

Appendix E

Written Comments

Comments received in response to
February 8, 2008 documents

California Department of Transportation (Joyce Brenner)
City of Sausalito (Todd Teachout)
Floating Homes Association, Inc. (Stan Barbarich)
Marin County Development Agency (Brian Crawford)
Marin County Department of Public Work (Terri Fashing)
Pelican Harbor (Sara Flynn)
Richardson Bay Regional Agency (Charles McGlashan)
San Francisco Baykeeper (Sejal Choksi and Amy Chastain)
Sausalito-Marin City Sanitary District (Robert Simmons)
Sausalito Yacht Harbor (Jim Madden)
U.S. EPA (Janet Hashimoto)

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March 21, 2008

Farhad Ghodrati
San Francisco Bay Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Comments on Establishing a Total Maximum Daily Load (TMDL) for Pathogens in Richardson Bay and an Implementation Plan to Achieve the TMDL

Dear Mr. Ghodrati:

The California Department of Transportation (Department) appreciates the opportunity to comment on the proposed Basin Plan Amendment (BPA) and supporting staff report incorporating a Total Maximum Daily Load (TMDL) for pathogens in Richardson Bay. The Department strongly supports efforts to protect human health and achieve the best water quality possible. However, this TMDL proposes a very low value for load allocations for Pathogens carried by stormwater which has a potential to impact the Department's run off program in the Richardson Bay. The costs to reduce the bacteria count from stormwater run off from the Department would be significantly high as compared to a small water quality benefit. The compliance by the Department would most likely not affect bacteria levels in the Bay. In addition, the TMDL would set an unacceptable precedent for other locations with runoff into waterways currently listed as impaired by bacteria. We raised these issues in the workshop on September 25, 2007, and we noted that the Staff Report states that it is not expected that the Department will need to revise the current stormwater management plan.

The Implementation Plan for the TMDL includes three actions to be taken by the Department.

1. The Department is required to implement an applicable stormwater management plan. As you know, the Department has a statewide NPDES permit and stormwater management plan that identifies how the Department will comply with the provisions of the permit. The Department will continue to implement the procedures described in the stormwater management plan to ensure that the goals of the TMDL and water quality in the region are attained.
2. The Department is required to:
 - update/amend applicable stormwater management plan to include specific measures to reduce pathogen loading, including additional education and outreach efforts, and installation of additional pet waste receptacles

The Department usually does not allow pets and does not install any pet waste receptacles on the state highways.

In the discussion of the planned actions, at page 48, the staff report states we do not anticipate that Caltrans' Stormwater Management Plan will need to be revised because we believe the source of bacteria in highway runoff is wildlife.

In addition, Section 9.4 at page 47 of the staff report states:

The Water Board will not hold discharging entities responsible for uncontrollable coliform discharges originating from wildlife/natural background sources.

The Department agrees with the Regional Board staff that the source of bacteria in highway runoff is wildlife and that these are part of the natural/background loads to the bay. Nevertheless, the proposed BPA in Table 7-3 assigns stormwater runoff the following load allocation:

Categorical Pollutant Source	For Direct Discharges to the Bay <i>Fecal Coliform (MPN/100 mL)</i>	
	Median	90th Percentile
Municipal Runoff	<14	< 43

Caltrans is listed along with the cities and Marin County as being the parties required implementing the TMDL in Table 7-4, Trackable Implementation Measures, (page 5) of the proposed BPA. Based on the Department's statewide highway monitoring, median fecal coliform in highway runoff is 362 MPN/100 mL. The mean value is 1132 MPN/100 mL with a maximum density of 6,000 MPN/100 mL. This data is taken from the *Discharge Characterization Study Report, 2003*.¹ We understand it is not the intent of the Regional Board to apply the allocations as given in Table 7-3 of the proposed BPA to the Department; however, the proposed BPA contains no statements indicating that the allocations would not apply to the Department.

