ASBS Special Protections Comment Letters
Draft Response to Comments received February 21, 2012

Note: The list of commenters is at the end of this document.

Comment Number	Commenter	Subject	Comment	Response
1	1.	**Section I.A.1.d**	There is no baseline within which to measure that there will be no contributions of runoff.	Existing outfalls are those constructed on or before January 1, 2005 and included in the exception application. Existing outfalls are identified in the SCCWRP 2003 inventory and the characteristics of those discharges include the monitoring data and other information the applicants submitted in the exception application.
2	1.	**Section I.A.1.d**	It is not described as to what "Change" is under item d. In terms of relocation this is confusing.	Relocations and/or alterations to an existing outfall identified in Appendix 5, that are made in order to comply with the terms of the Special Protections, constitute a change. This clarification in the Special Protections was included to address situations where a discharger modifies its outfall to install a structural BMP. In certain cases the installation of a BMP may require the movement of the discharge point to another location, or in the case of an LID BMP, to more than one location (to distribute flow, increase infiltration and reduce runoff into the ocean).
3	1.	**Section I.A.1.e.2.vi.**	There is no baseline within which to measure that there will be no contributions of anthropogenic runoff. This could include timber harvests and sediment issues.	See response to comments 1 and 2. Staff disagrees that this clarification would allow new discharges from upland sources such as timber harvests.
4	2.	**Section I.A.2.f.**	**Section I.A.2.f. on page 4** **Amend last sentence as**: To control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider, and use where technically feasible, using LID practices to infiltrate, use, or evapotranspirate storm water runoff on-site.	Our intention was for the applicants to consider, and when technically feasible, to use LID BMPs if such LID approaches would be the most effective in reducing wastes entering the ASBS. Staff will further edit this sentence accordingly.
5	2.	**Section I.A.3.e**	**Section I.A.3.e on page 5** We suggest that the Exception eliminate the comparison of post-storm receiving water quality testing to reference water quality data *and* pre-storm conditions. This is inconsistent with the Ocean Plan and the requirement that	Staff disagrees. The use of pre- and post storm monitoring was originally recommended by the Natural Water Quality Committee. When monitoring in receiving waters one confounding factor can be the presence of pollutants from a more distant source, out of the control of the party directly

			dischargers not alter natural water quality. The only appropriate standard is to compare post-storm water quality conditions to the reference water quality data, alone. **Amend as**: Within four (4) years of the effective date of the Exception, all dischargers must comply with the requirement that their discharges into the affected ASBS maintain natural ocean water quality. If the initial results of post-storm receiving water quality testing indicate levels higher than the 85th percentile threshold of reference water quality data and the pre-storm receiving water levels, then the discharger must re-sample the receiving water, pre- and post-storm. If after re-sampling the post-storm levels are still higher than the 85th percentile threshold of reference water quality data, and the pre-storm receiving water levels, for any constituent, then natural ocean water quality is exceeded.	discharging into the ASBS. While not necessarily natural, the pre-storm monitoring represents the background condition prior to runoff entering the ASBS. Staff believes the existing language adds clarification to the monitoring, so no changes will be made to the existing language.
6	2.	**Section I.A.3.f.2**	**Section I.A.3.f.2 on page 6** We suggest a minor amendment to clarify that, to obtain an extension for lack of funding, government agencies must demonstrate that funding was unavailable or inadequate. This appears to be an oversight in subsection 2, as subsection 1 requires municipalities to demonstrate that funding is unavailable or inadequate. **Amend as**: for other governmental agencies, a demonstration and documentation of a good faith effort to acquire funding through that agency's budgetary process, and that funding was unavailable or inadequate. We also suggest a clarification to set a time limit on extensions for no longer than one year, with the opportunity to renew the extension.	Staff agrees that the clarification is useful and the changes will be made to Section I.A.3.f.2. See response to comment 7.
7	2.	**After A.3.f.2, add**:	**After A.3.f.2, add**: Extensions shall be granted for no	A request for extension is required to be supported with,

			longer than one year. If the circumstances above still exist when the extension expires, the discharger may apply for a continuation of the extension for up to one year.	among other information, the anticipated length of time the delay in compliance may persist. The Executive Director or Executive Officer will weigh the information and support contained in the notice in making any determination. The change is unnecessary.
8	2.	**Section I.B.2.b.** **Amend as**:	**Section I.B.2.b. on page 8** It appears that the intent of Section B.2.b.(1) and (2) on page 8 is to require the same design storm criteria for non-point sources as the design storm criteria for point sources, which is listed on page 3. If so, the wording should be consistent between the two provisions. **Amend as**: (1) Set as the Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or (2) A 90% reduction in pollutant loading during storm events, for the applicant's total discharges.	Staff agrees that the intention was the same for storm water and nonpoint source targets. While the difference is not substantive, we will make the change to make both sections consistent.
9	2.	**Section I.B.3.f.2** **Amend as** **After B.3.f.2, add**:	**Section I.B.3.f.2 on page 10** We suggest a minor amendment to clarify that, to obtain an extension for lack of funding, government agencies must demonstrate that funding was unavailable or inadequate. This appears to be an oversight in subsection 2, as subsection 1 requires municipalities to demonstrate that funding is unavailable or inadequate. **Amend as**: for other governmental agencies, a demonstration and documentation of a good faith effort to acquire funding through that agency's budgetary process, and that funding was unavailable or inadequate. We also suggest a clarification to set a time limit on extensions for no longer than one year, with the opportunity to renew the extension. **After B.3.f.2, add**: Extensions shall be granted for no longer than one year. If the circumstances above still exist when the extension expires, the discharger may apply for a continuation of the extension for up to one year.	Staff agrees and the changes will be made to Section I.B.3.f.2. See response to comment 7.

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10	2.	**Section III.E.** **Amend as**:	**Section III.E. on page 13** The second paragraph contains a typo. There is no subsection d. or e. in Section E. **Amend first sentence of paragraph two as**: If a discharger claims physical impossibility, it shall notify the Board in writing within thirty (30) days of the date that the discharger first knew of the event or circumstance that caused or would cause it to fail to meet the deadline in Section III.A.5. d. or e. We suggest a minor amendment to clarify that, to obtain an extension for lack of funding, government agencies must demonstrate that funding was unavailable or inadequate. This appears to be an oversight in subsection 2, as subsection 1 requires a demonstration that funding is unavailable or inadequate. **Amend as**: for governmental agencies, a demonstration and documentation of a good faith effort to acquire funding through that agency's budgetary process, and that funding was unavailable or inadequate.	Staff will correct this error, and replace "d or e" with Section III.A.5.d. Staff agrees and the changes will be made to Section III.E.
11	2.	**After III.E.2., add**:	We also suggest a clarification to set a time limit on **extensions for no longer than six months, with the** opportunity to renew the extension. **After III.E.2., add**: Extensions shall be granted for no longer than six months. If the circumstances above still exist when the extension expires, the discharger may apply for a continuation of the extension for up to six months.	See response to comment 7.
12	2.	**Section IV.A.3.a.(3)**	**Section IV.A.3.a.(3) on page 14** The Exception now includes a provision that if a discharger has no outfall greater than 36 inches, then it must analyze storm water runoff from its largest outfall for Table B constituents and others. We agree that a discharger with no outfalls equal to or greater than 36 inches be required to monitor for these constituents.	The existing monitoring language is adequate, so no changes will be made. It is staff's experience that dischargers without outfalls greater than 36 inches typically have very few outfalls; their next largest outfall less than 36 inches will suffice for characterizing their highest threat discharge.

		Amend as:	However, we believe that a requirement that only *one* larger outfall be monitored would, in circumstances of dischargers with many outfalls, not adequately protect ASBSs for beneficial uses. Accordingly, we suggest the following clarification: **Amend as**: If an applicant has no outfall greater than 36 inches, then storm water runoff from the applicant's five largest outfalls shall be further analyzed during the same storm as receiving water samples for Ocean Plan Table B metals for protection of marine life, Ocean Plan polynuclear aromatic hydrocarbons (PAHs), current use pesticides (pyrethroids and OP pesticides), and nutrients (ammonia, nitrate and phosphates).	
13	2.	**Section IV.B.2.a.**	**Section IV.B.2.a. on page 17** We suggest that the Exception clarify with further specificity what is meant by "minimal" development, aside from simply stating it shall not be more than 10% development. Given that this approach seeks to characterize "natural" water quality, simply setting a threshold at 10% is insufficient; very low levels (less than 10%) of urban development can lead to watershed degradation.2 Rather, the approach suggested below offers more specificity and guidance in order for staff and stakeholders to better find sites that truly represent natural water quality.	Staff agrees that even minimal development may have effects on streams and possibly estuaries. However there is no evidence that such effects from watersheds with less than 10% development are measurable in open coastal systems. It is important to remember that reference sites are proxies for natural water quality and do not necessarily represent absolutely pristine conditions. It is not likely that any site on California's coast does not have a measurable concentration of certain ubiquitous pollutants in sediments, water or tissues, including global contaminants such as DDT or mercury. By expecting that reference sites meet pristine conditions then we may not have any reference sites that are of use for typical storm water constituents of concern.
		Amend first sentence	**Amend first sentence as**: Ocean reference areas shall be located at the drainages of flowing watersheds with minimal development (in no instance more than 10% development), shall be the best attainable in the region as established, in order of priority, by: (1) substantial data demonstrating that established water quality standards (concentration criteria and beneficial uses) are achieved at or near the discharge point to the ocean; or (2) the lowest presence of human-dominated land uses, including	Staff believes the existing language is sufficient to characterize the land use pattern necessary for natural water quality use. State and Regional Water Board staff will be involved in the process of identifying the reference sites, and will make sure that the least impacted sites will be selected. It is our experience that while watersheds with less than 10% development are available in southern California, but in the central and northern coastal areas there are more watersheds available with less than 5% development.

			urbanization, agriculture (crop and/or pasture), grazing, and timber harvest. In the event that no watershed in a region meets the first criterion and has no more than 5 percent human-dominated lands uses by area, the reference watershed(s) shall be the nearest located in another region that meets the first or second criterion. Ocean reference areas shall not be located in CWA Section 303(d) listed waterbodies or have tributaries that are 303(d) listed. Also, the Exception should set a deadline for choosing ocean reference areas. We suggest adding a sentence at the end of Section IV.B.2.a. to read: Dischargers should select and present to the Water Boards for approval ocean reference areas within six months of the effective date of the Exception.	Where available and representative, staff will assure that such watersheds with less than 5% development are used as reference sites. Adding overly prescriptive language may have unintended consequences and may hamper our ability to find an adequate number of reference sites. No changes will be made to the existing language.
14	2.	**Definition of Design Storm** **Amend as**:	**Definition of Design Storm** on page 19 The Exception defines the Design Storm as the volume of runoff produced from one inch of precipitation per day. Stormwater permits may have a different definition for a design storm. Thus, we suggest amending the definition of Design Storm in the Exception to ensure consistency with the discharger's applicable stormwater permit. **Amend as**: For purposes of these Special Protections, a design storm is defined as the volume of runoff produced from one inch of precipitation per day, or, if this definition is inconsistent with the discharger's applicable stormwater permit, then the design storm shall be the definition included in the discharger's applicable stormwater permit.	Staff appreciates this suggestion and will change the definition to allow consistency with applicable storm water permits.
15	3.	**85th Percentile**	**85th Percentile Threshold for Natural Water Quality** We remain concerned about the proposed 85th percentile compliance threshold defining natural water quality. The Natural Water Quality Committee's Summary of Findings specifically states that "quantifying natural water quality is	The use of the 85th percentile 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.

