination. For those impacts substantial enough (not meeting or likely not meeting natural water quality) the discharger should prioritize those discharge locations for the installation of structural BMPs. Using an accelerated iterative approach, until monitoring and initial BMP implementation occurs the dischargers will not know if additional BMPs will be required. It does not make sense to estimate that each discharge location will need maximum protection. The costs of protecting water quality in ASBS are entirely reasonable and are much lower than the other option to move discharges outside of ASBS. State Water Board staff did not perform a cost/benefit assessment. Instead, State Water Board staff limited its economic assessment to costs only. Those costs were explained in the PEIR. The cost figures were derived from the Prop 84 and other grant proposals. From this it was estimated that $147,000 to 185,000 per discharge is reasonable to assume as a general estimate. There are about 294 total discharges greater than 18 inches in width or diameter. If all these

			Special Protections has been done, no changes made to reduce costs since the March 3, 2008 version. Inadequate costs/benefits analysis by State Water Board staff. It is not possible to determine whether any water quality benefit will be achieved absent evidence of existing harm to ASBS via discharges.	discharges are controlled with structural BMPs (to be conservative we used CDS vortex units as an example of a relatively expensive control device), the total cost would range from $43 to $54 million statewide. The examples given in the DPEIR are costs for constructed facilities where state bonds funds have been successfully implemented. We know that there are times and ASBS locations where natural water quality and/or objectives are not met for certain constituents. We also know that prohibited waste discharges of runoff occur at such locations. Controlling the quality of runoff will undoubtedly improve water quality.
114.	**Costs – capital expenditures**	**7. 14. 15.**	**The State's cost estimates are far too low.** The DPEIR estimates the total costs of structural BMPs will range from $43 to $54 million statewide (DPEIR at 303 of 331). Malibu believes this cost estimate is far too low as Malibu itself has committed $50 million to clean water and water quality improvements. In the ASBS alone, the City will spend over $3 million on initial construction projects to comply- $2.5 million on its Broad Beach Bioinfiltration project and $600,000 on its Wildlife Road drainage treatment project. The technology required and costs of the land are tremendously expensive and the cost estimates to comply with the Special Protections must accurately reflect that. The cost estimates for the Malibu area ASBS equal $54 million for "catchment basin treatments" and "2 major storm drains" and $2.25 million for "8 storm drains; 1 mile coastal highway LID," which would presumably be Caltrans projects (DPEIR at 301-302). The cost estimates do not include the 110 other pipes that the State Water Board estimates exist	The state's estimates are for additional costs due to the Special Protections. Most of the costs are unknowable at present since the projected monitoring program and data have yet to be established. There are many reasons to create BMPs to improve water quality, these Special Protections are but one factor (for example another reason to control runoff is contact recreation). The State Water Board has provided Malibu and other municipalities with funding for ASBS and beach water quality protection. The EIR does not include in the cost estimate ($43 to $54 million) all state provided grant funds for reducing ASBS and beach contamination. Instead the estimate was based on a conservative estimate of priority direct discharges and a relatively high estimate of cost per BMP.

			in this ASBS. There is no guarantee that if these projects are completed, no others will be required. Therefore, all possible projects needed to meet the Special Protections as well as monitoring costs must be considered.	
115.	**Costs - Monitoring**	**6. 7.14. 15. 33. 34.**	**The SP uncertainty of Natural Water Quality is problematic when defining scope, breadth of any proposed monitoring targeted to reduce discharges.** SP Monitoring is highly complex and costly that may not contribute to the overall objective of reducing discharge and pollution. Monitoring should rely upon the relative improvement in the quality of effluent from anthropogenic point sources and storm water.	Without initial monitoring it will be impossible to determine accurate current conditions and determine where and which possible sources may ultimately need to be addressed. Environmental quality measurements are complex and the monitoring programs proposed are designed to provide reasonable scientific data to promote sound regulatory protections only as needed. The monitoring of effluent discharges is inherently variable in their pollutant concentrations at any given time. If, over time the Applicant can demonstrate improvements in water quality, the Water Boards may subsequently modify certain monitoring requirements.
116.	**Costs – Monitoring - eliminate toxicity**	**7.**	Toxicity requirements should be deferred until a final state-wide policy on these requirements is finalized by the State Water Board.	Toxicity objectives have been part of the Ocean Plan since 1972, and are a key component of the State Water Board's authority and regulatory tools to carry out the federal CWA.
117.	**Costs - monitoring**	**6. 14. 15. 16. 17. 26. 27. 28.**	Monitoring costs are also excessive. The first year start-up costs of the Regional Monitoring Programs will be about $2.5 million (all of which will have to be paid by the dischargers). The dischargers will have to spend additional millions of dollars indefinitely to continue those monitoring programs. Should not be required to fund stormwater and receiving water monitoring or to implement additional BMPs until there are statistically significant data documenting that there is an undesirable alteration of natural water quality occurring in	Monitoring is always the responsibility of the discharger in all of the Water Boards' permits. State Water Board staff acknowledges that monitoring is expensive, but disagrees that it is excessive. Monitoring is necessary to determine if natural water quality is protected, and is an essential component to the Special Protections. The State Water Board has provided grant funding opportunities to assist in the cost of compliance,

			the ASBS. The Monterey Peninsula is home to two preeminent research facilities on the West Coast, the Monterey Bay Aquarium and the Hopkins Marine Station. We understand from their staff results that confirm that stormwater is indeed impairing the beneficial uses of the ASBS. Should the monitoring program provide inclusive results, it would be viewed as ineffective by the County. The County will support a monitoring program that provides an unambiguous link between impairments that may be observed and the wastes that cause it.	offsetting much of the cost of the proposed infrastructure It is recognized that costs could be higher than estimated. True costs won't be known until monitoring programs are implemented and resulting protections applied if necessary. State Water Board staff agrees that storm water waste discharges are harmful to beneficial uses. It is the intention of the Special Protections to address runoff waste discharges into ASBS. Additional Water Board programs (e.g., MS4 permits and TMDLs) are also designed to protect coastal waters from waste discharges.
118.	**Costs**	**4.**	**The DPEIR bases a very summary cost projection for eliminating discharges into ASBS on Caltrans calculations, a regulated entity with numerous illegal discharges up and down the coast.** Lumping all the discharges into one EIR is problematic when analyzing costs because one discharger cost considerations will not be the same as another.	It is acknowledged that the Caltrans estimate is over generalized. It was provided to indicate a possible worst case application of total prohibition of discharges into ASBS in absence of monitoring showing actual water quality. At the Program-level of analysis it is not possible to provide separate estimates for all the potential jurisdictions that may be impacted by the requirements set forth in the General Exception and Special Protections. . An effort was made to provide examples of costs derived from completed water quality improvement projects already funded through state money.
119.	**Monitoring – unfunded mandate**	**11. 13. 16. 17. 26.**	The monitoring is an unfunded mandate and the burden of monitoring should be the responsibility of the SWRCB, not the local dischargers. **T**he newly proposed Special Protection requirements are new, constitute a "new program," and/or create a "higher level of service" over the previous stormwater and non-stormwater requirements that	Discharges into ASBS are currently prohibited under the Ocean Plan. Proof of harm is not required, only evidence that waste (runoff) is discharged. The General Exception and Special Protections do not constitute an unfunded local government mandate

			impose substantial additional costs, thereby implicating an unfunded state mandate. As such, these requirements could be considered to be unfunded mandates on many of the public entity ASBS dischargers and should be more narrowly tailored to directly protect the beneficial uses	subject to subvention under Article XIIIB, Section (6) of the California Constitution, for several reasons, including, but not limited to, the following: local agency obligations under the General Exception and Special protections are similar to the obligations of non-governmental dischargers who are subject to the same waste discharge prohibition and have applied for an exception. Further, to the extent that the dischargers are MS4 dischargers, the local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with any requirements associated with the Special Protections. The General Exception is intended to provide relief from the existing discharge prohibition, requiring conditions intended to protect beneficial uses with ASBS. State Water Board staff do not believe that the Special Protections mandate a higher level of service than that represented by an absolute discharge prohibition.
120.	**Monitoring –**	**16.17.**	Rural and rural residential Counties should only be required to participate in stakeholder agreed upon protection and/or monitoring in proportion to their relative area or population in the watershed contributing stormwater runoff to an adjacent ASBS	The dischargers have the option to collect their receiving water data as individuals, or participate in a group regional monitoring effort. The proportional participation in a regional effort should be determined through a stakeholder process, which typically occurs in such collaborative programs.
121.	**Special Protections – Monitoring approach**	**10. 16. 17.**	**Impacts to ASBS should be assessed using a triad approach, and use data to assist in defining natural water quality.** **Broaden the provision of the proposed Special Protections to address all types of potential impacts, not just water chemistry. Should be site-specific.**	State Water Board staff agrees with the use of a triad approach. The Ocean Plan provides water quality objectives for chemistry, toxicity and marine communities. The Special Protections require testing for a variety of measurements such as water chemistry, toxicity, and biological community condition. Conceptually, as the dischargers provide their monitoring data, all these results will be assessed.

122.	**Special Protections – Monitoring – Biological not useful**	**25.**	**Intertidal surveys are not useful in distinguishing between natural and human influence on ASBS.** Intertidal surveys of benthic marine life do not serve a purpose in the SP. These surveys are not capable of differentiation between natural and human influences on ASBS.	The Natural Water Quality Committee has recommended biological measures, including rocky intertidal monitoring, as an important component of an ASBS monitoring program. That committee has worked with staff, researchers from SCCWRP, and Dr. Pete Raimondi of UC Santa Cruz to establish protocols which can determine differences between natural and human influences on ASBS.
123.	**Compliance Timelines**	**26. 30.**	**The timeline for Stormwater Management Plans and waterfront and marine plans should be changed to 1 year.**	Waterfront plans should be less complex to assemble than SWMP ASBS compliance plans, because it is unlikely or rare that management measures employed to address waterfront pollutant sources will involve many structural pollutant control devices. Therefore six months should be an adequate period to produce the plan, which would rely mostly on operational and educational measures.
124.	**Compliance Timeline – Flowchart**	**33.**	**Flow Chart Is Confusing** The flow chart should be refined to better illustrate what is required of a discharger. What is the difference between the first and second pages of the flow chart other than an "or" box?	We agree and have made improvements to the flow chart that illuminate its meaning.
125.	**Compliance Timelines - eliminate**	**5. 7.**	**Compliance schedules should use an iterative approach** without fixed deadlines. Each ASBS entity is different and has different constraints.	We agree with the iterative approach as discussed in the Special Protections. However we are relying on an accelerated iterative approach for ASBS to protect and restore natural water quality. We agree that each ASBS is different and has different constraints. However, Staff is confident that the schedule is achievable, and should a discharger not be able to achieve compliance with BMP installation within the four year period we have edited the Special Protections to make it clear that an extension may be granted for good cause.

126.	**Compliance Timelines – too short**	**4. 5. 7. 11. 13. 14. 15. 26.**	**Modify the compliance schedule to allow adequate time (10 years) for the planning, permitting, and implementation of mitigation measures to meet the proposed Draft Special Protections requirements. 4 years is not enough time.** The four-year timeline to meet reduction goals as defined in the Draft ASBS Special Protections conflicts with the Proposition 13 grants' authorized Watershed Management Plans, which have implementation schedules.	State Water Board staff appreciates the constraints expressed. However, State Water Board staff believes that there needs to be a single time schedule for compliance for all dischargers. The State Water Board staff does not have the resources to evaluate and develop individual compliance schedules for each of the applicants for the general exception. The general exception and its Special Protections must have a consistent approach for all parties, i.e. to make sure that structural BMPs are installed as rapidly as possible to address priority discharges.
127.	**Compliance Schedules - too long**	**2. 29.**	**Unnecessary lengthy compliance schedules delay control on pollution into ASBS.** The SP allows more time for discharges to continue instead of implementing immediate enforcement w/ a CDO or CAO.	The compliance schedule was developed as part of the stakeholder process and meetings. State Water Board staff has proposed the compliance schedule in order to accommodate time for planning and implementation of actions necessary to come into compliance with the Special Protections.
128.	**Compliance Timelines –**	**1.**	If an applicant is unable to construct BMP's within the 4 year limit as specified, under what circumstances would these discharges be allowed to continue?	The Special Protections would allow a discharger, that anticipates failure to meet the implementation schedule, to request an extension. State Water Board staff has added clarifying language to the Special Protections to further explain the process for requesting an extension if good cause exists to do so. Good cause means a physical impossibility or lack of funding. The request for an extension should contain it's the reasons for the delay and propose a new anticipated date of compliance. At that point the Water Boards may authorize additional time to comply.
129.	**Compliance Timelines unattainable**	**4. 26. 27. 28. 33.**	The only means for achieving compliance is the substantial retrofit of drainage facilities (design and construction), which will exceed the period prescribed by the proposed Draft Special Protections compliance schedule.	Dischargers were notified in 2006 to begin to plan for and implement protective measures. While the Special Protections may require other or stricter measures in order to attain compliance with the conditions of the General Exception, dischargers