We request that the TMDL Report and Basin Plan Amendment specifically state the Department is not subject to the allocations in Table 7-3 to the extent that sewer breaks or related releases do not occur from the Department's MS4 and that the Department is not expected to change its existing stormwater management plan to address this TMDL.

3. The Department is required to report to the Water Board on the progress toward implementation of pathogen reduction measures. We assume that the Department is not expected to implement changes to address the TMDL as discussed above. The Department currently issues an annual report to the Water Board that describes the actions taken toward meeting the Department stormwater management plan. The report includes descriptions of the efforts taken to achieve the goals of TMDLs throughout the state. We assume that this annual report as currently structured meets the requirements of the Water Board.

¹ The report, number CTSW-RT-03-065.51.42, is posted at: <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-03-065.pdf>

Mr. Farhad Ghodrati
March 21, 2008
Page 3

Thank you for the opportunity to comment. The Department strongly supports the goals of the pathogen TMDL for the Richardson Bay Watershed, and we hope that our concerns will be addressed in the BPA. If you have any questions, please contact Jagjiwan Grewal of my office at (916) 653-2115.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joyce Brenner".

JOYCE BRENNER
Acting Chief,
Stormwater Implementation



CITY OF SAUSALITO

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March 24, 2008

Mr. Farhad Ghodrati
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Pathogens in Richardson Bay
Total Maximum Daily Load (TMDL)
Staff Report and Proposed Basin Plan Amendment

Dear Mr. Ghodrati:

I am writing on behalf of the City of Sausalito. The City operates a sanitary sewer collection system, a storm drain system and regulates land uses within the Sausalito City Limits. We are members of MCSTOPPP and RBRA whose goals include improving water quality.

Sausalito supports the goal of improving Richardson Bay water quality by improving management, operational and regulatory practices to limit pathogen discharges from sanitary sewers, storm drains, houseboats and vessels. To further that end, this letter proposes changes to the draft Basin Plan Amendment (BPA) and also provides comments on the Staff Report.

PROPOSED CHANGES TO THE BASIN PLAN AMENDMENT

There appears to be a typographic error on page 2. Paragraph 1 refers to numeric targets presented in Table 8. The proposed amendment language excludes a Table 8.

MCSTOPPP and other agencies expressed concerns about the ability to meet the stated numeric targets. Sausalito shares these concerns. As you know discharges into receiving waters naturally dilute concentrations. While the BPA does not specify sample sites we have been informed that monitoring will continue to be performed at storm drain outfalls many within the City of Sausalito. This approach we believe is inappropriate both skewing the data and putting inappropriate levels of obligation on the City.

The principal reasons for these changes are:

- Samples from marinas, harbors, and the urban shoreline are not representative of Richardson Bay as a whole, and are unrepresentative of the areas where shellfish harvesting has historically taken place or may take place in the future.
- Evaluating attainment using samples taken at historic or potential shellfish harvesting areas would focus implementation efforts on protecting the potential shellfish harvesting beneficial use.

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Administration: (415) 289-4167
Recreation: (415) 289-4189

Community Development: (415) 339-2256

Library: (415) 331-7943
Public Works: (415) 289-4138

Other reasons include:

- There is only a tenuous quantitative association between coliform levels in fresh and marine waters and risk to human health from ingestion of those waters. The risk from ingestion of shellfish is even more uncertain. The uncertainties are not adequately addressed in the Staff Report.
- Sporadic exceedances of coliform water quality objectives do not necessarily imply that the shellfish harvesting use is impaired.

If the number of sample sites is to remain constant we advocate abandoning some sites along the Sausalito shoreline and adding other sites nearer to or within the shellfish fisheries as well as other areas of Richardson's Bay.

Load Allocations

The allocation to stormwater of a median MPN/100mL < 14 and a 90th percentile MPN/100mL < 43 (Table 7-3) may not be achievable—depending on where measurements are made. It would make little sense to measure stormwater itself; rather the measurement should be made at those locations within the Bay where the shellfish harvesting use could potentially and feasibly take place.