			not concluded". We support the use of this threshold as a benchmark requiring specific actions be taken when monitoring programs show the 85th percentile is exceeded. But we do not support its use as the definition of natural water quality. DoD requests that language be included that clearly states the **85th** percentile is a **benchmark not a water quality standard**.	The 85th percentile is one means of comparing discharge and reference data and is being recommended in the Special Protections to exercise the precautionary principle, addressing the uncertainty in accepting the reference site data range. However, the language currently proposed in the Flowchart clarifies that if the 85th percentile exceeded it is not a violation, but rather requires the discharger to apply additional BMPs through the iterative approach in the Special Protections.
16	3.	**Flowchart is not consistent**.	In addition the language within the body of the Special Protections and the Attachment 1 **Flowchart is not consistent**. Important clarifications have been added to the attachment that should also be reflected in the Special Protections text. These clarifications point out that re-sampling occurs during the next feasible storm event and that when an exceedance of the **85th** percentile occurs the Water Boards will **consider end-of-pipe sampling data** in making determinations. The two documents should be consistent to avoid confusion in the implementation of these requirements.	The flowchart currently states that when sampling data is available, end-of-pipe effluent concentrations will be considered by the Water Boards in making this determination. The flowchart is a part of the exception and is not inconsistent with the text in section I.A.2.h or section I.B.2.c. During the process described in those sections the Water Boards will consider end-of-pipe concentrations.
17	3.	**A.3.a(1)**	**Runoff and Receiving Water Sampling** The sample collection requirements are confusing. Page I4 item A. 1 requires runoff samples to be collected when receiving water samples are collected. Page 14 item **A.3.a (1)** requires sampling storm water runoff during the same storm as receiving water samples. It will be extremely difficult to sample both the discharge and receiving water at the same time but reasonable to collect samples representing the same storm event. We suggest using the sampling protocol established on Page 6 of the ASBS '08 Work plan "Receiving water samples will be collected immediately prior to (< 48 h) and	To avoid confusion Section IV.A.1 has been changed to state that runoff samples shall be collected during the same storm and at approximately the same time when post-storm receiving water is sampled. We agree that would be extremely difficult to sample both runoff and the receiving water at the exact same time, but we believe it is completely feasible to collect those samples at approximately the same time. For example a sample of runoff may be first collected and stored, and then the receiving water would be sampled. This would all happen during the same sampling trip, no more than an hour apart. That is what we mean by "at approximately the same time."

			immediately following (< 24 h) wet weather events." The runoff sample would be collected consistent with the directions in the applicable storm water permit.	
18	3.	**Indicator Bacterial Fecal Contamination Monitoring**	**Indicator Bacterial Fecal Contamination Monitoring** The revised Special Protections document now includes a specific reference to sampling within the range of the southern sea otter indicator bacteria or some other measure of fecal contamination.. ." (Pages 14 and 18). Based on statements within the Program Environmental Impact Report (PEIR) this was likely added to address concerns regarding ***Toxoplasma*** gondii infections in otters. As noted in the PEIR, cat feces in storm water discharges is a likely source of T. ***gondii*** in the ocean.Pinnipeds naturally create a very high fecal load on island beaches and near shore waters. The Navy has successfully eradicated cats from San Nicolas Island and hence, there is no potential for cat feces to enter the ocean. If the Water Board is concerned with the potential for T. ***gondii*** infections in otters, then the sampling protocol should test for the presence of ***T. gondii,*** not fecal contamination or some other fecal indicator.	Indicator bacteria are the only practical and cost effective way to measure for fecal contamination, from cats, other terrestrial animals, and humans. Sea otters are prone to insults from many pollutants, both chemical and biological. It is prudent to measure indicator bacteria throughout the range of the southern sea otter.
19	4.	**Outreach to the applicants**	We were under the impression from the November hearing that the State Board staff would **outreach to the applicants**, though we are unaware of any outreach and were not contacted. We are extremely concerned about the seven working day comment period, which raises concerns about the sincerity of obtaining input from the applicants.	The staff and the Board has provided outreach over several years with staff workshops, regional monitoring meetings, Board workshops, scoping meetings, and public hearings. The direction given by the Board to staff at the October Meeting was to go over and improve the response to comments document, and to make only minor clarifying edits to the Special Protections.
20	4.	**90% load reduction**	The City of San Diego is concerned that changes to this program continue to expand without explanation or without best available scientific data justifying the stricter requirements. There is a requirement to have a **90% load reduction** over the 85% reference station threshold within	The 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.

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			four years, with no justification on how that load reduction was determined.	
21	4.	**Comply in four years**	The requirement to comply with natural ocean water quality in **four years** appears to be unjustified, calling out for a more detailed analysis of the program's requirements.	This comment is out of the scope of the most recent clarifying edits. 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.
22	4.	**Dictate Best Management Practices**	There is a new requirement that the applicants *must first consider using LID practices to infiltrate, use, or evaporatranspirate storm water runoff on the site.* It is the City's understanding that the State and Regional Boards do not **dictate** which **Best Management Practices** applicants are to use, and recommend the removal of this requirement.	This was added to be consistent with the Water Board's storm water program. Staff intends for a discharger to consider LID when planning its BMPs. If feasible, and if LID will provide the best water quality protections, then we expect LID solutions to be employed. LID approaches can take different forms. Staff is not dictating any specific LID or other BMP.
23	4.	**Dilution zones** **Monitoring duplicative**	The City continues to request that mixing or **dilution zones** be incorporated into the monitoring requirements, as authorized in the Ocean Plan. **Monitoring** at the point of discharge for both the storm water and the receiving water is **duplicative**, and appears to be punitive.	It is State Water Board staff's intention that wet weather runoff not cause an alteration of natural water quality in the receiving water, and the Special Protections are to protect natural water quality in ASBS. Since monitoring will be conducted in the receiving water, adding a dilution factor would not be protective. We also need to better understand what is in the discharges (core monitoring). Core and receiving water monitoring, as required by the Special Protections, are not duplicative.
24	4.	**State Board and the Regional Board approval**	The **monitoring** requirements added to the approval process with the Regional Board regarding the quantitative intertidal benthic marine life survey, bioaccumulation study, and the marine debris program. Please explain why both the **State Board and the Regional Board** are now required to approve these documents.	The State Board and the Regional Board work cooperatively on Ocean Plan exceptions and the incorporation into a permit. Mutual approval of surveys has been standard professional practice to date for exceptions.

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25	4.	**Dilution zones**	We are requesting that mixing or **dilution zones** be allowed in the special exceptions requirements, similar to other authorized Ocean Plan permits.	Compliance with the Special Protections will allow responsible parties to discharge clean storm water to ASBS so that natural water quality is maintained everywhere in the ASBS. Since monitoring will be conducted in the receiving water, adding a dilution factor would not be protective.
26	4.	**Reasonable timeline**	We request consistent regulations based on best available science, and a **reasonable timeline** to comply that goes beyond four years for full implementation of all Best Management Practices.	This comment is out of the scope of the most recent clarifying edits. Four years is considered reasonable and is used in other permits. Also s ee response to comment 21.
27	5.	**Scale requirements based on population size**	For example, the policy does not **scale requirements based on population size,** density, or land use. Instead, the policy continues to employ a one-size-fits-all urban oriented approach that has significant impacts for less developed areas (such as the Monterey Peninsula, in general, and the Del Monte Forest, in particular) that are unjustifiable given the speculative environmental benefits in such areas.	This comment is out of the scope of the most recent clarifying edits. All dischargers are treated equally in their requirements to comply with the ASBS requirements. The alternative the discharger could elect would be to cease the discharge.
28	5.	**No changes were made - undefined natural water quality**	**No changes were made** to the policy to address the scientific issues associated with determining and complying with the **undefined** standard known as **"natural water quality."** The Special Protections policy will require dischargers to characterize natural water quality, pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near certain discharge locations.	This comment is out of the scope of the most recent clarifying edits. 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 under the exception.
29	5.	**State-funded panel**	We recommend that a **state-funded panel** be convened to define natural water quality in each ASBS and to provide guidance and protocols for determining whether storm water runoff is causing and contributing to degraded receiving water quality. This state-funded work must be completed prior to the development and release of	This comment is out of the scope of the most recent clarifying edits.

			proposed Special Protections policy.	
30	5.	**Comparison of "reference" and discharge sites**	A meaningful **comparison of "reference" and discharge sites** is impossible due to the statistical invalidity of simply comparing the collected samples to one reference site, which will probably be located many miles away from the ASBS in question and with different oceanographic characteristics, and the high degree of natural variability in the ecosystem.	This comment is out of the scope of the most recent clarifying edits.
31	5.	**Effective date**	The **Compliance Plans in parts A.2 and B.3** use the **effective date** of the Special Protections as the beginning point to commence time periods for meeting proposed Special Protection-mandated deadlines. This commencement point does not take into account the time taken to form regional monitoring partnerships or develop an understanding of what constitutes "natural water quality." We recommend that the commencement date should be after "natural water quality" characteristics are determined.	This comment is out of the scope of the most recent clarifying edits. However, the selection of the effective date is consistent with Board policy and when orders are adopted. It is imperative to initiate monitoring as soon as possible so that problematic discharges may be identified and corrected as soon as possible within the four year window. Regional monitoring has been encouraged for years and some dischargers have already performed regional monitoring. Staff is confident that the formation of regional monitoring collaborations will not prevent monitoring in the first storm period after adoption. Waiting until after all monitoring is performed will present an unacceptable delay in protecting natural water quality.
32	5.	**I.A.1.e(2)(vi):**	**I.A.1.e(2)(vi):** This definition is vague. Are "non-anthropogenic" flows from those sources described in (ii) through (v) included in this definition? If so, this new category could lead to further confusion.	The intention of this clarification was to allow a naturally occurring stream that incidentally may passes through a culvert (e.g., operated by a public works agency) on its way to the ocean, as long as no pollutants are added by the discharger. The new section (vi) stands alone and is not intended to be assimilative of the other allowed discharges (ii) through (v). Staff never intended to regulate naturally occurring streams with no contributions of anthropogenic runoff under the exception.
33	5.	**Section I.A.2.f**	**Section I.A.2.f** of the revised policy includes the following new language: "to control storm water runoff discharges	This was added to be consistent with the Water Board's storm water program. Staff intends for a discharger to