			Compliance Schedules Are Unattainable. Four years may not be sufficient time to procure funding, perform environmental (NEPA) reviews, and to implement structural controls to comply with the Special Protections. There is also no explanation how it was determined four years is an appropriate time frame. A provision should be added that allows dischargers to propose a time schedule to implement structural controls to comply with the applicable requirements.	should have initiated planning for structural BMPs. State Water Board staff maintain that the proposed compliance schedule provides a reasonable timeframe to complete necessary controls. Timelines were developed during the stakeholder process developing the Special Protections policy, and the four year period for structural BMPs is consistent with the Prop 84 Grant periods for installation. The Special Protections would allow a discharger that anticipates failure to meet the implementation schedule, to request an extension. State Water Board staff has added clarifying language to the Special Protections to further explain the process for requesting an extension if good cause exists to do so.
130.	**Monitoring - too much**	**34.**	**Breadth and scope of monitoring and reporting requirements of the SP are too broad.** SP criteria are applied uniformly to all ASBS Exception applicants regardless of type and intensity of discharge unique to Applicant.	State Water Board staff developed the monitoring and reporting requirements based on the collaboration and lessons learned in the southern California Bight '08 regional monitoring. A broad scope and commonality is necessary to provide consistency and comparability in data, and for the Water Boards to implement permits. ASBS require a level of protection needed to protect beneficial uses. The intensity and type of an Applicants' discharge will be considered at the time the Water Boards consider a change in the permit, and those impacts arising from the discharge unique to that applicant.
131.	**Natural Water**	**2.**	**Board should identify reference sites that reflect natural water quality.**	State Water Board staff agrees and has added clarifying language in the Special Protections

	Quality - Reference Sites		The Exception lacks specific guidance on the appropriateness of potential reference areas, which would pose significant danger that reference site criteria will fail to meet Ocean Plan objectives, and fail to serve as areas which truly reflect "natural water quality."	regarding the necessary characteristics of reference sites. Reference sites will serve as adequate proxies for natural water quality.
132.	**Natural Water Quality – Definition & compliance**	**16.**	**The Public Resource Code Section 36700(f) and California Ocean Plan definition of natural water quality need to be accurately referenced throughout the PDEIR, Special Protections, and related documents.** The Public Resources Code (PRC) section 36750 states that, as of January 1, 2003, all ASBS are now included in the Marine Managed Area category of State Water Quality Protection Areas (SWQPAs). PRC section 36700(f) then defines a SWQPA as "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an **undesirable** alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Board through its water quality control planning process." The Ocean Plan Appendix 1 Definition of Terms (p/24) similarly defines an ASBS as "those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is **undesirable**. All Areas of Special Biological Significance are also classified as a subset of State Water Quality Protection Areas." The PDEIR cites the above PRC definition of the ASBS (p.41) and cites the above OP Appendix 1 definition of the ASBS (p. 38). Inclusion of the term "undesirable" relative to the definition of the degree of alteration of natural water quality incorporates the concept that some degree of water	State Water Board staff agrees with the definitions cited in the PRC and the Ocean Plan, both of which were used in the PEIR. For ASBS the term "undesirable alteration of natural water quality" is not intended to allow an assimilative capacity or an allowable margin of degradation. The State Water Board's Anti-degradation Policy requires that the highest water quality consistent with maximum benefit to the people of the State must be maintained. The term "undesirable" relative to alteration of natural water quality relative to ASBS is interpreted by staff to generally mean an increase in constituent concentrations. For ASBS, an increase in constituent concentrations above the range of natural water quality is undesirable and constitutes noncompliance. The Ocean Plan Program of Implementation states that there shall be no alteration of natural water quality. For ASBS State Water Board staff intends no difference in meaning between the terms "*alteration of natural water quality is undesirable*" and "*assure maintenance of natural water quality*" in an ASBS. These terms are synonymous. Likewise the terms "discharges composed of stormwater shall not alter natural ocean water quality in an ASBS" and "natural water quality conditions in the receiving water are achieved and maintained" are intended by State Water Board staff to have the same outcome, that there be no alteration of natural water

			quality alteration may be able to occur while still reasonably protecting beneficial uses. However, the PDEIR, first on p. 22 and continuing thereafter including in the Special Protections (Appendix 1), deletes the term "undesirable" from the PRC statutory definition and the OP regulatory definition. The definition is changed from "*alteration of natural water quality* ***is undesirable***" to "in order to compromise beneficial uses, natural water quality must be **maintained** in an ASBS" The PDEIR and Special Protections also uses slight variations on the above "natural water quality must be **maintained**" definition including "Discharges composed of stormwater shall not **alter** natural ocean water quality in an ASBS" (Appendix 1 p. B-2) or that "natural water quality conditions in the receiving water are **achieved and maintained**" (Appendix 1 p. B-4)	quality in an ASBS. State Water Board staff disagrees with the comment that the omission of the term undesirable is problematic. It is not. Regardless of size, under the Ocean Plan currently all waste discharges into ASBS are prohibited, unless an exception is granted. This is an existing requirement, as is the State's Anti-degradation Policy. The relevant terminology in the DPEIR and the Special Protections are not intended to "shift" existing requirements. The intention of staff is rather to propose an exception, with Special protections for ASBS, that would allow minimal waste discharges as long as natural water quality is not altered and beneficial uses are protected.
133.	**Natural Water Quality – not protected**	**2.**	**To protect the ASBS beneficial uses, the SWRCB must define natural water quality for each ASBS. This should be done through a science-based process using reference sites. The resulting information can then be built into the discharge ban enforcement orders as needed, to identify milestones, track progress and ensure continued compliance.** **The Ocean Plan mandates no alteration of natural water quality, and specifically recognizes that any pollution discharges into ASBSs alter natural water quality and so must be banned.** **The Ocean Plan presumes impacts in ASBS if there is any alteration of natural water quality.**	State Water Board staff agrees that the Ocean Plan mandates no alteration of natural water quality. Any pollution discharges into ASBS have the potential to alter natural water quality It is not practical within the available resources to identify the exact natural water quality for each ASBS, but it is practical and scientifically defensible to identify reference conditions that are reliable proxies for natural water quality on a regional basis. State Water Board staff's efforts are underway to better define natural water quality reference sites. Furthermore State Water Board staff is adding clarifying language to better describe requirements for reference sites. Compliance will be monitored within each discharger's permit, and the Special Protections will be

				incorporated into each permit, thus tracking progress and ensure compliance.
134.	**Natural Water Quality – Definition & compliance**	**11. 13. 16. 17. 26. 27. 28. 31. 32. 33. 34.**	**Natural Water Quality has not been defined, and is a condition that is an unknown.** Compliance with an unknown target is problematic. Raises contradictions among objectives to be met. **a. There** is a rush to establish a compliance threshold for Natural Water Quality when the Natural Water Quality Committee's Summary of Findings specifically states that "quantifying natural water quality is not concluded". Uncertainty as to what requirements may be imposed on dischargers in the future and this is unreasonable. Studies showed that water quality at ASBS discharge locations were no different than water quality measured at reference locations far from anthropogenic influence. There is limited data on how sources outside of ASBSs may influence water quality within an ASBS and how this would be treated in the regulatory process. **Lacks sufficient clear water quality criteria for how the determination of Natural Water Quality will be used in the regulatory context for both discharges and reference sites.** **Ill-defined.** The PEIR is unclear if natural water quality criteria or effluent limits in the OP will serve as the basis for regulatory compliance.	The Natural Water Quality Committee established a working definition of natural water quality, but not numeric concentrations of general chemistry. Instead they endorsed the use of reference sites as proxies for natural water quality. State Water Board staff disagrees that there is a rush to establish Natural Water Quality, but instead proposes a measured approach to monitoring of additional reference sites. The Natural Water Quality Committee stated: "further work needs to occur for quantifying natural variability. While the reference site approach was successfully applied in southern California, insufficient information was collected to have certainty in assigning natural water quality ranges throughout the State (i.e., reference sites need to be sampled in central and northern California). State Water Board staff disagrees that there is uncertainty as to what requirements may be imposed. The project (General Exception/Special Protections) provides the specific requirements to be met. State Water Board staff disagrees that water quality at ASBS discharge locations were not different than water quality measured at reference locations. Studies show that water quality is generally good in ASBS, but there are cases where objectives or natural water quality reference conditions are not met, and in some cases those exceedences may be caused by anthropogenic contributions. State Water Board staff agrees that more work must be done to identify contributions from more distant

				sources. However, under existing law the water quality control plans are intended to harmonize, and regional water boards must protect downstream beneficial uses through implementation of permits, WDRs, waivers, prohibitions and TMDLs. State Water Board staff expects improvement will be made by the Regional Water Boards in this regard. State Water Board staff disagrees that the definition developed by the Committee is inadequate in any way. The findings of the Committee state that the reference approach is an acceptable proxy for Natural Water Quality and the Committee further stated that additional monitoring is necessary to provide additional reference site data to make a more robust determination of Natural Water Quality concentrations. That approach is embodied in the Special Protections.
135.	**Natural Water Quality - unattainable**	**5. 14. 15.**	**Attainment of natural ocean water quality.** As defined in SP, natural water quality is "without apparent human influence." Urban runoff will inevitably fail this standard even with substantial treatment, some alterations in receiving water temperature, bacteria count, or chemistry may occur and will be detectable. Use of indicator bacteria should not be used for compliance assessment.	State Water Board staff agrees that urban runoff is undoubtedly influenced by human activities, and therefore has is waste as defined in the Ocean Plan. The Special Protections do not require attainment of natural water quality in the runoff, only in the receiving water. When constituent (waste) concentrations in runoff are minimized by institution of BMPs, then natural ocean water quality in the ASBS will be protected. We agree that indicator bacteria are not relevant constituents in parts of the state. However, the southern sea otters along the central coast have been shown to be impacted by pathogens in fecal matter. Indicator bacteria are the only practical and cost effective way to measure for fecal contamination. State Water Board staff is providing clarifying edits to the Special Protections to address this.

136.	**Special Protections – receiving water**	**1. 5.**	We know of no urban stormwater dischargers that have been required or have been able to attain discharge characteristics statistically indistinguishable from the receiving water. **Explain how outfall sampling will trigger BMPs to be added to Storm Water Management Plan, Storm Water Pollution Prevention Plan or Pollution Prevention Plan, and how ocean water receiving monitoring would be used to "indicate" that a particular source is responsible.** How will these thresholds be imposed, how will decisions be made, and what criteria or thresholds will be used to determine their direction?	The proposed Special Protections would not require that runoff and receiving water be "statistically indistinguishable." For one thing, runoff is generally fresh water while the ocean is salt water, and therefore has different composition by nature. The Special Protections represent a comprehensive approach to assuring that natural water quality be maintained in ASBS receiving water. Dischargers may, based on existing monitoring data, determine their priority locations for structural BMPs and use that information in their Compliance Plans/SWMPs. In addition, new monitoring results during the first storm season after adoption may also be used to develop or amend their compliance plans. End-of-pipe monitoring should be conducted during the same storm event as receiving water monitoring. If receiving water exceeds reference site concentrations (natural water quality), and if concentrations in runoff are elevated for those constituents exceeded, then those outfalls would be prioritized for installation of structural BMPs.
137.	**Special Protections – storm monitoring**	**6. 32.**	**Wet weather runoff controlled so as not to violate natural water quality in the ASBS receiving water.** We have concerns about the seasonality of storm events and their influence on natural water quality. The Natural Water Quality study highlights this concern. It is necessary to identify which rainfall event will be monitored and be consistent throughout the permit cycle, as pollutant loads will vary greatly between storms.	State Water Board staff agrees with the concern expressed about seasonality of samples. This can be addressed during the development of regional monitoring programs. State Water Board staff is adding more detail in the Special Protections to better define sampling in receiving water and reference sites to require a minimum number of samples, thereby addressing this issue of variability.
138.	**Special Protections – Regional Monitoring**	**32.**	**How will the regional monitoring design component of the Special Protections adequately determine the effect of storm water discharges to ASBS?** The Special Protections lack a scientific study design	It was not the intention of State Water Board staff to provide a prescriptive approach to the development of the regional monitoring program. Each regional program should be designed collaboratively with the stakeholders and State and Regional Water Board

			adequate to answer the question. Effects from storm water discharges cannot be determined based on peripheral studies or ambient monitoring, as proposed. Monitoring studies and design should be performed by an independent third party, scientifically designed and peer reviewed.	staff. However, based on experience from the Bight 08 regional ASBS monitoring, some extra detail on sampling has been added to the Special Protections that will clarify what staff considers to be minimum criteria for end-of-pipe, receiving water, and reference monitoring. Natural water quality is necessary to support the marine aquatic life ASBS beneficial use. Alteration of natural water quality due to storm water runoff can be successfully determined, as evidenced by the southern California regional monitoring program (Bight 08). That program, which was peer reviewed, was performed collaboratively with resources provided by the dischargers, including participation by Water Board staff and SCCWRP. That monitoring effort used the Natural Water Quality Committee for peer review, and was also published in a peer reviewed journal. It is expected that other regional monitoring efforts for ASBS will have the same level of quality design and review.
139.	**Special Protections – Monitoring inadequate**	**2.**	**The monitoring requirements fail to ensure protection of the ASBS in large part because they have little or no connection with how compliance with the proposed Exception must be measured and ensured.** A number of monitoring protocols are required only once every five years, yet the Exception appears to require compliance with natural background levels within four years after adoption. Allowing Applicants to choose to participate in a regional integrated monitoring program in lieu of an individual monitoring program is contrary to the fundamental nature of ASBSs as special places to be protected.	As the Special Protections monitoring requirements are incorporated into a discharger's permit, some monitoring is associated with end-of-pipe and some monitoring is associated with receiving waters. Receiving water quality must be compared to reference sites as proxy for natural water quality. Staff has added more detail to the Special Protections clarifying that monitoring will be performed during the first storm season after adoption of the exception. State Water Board staff has also amended the monitoring requirements so that effluent, receiving water and reference sites are sampled during the same storms for better comparability.