Alternatively, the allocation for stormwater measured upstream of outfalls should account for attenuation and die-off of organisms between the outfall location and where the beneficial use could potentially and feasibly take place.

While sanitary sewer systems, houseboats, and vessels are already required to achieve zero discharge to Richardson Bay (i.e., are prohibited from discharging), stormwater discharges cannot be prevented without significant changes to the drainage and utility laws and the creation of new funding sources. Adoption of the load allocation in Table 7-3 without this change could potentially place Marin municipalities in a situation where there is no beneficial use impairment. Instead regulatory noncompliance could trigger additional monitoring and reporting and thereby divert resources needed to implement local pollution-prevention programs. Though waterboard staff has assured local authorities that no additional legal claims will arise from non-compliance, we remain skeptical.

Implementation

City of Sausalito can support adoption of the implementation measures listed in Table 7-4.

COMMENTS ON THE TMDL STAFF REPORT

The approach to imbed discussions of past regulatory and adaptive implementation efforts in the background sub-topic areas are limiting. Implementing the plan has been a multi-decade effort. Past bodies of knowledge need to be recognized and the past regulatory efforts should be summarized in this section for the current stewards be they elected, appointed or hired staff.

The staff report is silent on existing regulations regarding fecal coliform. The California Department of Health promulgates regulations and standards for coliform contact in Humans and has coordinated a monitoring program for public beaches. To the extent that the proposed regulations duplicate the Department of Health or existing County Health regulations regarding water quality, they should be deleted. Those existing regulations can then be cited by reference.

The Problem Statement (Section 3.1) should summarize the uncertainties associated with the statements therein. In particular, the chain of inference—from the presence of fecal coliform bacteria, to the presence of pathogens, to human health risk—has not been quantified. The Project Objectives (Section 3.3) should note that, to protect the shellfish harvesting beneficial use, the objectives for shellfish harvesting need only be met in areas where shellfish harvesting could potentially occur.

The discussion of the use of fecal coliform bacteria as indicators for pathogens (Section 4.1) should note there is only a weak quantitative relationship between fecal coliforms and pathogens and should also note there is an even weaker quantitative relationship between the presence of fecal coliform in water and the incidence of disease from consuming shellfish.

Section 4.2 (Water Quality Standards) should note the shellfish harvesting beneficial use is based on historic and potential shellfish harvesting, that there has not been shellfish harvesting in Richardson Bay for 40-50 years, and that the water-quality data which form the basis of the 303(d) listing were obtained in areas in which shellfish harvesting does not occur and would not be possible, as is documented in Section 4.4.

Section 4.5 (Recent Bacterial Monitoring Data) should note that the correlation between elevated fecal coliform in wet-season samples as compared to dry-season samples could be due to increased mixing and turbidity, as well as other potential causes. The last paragraph of Section 4.5 should be made clearer with regard to the TMDL process. The TMDL process generally presumes contributions of loads from various sources into a well-mixed water body. “Relative contributions” from various sources is of less relevance in this TMDL which is not based on loads but is instead “density based.” In this case, the “contributions” (loads) of coliforms from stormwater or sanitary sewer overflows are not very relevant. Therefore the last three sentences of this paragraph, including the statements about monitoring, should be deleted as the monitoring approach described is not relevant to the TMDL project objectives—nor is it technically sound.

In Section 4.7, it is noted that the data provides “a consistent picture of widespread, but somewhat localized potential pathogen impairment. Data indicate that houseboats consistently have been and still are a significant source of potential pathogen pollution in the Bay. They also indicate that vessel discharges in certain recreational boat marinas are a significant potential pathogen source.” It should be noted here, as well as elsewhere, that the houseboats and recreational boat marinas are well removed from historic or potential shellfishing areas and that there is no evidence that the discharges significantly affect coliform levels in those areas.