			(at the end-of-pipe) during a design storm, permittees must first consider using **LID practices to infiltrate, use, or evapotranspirate storm water runoff on-site.**" This proposed policy could have significant, secondary environmental impacts that have not been adequately discussed in the PEIR. For example, infiltration on steep bluffs in many of our coastal areas could lead to an increased risk for slope instability and bluff erosion,	consider LID when planning its BMPs. If during that consideration LID is feasible, and if LID will provide the best water quality protections, then we expect LID solutions to be employed. .If an LID BMP would lead to an increased risk for slope instability and bluff erosion, then there is nothing in the Special Protections to require its use, and another type of BMP would of course be allowable.
34	5.	**I.A.2.h (i):**	**I.A.2(i):** This paragraph, which has been deleted, provided a modest amount of flexibility for unforeseen circumstances, and it should be retained. Related to this deletion is the new section A.3.f. The intent of this new section is to provide structure to what will be deemed an unforeseen circumstance.	The paragraph was removed because it was duplicative to the requirements in I.A.3.f, so that compliance guidelines would be more clear. We agree that I.A.3.f, does provide more structure and that was our intention.
35	5.	**I.A.3.f**	**I.A.3.f T**he definition of a physical impossibility which is given in the glossary is very narrow and impractical. It does not include such factors as physical impossibility for reasons such as geology, topography, or negative environmental impacts. The **definition of what constitutes an economic hardship** (**lack of funding**) which is given in section 1 is also very narrow and completely unrealistic. The median income of a community has nothing to do with the ability or inability of a jurisdiction to raise revenues to pay for this program.	Section I.A.2.a allows the discharger to prioritize discharges that pose the greatest water quality threat for installation of structural BMPs. Section I.A.2.d states that structural BMPs need not be installed if the discharger can document to the satisfaction of the Water Boards that such installation would pose a threat to health or safety._ Section I.A.3.f states that the Water Boards may authorize additional time to comply if good cause (physical impossibility or lack of funding) exists. Taken together these sections provide for greater flexibility in meeting the terms and conditions. Annual household income for residents within a community is a factor relevant to the availability of grant funding.
36	5.	**I.B.1.e(2)(vi)**:	**I.B.1.e(2)(vi)**: See comment pertaining to I.A. 1 .e (2) (vi) above.	See response to comment 32.
37	5.	**I.B.2.d:**	**I.B.2.d:** See comment pertaining to I.A.2 above.	See response to comment 33.
38	5.	**I.B.3.f:**	**I.B.3.f:** See comment pertaining to I.A.3.f above;	See response to comment 36.
39	5.	**I.B.3.f.**	**I.B.3.f.**1 and 2: These two conditions do not appear under	These conditions are nearly the same as the conditions in

			I.A.3 .f. Was this intentional?	sections I.A.3.f.1and 2, but are intentionally a little different based on staff's understanding of the difference between nonpoint source and municipal storm water dischargers.
40	5.	**III.E:**	**III.E:** See comments pertaining to I.A.3.f and I.B.3.f above.	These conditions in Section III.E are nearly the same as the conditions in sections I.A.3.f.1and 2, but are intentionally a little different based on staff's understanding of the difference between waterfront dischargers and municipal storm water dischargers.
41	5.	**Section IV.A.**	**Section IV.A.** 1: This section includes the following new language, "Runoff samples shall be collected when post storm receiving water is sampled." **Please add language to this section in the final policy that clarifies the length** of time that is allowed between sample collection of receiving water and stormwater outfall runoff. We recommend that at least 12 hours be allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.	Section IV.A.1 has been changed to state that runoff samples shall be collected during the same storm when post-storm receiving water is sampled. Section IV.B.1(a) has been similarly edited.
42	5.	**Sections IV.A.3.a.(l) and IV.A.3.b.(l):**	**Sections IV.A.3.a.(l) and IV.A.3.b.(l):** We suggest that these sections be revised to state "samples of storm water **runoff shall be analyzed- collected during the same storm** as receiving water samples annually and analyzed for oil and grease.. . ".	Runoff samples should be collected during the same storm event that receiving water is sampled, so that if natural water quality is determined not to be met, then the runoff data will be available to determine if it is contributing to the exceedance. However, Sections IV.A.3.a.(1-3) and IV.A.3.b.(1-3) have been amended to more clearly state that "samples of storm water runoff shall be collected during the same storm as receiving water samples and analyzed…" for the respective constituents.
43	5.	**Section IV.B.2,**	**Section IV.B.2, Regional Integrated Monitoring Program, contains substantial revisions that will increase monitoring costs (annual toxicity testing for runoff samples as opposed to once every five years,** pre and post storm monitoring three times per year for Regional Monitoring Programs). It is not clear if the	We recognize that costs will be increased during the first two storm seasons. Staff's intention is to move the runoff and ocean monitoring up to the first two storm seasons so that there will be less cost involved in mobilization throughout the first permit cycle, and so that there can be better planning for BMPs. The EIR was amended to more fully explain the

			increased costs associated with the revised monitoring requirements were incorporated into the CEQA Economic Analysis. If the Special Protections policy is adopted on March 6, 2012, as planned, the impacted communities will **need time to assess** the full cost of the monitoring program. We recommend that water quality monitoring not be required until the 2013-2014 rainy season to allow time to assess and budget for the cost of compliance once the policy is adopted. The monitoring results are critical to BMP design; we request that the Compliance Plan and BMP Implementation Schedule be adjusted accordingly.	costs of monitoring over the entire permit cycle. Dischargers who have already begun the data collection process, such as those in southern California, will be able to use that data when planning their BMPs. For those southern California dischargers, who already participated in a regional monitoring storm season, they will only need to perform runoff monitoring during one more storm season. It is imperative to initiate monitoring as soon as possible so that problematic discharges may be identified and corrected as soon as possible within the four year window. Regional monitoring has been encouraged for years and some dischargers have already performed regional monitoring. Staff is confident that the formation of regional monitoring collaborations will not prevent monitoring in the first storm period after adoption. Waiting until after all monitoring is performed will present an unacceptable delay in protecting natural water quality.
44	5.	**IV.B.2.a:**	**IV.B.2.a:** This policy states that a minimum of three ocean reference samples are to be collected, but it doesn't **specify over what period of time.**	Section IV.B.2.c states that reference and receiving water sampling shall commence during the first storm season following adoption, and that sampling shall occur in a minimum of two storm seasons. Nevertheless Section IV.B.2.a has been changed to clearly state that reference station samples must be collected during the same storm season that receiving water is sampled.
45	5.	**IV.B.2.c:**	**IV.B.2.c:** This policy specifies sampling over two storm seasons, but without the term of the Special Protections being known, it isn't clear over **what period this is to be done.**	Section IV.B.2.c states that reference and receiving water sampling shall commence during the first storm season following adoption, and that sampling shall occur in a minimum of two storm seasons. The samples for runoff, receiving water, and reference sites may be grab samples, and therefore staff declines to suggest more prescriptive requirements.

46	5.	**Section IV.A.3.b.(3)**	**Section IV.A.3.b.(3)** of the policy was revised to require storm water runoff toxicity testing annually as opposed to once every five (5) years. This change will increase monitoring costs significantly. Have these increased costs been incorporated into the Economic Analysis? If not, then they need to be included and the document recirculated for public review and comment. Additionally, annual testing may be unnecessary and therefore unreasonable. If the results show no toxicity after one year of sampling, we recommend that the sampling frequency be reduced to once every five years.	We recognize that there will be a cost increase associated with an additional toxicity test. These change was made to make clear there needs to be consistency between receiving water and runoff monitoring, which was always staff's intention. Two toxicity tests per permit cycle will better characterize the runoff and provide comparable results to receiving water testing. The EIR was amended to more fully explain the costs of monitoring over the entire permit cycle. It is important to remember that Section IV.A.4 states that Water Boards may reduce or suspend core monitoring once the storm runoff is fully characterized. This determination may be made at any point after the discharge is fully characterized, but is best made after the monitoring results from the first permit cycle are assessed.
47	5.	**Recommendation To Delay Project**	**Recommendation To Delay Project** In an earlier letter sent by PBC dated May 20, 2011, we proposed a credible and potentially environmentally superior alternative to the Special Protections. The alternative received no response to our comment, and it deserves a fair and unbiased review and analysis as an alternative to the designated project. For these reasons and many others stated within our written and verbal communications to the SWB on this project, we believe that the SWB should not approve the project due to the fact that the final PEIR certification, if adopted, was not completed in compliance with CEQA, which is necessary per CEQA Section 15090.	This comment is out of the scope of the most recent clarifying edits.
48	6.	**Inadequate public process**	**Comments related to the inadequate public process overall- not SP specific**	This comment is out of the scope of the most recent clarifying edits.
49	7.	**I.A.2.d(2):**	**I.A.2.d(2):** It is not clear how the 90% reduction in pollutant loading is to be determined. It is based on the	The reduction applies to all pollutants, and is relative to the total volume of runoff. The intention is to allow an LID

			discharge's total mass emission rate of pollutants as a whole, or on each individual pollutant by itself? With the deletion of the previous reference in this paragraph to Table B parameters, to which pollutants does this 90% reduction apply?	approach to infiltrate 90% of the runoff (on average, given a design storm)..
50	7.	**I.A.2.i:**	**I.A.2.i:** This paragraph should be retained and not be deleted. As explained in some of the comments below, the City anticipates it will not be possible to meet the time schedule set forth in the Special Protections for reasons beyond the City's control. Therefore, the City should be allowed to propose a revised **time** schedule based on its circumstances.	The paragraph was removed and language was added to the I.A.3.Compliance Schedule for clarification.
51	7.	**I.A.3.e:**	**I.A.3.e:** This section refers to maintaining Natural Water Quality, but goes on to define Natural Water Quality within the ASBS as containing less than 85% of the threshold pollutant levels in the Reference stations. Since the Reference stations themselves are supposed to be selected to represent Natural Water Quality in the vicinity of the ASBS, this would require the water in the ASBS to be 15% cleaner than Natural Water Quality. This conflicts with the objective of the Special Protections to maintain Natural Water Quality.	Reference stations are intended to be proxies of natural water quality. However, absolute pristine conditions probably do not exist anywhere in California waters, and the possibility exists that a particular reference sample may be polluted by some unexpected source. Therefore, to be protective, staff recommends the 85th percentile approach. Also, see response to comment 15.
52	7.	**I.A.3.f:**	**I.A.3.f:** The words "...or lack of sufficient Reference station water quality data to determine Natural Water Quality. .." should be added as another basis for allowing the State to authorize additional time to comply with these special conditions. No Reference stations have yet been selected for the ASBS into which the City's storm drains discharge. Based on the experience in Southern California, it will likely take considerable time for Reference stations to be selected, and then for enough sampling of water quality to be performed in order to establish Natural Water Quality at those stations. Until that has been done, it will not be possible to compare sampling data from the discharges or	Based on our experience and involvement with the southern California Bight 08 regional monitoring, staff is confident that reference stations will be identified and sampled during the first storm season following adoption. The state has provided funding to the Southern California Coastal Water Research Project (SCCWRP) to advise the central and north coast groups so that the regional monitoring in those areas are expedited.