			Regional integrated monitoring program lacks any details.	Beyond the minimum monitoring requirements, because each Applicant has a unique set of issues particular to their sites, it is prudent to allow for some flexibility to meet the receiving water monitoring requirements. Participation in a group effort for regional monitoring would help to pool costs and provide for a better collection of relevant data.
140.	**Special Protection – inconsistent w/Ocean Plan**	**2. 29.**	The requirement that dischargers ensure maintenance of natural water quality is inconsistent with the language of the Exception, to meet Table B objectives or a 90% pollutant load reduction.	The language in the exception regarding Table B or a 90% load reduction is clearly intended as a target for design of BMPs and not as an ultimate compliance endpoint. Ultimate compliance is required in the receiving water in order to meet natural water quality. State Water Board staff developed those targets for BMPs based on our judgment that they would be protective of natural water quality. Stakeholders had requested some design targets during early meetings on the exception. These design targets were proposed and discussed during subsequent stakeholder meetings and have been in the preliminary version of the Special Protections (NOP, 2009), allowing time for responsible parties covered by the General Exception to plan for structural BMPs.
141.	**Special Protections – duplicative - violates state law**	**7.**	The proposed approach of mandating additional Special Protections is not necessary and goes beyond federal requirements for stormwater and non-stormwater discharges. This approach may violate state law, which prohibits the State Water Board from issuing any requirement, or order that specifies the design, location, type of construction, or particular manner in which compliance may be had with that requirement or order (Water Code section 13360(a)). In addition, the monitoring requirements do not comply with state law requirements to weigh the burdens of the monitoring, including costs, and the benefits to be obtained (Water Code section 13267(b), (f)). The CHANGE OCEAN PLAN alternative would	The State Water Board proposed Special Protections to establish minimum requirements for the permitting, monitoring, and continued operation of selected point and non-point discharges, as a requirement of an exception to the California Ocean Plan. The Special Protections allow responsible parties of these discharges to discharge waste without having to cease discharge flows and comply with the applicable minimum requirements set forth in the Special Protections. The proposed Special Protections would impose these requirements on existing discharges in order to

			eliminate the potential for duplicative regulation.	come into compliance with the Ocean Plan's requirement that natural water quality be maintained in an ASBS. However, the General Exception's Special Protections do not specify the design, location, type of construction or particular manner in which compliance may be had. Dischargers may propose their method of complying with the requirements of the Special Protections. Monitoring is required for all discharges subject to an NPDES permit. Water Code §13267(b), governing water board investigations of water quality requiring technical reports, does not require the State Water Board to weigh the benefits and burdens of requiring monitoring as a condition for granting an exception to a waste discharge prohibition implemented through an NPDES permit.
142.	**Special Protection – 90% reduction/ Table B**	**2. 4. 6.**	**The proposed Draft Special Protections clearly state how the State Water Board expects the 90% reduction and compliance with Table B are to be achieved, as well as explain what the consequences would be if the objectives are not achieved.** The requirement that dischargers ensure maintenance of natural water quality is inconsistent with the language of the Exception, to meet Table B objectives or a 90% pollutant load reduction. Even if a discharge complies with Table B, the discharge could still be adversely impacting natural water quality, since the Table B instantaneous maxima objectives are approximately an order of magnitude above background. Assuming the treatment of all direct discharge points and full diversion of discharges outside of ASBS areas, complying	The two alternative targets (90% reduction or compliance with Table B instantaneous max) are intended as design criteria and not as effluent limits or receiving water quality objectives. Ultimate compliance is required in the receiving water in order to meet natural water quality. Stakeholders had requested some design targets during early meetings on the exception. These design targets were proposed and discussed during subsequent stakeholder meetings and have been in the preliminary version of the Special Protections (NOP, 2009), allowing time for responsible parties covered by the General Exception to plan for structural BMPs. It is State Water Board staff's position that if a discharge complies with Table B it will very likely not alter natural water quality in the receiving water, given the fact that there will be sufficient dilution in the receiving water at the point of the outfall in order to

			with the proposed Draft Special Protections could cost Caltrans approximately $673 million in construction costs alone (including system components, treatment BMP installation, right-of-way acquisition, permitting, traffic control, structures retrofitting, pump stations, and habitat mitigation).	protect the marine life beneficial use. Monitoring, as required by the Special Protections, will be essential to confirm this. Compliance with the Special Protections will allow responsible parties to discharge clean stormwater to ASBS without having to divert storm runoff out of the ASBS. State Water Board staff maintains that dischargers will not need to divert in order to comply with the Special Protections. It is State Water Board staff's intention that wet weather runoff not cause an alteration of natural water quality, and the Special Protections are to protect natural water quality in ASBS.
143.	**Special Protections -Table B End of Pipe target levels**	**5. 11. 13. 14. 15.17. 26.**	Table B cannot be applied to end of pipe measurements because doing so assumes that material in storm water is waste. **c.** Using Table B objectives for end of pipe is not legally or scientifically justifiable. It also makes the assumption that storm water contains waste. Table B was designed for use in initial dilution ocean receiving waters. End of pipe monitoring unnecessary.	The two alternative targets (90% reduction or compliance with Table B instantaneous max) are intended as design criteria and not as effluent limits or receiving water quality objectives. The use of Table B Objectives, based on conservative estimates of chronic toxicity, within the Ocean Plan is US EPA approved and is "best available science." The monitoring data submitted with the exception applications clearly show the presence of pollutants in runoff. Storm water runoff and its constituent pollutants are waste as defined in the Ocean Plan. It is necessary to monitor runoff at end-of-pipe in order to determine the pollutant contributions to the ASBS receiving water.
144.	**Special Protections -Table B End of Pipe target levels**	**32.**	**Monitoring to ensure protection of beneficial uses.** We support the monitoring of end of pipe discharges and receiving waters at zone of impact to determine effect from terrestrial runoff on beneficial uses.	State Water Board staff agrees and has incorporated both "end of pipe" and receiving water monitoring into the Special Protections.

145.	**Special Protections – not practical too burdensome**	**26. 30.**	**We recommend a more practical way to ensure runoff discharges will not threaten water quality.** Examples of practical solutions are found in the 1977 US Navy San Clemente Island individual exception for its WWTP, that monitoring demonstrates that effluent not alter natural water quality; the 1990 US Navy San Nicolas Island desalination plant in which it was found that the discharge would not adversely impact the ASBS. Both do not measure end of pipe, as required in the Special Protections.	The examples cited are indeed exceptions to the Ocean Plan for ASBS. "Best available science" improves continually. The 1977 and 1990 Exceptions referred to are quite dated and these exceptions are not considered by staff to be protective of ASBS based on the standards of more recent exceptions. In fact, staff is currently working to amend these two exceptions to make them more protective. However, both of these cited discharges are covered by NPDES permits. NPDES permits in fact do require end-of-pipe monitoring. Dischargers are responsible to implement site-specific measures to ensure runoff discharges will not threaten water quality.
146.	**Special Protections – not practical too burdensome**	**25. 33.**	**The Special Protections impede national security activities at San Clemente and San Nicolas islands, and are excessively burdensome.** Proposed waterfront and marine operations should exempt military vessels and operations. The additional monitoring and management requirements are clearly designed for recreational and commercial marina. Military vessels and operations should be exempt from these requirements.	The Special Protections were developed during stakeholder meetings to effectively characterize the range of issues that face all the Responsible Parties of the Exception. The Special Protections are intended to be implemented through the existing storm water permit (general industrial) under which the Navy facilities are currently operating. While staff do not believe that the Special Protections impede national security, changes have been made to Sections 1.B.1.f and 1.B.1.g to allow for discharges incidental to military operations.
147.	**Special Protection - Inspections**	**14. 15. 25. 26. 30. 33.**	Inspection of facilities is already required by industrial and construction general permits. The inspection requirements of SP are redundant and unnecessary to ensure activities are not impacting the ASBS. Special Protections would require certain minimum inspection frequencies for MS4 dischargers during the rainy season. This level of inspection is not justified by the results of the monitoring of ASBS. There is no evidence in the record (and no discussion in the PEIR) to support the	Permits have minimum inspection frequencies to protect surface waters in general. ASBS are deserving of special protections under the Public Resources Code. Increasing the number of inspections will necessarily decrease the risk of discharges that may alter natural water quality in the ASBS receiving water by ensuring that the Special Protections are appropriately implemented and maintained.

			rationale for the inspection frequency, especially where inspections may already be required under an MS4 permit. For dischargers covered by an MS4 permit, the County submits that inspection frequencies called for in the permit must be used.	
148.	**Special Protection - Monitoring – inconsistent with other regulatory programs**	**13.**	The monitoring and regulatory compliance targets for ASBS are inconsistent with other regulatory requirements that affect the ASBS, such as the Marine Life Protection Act (MLPA). Duplicative monitoring and BMP implementation to support multi-agency regulations is an inefficient use of our limited resources	The monitoring required under the Special Protections is designed to protect water quality from anthropogenic discharges. The MLPA monitoring is being conducted to determine the effectiveness of the marine protected areas in managing and protecting marine life from consumptive uses (e.g., fishing, take.) The State Water Board has been collaborating with the Department of Fish and Game and the MLPA Monitoring Enterprise in investigating the potential to make more efficient use of scant monitoring resources.
149.	**Special Protection - Monitoring too uniform**	**34.**	Magnitude of expected impacts were not analyzed, thus resulting in a uniform approach to subsequent monitoring. **The proposed monitoring approach is uniform and does not fully consider the nature and scope of discharges or adjacent environments or land management policies.** The scope of the chemical and physical components for monitoring is extensive and expensive, not tailored to the discharger. Monitoring plans and protocols should be based on observed constituents of concern.	A consistent approach for monitoring is deemed necessary for this group of Applicants. While there are differences in land use between different geographic locations, such as the differences between urban areas and campground uses, there still are similarities such as road and parking lot runoff for example. The scope of the chemical and physical components for monitoring by ocean discharges is based on the basic Ocean Plan objectives. For ASBS the Ocean Plan requirements of natural water quality must also be addressed, which expands the universe of constituents of concern. Dischargers are required to meet natural ocean water quality, and this is consistent for all dischargers under the General Exception.