Also in Section 4.7, the last sentence should be deleted, as additional wet-weather monitoring would be unlikely to achieve better characterization of the magnitude and relative contributions from sanitary sewer overflows and stormwater.

In Section 6.3, the discussion of the relative percentage of exceedances during the wet season and dry season should include a statistical analysis of the likelihood that the difference in relative percentages is due to chance rather than a difference in actual conditions. Without such an analysis, these data should not be used to support “the conclusion that stormwater runoff could potentially be a source of pathogens loading to the Bay.”

Also in Section 6.3, the last three sentences regarding the need for additional monitoring should be deleted as the monitoring approach described is not relevant to the TMDL project objectives nor is it technically sound.

In Section 7.5 (Seasonal Variation), in the first sentence, the phrase “due to factors such as stormwater runoff” should be deleted as there has been no statistical analysis as to whether the data support this conclusion.

Because this is a density-based TMDL, Section 8 (Linkage Analysis) must discuss the geographic relationship between the identified sources (houseboats and marinas) and the uses (water-contact recreation and shellfishing), and the extent to which discharges at the source locations may affect, or not affect, water quality where the uses actually occur or could potentially occur.

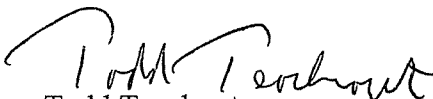
Water Quality Monitoring. Past efforts have focused on detection and concentrations at the sample site. There is little or no effort made to evaluate the mechanisms in place in the Bay as a reactor. Sausalito recommends that policies, regulations and funding be provided to enable a monitoring study design that

1. Determines concentration gradations at all areas in the Bay
2. Evaluates the tidal, and seasonal affects.

The identified monitoring stations do not create an adequate monitoring network to evaluate water quality in Richardson’s Bay. It must be changed to better report on quality in the Bay in general and at the beaches and shellfish fisheries in particular.

We appreciate your consideration of our comments. If you have any questions regarding these comments please contact me at 415-289-4111 or tteachout@ci.sausalito.ca.us.

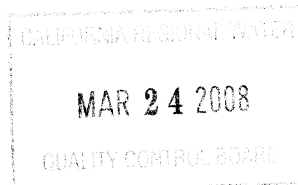
Sincerely,


Todd Teachout
City Engineer

FLOATING HOMES ASSOCIATION, INC

P.O. BOX 3054 • SAUSALITO, CA 94966

March 21, 2008



Ms. Janet Cox

TMDL Communications
TMDL/Planning and Policy Division
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

Re: Proposed Basin Plan Amendment—Richardson's Bay TMDL

Dear Water Board Members and Staff:

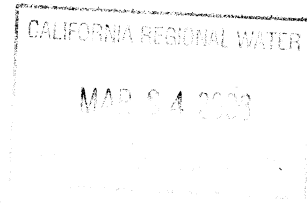
The Floating Homes Association has reviewed the TMDL standards proposed in the February 2008 staff report and has taken careful note of the discussion and comments of your staff at the March 12th Marin County workshop. Accordingly, we are pleased to submit our comments on this matter.

As I stated at the workshop, there are no "houseboats" berthed in any floating home marinas in Richardson's Bay, nor are there any "houseboat marinas" in Richardson's Bay. Given that your intent is regulatory, the terminology you use to identify potential sources of contamination must be correct. The California Health and Safety Code, Section 18075.55 defines "Floating Home" as follows:

(d) Floating home, as used in this section, means a floating structure which is **all** of the following:

- (1) It is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling.
- (2) It has no mode of power of its own.
- (3) It is dependent for utilities upon a continuous utility linkage to a source originating on shore.
- (4) It has a permanent continuous hookup to a shoreside sewage system.

Therefore, please modify your verbiage to identify floating homes as such, and to differentiate them from other vessels.