			their receiving waters with Natural Water Quality in order to determine compliance with these conditions.	
53	7.	**I.A.3.f(1):**	**I.A.3.f(1):** There is no nexus between the annual household income of residents and the ability of the City to generate finds to pay for complying with the Special Protections by imposing storm water fees on those residents. This is because under Proposition 2 18 those residents must approve of having such fees imposed upon them, regardless of what their incomes are, in order for the City to be able to levy such fees. **The language in this portion of this paragraph should be changed to state** that the municipality has attempted to impose storm water fees to fund compliance with the Special Protections in accordance with the requirements of Proposition 21 8 and has been unsuccessful in doing so.	See response to comment 35. Staff does not agree that inability to raise or impose fees because of the requirements Proposition 218 by itself illustrates lack of funding. The annual household income of residents within the jurisdiction is one factor relevant to the availability of grant funding.
54	7.	**IV. - Second paragraph:**	**IV.** - **Second** paragraph: This paragraph states that both State and Regional Board must be notified of certain **Safety conditions affecting sampling.** Elsewhere throughout the Special Protections there are similar requirements to receive approval from both the State and the Regional Board for various things. This makes the process unnecessarily cumbersome **and** time consuming. Point dischargers with Regional Board permits should be required to obtain approval from, or give notices to, their respective Regional Board, and not to also have to do this with the State Board. **This language should be changed here and in the other locations in which it appears,** so as to be consistent with the other paragraphs in the Special Protections in which obtaining only Regional Board approval is necessary for Regional Board issued permits.	The notification is intended to be relatively simple, and to those staff at the State and Regional Boards involved in approving the monitoring programs. A simple "cc" on the same message is all that is intended, to assure that both agencies are aware of the safety issue. The State and Regional Boards will be involved collaboratively in the monitoring programs. Also, see response to comment 24.
55	7.	**IV.A.2.a:**	**IV.A.2.a:** Some examples of "acceptable methods" of calculating flows should be provided, since it will rarely be	This comment is out of the scope of the most recent clarifying edits. Nevertheless consideration of methods will

			possible to actually measure the flows from the outfalls. For example will use of the Rational Method based on tributary drainage area, estimated subarea-weighted runoff coefficients, and rainfall intensity charts be an acceptable method?	be part of the approval by the Water Boards of the monitoring program. Any reasonable and practical method with a sound scientific basis will be allowed to measure flow.
56	7.	**IV.A.2.b**:	**IV.A.2.b**: What is the purpose of calculating the flows? How does that information pertain to complying with the other provisions of the Special Protections, none of which appear to have any correlation to flow rates?	This comment is out of the scope of the most recent clarifying edits. Nevertheless this information will be generally valuable in determining runoff reduction and BMP effectiveness.
57	7.	**IV.A.4:**	**IV.A.4:** The language in the last sentence of this paragraph **stating** that "...this is best made after the monitoring results from the first permit cycle are assessed" should be deleted. The Regional Board should have the authority to determine when and if a reduction or suspension of monitoring is appropriate, and should not be influenced by language such as this. This comment also applies to paragraph **IV.B.I.f.** Also, the term "permit cycle" is not defined. How long is the permit cycle expected to be?	As currently structured in the Special Protections, monitoring would take place in the first two years. We consider two years of data to be a sufficient data set to make a determination to reduce monitoring. Permit cycles are five years. Nothing in this section would preclude the Regional Board (if the permit is issued by the Regional Board) from modifying monitoring when appropriate (i.e., the discharge is fully characterized).
58	7.	**IV.B.1.a:**	**IV.B.1.a:** Language in this paragraph indicates that Reference stations will be determined by the State. Elsewhere in the Special Protections (see paragraph **IV.B.2.a** and the definition of "Representative sites and monitoring procedures" in the Glossary) there are indications that Reference stations are to be proposed to the State by the discharger, for State approval. The process of determining Reference stations should be clarified and the language pertaining to this process should be made consistent throughout the Special Protections.	The difference in terminology is intentional. In Section IV.B.1.a the intention is for the reference sites to be determined by the Water Boards because the discharger is not involved in the regional monitoring program. In Section IV.B.2.a, participants in the regional monitoring program collaboratively with the Water Boards to identify reference areas.

59	7.	**IV.B.1.b:**	**IV.B.1.b:** It is not clear whether sediment sampling is to be performed at every outfall, or only at certain outfalls. Because of the costs associated with performing this sampling and analyses, it would seem adequate to perform this at most at only a few locations along the shoreline where the outfalls are located.	This comment is out of the scope of the most recent clarifying edits.
60	7.	**IV.B.1.c:**	**IV.B.1c:** It is not clear whether a qualitative survey is to be performed at every outfall, or only at certain outfalls. Because of the costs associated with performing this surveying, it would seem adequate to perform this at most at only a few locations along the shoreline where the outfalls are located. Also in this paragraph the requirement for both Regional Board and State Board approvals to be obtained should be deleted, as mentioned in the comment above pertaining to paragraph **IV.** - **Second paragraph.**	This comment is out of the scope of the most recent clarifying edits. Nevertheless the intention is clearly one discharge and one reference site (the term site is singular and not plural). Also, see response to comments 24 and 54.
61	7.	**IV.B.1.d:**	**IV.B.1.d:** The requirement for both Regional Board and State Board approvals to be obtained should be deleted in two places in this section, as mentioned in the comment above pertaining to paragraph **IV.** - **Second paragraph.**	See response to comments 24 and 54.
62	7.	**IV.B.2:**	**IV.B.2:** The requirement for both Regional Board and State Board approvals to be obtained should be deleted, as mentioned in the comment above pertaining to paragraph **IV.** – Second **paragraph.**	See response to comments 24 and 54.
63	7.	**IV.B.2.a:**	**IV.B.2.a:** It is not clear what is meant by ". . . at the drainages of flowing watersheds..." In the preceding paragraph the term ". ..near the mouths of identified open space watersheds.. ." appears to be used for this. Although this paragraph contains some additional conditions pertaining to ***this*** topic, a more understandable and complete description of what will constitute an acceptable "reference area" is needed to assist dischargers in making this selection. Providing some examples to illustrate this would be helpful.	The terms “at the drainages of flowing watersheds" and "near the mouths of identified open space watersheds" are not incongruous. The intention is for a reference area to have a freshwater influence, just like storm runoff sites have an obvious freshwater (depressed salinity) influence. At the final meeting of the Natural Water Quality Committee, on August 10, 2010, a presentation and related materials to this topic is found: http://www.waterboards.ca.gov/water_issues/programs/ocean/docs/asbs/asbsnwqc/081010stwde.pdf

			In this same section is it **not clear how many reference stations** need to be established by each discharger and for each ASBS. Providing some examples to illustrate the intent would be helpful. In this same section and elsewhere in the Special Protections the terms "reference area" and "reference station" seem to be used interchangeably. However, the term area is a broad description of a location whereas the term station would be a very specific location. This discrepancy should be clarified or eliminated so that the two terms are clearly defined.	The terms “reference station" and "reference area" are not incongruous. Since sample locations are points, there is no conflict between these two terms. Also, see response to comment 51.
64	7.	**IV.B.2.c:**	**IV.B.2.c:** As mentioned above under the comment on paragraph **I.A.3.f,** it appears unlikely that reference stations for **Central** Coast ASBSs will be able to be selected and approved prior to the 2012 rainy season. This is one reason why compliance with the time schedule in the Special Protections will likely be impossible for dischargers in that area. This needs to be addressed in the language in the Special Protections by adding the language suggested in the comments for that paragraph.	See response to comment 52.
65	7.	**Surface Water Ambient Monitoring Program (SWAMP)**	**Glossary - Definition of the term "Surface Water Ambient Monitoring Program (SWAMP) comparable":** The definition of this term includes in its final sentence a reference to the Southern California Bight QAPP and data base management as being "SWAMP comparable." Please clarify exactly what this statement means. Also, please state how one can obtain a copy of that documentation and describe how it is "SWAMP comparable." Also describe other forms of documentation that would be "SWAMP comparable," as there certainly must be other documentation forms that would meet this requirement.	The Southern California Bight QAPP was approved by the SWAMP program at the State Water Board. A copy may be obtained upon request from the State Water Board QA officer or from the State Water Board Ocean Unit.

66	7.	**Recommend alternate approach**	The Peninsula communities of Pacific Grove, Carmel-By-The-Sea, County and City of Monterey as well as Pebble Beach Company and other ASBS storm drainage dischargers request that the State Water Resources Control Board (SWB) employ **an alternate approach** to that proposed in the currently drafted Special Protections. We appreciate the time, effort and expense that has gone into the preparation of the current Special Protections. However, we believe that the approach described below is a more efficient and protective process.	This comment is out of the scope of the most recent clarifying edits.
67	8.	**85th Percentile Inadequate number of sampling events for statistical significance**	**Within four years of the effective date** of the Exception, the Special Protections require compliance with 85th percentile threshold of Table B constituents. Section I.A.3.e. and the Compliance Flowchart specify procedures to be followed after an exceedance of this threshold is discovered. The County is concerned that program compliance will be measured against a very small sample of reference site monitoring events. Section IV.B.2.a. and c. state that only two seasons of reference site monitoring will be required with samples from three separate storms per season. The County is concerned that six samples taken over two years is not **statistically significant** to use as a compliance measure for the hundreds of receiving water samples. The County desires its program to be legally and statistically defensible and questions whether the program described achieves these results.	See responses to comments 15, 16, 21. The County is not precluded from collecting more samples, and Staff will be glad to use additional data if the County decides to do so. This comment, regarding statistical significance, is out of the scope of the most recent clarifying edits.
68	8.	**No changes were made - scale the requirements**	No changes were made to the policy to **scale the requirements based on characteristics of watersheds** draining to Areas of Special Biological Significance. The policy does not scale compliance requirements based on	This comment is out of the scope of the most recent clarifying edits. See response to comment 27.

			population size, density, or land use and continues to employ a one-size-fits-all approach.	
69	8.	**Section I.A.3.f.**	**Section I.A.3.f.** describes the procedure for requesting an extension of time for compliance based on a lack of funding, requiring a demonstration of significant hardship to discharge ratepayers. This will be **impossible to prove** for most municipalities who have **no established stormwater utility.** As you have heard repeatedly throughout the testimony on the Special Protections, municipalities without an existing storm water utility have no viable method of creating one without going through the expensive Proposition 218 process.	Time extensions may be approved by both State and Regional Boards when implementing the Responsible Parties' permits. The State Water Board's ASBS Prop 84 grant program allowed dischargers to apply for funding to comply with the ASBS Special Protections. Furthermore the municipalities have known about ASBS waste discharge prohibition and the exception since 2004. See also responses to comments 6 and 35.
70	8.	**Section IV**	**In Section IV** - Monitoring Requirements, consideration of safety may allow postponement of sampling upon receiving approval from the State and Regional Water Boards. In the California Construction General Permit (SWRCB Order No. 2010-0014-DWQ), sampling is only permitted during working hours on active construction days under safe conditions. Exceptions for unsafe conditions (such as electrical storms or flooding) are allowed explicitly without prior approval. **Please clarify** the conditions that would normally be considered **unsafe**, with special consideration of the sampling that is required in rocky intertidal locations. The Special Exceptions seem to fairly describe conditions where sampling in the "surf zone" is required, but rocky intertidal sites present additional safety concerns when collecting samples. For instance, is there a maximum wave height that the State considers safe when collecting samples during pre- and post-storm events?	The exception will be implemented through the MS4, Caltrans, and Industrial General permits, not the Construction General Permit. Site conditions and weather conditions, available light and sea conditions may all qualify as safety concerns. Sampling in the rocky intertidal alone is not precluded for safety reasons, but of course precautions must be taken when working in the rocky intertidal zone. Staff expects the dischargers to be reasonable in their postponement of sampling for safety purposes. This is best handled on a case-by-case basis.
71	8.	**Timing of pre-**	Please provide additional **clarification on the timing of**	Staff is amending section IV.B.1.a to state that post storm