			Applying a standardized suite of monitoring to nonpoint source discharges from undeveloped areas is not a cost effective use of financial resources instead should be applied toward reducing discharges in general thru management **Instead of the SP broad approach, a variety of monitoring plans could be designed around the type of known discharges without requiring CEQA compliance for each of the 27 Applicants.** Many of the discharge locations of Pt Reyes NS and Duxbury Reef do not meet the definition of a "discharge" conveyance of 18" or greater to be monitored. The shoreline environment of Pt Reyes NS and Duxbury Reef are highly dynamic and ever changing. One example shown is bluff recession averages 2.5 ft/yr, complicating the establishment of locations to be monitored and reported.	The State Water Board staff has identified the water quality threats and constituents of concern within each ASBS. This information was used to develop the Special Protections, including the monitoring program to assure protection of beneficial uses. To comply with the general exception all dischargers are required to monitor for their discharges. Core monitoring is required for discharges that meet certain requirements (18 and 36 diameter or width, for example). Individual receiving water monitoring programs are required but may be substituted by participation in a regional monitoring program. The Appendix A of the Draft Data Report provided an initial identification of those higher threat discharges which include parking lot and road runoff. Discharge monitoring locations may be selected in those areas. The regional monitoring programs must be approved by the State and Regional Boards. The Water Boards will take into account discharger specific conditions in that process.
150.	**Special Protections – new water quality objectives**	**4. 14. 15.**	**The State Water Board follows the intent of California Water Code Section 13241 in establishing new water quality objectives, including identifying the water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in an area, and the associated economic considerations.**	State Water Board staff has identified the conditions that could be reasonably achieved. The State Water Board is not establishing new water quality objectives with the proposed exception, and therefore this is not applicable. State Water Board staff is instead implementing the long-standing natural water quality requirement which exists in the current Ocean Plan. State Water Board staff has identified, in the definition of Natural Water Quality, the conditions that could be reasonably achieved. While the conditions may not specify the "exact" constituent concentrations, that is a

			In the Glossary, under Natural Ocean Water Quality, when natural ocean water quality is not maintained, the discharge is presumed to not affect natural ocean water quality, only if the concentrations are equal to or less than those found in the ocean reference area, or the Regional Water Board makes that determination. This establishes a new water quality objective not found in the 2009 Ocean Plan.	reflection that natural water quality may vary from place to place and from season to season. State Water Board staff disagrees. A new water quality objective is not being established. Natural water quality is a condition of the natural environment whereas water quality objectives are relevant to specific beneficial uses and are determined based on toxicity or carcinogenicity of those constituents. Since natural water quality is to be determined by measuring reference sites, and those reference sites may change over time due to natural events, the State Water Board is not setting discrete criteria and therefore does not need to follow federal and state requirements for setting standards.
151.	**Special Protections – Fail to Ensure Protection**	**2.**	**The discharge monitoring program has little or no connection to how compliance with main provisions of SP or achievement of no pollution will be measured and ensured.** Some monitoring protocols are required only once very 5 years, exceeds time of Triennial Review. Sampling is only required from outfalls 18" or greater, yet 41% of discharges (SCCWRP 2003) were from small storm drains, providing no monitoring for those waste discharges. The SP fails to give any details about what Regional Monitoring will entail, or how it will protect ASBS ecosystems. SP state that the regional monitoring approach shall characterize natural water quality in ocean reference areas, a task which should have been performed by the Natural Water Quality Committee.	The Special Protections will be incorporated into each applicant's permit issued by the Water Boards. The Water Boards will enforce monitoring compliance. State Water Board staff is confident that sufficient monitoring will be conducted throughout the permit cycle, including components of the core and regional monitoring, to be able to evaluate protection of beneficial uses for the next Triennial Review The 18" cutoff was determined based on staff judgment that runoff from 18 inch and greater drains were capable of substantial enough flows (and serviced moderate to large drainsheds) to warrant intensive monitoring, and this was discussed and agreed to during the stakeholder meetings. State Water Board staff has added more detail to the monitoring requirements for effluent, receiving water and reference sites. This includes clarifying that

			SP monitoring of discharges do not ensure compliance w/ discharge prohibition	sampling should be done during the first storm season after adoption of the exception. State Water Board staff has also amended the monitoring requirements so that effluent, receiving water and reference sites are sampled during the same storms for better comparability; this will result in runoff sampling soon after the adoption of the exception, e.g., during the first two storm seasons. The exception allows the discharge of waste (runoff) as long as natural water quality is protected. The required monitoring is not intended to address the Ocean Plan waste discharge prohibition.
152.	**Special Protections - Priority for Impaired ASBS - no**	**14. 15.**	**"Impaired" ASBS should not receive different treatment.** The NGO representative suggested that given that several of the ASBS were on the state's 303(d) list of impaired water bodies, those ASBS should be given special emphasis. There is no reason for such treatment, as being placed on the 303(d) list (which relates to water quality objectives for human health), and designation as an ASBS (which relates to the protection of biological resources), is a matter of "apples and oranges." As noted by State Water Board staff, the purpose of the ASBS designation is the protection of biological resources.	303(d) listed water bodies will be addressed by TMDLs, inclusive of ASBS, through the listing and TMDL process. The Special Protections do not assign a different level of treatment to "impaired" ASBS. However, State Water Board staff's assessment of discharge priority must include the impaired status of an ASBS or a tributary water body as a relevant piece of information in assessing water quality conditions in ASBS.
153.	**Special Protections - Priority for Impaired ASBS - yes**	**2.**	**Numerous ASBS already are or should be listed as impaired under Section 303(d) of the Clean Water Act.** One-third of ASBS have been formally listed in whole or part as impaired under CWA303 (d), standards much less conservative than the no alteration of water quality standard in place. Pollution load reductions to meet standards should begin immediately. At least a portion of 11 ASBSS are listed as impaired under CWA Section 303(d).	This comment should also be directed to the State Water Board, along with sufficient data, during the 303(d) listing process. When a recommendation for a listing is approved by the State Water Board and US EPA, then a TMDL would be developed, adopted and implemented. Yes, these 11 ASBS were identified as either being impacted from a river drainage or some portion of the shoreline. The 303(d) constituents primarily are

				bacteria, sediment, temperature, and two ASBS are listed for other constituents. Implementation of the Special Protections will undoubtedly improve water quality in all ASBS, including those that are listed, However, some portion of the pollutant loading into those areas are also due to more distant sources. The Special Protections cover only direct discharges.
154.	**Special Protections – time period**	**33.**	**The language in the resolution indicates a discharger's NPDES and/or waste discharge requirements (authorizations) need to incorporate all of the Special Protections.** The SP should be modified to immediately authorize allowable point and non-point discharges. SP should provide an adequate time period to include the Special Protection requirements into required applicable authorizations. The State and Regional Boards should ensure there is a mechanism in place to have the S P requirements included in existing general (e.g. Industrial Storm Water Permit), MS4 and specific permits as soon as possible.	Yes, that is correct. Comment noted. The time period presented was developed during the meetings of the stakeholders, and State Water Board staff have determined this time period to be appropriate. Once the Board adopts the General Exception, effective immediately, the SP requirements will be applicable, and implemented in permits issued by the Water Boards.
155.	**Special Protections – Waterfront Mgt Plan**	**33.**	**Timeframe To Complete Waterfront Management Plan Should be Extended** The PEIR (page 67) section states that staff have modified the Special Protections to allow one year to complete storm water and pollution prevention planning documents. The Waterfront Management Plan is still required in a 6 month timeframe according to Page B-12 of the Special Protections. That should be extended to 1 year in order to	The timeline was developed by the stakeholders and during the Special Protections development. State Water Board staff has determined that Waterfront Management Plans for the most part will involve nonstructural BMPs to be implemented, and involve relatively straightforward management measures that do not require extensive planning. Therefore these plans can easily be prepared in a six month period.

			give dischargers sufficient time to ascertain needed resources and to be consistent with the PEIR.	
156.	**Special Protections – Marina/mooring monitoring**	**33.**	**Monitoring Requirements Marinas and Mooring Fields Are Excessive** The monitoring requirements for marina and mooring fields should be revised to incentivize the elimination of practices that could result in discharges to the ASBS. Marinas and/or mooring fields that implement programs prohibiting practices such as waterborne maintenance, hull cleaning and other similar activities should have reduced monitoring requirements to reflect a lower risk to the ASBS. Receiving water monitoring requirements should be reduced to two times annually where management practices reduce risk to the ASBS.	State Water Board staff identified special requirements for these higher threat areas based on the data presented in the Draft Data Report. State Water Board staff agrees that practices that result in pollution must be eliminated. However, monitoring must be performed to confirm that water quality and beneficial uses are protected. The option of participation in a regional monitoring program will reduce the monitoring frequency. State Water Board staff has added additional detail to the monitoring provisions to describe the potential for a reduction in monitoring frequency for regional monitoring participants, based on the monitoring results.
157.	**Special Protections – Considerations needed for monitoring**	**33.**	**Monitoring Exemptions For Biological/Cultural Protection And Inclement Weather** Monitoring exemptions should be allotted during biological/cultural protection initiatives/periods (e.g. snowy plover nesting season) and due to inclement weather that hampers access to monitoring locations (e.g. planes grounded to island). It is not clear if this falls in the scope of "hazardous conditions".	We concur, and as such, the flexibility to accommodate such issues have always been part of our monitoring policy.

158.	**Special Protections – Stormwater sampling**	**33.**	**Storm Water Sampling Should Only Be Required During Normal Business Hours** Samplers will not be available twenty four hours seven days a week, provisions need to be incorporated to include sampling during "normal business hours" as dictated in other NPDES permits issued by the State. This is a particularly important issue at San Clemente and San Nicolas Islands where daily flights are often not available.	According to the Public Resources Code ASBS require special protections, which are over and above the normal storm water permit requirements. The Special Protections require monitoring during storm events. State Water Board staff realizes that oftentimes storm events do not fall into "normal working hours." However, sampling during outside normal business hours may be necessary.
159.	**Special Protections – Receiving water sampling**	**33.**	**Ocean Water Receiving Water Sampling Should Be Reduced To Two Times Annually** The individual monitoring program for ocean receiving water requires sampling three times annually during wet weather. The DOD has found that sampling two times annually is very difficult to achieve, particularly in southern California and especially at **island** locations. It is not always feasible to transport staff to the islands during storm periods and the ability to sample may also be hindered by ongoing military operations. Sampling two times annually will still provide the necessary data to evaluate ASBS receiving water conditions and is a reasonable starting point for Regional Water Boards to consider.	Based on State Water Board staff's experience three sampling periods per year (storm season) are necessary to capture variability. Two samples per storm season will not be sufficient to characterize compliance in receiving water for those dischargers that are not participating in the regional monitoring programs.
160.	**Special Protections – Sediment sampling**	**33.**	**Sediment Sampling Should Be Reduced To One Time Every Five Years** Sediment sampling is required three times during every five year period. Sediment sampling is very costly and is typically used to establish a baseline condition and then evaluate trends over time.	Sediment sampling three times per permit cycle is a component of the Individual Monitoring Program, but is not prescribed for regional monitoring except at waterfront locations/mooring fields. Regional monitoring efforts are designed through a scientific and collaborative process with a great deal of State and Regional Water Board staff involvement, and State Water Board staff's experience is that the resulting program is robust and defensible. State Water Board staff maintains that a prescriptive

				monitoring approach for individual monitoring efforts is necessary in order to adequately characterize ASBS receiving waters in the relative absence of State Board involvement, and this includes sediment monitoring. The trend period for sediment sampling is the first permit cycle, and a minimum of three samples is necessary to establish that trend.
161.	**Special Protections – Biological sampling protocols**	**33.**	**PISCO and MARINe Should Be Approved Methodologies** Both PISCO biodiversity surveys and the Multi-Agency Intertidal Network (MARINe) core intertidal survey methodologies are requested as approved methodologies for quantitative surveys for intertidal benthic marine life. Whether these either occur as part of the Regional Integrated Monitoring Program or as individual site programs, these methodologies are scientifically rigorous in their assessment of the quantitative health of the intertidal benthic marine life. Additionally, these methods have been standardized so that datasets can be compared across large spatial scales and between time periods.	State Water Board staff agrees that these methodologies are long-term and consistent protocols. In particular the biodiversity PISCO protocol has been the approved approach to date in the ASBS regional monitoring program.
162.	**Special Protections – Biological sampling**	**33.**	**Impacts to biological resources during sampling events, pursuant to the Special Protections, need to be addressed in this section.** The sampling requirements included in the Special Protections will have significant impacts on biological resources unless, the Special Protections provides exemptions from sampling during seasons when sensitive biological resources are present in the area of the sample sites.	We disagree. During the southern California ASBS regional monitoring project, this was not an issue. State Water Board staff is confident that sampling can be performed in a non-destructive and nonobtrusive fashion, in order to fully protect biological resources. Supporting data accompanying this comment was not provided. However, in the event that conflicts are identified in the future the Water Boards can address this through permit implementation or through the regional monitoring programs.
163.	**Special Protection**	**33.**	**SWRCB recognizes the issue of influence from watersheds outside of the control of the identified**	The purpose of the DPEIR was focused on addressing a select group of direct dischargers, not to