California Regional Water Quality Control Board
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Page 2

Vessels that are anchored out, are, by definition, **not** floating homes. Nor are any vessels that are berthed in recreational marinas, unless they comply with **all** of the above provisions. Anchored out vessels, as well as those moored in recreational marinas, must be required to pump out into an approved shoreside facility, or into a "honey barge."

Houseboats can only be evaluated as a part of the group of vessels which are berthed in recreational marinas and included in measurements taken there. RWQCB evaluations and standards should not confuse the two.

As a statement of policy, the Floating Homes Association considers excellent water quality to be a top priority. Nobody wants clean water more than those of us who live on the water. Therefore, it is our policy that every floating homeowner and occupant, and every floating home marina operator, should diligently pursue a zero-discharge policy and take every reasonable measure available to ensure achievement of that goal.

All floating home owners should regularly inspect and carefully maintain their sewage discharge systems, to ensure zero leakage.

All floating home marina operators should also regularly inspect and maintain their sewage systems, to achieve zero leakage. Further, to prevent accidental spills into bay waters from floating homes or the marina sewage lift stations, all lift stations (both floating home and recreational marinas) should be required to be equipped with adequate backup electrical generators to ensure operation of those facilities in case of power outages.

When agencies conduct water testing in floating home and recreational marinas, best efforts should be made to differentiate storm water drain outflow measurements from measurements of any discharge from the homes or marinas or recreational vessels, so that corrective measures can be taken by the appropriate party.

As I stated at the workshop, it is our opinion that, once the planned Waldo Point Harbor reconstruction is completed and the Gates group of floating homes are thereby brought up to code, the testing results that have historically and currently show unacceptable contamination levels will be vastly different and will then compare favorably with results at other marina testing points. This is, we hope, a goal that will be achieved in the near term. Its achievement is only limited by the need for two agencies to decide who has jurisdiction over a portion of the project. Once this is decided, work on harbor facilities and on the Gates homes can be accomplished. This is a top priority matter for marina owners and residents.

California Regional Water Quality Control Board
March 21, 2008

As to the specific TMDL standards that are proposed, we believe that it is a lofty, unnecessary and unachievable goal to utilize shellfish-safe standards. As we understand it from Water Board staff statements on March 12, this goal is based upon some questionable historical shellfish beds, mainly in the Strawberry area that may or may not have been used at some point in history by indigenous native persons. It was broadly acknowledged at the workshop that, between rain water runoff and some unavoidable discharge from sewage treatment systems due to mechanical failure, it is impossible to achieve pristine conditions, 100% of the time.

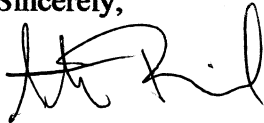
Further, as there is apparently no evidence of shellfish farming or gathering in Richardson's Bay being conducted by anyone currently alive, this unconfirmed, archaic use seems spurious as a reason for applying specific water quality standards. We suggest that you preserve limited fiscal and staff resources at all the involved agencies to conduct the intense scrutiny and operational diligence required to achieve such high standards for application in Tomales Bay and other legitimate shellfishing grounds.

Body-contact recreational standards are reasonable, appropriate and achievable and should be the only standards you establish for Richardson's Bay.

Finally, we were gratified to hear RWQCB staff state at the workshop that the specific "numbers" were not what you hoped people would focus on, rather that progress toward zero avoidable discharge was the actual goal. Many people had been concerned that zealous pursuit of the achievement of specific numbers would lead to onerous enforcement programs. FHA wholeheartedly supports this zero-avoidable-discharge goal.

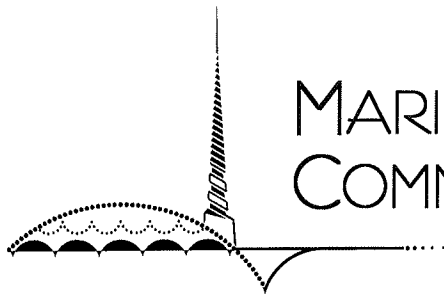
Thank you for the opportunity to comment on the staff report. We look forward to participating in the upcoming hearings. Please continue to retain us on the interested parties' database.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Barbarich". The signature is fluid and cursive, with the first name being more prominent.