		storm and post-storm monitoring	**pre-storm and post-storm** monitoring. No guidance on the period that defines pre-or post-storm has been given. Consideration of the timing of the storm should be given, allowing sampling to occur within regular business hours, providing an increased level of safety by allowing sampling teams to be staffed and operating in daylight conditions. The County suggests that the pre-storm sampling event be defined as no less than **72 hours prior to a predicted storm event,** allowing sampling to occur on a regular business day prior to a predicted weekend or early Monday morning storm. Similarly, the post-storm period should be defined as being no less than 72 hours after precipitation has ceased, in agreement with the definition provided in **IV.A. 1.**	sampling shall be during the same storm and at approximately the same time as when the runoff is sampled. Obviously this will require sampling in the receiving water when runoff is available for sampling. Staff disagrees with the commenter's suggestion that sampling should be confined to regular business hours. Sampling should instead occur in order to collect the most representative samples as long as safety considerations are met. Pre-storm sampling is not specified because this should be determined through the planning effort of the regional monitoring program. However, in the Bight 08 ASBS regional monitoring program a time period of <48 hours before a storm was used. Staff disagrees with concept of sampling post-storm up to 72 hours after the storm because we do not believe that is representative. Staff will review the monitoring programs to make sure that pre storm samples are truly representative of conditions immediately before the runoff occurs.
72	8.	**Section IV.A.2**	**Section IV.A.2** remains confusing on what is being required. The wording states that **flows must be measured or calculated and submitted annually to the State and Regional Boards. Because stormwater flows change instantaneously throughout the duration** of every storm event, we suggest that a maximum sampling period (such as every hour) be specified to be measured for the duration the storm event Compiling and transmitting this large volume of data will be a significant undertaking requiring capital expenditures for equipment and personnel to manage this task. The County questions whether this is the State Board's intent and the practical purpose of providing this data.	This comment is out of the scope of the most recent clarifying edits. The installation of automatic flow measurement devices are one alternate to measure flows. See also response to comment 55.
73	8.	**Section B.2.a**	**Section B.2.a** describes that Ocean Reference Areas be located in the same region as the ASBS receiving water monitoring occurs. The County is still concerned that a	Staff disagrees. When planning the Pilot Study (2008), funded by the SWAMP program, Water Board staff worked collaboratively with central coast parties and identified

			suitable reference site will be able to be found that meets the criteria (i.e., less than 10% development) that is statistically similar to the Monterey and Carmel Bays that define two local ASBS.	representative reference sites.
74	8.	**Design Storm**	Please provide a better definition of **"Design Storm."** The definition presented does not describe a precipitation event but instead specifies a runoff volume. Please provide a better definition of the precipitation event and a clearer connection of why this runoff volume is significant.	Staff is proposing a minor change to the definition for consistency with definitions in permits. See response to comment 8. The design storm definition is usually in the storm water permit language, and is a term which has been in use for quite some time.
75	8.	**Storm Season**	The definition of **"Storm Season"** does not provide dates but rather presents a definition that cannot be planned for or quantified until after the season has ended. Please consider providing dates that will allow permittees to plan for and budget compliance-based activities. As now defined, the season will vary annually, from onset of rainfall (which can occur as early as August) until the cessation of rainfall in the spring (which can occur in June). Caltrans has defined the season from October 1 through May 1 for the North and South Coast regions, and from October 15 through April 15 for the Central Coast.	Staff purposely does not want to prescribe storm season starting and ending months as it is different in different parts of the state. This should be done as a component of the regional monitoring program. However, the dates used by Caltrans are reasonable. As part of the Bight 08 ASBS regional monitoring project in southern California, the storm season was October 1, 2008 to March 31, 2009.
76	9.	**Alterations to Existing Outfalls**	**Alterations to Existing Outfalls for Compliance (Section A.1.d):** The City of Pacific Grove appreciates the clarification added to this provision.	See responses to comments 1 and 2.
77	9.	**A.1.e and B.1.e:**	**Allowed Non-Storm Water Discharges and Non-Point Source Discharges** (Sections **A.1.e and B.1.e):** The City of Pacific Grove has hydrogeologic conditions that result in all types of non-storm water flows identified in this section. The City has been urbanized since the early 1900s, and is built out with impervious surface coverage over fifty percent in many parts of the ASBS watershed. At the same time, the watersheds of the Monterey Peninsula are predominantly located on granite with shallow depths	The non-storm water flows identified in Sections I.A.1.e and I.B.1.e will be allowed, including the clarification (A.1.e 2(vi) and B.1.e.2(vi) that non-anthropogenic flows from a naturally occurring stream via a culvert or storm drain, are allowed as long as there are no contributions of anthropogenic runoff. Staff agrees that non-storm and storm flows should be covered in the Compliance Plan.

			to the bedrock, greatly limiting the land capacity for infiltration and absorption of these flows. The City believes it will be necessary to further study and document these existing conditions to establish an appropriate environmental baseline for compliance within the Pacific Grove ASBS watershed, for both non-structural and structural controls. This should be included as part of the ASBS Compliance Plan.	
78	9.	**Compliance Plans** **Clarify the types of construction sites**	ASBS **Compliance Plans (Section A.2):** The City of Pacific Grove believes that the ASBS Compliance Plan must provide for localized conditions and establishment of environmental baseline conditions unique to each ASBS area. The added provision that discharges can be prioritized by those that pose the greatest water quality threat is necessarily determined by the unique setting of each ASBS. . Please **clarify the types of construction sites** that require weekly inspections. Many projects in Pacific Grove are interior remodels and small projects with limited ground disturbance or soils excavation that would not result in a water quality impact. The City has implemented two phases of an urban dry weather diversion, and is currently expanding a third phase to add the storm water outfalls located in the vicinity of Hopkins Marine Station and the Monterey Bay Aquarium. Areas of the watershed west of Lovers Point are not covered by diversion facilities. The City is concerned that significant environmental impacts may occur from the installation of structural controls in these areas. However, there are no clear criteria established to know what would be considered a threat to health and safety, in order not to he required to install structural BMPS, and to "document to the satisfaction of the State Water Board Executive	It is up to the discharger to prioritize discharges and describe that in the Compliance Plan. The discharger is allowed to do so with the understanding that natural water quality must be maintained in the ASBS. The types of construction sites to be monitored are to be determined according to the requirements of the MS4 permit. If that guidance is not in the MS4 permit the City can propose its criteria in the Compliance Plan, which is subject to approval by the Water Boards. Any installation of a structural BMP that is considered a threat to health and safety can be identified along with the criteria used in the Compliance Plan, which is subject to approval by the Water Boards.

			Director."	
79	9.	**Change to Section A.2.d (2):**	**Please clarify the change to Section A.2.d (2):** If the Ocean Plan Table B parameters are deleted, does this mean that the established "**natural water quality conditions," which have yet to be determined for the Monterey Bay region, become the baseline? This** section is confusing, particularly in regards to the effectiveness date. Because of the City's urbanized and hydrogeologic conditions, watershed restoration activities for both LID and structural controls are limited. The City believes it will be necessary to further study and document these existing conditions to establish an appropriate environmental baseline for compliance within the Pacific Grove ASBS, and recommends this to be a critical component of each ASBS Compliance Plan.	Section I.A.2.d provides alternate target levels (to be achieved, on average) for design of structural BMPs relative to a design storm. These are simply targets that staff considers achievable. See also response to comment 49.
80	9.	**Natural water quality**	The revised Special Protections do not contain changes to address the scientific issues associated with determining and complying with the undefined standard known as **"natural water quality"**. The Special Protections policy will require the dischargers to characterize natural water quality, pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near certain discharge locations. The "natural ocean water quality" in each ASBS have not yet been **established, nor has it been determined whether** a stormwater runoff is causing and contributing to degraded receiving water quality.	This comment is out of the scope of the most recent clarifying edits.
81	9.	**Section A.3 Compliance Schedule**	**Compliance Schedule (Section A.3):** The City requests that the start date for compliance be based on an agreed upon determination of applicable "natural ocean water quality" for each ASBS by individual or regional monitoring area. The Compliance Schedule should take into account the time taken to form regional monitoring partnerships and to develop an understanding	This comment is out of the scope of the most recent clarifying edits. The compliance deadlines remain unchanged.

			of what constitutes "natural water quality". We recommend that the time zero should be after "natural water quality" characteristics are determined.	
82	9.	**(10) year extension**	The City of Pacific Grove concurs with previous comments by the southern California jurisdictions that the requirements for installation of **structural controls** be **extended** to ten **(10) years**, in order for adequate funding to be available or generated.	This comment is out of the scope of the most recent clarifying edits. The compliance deadlines remain unchanged.
83	9.	**Definition of economic hardship**	The **definition of** what constitutes an **economic hardship** (lack of funding) is very limited and unrealistic. The median income of a community has nothing to do with the ability or inability for a jurisdiction to raise revenues to pay for this program. The City of Pacific Grove does not have a storm water fee, and likelihood of imposing one can only be determined though the appropriate political process. The real challenges lie in state legislation which limits the ability for local jurisdictions to charge fees or raise taxes.	See responses to comments 6 and 35.
84	9.	**Monitoring Requirements (Section IV)**	**Monitoring Requirements (Section IV)** Core Monitoring - the prescriptive nature of the core monitoring requirements continue to include costly analysis that may or may not provide adequate information to dischargers to make management decisions regarding BMP implementation and to ensure compliance with the Special Protections. The City of Pacific Grove requests clarification that there is flexibility in the core monitoring program requirements if integrated with a Regional Monitoring Program.	New section IV,A..4 states that the Water Boards may reduce or suspend core monitoring once the storm runoff is fully characterized. This determination may be made at any point after the discharge is fully characterized, but is best made after the monitoring results from the first permit cycle are assessed. Staff believes this language provides flexibility, so no changes will be made to the existing language.
85	9.	**Section IV.A.1:**	**Section IV.A.1:** This section includes the following new language "Runoff samples shall be collected when post-storm receiving water is sampled". Please add language to this section in the final policy that clarifies the length of time that is allowed between sample collection of receiving	Staff is amending Section IV.A.1 to state that runoff samples shall be collected during the same storm when post-storm receiving water is sampled. However, staff does not agree with the suggested logistical challenge, since runoff and receiving water can be collected during the same storm

			water and stormwater outfall runoff. We recommend that 12 hours are allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.	event at approximately the same time (i.e. during the same sampling trip).
86	9.	**Sections IV.A.3.a.(1) and IV.A.3.b.(1)**:	**Sections IV.A.3.a.(1) and IV.A.3.b.(1)**: We suggest that these sections be revised to state "samples of storm water runoff shall be analyzed & collected during the same storm as receiving water samples annually and analyzed for oil and grease.."	See response to comment 42. Sections IV.A.3.a.(1-3) and IV.A.3.b.(1-3) have been amended to more clearly state that "samples of storm water runoff shall be collected during the same storm as receiving water samples and analyzed…" for the respective constituents.
87	9.	**Section IV.A.4:**	**Section IV.A.4:** The City of Pacific Grove appreciates the addition of this provision. Please clarify what is meant by "full characterization" of the discharge.	Full characterization will involve review of the monitoring data using best professional judgment.
88	9.	**Compliance Plan and BMP Implementation Schedule**	If the Special Protections policy is adopted on March 6, 2012, as planned, the Central Coast ASBS jurisdictions will need to develop a regional monitoring program, assess the program cost and obtain all necessary funding, and to begin implementation. The monitoring results are critical to BMP design and we request that the **Compliance Plan and BMP Implementation Schedule be adjusted to reflect** the timing of regional monitoring implementation.	This comment is out of the scope of the most recent clarifying edits. The compliance deadlines remain unchanged.
89	9.	**Request for Continuance**	**Request for Continuance.** In closing, we are disappointed that most of the previously submitted comments submitted by the City of Pacific Grove have not been responded to or adequately addressed in the revised ASBS Special Protections and General Exception.	This comment is out of the scope of the most recent clarifying edits.
90	10.	**Scale the requirements based on characteristics of watersheds**	No changes were made to the policy to **scale the requirements based on characteristics of watersheds** draining to ASBS. For example, the policy does not scale requirements based on population size, density or land use and it continues, to employ a one-size-fits all	This comment is out of the scope of the most recent clarifying edits. See also response to comment 27.