	s – Water quality influences outside ASBS		**stakeholders yet provides no remedy for the situation.** ASBS stakeholders should not be held responsible for determining effects of outside sources; this should be the responsibility of the state to determine. In that the SWRCB cites that these are "…statewide Special Protections that establish minimum requirements for the permitting, monitoring, and continued operation of selected point and non-point discharges, as required by the California Ocean Plan" -- we request that the document be modified to reflect the proposed program being administered on a "statewide" basis. The exclusion of areas outside of the identified ASBSs provides the potential for the listed exclusion stakeholders to be impacted by activities outside of their control (leading to financial impacts not identified in this document).	address a larger more global issue. Stakeholders are not responsible for determining the relative contribution of distant sources, but are allowed to point out cases where data suggest distance sources may be contributing. As set forth above, the General Exception and Special Protections were developed to address specific direct discharges into ASBS that are currently prohibited under the terms of the Ocean Plan. Discharges outside of identified ASBS are subject to other regulatory requirements.
164.	**Special Protections – Natural Water Quality target**	**34.**	If natural water quality is the target, then land managers should focus on ensuring those natural ecosystem processes and function.	State Water Board staff is supportive of protecting natural ecosystem processes and function.
165.	**Special Protections – Natural Water Quality target**	**4.**	**Caltrans requests that an iterative approach be incorporated into the proposed Draft Special Protections that allows time to determine if there are discharges that do not meet the natural water quality standards, and identify appropriate measures to address these discharges.** Roadway runoff will fail standards even with substantial treatment; some alterations in receiving water temperature, indicator bacteria count, or chemistry will occur and may be detectable. In order to attain natural water quality as the proposed Draft Special Protections require, retrofitting the	State Water Board staff does not believe the iterative approach is precluded, and in fact relies on an accelerated iterative approach in the Special Protections. Through the special protections process, State Water Board staff has identified non-storm water discharges as a category of discharges that will likely not meet natural water quality standards, and has therefore prohibited them. For the storm water discharges, Caltrans could study various non-structural BMPs or combinations of non-structural BMPs at different locations to determine whether or not they could be used when structural

			existing 1930's facilities will be required, and in most cases, retrofitting such facilities is impractical.	BMPs are not practical or safe to install. This should be dealt with through the implementation of the Special Protections in the NPDES permit.
166.	**Special Protections – Natural Water Quality target**	**17.**	The County believes that it is a minimal contributor of potential stormwater conveyed constituents to the ASBS due to the watershed's rural setting. Site specific assessments of the type and potential magnitude of stormwater conveyance of constituents of concern to the ASBS should be conducted first to determine the extent of controls needed to prevent an undesirable alteration of natural water quality.	State Water Board staff sincerely hopes that future runoff discharges from San Mateo County's drains are minimal and do not alter natural water quality. Water quality monitoring will occur in the first storm season after adoption of the Exception. If the County has not yet identified its priority discharges it will be able to use the monitoring results in doing so. We look forward to working with the County on their efforts to reduce and/or eliminate potential pollutants in their storm water and encourage their monitoring efforts. State Water Board staff encourages the County to carry out site assessments and as such, are available to provide feedback on those efforts.
167.	**Special Protections – BMPs and Direct discharges**	**4.**	**Caltrans requests that the treatment BMP implementation be limited to ASBS sites where there is a direct discharge. Of the 10 ASBS sites designated by the State Water Board as requiring Caltrans BMP implementation, 5 locations include direct discharges to the ocean:** • **a. Redwood National and State Parks** • **b. Kelp Beds at Saunders Reef** • **c. Julia Pfeiffer Burns Underwater Park** • **d. Ocean Area Surrounding `the Mouth of Salmon Creek** • **e. Mugu Lagoon to Latigo Point** **a.** Stormwater runoff from Caltrans roadways at Point Lobos Ecological Reserve ASBS and Carmel Bay ASBS either infiltrates or is treated through natural vegetation. Based on Caltrans's field and desktop evaluation of the State Water Board's discharge points list in the Año Nuevo Point and	This would be one way for Caltrans to prioritize its activities. The areas where the runoff infiltrates or is filtered through natural vegetation are good sites to see if the vegetation actually is a benefit to the water quality. Comment noted. State Water Board staff stands by the fact that there are ten ASBS where Caltrans has direct discharges to ASBS. Caltrans has a different definition of direct discharges than the State Water Board. State Water Board staff generally considers a direct discharge any discharge that flows to the ocean on the seaward side of Highway One (or the closest public road parallel to the coast). Discharges that drain to substantial vegetated areas before reaching the ocean may be considered attenuated. Such discharges were classified by Caltrans in their application as "indirect."

			Island ASBS and James V. Fitzgerald Marine Reserve ASBS, the discharge points assigned to Caltrans at these ASBS locations either discharge to an inland stream or are naturally treated by existing vegetation. At the Irvine Coast Marine Life Refuge ASBS, Caltrans believes it had implemented projects which reach the requirements in the Santa Ana Regional Water Quality Control Board's Cease and Desist Order on the prohibited discharge of waste.	Furthermore staff suggests that Caltrans use this approach to prioritize its activities. The areas where the runoff infiltrates or is filtered through natural vegetation are good sites to see if the vegetation actually is a benefit to the water quality. If the discharge flows through vegetation or infiltrates, then it may not be necessary to implement structural BMPs in those cases.
168.	**Special Protections – compliance standards confusing**	**1.**	**The PEIR presents a two tiered protection approach to meet water quality objectives in ASBS.** The first tier uses Ocean Plan Table B criteria; However, achieving those standards may present technical difficulties that should be examined in greater detail in the PEIR. A second tier of protection will protect natural water quality in ASBS. These standards are not set in advance of adopting the Special Protections. Instead, monitoring will collect information and the standards will be set in a later time.	The Special Protections (the project/preferred alternative in the DPEIR) sets compliance in the receiving water, which must meet natural water quality. Natural water quality will be determined by using reference sites, determined through the regional monitoring cooperatives, as proxies. Table B Instantaneous Maximum objectives are used as design targets for structural BMPs, but do not constitute effluent limits.
169.	**Special Protections – compliance BMPs – design storm**	**14. 15.**	**Special Protections do not clearly require that BMPs be sized to a design storm**	State Water Board staff disagrees. A design storm is defined in the Special Protections. Also, from the Special Protections: "BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm shall be designed to achieve the following target levels…"
170.	**Special Protections – compliance BMPs**	**1. 14. 15.**	Without a clear understanding of what will be required, it is difficult to be able to understand the range of potential projects that will be necessary to meet the proposed Special Protection provisions, objectives and standards. Only by knowing what the full range of reasonably anticipated projects and discussing them in the PEIR would it be possible to determine whether or not these projects would be able to be implemented in a manner consistent with the Coastal Act and LCPs.	This is not a rulemaking or water quality standard setting process. Compliance is clearly described as assuring the maintenance of natural water quality in the ASBS. Reasonably foreseeable BMPs were discussed, in the DPEIR. The Special Protections are not intended as a prescriptive approach to locating and constructing BMPs. That is left to the discharger and should be addressed for CEQA on an individual project level by

			It is unclear how typical development scenarios, including locating and constructing BMPs would be approached given the framework of the rule making. It is important for the PEIR to clarify whether the exceptions are to be implemented by area or by discharger (especially for non-point discharges). Do the 27 applications listed in the PEIR include all 1658 discharges inventoried (other than those filed independently for marine research facilities)?	the discharger. The exception and its Special Protections will be implemented by discharger. Those dischargers are not responsible for all known discharges. For example there are marine laboratories and waste water plants that also discharge under exceptions to ASBS. The majority of the ASBS discharges are within the "footprint" of municipalities and other dischargers covered under the exception. In the case of storm water management agencies they are responsible for their conveyances but must also provide outreach and education to individual property owners in their jurisdiction to prevent pollutant discharges from entering the ASBS.
171.	**Special Protections – BMPs non-structural**	**5.**	18 mos. may not be enough time. Public education, negotiation with other agencies (e.g., water suppliers), creating and staffing enforcement programs, and enhancing public works programs will take longer. In addition, MS4s will need to secure funding to implement these non-structural programs. We propose 3 years	The responsible parties were notified that waste discharges of storm water were in violation of the waste discharge prohibition in October 2004. The Special Protections require implementation of non-structural controls 18 months following adoption of the Exception, which is approximately eight and a half years since originally notified. In addition, the State Water Board solicited proposals for funding BMPs in ASBS, and several municipalities applied for and received grants.
172.	**Special Protections - BMPs**	**5.**	Fails to adequately analyze actual technology needed to comply with Table B metals or temperature, bacteria, etc., are not changing natural water quality in the ASBS.	Such detail is outside of the scope of this PEIR, and would occur pursuant to project level environmental analysis.
173.	**Special Protections – controlling storm water**	**34.**	Natural storm water runoff containing natural soils, detritus and organic matter, which are part of the ecosystem processes. Efforts to reduce these components would result in unnatural conditions to the nearshore waters	The Special Protections' monitoring and the implementation of BMPs were developed on existing methods known to reduce anthropogenic sources of pollution. Removing the pollutant fraction plus trash would not interfere with natural processes. Furthermore, compliance is with natural water quality

				in the receiving water, and the watershed derived sediments and organic detritus are included in the measurements at reference sites.
174.	**Special Protections – controlling trash**	**6.**	Prohibition of trash discharge requirement is unrealistic.	Trash is harmful to beneficial uses. ASBS require special protections. Waste, including trash, is already prohibited from discharge to ASBS under the Ocean Plan. Dischargers should make a diligent effort to prevent the discharge of trash.
175.	**Special Protections – SWMP mapping**	**6.**	Prepared detailed mapping will be expensive and time-consuming and it is not clear why necessary to achieve desired ASBS water quality levels.	It should be incumbent on responsible dischargers to know where each of their discharges are located, and the characteristics of those discharge conveyances. Much of the outfall location work has already been done by the State during the 2003 SCCWRP survey, and is available in GIS.
176.	**Special Protections – PPPs Inappropriate**	**33.**	**Pollution Prevention Plan Requirements Are Inappropriate for Military Activities** **a. The** Pollution Prevention Plan (PPP) requirement is inappropriate for discharges associated with military training and testing activities. PPPs are intended to address industrial activities, not military activities such as underwater demolitions. Request language be included that clearly states the pollution prevention plan requirement is not applicable to military operations, testing, and training activities.	It has been State Water Board policy that all Responsible Parties identified in an exception must have a pollution prevention plan in place to comply with the requirements of an exception.
177.	**Special Protections – Parks and Rec unjustified**	**14. 15.**	**Additional requirements for parks and recreation facilities are unjustified.** Section II of the Special Protections includes "special requirements" for "dischargers with parks and recreation facilities." The County has several concerns with this section. First, "parks and recreation facilities" are not defined in the Special Protections, which makes the provision void and ambiguous.	State Water Board staff disagrees and maintains that parks and recreation facilities are easily identifiable. These are common locations where people go to hike, camp, picnic, swim, etc. For example, parking lots and picnic areas may be sources of pollutants if not properly maintained. Examples of potential pollutants are trash, automotive wastes (oil, antifreeze), and pesticides/herbicides.

			Second, there is nothing in the record before the State Water Board to suggest that "parks and recreation facilities" pose special threats to the ASBS. The PEIR includes no discussion of this issue.	
178.	**Special Protections - Flawed**	**6. 8. 9. 11. 16. 17.26. 27. 28. 30.**	**The proposed ASBS Special Protections Approach is Fundamentally Flawed and Needs to be replaced by a Collaborative Stakeholder Developed Alternative Sound Science Weight of Evidence Based Approach.** The County of Monterey supports the Monterey Peninsula communities of Pacific Grove, Carmel-By-The –Sea, County and City of Monterey as well as Pebble Beach Company and other interested ASBS stakeholders' request that the State Water Board develop and employ an alternate approach to the proposed special protections approach. There are several fundamental and scientifically irreconcilable flaws in the proposed special protections approach that mandate an alterative approach be developed and implemented (See comments from Hopkins Marine Station dated March 11, 2011). These include the fact that a meaningful comparison of "reference" and discharge site is impossible due to the heterogeneity of the ASBS and candidate reference sites, the statistical invalidity of simply comparing one reference site with one discharge site (i.e. no statistically power), and the high degree of natural variability in the ecosystem. Recommends that the State Water Board direct staff to convene an inclusive and transparent stakeholder process, similar to the one that resulted in the successful recycled water policy, to develop an alternative approach to the draft special protections, similar to that outlined by the central coast ASBS stakeholders. The county would be pleased to actively participate in such a collaborative stakeholder process, which we believe can lead to a more widely	State Water Board staff disagrees. The Special Protections were already developed with a great deal of public input, including input from municipalities and other responsible parties. The definition of natural water quality was developed by a committee of well respective scientists, in a transparent manner. The ultimate compliance endpoint is maintenance of natural water quality, which is determined by selecting reference sites through a collaborative stakeholder process.