Stan Barbarich
President

By mail and email



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY
ALEX HINDS, DIRECTOR

SENT VIA FACSIMILE – 510-622-2460

March 21, 2008

Farhad Ghodrati
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Proposed Total Maximum Daily Load (TMDL) for Pathogens in Richardson Bay

Dear Mr. Ghodrati:

I am writing on behalf of the Marin County Community Development Agency (CDA) in response to the San Francisco Bay Regional Water Quality Control Board proposal to amend the Basin Plan by imposing Total Daily Maximum Load (TMDL) standards for Richardson Bay (proposed standards).

The CDA's interest in the proposed standards stems from our membership with the Richardson Bay Regional Agency and implementation of the Richardson Bay Special Area Plan, the County's responsibility for administering land use review and approval of floating home marinas, the CDA's Environmental Health Services water quality monitoring for Richardson Bay, and the County's broader public policy objectives for preserving and enhancing water quality and wildlife habitat. This response also follows a stakeholder workshop the CDA recently sponsored to solicit input from sewer agencies, marina owners, floating home residents and other interest groups potentially affected by the proposed standards.

In general, the CDA supports the overall objective of protecting and enhancing water quality and beneficial uses against pathogen impairment by establishing numeric water quality standards. We also support the Water Board's objective of avoiding regulatory requirements that are overly stringent with respect to attaining those standards. In reviewing the Proposed Basin Amendment and accompanying Water Board staff report, there are several particular concerns we have, as follows.

Beneficial Uses

The proposed water quality objectives are intended to protect shellfish harvesting as one of two beneficial uses designated by the Basin Plan. Although we understand that shellfish harvesting may be firmly grounded in the Basin Plan, and derived from the Clean Water Act, we question the appropriateness of imposing a mandatory and very stringent water quality objective based

Farhad Ghodrati
San Francisco Bay Regional Water Quality Control Board
March 21, 2008

on a mariculture activity that has no contemporary relevance to Richardson Bay (input from local residents familiar with the history of Richardson Bay suggests that shellfish harvesting has not occurred in the last 40-50 years). Compounding this issue is the seemingly improbable prospect of attainment of the shellfish harvesting water quality objective by implementing parties.

Reestablishing shellfish harvesting on Richardson Bay is an admirable endeavor that we support, notwithstanding factors that suggest this proposition may be difficult to realize given the land use characteristics that surround the historic shellfish beds identified in the Water Board staff report (Figure 2). Furthermore, the County is certainly not averse to pursuing and implementing regulatory programs aimed at achieving a high level of environmental protection for a broad base of resource values. However, the proposed TMDL standards may benefit from balancing ambition with reality over time. That is to say we would like to be in a position of having a fighting chance at attaining a meaningful standard(s), such as the water quality objective for water contact recreation, at the outset of this important Basin Plan Amendment and consider the possibility of moving in the future toward increasingly stringent standards if warranted.

Implementation Plan Costs

The implementation measures outlined in the proposed Basin Plan Amendment (Table 7-4) have cost implications for the County, RBRA and other implementing parties with respect to allocation of staff resources and hard costs. Although it is difficult to assess with precision the fiscal impacts of the measures being recommended, we nonetheless have concerns about incurring additional costs that may be difficult to fund while budgets are being reduced to address current structural imbalances and State funding cuts. Other implementing parties undoubtedly have the same concern and may be subject to similar funding constraints.

Any guidance the Water Board staff may be able to provide the County and other affected agencies regarding potential funding sources for program implementation that may be available at the State or Federal level would be very much appreciated. We are not familiar with any prescriptions the Water Board may have for use of penalty fees assessed for Clean Water Act violations; however, if legally permissible, penalty fees could perhaps be considered as a potential funding source to assist with off-setting some of the cost associated with implementing TMDL measures.