			urban oriented approach. No changes were made to the policy to address the scientific issues associated with determining and complying with the undefined standard known as "natural water quality". - The Special Protections policy will require the dischargers to characterize natural water quality, pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near certain discharge locations. A meaningful comparison of 'reference' and discharge sites is impossible due to the statistical invalidity of simply comparing one reference site, which will probably be located many miles away from the ASBS in question and with different oceanographic characteristics, and the high degree of natural variability in the ecosystem than those of the discharge sites. In Monterey Bay, we can expect episodic but perhaps significant influences from nearby rivers such as the Salinas, Pajaro and Carmel Rivers. Per our Alternative Approach, which we submitted to you in our May 2011 letter on this matter, we recommend that a state-funded panel be convened to define natural water quality in each ASBS and to provide guidance and protocols for determining whether a stormwater runoff is causing and contributing to degraded receiving water quality prior to the release of the Special Protections policy.	
91	10.	**Effective date**	**The Compliance Plans in parts A.2 and B.3** use the **effective date** of the Special Protections as the beginning point to measure deadlines. This does not take into account the time taken to form regional monitoring partnerships or develop an, understanding of what constitutes "natural water .quality". We recommend that the time zero should be after "natural water quality" characteristics are determined.	This comment is out of the scope of the most recent clarifying edits. The compliance deadlines remain unchanged. See also response to comment 31.
92	10.	**I.A.1.e(2)(vi)**:	**I.A.1.e(2)(vi)**: This definition is vague. Are "non-	See response to comment 32.

			anthropogenic" flows from those sources described in (ii) through (v) above this definition? If so, this new category might just lead to further confusion.	
93	10.	**Section I.A.2.f**	**Section I.A.2**.f of the revised policy includes the following new language "to control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspirate storm water runoff onsite." It should be acknowledged that infiltration on steep bluffs in many of our coastal areas could lead to an increased risk for slope instability and bluff erosion, which could in turn lead to a myriad of problems including increased sediment inputs to the ASBS. This also introduces an ambiguity as to whether the increased groundwater seepage that will occur as a result of implementing LID practices in many areas will be considered an anthropogenic source of water.	See response to comment 33.
94	10.	**I.A.2.h(i):**	**I.A.2.h(i):** This paragraph, which has been deleted, provided a modest amount of flexibility for unforeseen circumstances and it should be retained. Related to this is the new section A.3.f. The intent of this new section is to provide structure to what will be deemed an unforeseen circumstance.	See response to comment 34.
95	10.	**I.A.3.f:**	**I.A.3.f:** The definition of a physical impossibility which is given in the glossary is very limiting and it doesn't include such factors as it being physical impossible for reasons such as geology, topography or negative environmental impacts. The definition of what constitutes an economic hardship (lack of funding) which is given in section 1 is very limited and unrealistic. The median income of a community has nothing to do with the ability or inability for a jurisdiction to raise revenues to pay for this program. The real challenges lie in state legislation which limits the ability for local jurisdictions to charge fees or raise taxes.	See responses to comments 6 and 35.

96	10.	**I.B.1.e(2)(vi):**	**I.B.1.e(2)(vi):** See comment pertaining to I.A.1 .e (2) (vi) above.	See response to comment 32.
97	10.	**I.B.1.f and .g**	**I.B.1.f and .g:** What is the scientific basis for allowing bombing of these two islands and the inevitable degradation of runoff quality? This seems extremely preferential in light of the onerous requirements placed upon MS4s.	The Navy has provided monitoring data as part of their exception application, and participated in the Bight '08 Project. In addition to this monitoring data, as part of the General Exception, they must meet water quality requirements as with the other Responsible Parties on the General Exception.
98	10.	**I.B.2.d:**	**I.B.2.d:** See comment pertaining to I.A.2.h (i) above.	See response to comment 34.
99	10.	**I.B.3.f:**	**I.B.3.f:** See comment pertaining to I.A.3.f above.	See responses to comments 6 and 35.
100	10.	**I.B.3.f.1 and .2**:	**I.B.3.f.1 and .2**: These two conditions do not appear under I.A.3.f. Was this intentional?	See response to comment 39.
101	10.	**III.E:**	**III.E:** See comments pertaining to I.A.3.f and I.B.3.f above.	See response to comment 40.
102	10.	**Section IV.A.1**:	**Section IV.A.1**: This section includes the following new language "Runoff samples shall be collected when post-storm receiving water is sampled". Please add language to this section in the final policy that clarifies the length of time that is allowed between sample collection of receiving water and stormwater outfall runoff. We recommend that at least 12 hours are allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.	See response to comment 41.
103	10.	**Sections IV.A.3.a.(I) and IV.A.3.b.(I):**	**Sections IV.A.3.a.(I) and IV.A.3.b.(I):** We suggest that these sections be revised to state "samples of storm water runoff shall be analyzed & collected during the same storm as receiving water samples annually and analyzed for oil and grease.. .".	See response to comments 42 and 86.
104	10.	**Section IV.B.2,**	**Section IV.B.2,** Regional Integrated Monitoring Program,	See response to comment 43.

			contains substantial revisions that will increase cost monitoring costs (annual toxicity testing for runoff samples as opposed to once every five years, pre- and post-storm monitoring three times per year for Regional Monitoring Programs). It is not clear if the increased costs associated with the ' revised monitoring requirements were incorporated into the CEQA Economic Analysis. If the Special Protections policy is adopted on March 6, 2012, as planned, the impacted communities will need time to assess the full cost of the monitoring program. We recommend that water quality monitoring is not required until the 2013-2014 rainy season to allow time to assess and budget for the cost of compliance once the policy is adopted. The monitoring results are critical to BMP design; therefore, we also request that the Compliance Plan and BMP Implementation Schedule be adjusted accordingly.	
105	10.	**IV.B.2.a:**	**IV.B.2.a:** This states that a minimum of three ocean reference samples are to be collected, but it doesn't specify over what period of time.	See response to comment 44.
106	10.	**IV.B.2.c:**	**IV.B.2.c:** This specifies sampling over two storm seasons, but without the term of the Special protections being known, it isn't clear over what period this is to be done.	See response to comment 45.
107	10.	**Section IV.A.3.b.(3)**	**Section IV.A.3.b.(3)** of the policy was revised to require storm water runoff toxicity testing annually as opposed to once every five (5) years. This will increase monitoring costs and may not be necessary. If the results show no toxicity after one year of sampling we recommend that the sampling frequency is reduced to once every five years.	See response to comment 46.
108	10.	**Recommendation to Table Project**	**Recommendation to Table Project** In closing, we are disappointed that most comments submitted by the City of Monterey as well as many other public agencies are not being taken into consideration or	See response to comment 47.

			adequately addressed. We're also concerned with the multiple short deadlines provided on this project for document review prior to written public comment deadlines.	
109	11.	**Sections 1.A.2.h.(5) and I.B.2.c.(5)**	**new Sections 1.A.2.h.(5) and I.B.2.c.(5),** which provide that "[c]compliance with this section does not excuse violations of any term, prohibition, or condition contained in these Special Protections." The County and the LACFCD have a significant concern with this new language. The provision potentially would **allow judicial interference** in the process of ensuring that discharges are not causing an undesirable alteration of NOWQ. If a discharger is working to revise its ASBS Compliance Plan to incorporate new or modified BMPs, the discharger should be allowed to do so without risk that a Clean Water Act citizens' suit be brought against it. Under the revised Special Protections, such a suit could be brought for allegedly causing an undesirable alteration of NOWQ, in violation of the Compliance Plan incorporated into the SWMP, which is an enforceable provision of an MS4 or other NPDES permit. In such a suit, the federal district court is authorized to order injunctive relief, leading to the potential for different, and potentially incompatible, remedies from those being performed under the ASBS Compliance Plan. The new language is also **inconsistent with the revised Flow Chart, Attachment 1, showing the** steps that must be followed in addressing compliance with the requirement to maintain NOWQ.	The provision has been edited to clarify staff's intent that dischargers must comply with all terms of the Special Protections while improving BMPs in order to better protect natural water quality.
110	11.	**Sections 1.A.1.e. and I.B.1.e.,**	**Sections 1.A.1.e. and I.B.1.e.,** provide a new category of permitted non-storm water discharges for non-anthropogenic flows from naturally occurring streams.	See response to comment 32.
111	11.	**Natural stream**	Natural stream flows (as well as naturally occurring	This comment is out of the scope of the most recent

		flows	groundwater seepage) should not be subject to the requirements of Sections 1.A.1.e.(3) and I.B.1.e.(3), that non-storm water discharges not cause or contribute to a violation of water quality objectives in Chapter II of the Ocean Plan nor alter NOWQ in an ASBS. Such flows are not, by definition, anthropogenic. The NOWQ for the adjacent ASBS has been influenced by such flows over history and these flows have contributed to what must be considered NOWQ for the ASBS in question.	clarifying edits. Sections I.A.1.e.(3) and I.B.1.e.(3) remain unchanged.
112	11.	**I.A.1.e.(3) and I.B.1.e.(3)**	The County and LACFCD suggest the following **revision** (in bold) to Sections **I.A.1.e.(3) and I.B.1.e.(3)** of the Special Protections document: 21Page Authorized non-storm water discharges (except for naturally occurring groundwater seepage via a storm drain or non-anthropogenic flows from a naturally occurring stream via a culvert or storm drain) shall not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan nor alter natural ocean water quality in an ASBS.	This comment is out of the scope of the most recent clarifying edits. Sections I.A.1.e.(3) and I.B.1.e.(3) remain unchanged.
113	11.	**Definition of "Good Cause"**	**Definition of "Good Cause"** While staff has attempted to set forth grounds for "good cause" in terms of "physical impossibility" and "lack of funding," these grounds are both too limited and appear to overlook realities faced by municipalities. For example, the LACFCD experienced delays in constructing structural BMPs in the Santa Monica Bay area because of delays in the land acquisition process, the need for Coastal Commission approvals, and requirements under the California Environmental Quality Act (CEQA). These difficulties were discussed in comments filed with the State Water Board last year and will not be repeated here. However, the limited definition of **"physical impossibility" does not cover all of these and similar delay-causing events, thus making the provision for "good cause" too restrictive.**	See response to comments 6 and 35.