			accepted and more effective ASBS protection program.	
179.	**Special Protections – Allow discharges to ASBS**	**10.**	Special Protections should include a statement that the Exception amends the MS4 permit to allow discharges to ASBS for non-point sources, including private drains. Provide immediate discharge authorization for point sources and non-point sources.	For individual drains within the footprint of the MS4 the Special Protections rely on outreach, education and ordinances as appropriate. In such examples within the MS4 jurisdiction staff does not envision the need for separate permits for individual property owners. The general provisions for nonpoint sources include those that not subject to an NPDES Permit. Examples may be golf courses or other non-municipal entities outside of an MS4 footprint. A Pollution Prevention Plan would be developed by the discharger in the manner equivalent to a Storm Water Management Plan as described in I(A)(2) of the Special Protections. Discharges for nonpoint sources may be authorized through an appropriate waiver or WDR.
180.	**Special Protections – consistency with other regulatory programs**	**1. 7.**	The DPEIR should fully examine whether or not municipalities and related entities will be placed in a situation where they are required to meet specified water quality standards, but the projects that would be required would be inconsistent with the Coastal Act or LCPs. Where potential conflicts are identified in the PEIR, mitigation should be proposed to lessen or avoid these conflicts. **Staying consistent with the Coastal Act and LCPs** While it is true that some project specific impacts must be deferred to project level environmental analyses, we are concerned that adopting these regulations without a higher level of analysis could put in motion a series of events that force projects being required in the coastal zone that are not consistent with the Coastal Act and LCPs. The PEIR should evaluate the full range of expected outcome so that	The Special Protections are not a regulation or Policy. They are the terms and conditions for a General Exception to the Ocean Plan for 27 specific nonpoint source and storm water applicants. Dischargers are already in violation of the ASBS waste discharger prohibition according to the Ocean Plan, California Water Code and US Clean Water Act, unless covered by an exception. The exception allows them to continue discharging as long as the special conditions and prohibitions (that comprise the Special Protections) are complied with. Pollution is inconsistent with the Coastal Act. Section 30231 of the Coastal Act states: “The biological productivity and the quality of coastal waters, streams,

			adjustments can be made to the program, as necessary, to ensure its implementation in the coastal zone is both technically feasible and consistent with the Coastal Act and LCPs. **Coastal land use policy consistency issues may be challenging for projects proposed in built environments, which are areas targeted under the program.** Often there is simply no undeveloped land area to site projects, including any required BMPs. If there is undeveloped land, it is often protected by wetland, ESHA, open space, agriculture or other special status. Cumulatively and statewide, these policy consistency issues would be investigated in the PEIR. **As local governments submit LCPs to the CCC for amendment or certification, the CCC typically recommends that they be updated to include policies protecting water quality, including those that are consistent with municipal storm water permits.** As new policies (such as improved hydro modification and Low Impact Development techniques) are incorporated into stormwater permits, they should also be reflected in the documents that guide land use, such as LCPs and General Plans.	wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams" The Special Protections will result in minimizing waste discharges and protecting marine water quality, a common goal of the State Water Board and the Coastal Commission. Dischargers covered under the exception will need to address compliance with the Coastal Act and Local Coastal Plans, and CEQA, for individual BMP installation projects.
181.	**Special Protections – Conflicts NPDES**	**4. 7.**	**The NPDES permit protects the ASBS and the board should consider alternatives that complement, not duplicate, the NPDES activities** **Caltrans requests the adoption of a straightforward**	The discharges of the Responsible Parties identified herein in their current status were not covered under any permit, thus unregulated and in violation of the Ocean Plan. The terms and conditions of the General Exception will be part of the appropriate permit issued by the Regional Water Board. State Water Board staff believes that the general

			approach for permitting ASBS discharges that would also facilitate the preparation of the proposed Draft Special Protections. Instead of the absolute prohibition on discharges we recommend the approach proposed by State Water Board staff in the *Information Document for the Proposed Amendment of the Water Quality Control Plan for Ocean Waters of California* (December 2003). This proposal removes the absolute ban on storm water discharges and replaces it with a provision allowing continued discharges that are not adversely affecting the ASBS.	exception, when incorporated into NPDES permits is, at this time the most straightforward and expeditious means of bringing discharges into ASBS into compliance. Based upon State Water Board staff interpretation, there is a prohibition against discharging waste into ASBS. Discharges consisting solely of storm water are allowed.

182.	**DPEIR – Miscellaneous**	**33.**	P 9 All In that the SWRCB cites that these are "…**statewide** Special Protections that establish minimum requirements for the permitting, monitoring, and continued operation of selected point and non-point discharges, as required by the California Ocean Plan" -- we request that the document be modified to reflect the proposed program being administered on a "statewide" basis. The exclusion of areas outside of the identified ASBSs provides the potential for the listed exclusion stakeholders to be impacted by activities outside of their control (leading to financial impacts not identified in this document).	Comment noted.
183.	**DPEIR – Miscellaneous**	**33.**	p. 14, S.5.2 "Minimum monitoring plan would include…receiving water monitoring of chronic toxicity, indicator bacteria analysis…", based on the Natural Water Quality Committee's review of SIO bacteria analysis, it was determined that bacteria was not a good indicator of anthropogenic impacts.	Comment noted.
184.	**DPEIR – Miscellaneous**	**33.**	p. 16, S.7 first bullet …ocean water quality "in" many of the 34 ASBS not…	Revisions made.
185.	**DPEIR – Miscellaneous**	**33.**	p. 16, S.7 seventh bullet Does this constitute the State encumbering the property of the listed stakeholders? If implemented, in some cases, this could increase flooding resulting in potential property damage and increased risked to human health and safety.	Comment noted. The Special Protections do not constitute an encumbrance on property.
186.	**DPEIR – Miscellaneous**	**33.**	p. 43,3.4.2In this section the following citation from the final section in the Southern California Coastal Water Research Project report (dated September 2010) should have been considered – ***Regulatory agencies need to identify strategies to account for shifting baselines (pg 19).*** As such, the SWRCB proposed program is recommended to be delayed until such time as a defensible baseline of site specific data has been collected.	Comment noted.

187.	**DPEIR – Miscellaneous**	**33.**	p. 49 & 2633.5.2.3 & 6.7These sections state that the California Ocean Plan (COP) water quality objectives are for the most part ***less*** stringent than those applied to drinking water to protect public health. In general this not accurate. For the most part the COP objectives are more stringent than the Safe Drinking Water Act (SDWA) MCLs.	Comment noted.
188.		**33.**	p. 77, 5.1.16 Transposed mi^2 and m^2.	Revisions made.
189.	**DPEIR – Miscellaneous**	**33.**	p. 105, 5.2.2.9 "There are fewer coves and wave protected areas on San Nicolas Island." Change "fewer" to "few".	Revisions made.
190.	**DPEIR – Miscellaneous**	**33.**	P, 105,5.2.2.20 Recommend the State purchase a copy of the Geology of San Nicolas Island California, Geological survey Professional Paper 369, authored by J.G. Vedder and Robert M. Norris (dated 1963). It has a substantial amount of offshore geology description that was collected via teams using SCUBA.	Comment noted.
191.	**DPEIR – Miscellaneous**	**33.**	p.123,5.4.23 "There are residential and industrial areas, piers…" There is one pier at San Nicolas Island, change "piers" to "pier".	Revisions made.
192.	**DPEIR – Miscellaneous**	**33.**	p. 170, Paragraph following Table 5.6.7This statement "It is possible that eutrophication causes filamentous green algae to be more productive and, therefore more abundant, exceeding grazing rates." is unsubstantiated conjecture. Recommend the statement be deleted.	Change not accepted.
193.	**DPEIR – Miscellaneous**	**33.**	p. 186,5.7.12 Replace "higher threat" with "potential concern".	Change not accepted.
194.	**DPEIR – Miscellaneous**	**33.**	p.209,5.8.5 This section states a pilot study was performed on potential reference sites. Please provide the locations of the potential reference sites.	Revisions made.
195.	**DPEIR –**	**33.**	p. 211,5.8.4 Table number missing in text.	Change accepted.

	Miscellaneous			
196.	**DPEIR – Miscellaneous**	**33.**	p. 215,5.8.4 This section states “San Nicolas Island ASBS had the highest exceedance rate of 35%”. That statement is not supported by Figure 5.8.8. It appears ASBS 25 (NW Santa Catalina Island) had the exceedance rate of 35%. This statement should be corrected.	Change accepted.
197.	**DPEIR – Miscellaneous**	**33.**	p. 243,6.3 Fifth Paragraph Delete 25 ASBS and replace with 23 ASBS (Catalina has three described ASBS but is listed as a single ASBS).	Santa Catalina Island actually has four ASBS, but one (Farnsworth Bank) is entirely submerged with no discharges. Change not accepted.
198.	**DPEIR – Miscellaneous**	**33.**	p. 289, 7.1.1 B Table 3 is referenced. Where in the text or appendices is Table 3?	Change accepted.
199.	**DPEIR – Miscellaneous**	**33.**	p. 289 San Nicolas Island participated in the Bight ’08 intertidal and subtidal monitoring, is there still a data gap at that location?	The Bight ’08 Report is not yet available; however, staff feels that there is still a data gap to close.
200.	**DPEIR – Miscellaneous**	**33.**	Appendix 7 Page 9 and 22 On page 22 the TUc for San Nicolas Island is 1 for fish and kelp and meeting COP. Page 9 the TUa (which is based on the TUc) states 0 survival for fish. This needs to be clarified. If the TUc is 1 the TUa would be 100% survival.	In the sidebar of this Table we note that the Acute toxicity tests were calculated from the chronic tests, in this data set, and as taken from the metadata provided from the Navy. EPA testing protocols and as outlined in the Ocean Plan require that each test, the chronic toxicity and the acute toxicity used the appropriate dilution series protocols to get an accurate endpoint. Calculating TUa from TUc does not provide that accuracy thus 0 is reported in this case.
201.	**DPEIR – Miscellaneous**	**33.**	p. 163 & 1745.6.14 & 5.6.15State Board should have provided an approved approach to biological surveys prior to requesting the survey as part of the application process.	These surveys were requested early on in the process. Upon review of the survey designs and the results it became clear that various dischargers used different methods making results more difficult to interpret. While we originally assumed that standard protocol from MARINe/PISCO would be used, upon retrospect we should have been more specific. This is resolved for future monitoring by the provisions in the Special Protections, requiring Water Board approval

				of the monitoring programs.
202.	**DPEIR – Miscellaneous**	**33.**	p. 67,4.3.7 This section states that the staff have modified the Special Protections to allow one year to complete storm water and pollution prevention planning documents. The Waterfront Management Plan is still required in a 6 month timeframe according to Page B12 of the Special Protections. That should be extended to 1 year in order to give dischargers sufficient time to ascertain needed resources and to be consistent with the PEIR.	Comment noted. Clarifying language has been added.
203.	**DPEIR – Miscellaneous**	**33.**	I p. 1635.6.14n that the data provided in the SNI ASBS exception application was considered by the SWRCB not to be representative – the SWRCB should be responsible for providing the exact methodology that will be acceptable for conducting the required studies/surveys. Dischargers opting for individual monitoring programs should not be responsible for "guessing correctly" an acceptable methodology for the collection of data required by the SWRCB.	Future ASBS monitoring will be performed according to specific requirements developed in the regional monitoring programs, and individual monitoring programs will also have to conform to these regional monitoring criteria, and approved by the Water Boards.
204.	**DPEIR – Miscellaneous**	**31.**	Page 112, Table 5.4.1describes the percent impervious surfaces adjacent to the Del Mar Landing ASBS, which is noted as 29.69%. Page 114 describes the study area for Del Mar Landing as comprising 58 lots and common area. A sampling of homes built in the study area show an average lot cover of impermeable surfaces as 19.2%. Combined with the roads within the study area, which cover approximately 5.5% of the study area commons, the total impermeable surface area is closer to 25% than the nearly 30% noted in Table 5.4.1. Unlike most subdivisions, nearly all the water from these impermeable surfaces flow not to storm drains, but to adjacent common area covered in meadow grasses and forbs. Given the low impact of development to the study area, the DPEIR should consider the development of The Sea Ranch as an LID (Low Impact Development), one of the "project types" indentified on page 270 of the DPEIR as complying "with the terms and conditions or Special Protections."	Comment noted.