Enforcement Capabilities

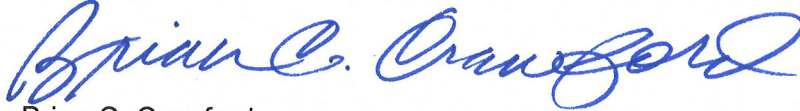
The implementation measures also assign responsibility to Marin County and the RBRA for ongoing evaluation of the adequacy and performance of sewage collection systems in floating home (houseboat) and vessel marinas. The language used to describe this action is somewhat vague with respect to defining the specific enforcement expectations and authorities that are being placed on, or would be relied upon, by the County, RBRA and other local agencies that regulate marinas, namely the City of Sausalito. This issue should be clarified between the affected regulatory agencies, Water Board staff, and marina owners and floating home representatives.

Farhad Ghodrati
San Francisco Bay Regional Water Quality Control Board
March 21, 2008

In closing, the CDA supports the process of adaptive implementation, especially as it may pertain to the Water Board's future re-evaluation of the attainability and applicability of the shellfish harvesting beneficial use and TMDL standard should they be adopted as currently proposed. The concerns we have expressed above are tempered by our understanding that compliance with the TMDL standards will be more a function of the ability of implementing parties to demonstrate that a reasonable effort has been made to attain or achieve progress toward the water quality objectives rather than strict adherence with the numeric targets. In that context we stand committed to working with the Water Board staff and other affected implementing parties on our mutual interest and efforts at protecting and enhancing the water quality and uses of Richardson Bay.

Thank you for the opportunity to comment on the proposed Basin Plan amendment.

Sincerely,



Brian C. Crawford
Assistant Agency Director

cc. Supervisor Charles McGlashan
Alex Hinds, Community Development Agency Director
Farhad Mansourian, Director of Marin County Department of Public Works
Phil Smith, Deputy Director of Environmental Health Services
Ben Berto, Richardson Bay Regional Agency
Bill Price, Richardson Bay Regional Agency
Terri Fashing, Marin County Department of Public Works (MCSTOPPP)
Liz Lewis, Marin County Department of Public Works (MCSTOPPP)
TMDL Stakeholder Workshop Group



Marin County Department of Public Works
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www.mcstoppp.org

Member Agencies:

SENT VIA FACSIMILE: 510-622-2460

March 24, 2008

Belvedere

Mr. Farhad Ghodrati

Corte Madera

San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400

Oakland, CA 94612

County of Marin

Subject: Pathogens in Richardson Bay

Total Maximum Daily Load (TMDL)

Fairfax

Staff Report and Proposed Basin Plan Amendment

Larkspur

Dear Mr. Ghodrati:

Mill Valley

I am writing on behalf of the Marin County Stormwater Pollution Prevention Program (MCSTOPPP). MCSTOPPP is a joint effort by Marin County and its 11 cities and towns. We coordinate local stormwater pollution prevention efforts by each municipality and implement countywide activities that protect and enhance water quality in Marin's creeks and wetlands, the San Francisco Bay Estuary, and coastal waters. MCSTOPPP is administered by the Marin County Flood Control and Water Conservation District with staffing provided by the Marin County Department of Public Works. A Citizen's Advisory Committee (CAC) provides review and advice.

Novato

Ross

San Anselmo

San Rafael

Sausalito

MCSTOPPP strongly supports this TMDL's overarching goal of improving Richardson Bay water quality by preventing potential pathogens from entering the Bay and its tributaries. To further that end, this letter proposes changes to the draft Basin Plan Amendment (BPA) and also provides comments on the Staff Report.

Tiburon

PROPOSED CHANGES TO THE BASIN PLAN AMENDMENT

Evaluation of Attainment of Shellfish Harvesting Beneficial Use

The BPA should state how attainment of the shellfish harvesting designated use (Table 7-1) is to be measured and determined. The evaluation of attainment should be based on measurements at or near historic or potential shellfish harvesting areas.