114	11	**Thirty (30) days notice**	The requirement that a discharger **notify** a water board "**in writing within thirty (30) days of the date that the discharger first k**new of the event or circumstance that caused or would cause it to fail to meet the deadline" is problematic and unwieldy. For example, a discharger may know now that it is required to obtain Coastal Commission approval for structures built in the Coastal Zone. The time required for that approval involves a timeframe that could push first operation of the structural control beyond the four-year deadline. Would the discharger be barred from relief if it did not notify the water boards almost immediately upon the effective date of the Special Protections, but instead waited until it knew exactly what delay would ensue? Because of this potential for ambiguity, the 30-day notice period should be deleted.	Staff does not agree that the requirement creates ambiguity. Dischargers are not required to anticipate the outcome of a chain of events occurring in the future, but rather to notify the Board within 30 days when circumstances arise constituting physical impossibility or lack of funding within the meaning of the definitions provided, and which will delay compliance with the requirements of the Special Protections.
115	11.	**limitations on "lack of funding"**	The limitations on **"lack of funding"** do not acknowledge the requirements of Proposition 218 or Proposition 26, which limit the ability of municipalities to raise funds for water quality purposes through fees. Thus, the **requirement to show the "relationship of storm water fees to annual household** income" is irrelevant to any finding of adequate funding, since the ability to obtain such fees depends on a vote of the people, not the ability of the municipality to impose the fees.	See responses to comments 6 and 35.
116	11.	**Retain language**	The County and LACFCD therefore request either that the **language** in the version **of the Special Protections circulated in October** be **retained** or that the State Water Board adopt the following revised language for Sections 1.A.3.(f)/I.B.3.(f) (which incorporates the definition of "physical impossibility" in the Glossary):	See responses to comments 6 and 35.
117	11.	**IV.A.3.b(3)**	Toxicity Monitoring for Storm Water Outfalls: In Section **IV.A.3.b. (3),** the revised Special Protections require analysis of storm water runoff for critical life stage chronic toxicity. **Chronic life stage toxicity testing** for storm	Critical life stage chronic toxicity is a more sensitive and protective test than acute toxicity. While the test period may be shorted than a storm event, it measures effects in the seawater environment which may persist for a period of time

			water discharges is not appropriate. Storm events are highly dynamic and variable and thus not representative of the condition under which species such as invertebrates or algal species live in the marine environment. Further, storm events usually do not last more than 12 hours, while chronic toxicity testing is conducted over about five to seven days, much longer than the actual storm duration. Thus, the requirement for chronic toxicity testing for storm drain samples is unjustified, has no scientific basis for evaluation of NOWQ and should be removed from the Special Protections monitoring requirements.	after the storm the runoff finally subsides. Critical life stage chronic toxicity testing is required of runoff to be consistent with the critical life stage chronic toxicity testing for the receiving water.
118	11.	**IV.B.2.b**	Point of Sampling Receiving Waters: Section **IV.B.2.b** of the Special Protections requires that ocean receiving water "must be sampled in the surf zone at the location where the runoff makes contact with ocean water (Le. at "point zero"). This requirement is not consistent with the Ocean Plan, which states that "compliance with the water quality objectives ... shall be determined from samples collected at stations ... where initial dilution is completed." Ocean Plan page 4. The Special Protections should be revised either to reflect that storm water sampling be conducted at stations where initial dilution is completed or, alternatively, that dilution factors be assigned for storm water discharges.	Point of sampling clarification was added for consistency with monitoring requirements of established exceptions.
119	11.	**Effectively Prohibited**	**Elimination of definition of "Effectively prohibited"**: The revised Special Protections eliminate the definition of "effectively prohibited." This phrase applies to the stoppage of non-storm water discharges into the ASBS and can be found in Sections 1.A.3.a. and 1.8.3.a. The removal of the definition is puzzling, as this language recognizes that discharges of non-storm water may occur despite the best efforts of the permittee. The problem is exacerbated in urban areas by MS4 permits which allow the discharge of such non-storm water streams as irrigation runoff into the MS4, where it can then be	The Special Protections will be implemented through storm water permits. All of the storm water permits use the same terminology “effectively prohibited.” Having a separate definition of effectively prohibited for ASBS discharges compared to non-ASBS discharges would create inconsistencies.

			discharged into the ASBS. Dischargers also have limited or no ability to govern the conduct of third parties. The County and the LACFCD therefore request that the definition of "effectively prohibited" be included in the Glossary.	
120	12.	**City is pleased with the results**	The City of Malibu applauds the State Water Resources Control Board (State Water Board) for considering the Ocean Plan Exception and Special Protections for the Areas of Special Biological Significance (ASBS) and is thankful for the opportunity to comment on the revised February 3, 2012 draft Special Protections. Malibu staff has collaborated with State Water Board staff for several years on this issue in an attempt to assist in the creation of a workable statewide Exception program. Overall, the **City is pleased with the results** of this effort and looks forward to working with the State and Regional Water Boards in implementing this innovative program.	Comment noted. Thank you and staff also looks forward to working with the municipalities to implement the Special Protections.
121	12.	**Urges the State Water Board to approve staff's recommendation**	While the City supported staff's recommendation to the State Water Board to adopt the Exception at the October 18, 2011 meeting, Malibu is appreciative of staff's efforts to consider the comments from stakeholders and the efforts to revise the Special Protections in Attachment B to accommodate some of those concerns. In the end, the Exception and Special Protections are a fair and reasonable method of balancing the need to protect the ASBS in a flexible manner that accounts for the special circumstances of the applicants. City staff will continue to work with State staff and provide minor comments regarding the final Special Protections. The City continues to support the immediate adoption of this Exception and **urges the State Water Board to approve staff's recommendation on March 6, 2012.**	Comment noted. Thank you for your support of the Special Protections.

Note: The list of commenters is at the end of this document.

122	13.	**Does not address critical issues raised in our comments**	We are concerned that the *revisions* to the Special Protections **do not address critical issues raised in our comments**. We are also concerned about the fiscal and logistical implications of the new language added to the monitoring section of the policy.	This comment is out of the scope of the most recent clarifying edits
123	13.	**Scale the requirements based on characteristics of watersheds**	No changes were made to the policy to **scale the requirements based on characteristics of watersheds** draining to Areas of Special Biological. Significance (ASBS). For example, the policy does not scale requirements based on population size, density, or land use and it continues to employ a one-size-fits-all urban oriented approach. The County requests that the policy be *revised* to include a set of compliance tiers that are based on population density, land use and identified water quality problems. Rural. residential areas do not have the same pollutant discharge potential as densely populated urban areas and do not require the same level of inspection, reporting, or water quality y monitoring.	See response to comment 27.
124	13.	**Natural water quality**	No changes were made to the policy to address the scientific issues associated with determining and complying with the undefined standard known as "**natural water quality".** The policy will require the County to characterize natural water quality (NWQ), pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near the County's discharge location. A meaningful comparison of 'reference' and discharge sites is likely impossible due to the statistical invalidity of simply comparing one reference site with one discharge site (i.e., no statistical power), and the high degree of natural variability in the ecosystem. And in the Duxbury Reef ASBS, interpretation of receiving water quality results are confounded by the significant uncontrollable	See response to comments 5, 13 and 28.

			influence of outgoing flows from San Francisco Bay being conveyed to and through the ASBS depending on prevailing winds, tides, and currents.	
125	13.	**State-funded panel**	We recommend that a **state-funded panel** is convened to define NWQ in each ASBS and to provide guidance and protocols for determining whether a storm water runoff is causing and contributing to degraded receiving water quality prior to the release of the final policy. NWQ and reference site monitoring should be conducted by the Water Board prior to implementation of the policy rather than concurrently.	See response to comment 29
126	13.	**Section I.A.2.f**	**Section I.A.2.f** of the revised policy includes the following new language: "To control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspirate storm water runoff on-site". It should be acknowledged that infiltration on steep bluffs in the Duxbury Reef Watershed could lead to an increased risk for slope instability and bluff erosion, which could in turn lead to a myriad of problems including increased sediment inputs to the ASBS.	See response to comment 33.
127	13.	**I.A.3.f**	Section **I.A.3.f** of the revised policy includes changes and additions that add to the inflexibility of the policy. In the January 18, 2011 version of the policy, additional time to comply with the special conditions could be granted, for "good causes", by the Regional Water Board. The new language imposes a prescriptive and difficult method for obtaining additional time for compliance. The new language should be changed to allow more flexibility.	See response to comments 6 and 35.
128	13.	**Storm Water Fee**	The County currently does not have a **Storm Water Fee** to fund new requirements that would be set forth by the policy. The County's General Fund is used for all NPDES-related expenses. Proposition 218, passed in 1996,	See response to comment 6.

			amended the California Constitution to include Article XIII D,. Section 6(c), which requires voter approval for new or increased fees and charges: "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area."	
129	13.	**Significant hardship**	The revised language of the policy requires a demonstration of a **significant hardship** to the ratepayers by showing the relationship of storm water fees to annual household income for residents within the discharger's jurisdictional area. We recommend that this section be revised to acknowledge that municipalities may not be able to increase or create fees to fund the requirements in the policy if the rate payers, regardless of annual household income, do not approve.	See response to comment 6.
130	13.	**Deadlines difficult to achieve**	The **deadlines in the policy will be difficult to achieve** and should be amended to allow more time for acquiring grant funds and for completing the planning, permitting, and implementation that may be required based on water quality monitoring results. In addition, we feel strongly that flexibility must be added or restored to the Compliance Schedule since NWQ has not yet been defined.	See response to comment 21.
131	13.	**IV.A.1.** **Clarify length of time that is allowed between sample collection**	Section **IV.A.1.** of the revised policy, Core Discharge Monitoring Program, includes the following new language: "Runoff samples shall be collected when post-storm receiving water is sampled". Please add language to this section that **clarifies the length of time that is allowed between sample collection** of receiving water and storm water outfall	See response to comments 41and 85.