205.	**DPEIR - Miscellaneous**	**31.**	Page 114, 5.4.6 Del Mar Landing describes the watershed adjacent to the ASBS and notes "four nonpoint source and storm water conveyances" and "eight ephemeral streams draining into or near the ASBS". During preparation of the Association's request for an Exception and in conversations with SWRCB staff, only two discharges were identified by State staff. These two discharges are identified in the Association's 2006 Exception request as 15" and 18" stormwater discharge pipes. Although "ephemeral" is not defined in the DPEIR, there is only one true 'ephemeral stream' within the study area and it ultimately debouches into the ocean some 250 feet south of the boundary of the ASBS. While there is sheet flow in the study area that crosses the commons and over the bluff face into the ASBS, these flows are through a complete cover of meadow grasses and forbs and have no defined channel, which in our view doesn't meet the definition of an ephemeral stream.	Comment noted.
206.	**DPEIR - Miscellaneous**	**31.**	Page 114 description also notes that "homes in the area have septic systems which may contribute pollutants to the watershed". This is in error since all the homes in the study area are all serviced by a sanitary sewer system. The nearest septic system is approximately 4000 feet south of the ASBS boundary. Please also note that the Golf Course is north of the ASBS, rather than south as noted.	Revisions made.
207.	**DPEIR - Miscellaneous**	**31.**	Page 185, 5.7.6 Del Mar Landing describes "three main storm drains carrying residential and road runoff into the ASBS." As noted above, the Association's request for an Exception identifies only two storm drains – a 15" pipe and 18" pipe. The identification of only these two discharges for the purpose of the Exception request was confirmed by SWRCB staff prior to submittal of the Exception request. The two storm drains carry water from TSR roads and adjacent meadow areas of commons, not from residential runoff as noted in the DPEIR. Also as noted above, most residential lots drain not to street drainage infrastructure, but	Comment noted.

			sheet flow to surrounding meadow common area. This finding is supported by section 5.7.21.5 on page 192 of the DPEIR. Information provided in the Association's 2006 Exception request shows that the 15" storm drain receives stormwater from only a ¾-acre area and the 18" storm drain receives stormwater from approximately 2.2 acres, much of which is meadow covered commons. These two small drains and drainage areas constitute the entirety of the Association's discharge into the ASBS.	
208.	**DPEIR - Miscellaneous**	**31.**	Page 188, Table 5.7.1. The identification of 3 storm drains, rather than two, and "residential" runoff is repeated in Table 5.7.1, rather than meadow and road runoff.	Comment noted.
209.	**DPEIR - Miscellaneous**	**32.**	**Regulatory settings in the PEIR make no mention of the National Marine Sanctuary Act.** **a.** The following language is recommended: "The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Day-to-day management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The Channel Islands, Monterey Bay, and Gulf of the Farallons National Marine Sanctuaries regulate the discharge of material or matter, including the discharging or depositing from beyond the boundary of the sanctuary any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality. [See 16 CFR §922.72, 922.82, 922.132 for specific regulatory language including exceptions.	Change accepted
210.	**DPEIR – Misc.**	**23.**	**The Draft EIR mentions 4 wastewater discharges w/Exceptions; the Navy at San Clemente Island, Shelter**	The four wastewater discharges in the comment are those that had exceptions prior to 2004.

			Cove, Carmel, and the Navy desal plant at San Nicolas Island. **a.** We found six, WWTPs four, that discharge directly to ASBS, and the DPEIR should include Half Moon Bay CA0038598; Shelter Cove CA0023027; Monterey Regional CA0048551; Carmel CA0049417; Ragged Point Inn CA0049417; and San Simeon CA 0047961.	The commenter is incorrect regarding the following discharges: CA0038598 (at Half Moon Bay), CA0048551 (Monterey Regional), CA0049417 (Ragged Point Inn) and CA 0047961 (San Simeon); these do not discharge to ASBS. It is worth mentioning that there are other wastewater discharges involving waste seawater from marine labs and aquariums that discharge to ASBS and have recently received exceptions.
211.	**DPEIR – General**	**4.**	**California Environmental Quality Act (CEQA) Draft EIR Improvements** **a.** Since subsection 1.3 (Purpose and Focus of the Draft EIR) emphasizes that the Draft EIR is a program-level and that "subsequent project level CEQA compliance and environmental analysis at a regional or local level may be required," Caltrans requests that the Draft EIR incorporates tiering references and an appropriate description consistent with the CEQA Tiering Guidelines. **b.** Caltrans believes that Section 2.0 Project Description is incomplete. The discussion is brief and is not clear as to the relationship with the Summary Chapter. Possibly it is intended for Sections 3.1-3.5 to be considered as part of the project description, as depicted in the Table of Contents. Section 15124 of the CEQA Guidelines describes the content of the Project Description, including (In summary): • Location, boundaries and graphics • Project Objectives-Included in the Summary Subsection (.3) but not mentioned in this chapter • Project characteristics • Intended use of the Draft EIR-Discussed in Section 1.0 but should be cross-referenced here **c.** Caltrans requests that the provisions of CEQA Guidelines	CEQA provides that a program EIR may be prepared for a series of related actions that are characterized as one large project or program (CEQA Guidelines §15168). Activities which relate to and follow the specific plan must be examined in light of the program EIR to determine if additional limited environmental analysis is warranted. Later activities which have been adequately analyzed under the program EIR will not require additional environmental documentation. If an activity may result in additional effects, or new mitigation measures are needed, a subsequent or supplemental EIR, or negative declaration must be prepared (CEQA Guidelines §15162 and 15163). Lead agencies for specific projects seeking coverage under the General Exception may decide to tier off of the program EIR for their CEQA compliance. When tiering is used, the later EIRs or negative declarations must refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that the EIR or negative declaration is being tiered from the earlier specific plan EIR (CEQA Guidelines §15152(e)). Since tiering is not the only option for subsequent environmental documents, a formal discussion of

			Section 15126.6 are carefully considered regarding the Environmentally Superior Alternative and Alternative sites. In addition, the Project Description with the Environmental Analysis sections should be revised to clearly link how Section 4.0 is represented. **d.** Caltrans requests that the Draft EIR identify potential permit jurisdictions and consider any reasonably foreseeable regulatory hurdles to compliance, and identify a process to assure compliance with all regulatory requirements. For example, regulatory overlaps in the coastal zone can and will present many challenges, but ultimately, no construction will take place without a Coastal Development Permit issued by the Locally Certified Coastal Program or the California Coastal Commission. The proposed Draft Special Protection requirements will trigger construction projects in the coastal zone that will need Coastal Development Permits. **e.** Caltrans requests that the environmental analysis directly assess the reasonably foreseeable impacts of a ban on new outfalls and assess the benefits of allowing new outfalls when environmentally preferable. **f.** Caltrans requests that the Draft EIR identify reasonably foreseeable environmental impacts from diversion of these flows around the ASBS, The Project Description, as well as the Environmental Analysis, should also identify the water quality standards to be attained, and the reasonably foreseeable impacts of locating new treatment facilities in the coastal zone. Hydrology and Water Quality-The Hydrology and Water Quality Impacts section of the Draft EIR discusses project types that underscore the feasibility question regarding Caltrans' implementation of the proposed Draft Special Protections. Caltrans believes that it is highly probable that wet weather flow diversions to alternative discharge locations will also be necessary to comply with	tiering in the program draft EIR is unnecessary. b. Comment noted. Clarifying language was added. The DPEIR has been amended to correct the discrepancies between the summary section and the main body of the DPEIR. All of the affected ASBS are listed in Table 2 of the DPEIR. A map has been added showing the location of all of the ASBS considered under the proposed General Exception. c. CEQA does not require the identification of an "Environmentally Superior Alternative." Since the illegal discharges already exist, there are no alternative sites available to analyze. Furthermore, since the State Water Board is not authorized to dictate the method of compliance that a discharger may use to comply with the General Exception, it is impractical to speculate as to where a discharger may try to move their discharge point. d. The State Water Board has included a listing of potential approvals that dischargers covered under the General Exception may require. Furthermore, staff believes that Caltrans already possesses the information being requested. They have expertise and knowledge about building in the coastal areas that no other entity has. Because of the large number of projects undertaken, they are well aware of and familiar with the permitting requirements and any regulatory overlap that may exist. e. The Ocean Plan currently prohibits any waste discharge outfalls within the ASBS unless an exception is granted. New outfalls are not allowed under the Ocean Plan and any discussion of allowing new outfalls would require an amendment to the Ocean Plan and is not a part of this proposed action.

			the Table B (90% reduction options), as well as the requirements for the preservation of natural water quality. **g.** Caltrans requests that the Traffic Impacts Analysis take into consideration the impacts associated with limited rights-of-way along segments of SR-1 and SR-101, and the potential for road closures to construct measures to address the proposed Draft Special Protections. Traffic Impacts Analysis-Caltrans does not agree with the determination that mitigation is available to reduce any potential impacts to transportation to less than significant levels based on the threshold listed as exceeding the capacity of the existing circulation system. **h.** Caltrans requests that the Draft EIR's estimate cost reflect the reasonable estimated costs of constructed facilities that meet Table B and ambient receiving water requirements as the proposed Draft Special Protections require. In addition, the reasonable estimate should consider the costs associated with delays to the traveling public and movement services due to the disruption of traffic, which could require road closures along SR-1 and SR-101. Caltrans alone has several hundred outfalls along 70 miles of roadway, and the cost to comply with the proposed Draft Special Protections requirements will far exceed this estimate. **i.** Caltrans requests that the State Board review the Draft Resolution to correct its inconsistencies with the Draft EIR. The Draft Resolution in Appendix 1 of the Draft EIR notes that it authorizes the General Exception and approves the Mitigated Negative Declaration.	The proposed action is to develop a mechanism where existing illegal discharges can be allowed to continue to discharge to ASBS. f. The State Water Board has already determined that compliance with the Ocean Plan prohibition on discharges to ASBS by existing discharges would have greater significant impacts on the environment than developing a General Exception that will allow the existing discharges to continue. The draft EIR provides an evaluation of a variety of methods dischargers may use to comply with the General Exception. Since the State Water Board cannot specify what measures any individual discharger may use to come into compliance with the General Exception, evaluation of specific measures decided upon by the discharger will need to be addressed in subsequent environmental documents if not specifically covered in the program EIR. g. The environmental impacts associated with potential measures taken by dischargers to comply with the General Exception are the same whether rights-of-way are limited or not. If a discharger decides to implement measures that will require a greater right-of-way, they will need to negotiate with property owners to increase the right-of-way. Since the State Water Board cannot dictate the measures to be used by dischargers (or their location), it would be speculative to try and evaluate where right-of way adjustments would be needed. Furthermore, right-of-way adjustments are not of themselves environmental impacts. h. The draft EIR identifies a number of potential measures that dischargers may use to comply with the General Exception and the potential costs

				associated with those measures. Since the State Water Board cannot dictate which measures individual dischargers will use, the estimates provided in the draft EIR are general and actual costs will be different. The main purpose of the economic analysis was to show that the cost of compliance with the General Exception was far lower than the cost of complying with the Ocean Plan prohibition on discharges to ASBS. Potential costs associated with delays to the traveling public and services movement would not significantly change this conclusion. The cost estimate in the Draft EIR is based upon the estimate that Caltrans provided to staff. Without specific information regarding the exact type of BMPs or treatment control devices that will implemented, it is not possible to provide more than an estimate. i. Thank you for noticing this error. This was corrected.
212.	**DPEIR – General**	**4.**	**Caltrans requests that the Draft EIR is revised to accurately identify Caltrans-approved and/or non-approved treatment BMPs. The Draft EIR, Section 7.5 incorrectly lists Drain Inlet Inserts and Vortex Separation Systems as Caltrans-approved treatment BMPs. Caltrans has not approved and does *not* approve of the use of Drain Inlet inserts and Vortex Separation Systems.**	Comment noted. The EIR was corrected.
213.	**DPEIR – General**	**4.**	**Caltrans requests that the State Board consider the infeasibility of complying with Ocean Plan requirements when the technology to meet those requirements does not exist.** a. Caltrans tested treatment BMPs for their applicability in its facilities by monitoring the copper, lead, and zinc effluent concentrations from eight BMP types, including infiltration devices (Austin and Delaware types), a wet basin, a	In general, State Water Board staff believes it to be feasible to meet the requirements set forth in these Special Protections. State Water Board staff performed an assessment of structural BMPs using initial influent concentrations representative of ASBS runoff. Most BMPs were effective at reducing Table B metals concentrations on average below Table B instantaneous maximum concentrations.

			biofiltration swale, a multi-chambered treatment train device, a biofiltration strip, a Continuous Deflective Separation (CDS) Unit, and an unlined extended detention basin. The results indicate the currently available technology (e.g., treatment BMPs) is not capable of treating discharges sufficiently to meet the proposed Draft Special Protections requirements and the Ocean Plan's Water Quality Objectives.	It is important to state that the Special Protections do not require compliance at end of pipe with Ocean Plan objectives, but rather compliance is in the receiving water which must meet natural water quality. In addition, while Caltrans is focused on structural treatment controls, there may be management practices that can be used in conjunction with treatment that will achieve the desired outcome.
214.	**DPEIR – General**	**7.**	**Language regarding "violation" of ASBS provisions should be revised.** **a.** The following sections of the PDPEIR should be modified as follows: • Pg. 28-Chapter 2.0, "Project Description," identifies existing Responsible Parties in <u>potential</u> violation of the ASBS waste discharge prohibition. • Pg. 43-All of these discharges are ~~currently~~<u>potentially</u> in violation of the Ocean Plan ASBS waste discharge prohibition because they lack an exception. • Pg. 208-Still, a number of discharges had elevated metals and PAH concentrations, and exhibited toxicity, and a few receiving water samples <u>exceeded</u> ~~were in violation of~~ Ocean Plan objectives….some other waste discharges definitely do not have adequate BMPs to prevent ~~violation~~<u>exceedance</u> of the objectives all of the time, as displayed by some of the minority samples described above. • Pg. 235-In general, projects must not cause the pollutant standard to be ~~violated~~<u>exceeded</u> and must not cause any increase in the number and severity of <u>exceedances</u>~~violations~~. If a known ~~violation~~<u>water quality standards exceedance</u> is located in the project vicinity, the project must include measures to	Changes not accepted. State Water Board staff does not agree that the language used is inaccurate.

			reduce or eliminate the existing ~~violation~~exceedance(s). These changes reflect the more accurate language used on page 22 of the PDPEIR that the "State Water Board's Ocean Unit, found 1,654 discharges to potentially be in violation"; and at page 269 regarding "the potential to violate the ASBS waste discharge prohibition of the Ocean Plan." The use of the word "exceedance" instead of "violation" is also more consistent with this term as used in the PDPEIR at 13, 14, 68, 212, 269, 272-73, 310-11.	
215.	**DPEIR – General – List of Drainages SCCWRP ID#**	**16.**	**The following information is being provided in response to the updated list of ASBS drainages for Duxbury Reef located in Bolinas, CA.** **a.** This list referenced as Appendix 5: *Lists of Drainages in All of the ASBS-this is a Working Draft (List) to the Program Draft Environmental Impact Report: Exception to the California Ocean Plan for Areas of Special Biological Significance Water Discharge Prohibition for Stormwater and Nonpoint Source Discharges with Special Protections (PDPEIR);* posted on the State Water Board Website. Discharge points on this list will be subject to the Resolution regulating discharges of stormwater to the ASBS. Therefore, it is important that information on the List be as accurate as possible. To that end, County staff conducted field verification of the discharge points listed for Duxbury Reef ASBS. Results of field verification found that some of the County listed discharge points are located on private property and not within the County's jurisdiction. In addition, some discharge points were found to have no potential discharge. **b.** The County also reviewed the discharge widths for accuracy. The Appendix 5 List includes a column titled "Width". This list includes an incorrect entry of "2.00" in the Width column for Sample ID DUX009. The correct width	State Water Board staff has worked with Marin County to make appropriate changes to the list of discharges.