			runoff. We recommend that at least 12 hours be allowed between sample collection times to minimize the logistical challenge of coordinating separate sample collection teams.	
132	13.	**Revise IV.A.3.a.(1) and (2) and IV.A.3.b.(1) and (2)**	We recommend that sections **IV.A.3.a.(1) and (2) and IV.A.3.b.(1) and (2)** of the revised policy, Core Discharge Monitoring Program, be **revise**d to state "samples of storm water runoff shall be analyzed collected during the same storm as receiving water samples 13.annually and analyzed for oil and grease ... ". The previous version required that samples be collected "annually". The new language makes it difficult to determine the required storm water runoff sampling frequency.	See response to comments 42 and 86.
133	13.	**IV.A.3.b.(3)**	Section **IV.A.3.b.(3)** of the policy was revised to require storm water runoff toxicity testing annually as opposed to once every five years. This will increase monitoring costs and may not be necessary. If the results show no toxicity after one year of sampling, we recommend that the sampling frequency be reduced to once every five years.	See response to comment 46
134	13.	**IV.B.2**	Section **IV.B.2,** Regional Integrated Monitoring Program, also contains revised language in need of clarification. Section IV.B.2.a states that "A minimum of one reference location shall be sampled for each ASBS receiving water site sampled per responsible party." We recommend that language be added to make it clear that participants in a Regional Integrated Monitoring Program will be allowed to co-sample or share reference locations.	The existing language is sufficient. Staff has been involved in the Regional Monitoring Program effort for the past two years in its development and relies on cooperation among the responsible parties of this General Exception and as carried out in the Bight 08 study lead by SCCWRP. However it is necessary to have a sufficient number of reference samples to compare to discharge samples, which the current language allows.
135	13.	**Section IV.**	**Section IV.,** Monitoring **Requirements, contains substantial revisions that will increase monitoring costs *(e.g.* annual toxicity testing for runoff** samples as opposed to once every five years, pre- and post-storm monitoring three times per year for the Regional Integrated Monitoring Programs). It is not clear if the	See response to comments 43 and 151 a.

			increased costs associated with the revised monitoring requirements were included in CEQA Economic Analysis. If the Special Protections is adopted on March 6, 2012, as planned, the County of Marin **will need time to assess** the full cost of the monitoring program. By the time of adoption, preliminary budgeting will be complete for the 2012-2013 fiscal year. The County is already faced with difficult fiscal constraints requiring substantial budget reductions across the board. We recommend that water quality monitoring not be required until the 2013-2014 rainy season to allow time to assess and budget for the cost of compliance once the Special Protections are adopted. The water quality monitoring results are critical to the design of effective BMPs. So, we also request that the Compliance Plan and BMP Implementation Schedule be adjusted accordingly.	
136	13.	**Section IV.B.1**	**Section IV.B.1**.a.requires that reference stations will be determined by the State Water Board's Division of Water Quality and the applicable Regional Water Board. Section IV.B.2.a states that a minimum of one reference location shall be sampled for each ASBS receiving water site sampled per responsible party. We recommend that Regional Integrated Monitoring Programs be allowed to work with the Water Boards to establish reference sites that can be shared by multiple responsible parties within the same Regional Water Quality Control Board region. This would be the most cost effective approach and would reduce redundant data collection.	See response to comments 43 and 58.
137	13.	**Regional Integrated Monitoring**	We request that the State and Regional Water Board allow Regional Integrated Monitoring Programs to be formed by two or more responsible parties and that the State Water Board provide financial and technical assistance to a potential Regional Integrated Monitoring Program in Region 2 if necessary.	See response to comments 43 and 58.

138	14.	**Scale the requirements based on characteristics of watersheds draining**	**No changes were made to scale the requirements based on characteristics of watersheds draining** to Areas of Special Biological Significance (ASBS). For example, the Special Protections do not scale requirements based on population size, density, or land use and it continues to employ a one-size-fits-all urban-oriented approach.	See response to comment 5.
139	14.	**Include a set of compliance and monitoring tiers**	More than two thirds of the James V. Fitzgerald ASBS watershed is unincorporated rural lands. There are two small communities, Montara and Moss Beach, with a combined population of less than 5,000. Given the rural setting of the James V. **Fitzgerald ASBS, it is not likely to have the same water quality concerns and pollutant loading potential as densely populated, more urban-dominated ASBS,** such as Laguna Point to Latigo Point or La Jolla (receiving waters of County of Los Angeles and City of San Diego), and should not be subject to the same monitoring approach and compliance requirements. The County requests that the Special Protections be revised again to **include a set of** compliance and monitoring **tiers** that are based on population density, land use, and identified water quality problems.	See response to comment 27.
140	14.	**Natural water quality**	**No changes were made** to the Special Protections to address the scientific issues associated with determining and complying with the **undefined standard** known as **"natural water quality".** The Special Protections will require the County to characterize natural water quality (NWQ), pre- and post-storm, in ocean reference areas and compare results to samples collected in the receiving water near the County's discharge location.	See response to comments 5, 13 and 28.
141	14.	**Reference and discharge sites**	A **meaningful comparison of 'reference' and discharge sites is likely impossible** due to the **statistical invalidity**	This comment is out of the scope of the most recent clarifying edits. See also response to comments 27 and 30.

			of simply comparing one reference site with one discharge site (i.e., no statistical power), and the high degree of natural variability in the ecosystem. For the James V. Fitzgerald ASBS, interpretation of receiving water quality results are likely to be confounded by the significant uncontrollable influence of outgoing flows from San Francisco Bay being conveyed to and through the ASBS depending on prevailing winds, tides, and currents.	
142	14.	**State-funded panel**	We again **recommend that a state-funded panel** is convened to define NWQ in each ASBS and to provide guidance and protocols for determining whether storm water discharges are causing and contributing to degraded receiving water quality prior to implementation of the Special Protections.	See response to comment 29.
143	14.	**I.A.2.f**	**Section I.A.2.f** of the revised Special Protection includes the following **new language "to control storm water runoff discharges (at the end-of-pipe)** during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspirate storm water runoff on-site." It should be acknowledged that infiltration on steep bluffs in many of our coastal areas could lead to an increased risk for slope instability and bluff erosion, which could in tum lead to a myriad of problems including increased sediment inputs to the ASBS.	See response to comment 33.
144	14.	**I.A.3.f**	**Section I.A.3.f** of the revised Special Protections includes changes and additions that add to the **inflexibility** of the Special Protections. In the January 18, **2011** version, additional time to comply with the special conditions could be granted, for good causes, by the Regional Water Board. The new language imposes a prescriptive and difficult method for obtaining additional time for compliance. The new language should be changed to allow more flexibility.	See response to comments 6 and 35.

145	14.	**Storm Water Fee**	The County currently does not have a **Storm Water Fee to fund** new requirements that would be set forth by the Special Protections. NPDES-related fees, which currently only cover a portion of the costs needed for meeting the requirements of the NPDES Municipal Regional Permit, are currently assessed on the property tax bill. Proposition 218, passed in 1996, amended the California Constitution to include Article XIII D, Section 6(c), which requires voter approval for new or increased fees and charges: "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." The revised language of the Special Protections **requires a demonstration of a significant hardship to the ratepayers** by showing the relationship of storm water fees to annual household income for residents within the jurisdictional area. We recommend that this section be revised to acknowledge that municipalities may not be able to increase or create fees to fund the Special Protections requirements if the rate payers, regardless of annual household income, do not approve.	See response to comments 6 and 53
146	14.	**Deadlines difficult to achieve**	The **deadlines in the policy will be difficult to achieve** and should be amended to allow more time for acquiring grant funds and for completing the planning, permitting, and implementation that may be required based on water quality monitoring results. We previously requested that **flexibility be added to the Compliance Schedule** since NWQ has not yet been defined and storm discharges have not been adequately characterized for ASBS along the Central Coast. Water	See response to comment 151 b. See response to comment 21.

			quality monitoring to characterize storm runoff should be conducted before an ASBS Compliance Plan, detailing specific BMPs, is developed. **BMPs should not be designed until a specific water qua**lity problem has been identified. NWQ and reference site monitoring should be conducted by the Water Board prior to implementation of the Special Protections rather than concurrently.	
147	14.	**IV.A.1.**	**Section IV.A.1.** of the revised Special Protections, Core Discharge Monitoring Program, includes the following **new language "Runoff samples shall be collected when post-storm receiving water is sampled". Please add language to this section that clarifies the length of time** that is allowed between sample collection of receiving water and storm water outfall runoff. We recommend that at least 12 hours are allowed between sample collection teams	See response to comments 41 and 85.
148	14.	**IV.A.3.a.(1) and (2) and IV.A.3.b.(1) and (2**)	We recommend that sections **IV.A.3.a.(1) and (2) and IV.A.3.b.(1) and (2**) of the revised Special Protections, Core Discharge Monitoring Program, are revised to state **"samples of storm water runoff shall be analyzed collected during the same storm as receiving water samples annually and analyzed for oil and grease ... ". Th**e previous version required that samples be collected "annually". The new language makes it difficult to determine the required storm water runoff sampling frequency.	See response to comments 42 and 86.
149	14.	**Section IV.A.3.b.(3)**	**Section IV.A.3.b.(3)** of the revised Special Protections was modified to require storm water runoff **toxicity testing annually as opposed to once every five years.** This will increase monitoring costs and may not be necessary. If the results show no toxicity after one year of sampling, we recommend that the sampling frequency is **reduced to once every five years**.	See response to comments 46 and 151 a.

150	14.	**Section IV.B.2**	**Section IV.B.2** of the revised Special Protections, **Regional Integrated Monitoring Program**, also contains revised language in need of clarification. Section IV.B.2.a states that "A minimum of **one reference location** shall be sampled for each ASBS receiving water site sampled per responsible party." We recommend **that language is added** to make it clear that participants in a Regional Integrated Monitoring Program will be allowed to **co-sample or share reference locations.**	The existing language is sufficient. Staff has presented the Regional Monitoring Program effort for the past two years in its development and relies on cooperation among the responsible parties of this General Exception and as carried out in the initial Pilot study lead by SCCWRP. Also see response to comment 134,
151	14.	**Section IV.**	**Section IV.** of the revised **Special Protections, Monitoring Requirements, contains** substantial revisions that will increase monitoring costs (annual toxicity testing for runoff samples as opposed to once every five years, pre- and post-storm monitoring three times per year for the Regional Integrated Monitoring Programs). It is not clear if the increased costs associated with the revised monitoring requirements were included in CEQA Economic Analysis. If the Special Protections is adopted on March 6, 2012, as planned, the County of San Mateo will need time to assess the full cost of the monitoring program. By the time of adoption, preliminary budgeting will be complete for **the 2012-2013 fiscal year**. The County is already faced with difficult fiscal constraints requiring substantial budget reductions across the board.	a. See response to comment 43. b. The Responsible Parties of the General Exception have been aware of the anticipated monitoring requirements as outlined in the Draft Special Protections for quite some time, and have had adequate time to plan for those requirements.
152	14.	**Defer monitoring**	We **recommend that water quality monitoring** is **not required until the 2013-2014** rainy season to allow time to assess and budget for the cost of compliance once the Special Protections are adopted. The water quality	See response to comment 43.

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

List of Commenters: 1) N.D. Fenton – public; 2) Natural Resources Defense Council, California CoastKeeper Alliance, Santa Monica BayKeeper (group); 3) Department of Defense (Navy); 4) City of San Diego; 5) Pebble Beach Company; 6) City of Carmel-by-the-Sea Community Planning and Building Department; 7) City of Carmel-by-the-Sea City Hall; 8) Monterey County Resource Management Agency; 9) City of Pacific Grove; 10) City of Monterey Department of Public Works; 11) County of Los Angeles Department of Public Works and LACFD; 12) City of Malibu; 13) Count of Marin Department of Public Works; 14) County of San Mateo.