			(diameter) for Sample ID DUX009 is four feet. Sample ID DUX009 describes a county-owned concrete culvert that terminates at Agate Beach within the Duxbury Reef ASBS. Water in an unnamed tributary in Bolinas, CA flows into the 25-foot long, 4-foot wide DUX009 culvert before it flows onto Agate Beach and into the Duxbury Reef ASBS. The Appendix 5 List should be changed to reflect the correct width. **c.** The following information describes and supports the additional corrections that should be made to the current *List of Drainages in All of the ASBS – this is a Working Draft* (List). Additional corrections to List—Discharge points not located on County property. Six discharge points listing the County as one of the responsible parties are not located within the County's jurisdiction. These discharge points are located on private property or owned by the State or Federal government. Table 1 lists the corrected responsible parties for each of the six discharge points (DUX001, DUX006, DUX007, DUX010, DUX024, and DUX032). **d.** Removal from List-Discharge points with no potential for discharge. Discharge points DUX011, DUX012, DUX013, DUX014, and DUX015 are pipes located on private property protruding from the face of a cliff. Original comments by State Water Board staff indicate that the pipes may have been supply lines from homes lost in a previous slide. Further investigation by Marin County staff verified that these pipes are abandoned portions or a previous potable water supply line. Currently no water runs through or discharges from these pipes. It is recommended that DUX011-015 be removed from the List of Drainages to Duxbury Reef ASBS.	
216.	**DPEIR – misc**	**22.**	**1.** The Program Draft EIR pages, Page 2 of 331 to Page 19 of 331, are not numbered. Also, these pages did not include the statement "ASBS Program Draft Environmental Report January 18, 2011" as was the case with the rest of the	Editorial and clarifying changes were made to the PEIR to address these miscellaneous issues.

			pages, Page 19 of 331 to Page 331 of 331. **2.** To the Table of Contents page, unnumbered Page 3 of 331, add “S.0 SUMMARY……..6”. **3.** Unnumbered Page 3 of 331, Table of Contents, “S.0 SUMMARY……..6” must be in bold print. **4.** Unnumbered Page 3 of 331, Table of Contents, “S.1 INTRODUCTION”, “S.2 TYPE OF EIR”, “S.3 PROJECT OBJECTIVES”, “S.4 PROJECT CHARACTERISTICS”, And “S.5 ALTERNATIVES” must be in bold print. **5.** Unnumbered Page 3 of 331, Table of Contents, the titles of “S,1”, “S.2”, and “S.3” must be properly indented for consistency. **6.** Unnumbered Page 3 of 331, Table of Contents, the titles of Section 5.0 ENVIRONMENTAL BASELINE subsections must be properly indented for consistency. **7.** Unnumbered Page 3 of 331, Table of Contents, the subsections of Section 6 must be properly indented for consistency. **8.** Unnumbered Page 3 of 331, Table of Contents, relocate Section 7.0 ECONOMIC ANALYSIS OF SPECIAL PROTECTIONS……..287 to unnumbered Page 4 of 331. **9.** Unnumbered Page 4 of 331, Table of Contents, properly indent the titles of Sections 7.1 to 7.7 for consistency. **10.** Unnumbered Page 4 of 331, Table of Contents, subsections “7.4” to “7.7” and their titles must be in bold print for consistency.	

			11. Unnumbered Page 4 of 331, Table of contents, subsections “8.1” to “8.3” and their titles must be in bold print for consistency. **12.** Unnumbered Page 4 of 331, Table of Contents, add a section for “TABLES” and list the Tables and their respective page numbers. **13.** Unnumbered Page 10 of 331 to Page 15 of 331, the text for the “Alternatives” and “Proposed Project” is confusing when the “Project Alternatives” information on Page 52 of 331, Page 53 of 331, and Page 54 of 331, is compared. **14.** Unnumbered Page 11 of 331, Table S.1 the titles of the “Alternatives” and “Proposed Project” do not match the “Project Alternatives” titles mentioned on Page 52 of 331, Page 53 of 331, and Page 54 of 331. **15.** Unnumbered Page 11 of 331, Table S.1, if the words “Comparison of Impacts of the Alternatives with Those of the Proposed Project” do not comprise the title, then add a title in bold print. If this is the title, it must be in bold print for consistency. **16.** Unnumbered Page 11 of 331, Table S.1, modify “No Action (Status Quo Alternatives)” to read “Alternatives A: No-Project Alternative (i.e., No Exception)”; or a combination of the two titles. **17.** Unnumbered Page 11 of 331, Table S.1, modify “Change Ocean Plan (Prescriptive Alternative)” to read “Alternative B: Amend the Ocean Plan’s Prohibition to Allow Existing Discharges into ASBS under Special Conditions:, or a combination of the two titles. **18.** Unnumbered Page 11 of 331, Table S.1, modify “Continue with general exception for Non-point Source and	

			Storm water discharges: a. width enforcement for noncompliance with waste discharge (Preferred Alternatives)" to read "Alternative D: Implement a General Exception for Selected Discharges (Preferred Alternatives)"; or a combination of the titles. **19.** Unnumbered Page 11 of 331, Table S.1, modify "Continue with general exception for Non-point Source and Storm water discharges: b. without enforcement for noncompliance with waste discharge prohibition" to read Alternative C: Implement Individual Exceptions for Each Storm Water and nonpoint Source Discharger", or a combination of the two titles. **20.** The reader should not have to take the time to match the "Alternatives" and "Proposed Project" information from Table S.1 on Page 11 of 331 with the "A" through "D" Project Alternatives information on Page 53 of 331, and Page 54 of 331. If it is preferable to keep the Alternatives and Proposed Project language provided in Table S.1 (and text on Page 11 of 331 to Page 15 of 331) then include the Alternative letter and page number. The information on these pages must coincide to be "reader friendly". **21.** Unnumbered Page 11 of 331, Table S.1, it is confusing to have "Prescriptive Alternative" and "Preferred Alternative". Even though the discharger community, environmental groups, and the USEPA have not supported the changes to the Ocean Plan under the Prescriptive alternative, Board staff is hoping for its implementation over the Preferred Alternative. This is a major contradiction. **22.** Page 22 of 331, the applicants named in the Project title do not add up to the "27 applications" received. The applicants listed in Table 1 (Page 23 of 331) add up to 28. The project title must name the applicants and their respective ASBS. The Project title must not include an applicant in parenthesis.	

			23. It is stated on Page 124 of 331 and Page 125 of 331 that "No Survey Conducted" for del Mar Landing ASBS, Salmon Creek Coast ASBS, San Nicolas Island & Begg Rock ASBS, and San Clemente Island ASBS (Table 5.5.1). **24.** It is stated on Page 195 of 331 that "no information provided" by the Humboldt Count-Public Works Dept. for ASBS 7, and by the U.S. Dept. of the Interior –redwood National State Parks for ASBS 8 (Table 5.8.1). **25.** It is stated on Page 196 of 331 that "no information provided" by the Los Angeles County-Dept. of Public Works for ASBS 24, and the Malibu City-Pacific Works for ASBS 24, and the Connolly Pacific Company for ASBS 25 (Table 5.8.1). **26.** Page 195 of 331 Table 5.8.1, for ASBS 7 and 8 capitalize the "n" in "no information provided" for consistency. **27.** Page 195 of 331, Table 5.8.1, for ASBS 11 capitalize the "u" in "unknown, personal/private property use only" for consistency. **28.** Page 196 of 331, table 5.8.1, for ASBS 24 and 28 capitalize the "n" in "no information provided" for consistency. **29.** Page 195 of 331, Table 5.8.1, for ASBS 6, 7, 8, and 9 include the city, county or federal agency designation with the applicants "Dept. of Parks and Rec.", and "Dept. of Parks and Rec". **30.** Page 196 of 331, Table 5.8.1, for ASBS 24 include the county, city or federal agency designation with the applicant "Dept. of Transportation".	

			31. Page 196 of 331, Table 5.8.1, for ASBS 24 include the county or federal agency designation with the applicant "Dept. of Parks and Rec."	
217.	**DPEIR – misc**	**21.**	**1.** Climate Change vulnerability and resulting consequences need to be incorporated into this document with analysis, effects and mitigation consideration. **2.** Event Analysis involving tsunamis or sea-level rise and consequent flooding needs to be under consideration along with the inland land areas affected. All CEQA categories would affect. **3.** Source point contamination is a responsibility of the permitee and are regulated under the Total Daily Maximum Load guidelines and pending penalties for water entering the watersheds. Scientific studies of migrating flows into ASBS have not been included in this document from impaired water bodies. **4.** The Prescriptive Alternative: Change Ocean Plan would allow continued discharges and potential fines for Impaired Water Bodies because of grandfathering. This does not solve the problem of source point identification or infrastructure planning and maintenance. **5.** Test Points requirements and Frequency requirements for monitoring and mitigation are critical and must be executed by quantified personnel. The permittee is responsible for detected exceedences located in their jurisdiction. That means sub-permittees should be responsible for exceedences measured under their jurisdiction, yet there may not be test points established under subpermittees. Natural made pollutants, from forests and the like, cannot be distinguished from man-made pollutants. **6.** Oil and gas fracking are now business in California and	Editorial changes were made as relevant to the document.

			their contaminated discharge should not be addressed. **7.** Not addressed is the salt sink discharges i.e. desalination plants and the effect on the ASBS and the oceans in general. **8.** The Inter-Agency Ocean Policy Task Force and the West Coast Ocean Governors Agreement on Ocean Health (including the West Coast Ocean Eco-system Based management Program) should be notified of this document as navigable waters are affected. **9.** Best Management Practices of BMPs are being used to capture runoff for future recycling. This may affect groundwater recharge and may not be the best use of taxpayer's infrastructure investment if point source identification is not attempted as a priority. It also does not change the Climate Change vulnerability issues even if volumes are reduced. Location of recycling facilities is a key factor with for Climate Change vulnerability events.	

KEY TO COMMENTORS
1. California Coastal Commission
2. California Coastkeeper Alliance/ Natural Resource Defense Council
3. California Council for Environmental and Economic Balance
4. California Department of Transportation
5. California Storm Water Association
6. City of Carmel-by-the-Sea
7. City of Malibu
8. City of Monterey
9. City of Monterey
10. City of Newport Beach
11. City of Pacific Grove
12. City of Pacific Grove
13. City of San Diego Transportation and Storm Water Department
14. County of Los Angeles Department of Public Works
15. County of Los Angeles Department of Public Works on behalf of the Los Angeles County Flood Control District
16. County of Marin Department of Public Works
17. County of San Mateo Department of Public Works
18. Defenders of Wildlife
19. Environmental Defense Center
20. Flow Science on behalf of Irvine Company
21. General Public
22. General Public
23. Heal the Ocean
24. Irvine Company Community Development
25. MACTEC Engineering and Consulting, Inc.
26. Monterey County Board of Supervisors
27. Monterey County Department of Public

Works
28. Monterey County Mayors' Association
29. Orange County Coastkeeper
30. Pebble Beach Company
31. The Sea Ranch Association
32. U.S. Department of Commerce-National Oceanic and Atmospheric Administration of National Marine Sanctuaries
33. United States Department of Defense
34. United States Department of the Interior