Likewise, in the BPA the TMDL (Table 7-2) states the number and timing of samples which are to be taken for the purpose of evaluating attainment. It should

also say measurements are to be made at historic or potential shellfish harvesting areas.

The principal reasons for these changes are:

- Samples from marinas, harbors, and the urban shoreline are not representative of Richardson Bay as a whole, and are unrepresentative of the areas where shellfish harvesting has historically taken place or may take place in the future.
- Evaluating attainment using samples taken at historic or potential shellfish harvesting areas would focus implementation efforts on protecting the potential shellfish harvesting beneficial use.

Other reasons include:

- There is only a tenuous quantitative association between coliform levels in fresh and marine waters and risk to human health from ingestion of those waters. The risk from ingestion of shellfish is even more uncertain. The uncertainties are not adequately addressed in the Staff Report.
- Sporadic exceedances of coliform water quality objectives do not necessarily imply that the shellfish harvesting use is impaired.

Load Allocations

The allocation to stormwater of a median MPN/100mL < 14 and a 90th percentile MPN/100mL < 43 (Table 7-3) may not be achievable—depending on where measurements are made. It would make little sense to measure stormwater itself; rather the measurement should be made at those locations within the Bay where the shellfish harvesting use could potentially and feasibly take place.

Alternatively, the allocation for stormwater measured upstream of outfalls should account for attenuation and die-off of organisms between the outfall location and where the beneficial use could potentially and feasibly take place.

While sanitary sewer systems, houseboats, and vessels are already required to achieve zero discharge to Richardson Bay (i.e., are prohibited from discharging), stormwater discharges cannot be prevented. Adoption of the load allocation in Table 7-3 without this change could potentially place Marin municipalities in a situation where no actual use impairment might exist, but “paper noncompliance” could trigger additional monitoring and reporting and thereby divert resources needed to implement local pollution-prevention programs.

Implementation

MCSTOPPP supports adoption of the implementation measures listed for stormwater runoff in Table 7-4.

COMMENTS ON THE TMDL STAFF REPORT

The Problem Statement (Section 3.1) should summarize the uncertainties associated with the statements therein. In particular, the chain of inference—from the presence of fecal coliform bacteria, to the presence of pathogens, to human health risk—has not been quantified.

The Project Objectives (Section 3.3) should note that, to protect the shellfish harvesting beneficial use, the objectives for shellfish harvesting need only be met in areas where shellfish harvesting could potentially occur.

The discussion of the use of fecal coliform bacteria as indicators for pathogens (Section 4.1) should note there is only a weak quantitative relationship between fecal coliforms and pathogens and should also note there is an even weaker quantitative relationship between the presence of fecal coliform in water and the incidence of disease from consuming shellfish. Section 4.2 (Water Quality Standards) should note the shellfish harvesting beneficial use is based on historic and potential shellfish harvesting, that there has not been shellfish harvesting in Richardson Bay for 40-50 years, and that the water-quality data which form the basis of the 303(d) listing were obtained in areas in which shellfish harvesting does not occur and would not be possible, as is documented in Section 4.4.

Section 4.5 (Recent Bacterial Monitoring Data) should note that the correlation between elevated fecal coliform in wet-season samples as compared to dry-season samples could be due to increased mixing and turbidity, as well as other potential causes.

The last paragraph of Section 4.5 should be made clearer with regard to the TMDL process. The TMDL process generally presumes contributions of loads from various sources into a well-mixed water body. “Relative contributions” from various sources is of less relevance in this TMDL which is not based on loads but is instead “density based.” In this case, the “contributions” (loads) of coliforms from stormwater or sanitary sewer overflows are not very relevant. Therefore the last three sentences of this paragraph, including the statements about monitoring, should be deleted as the monitoring approach described is not relevant to the TMDL project objectives—nor is it technically sound.

In Section 4.7, it is noted that the data provides “a consistent picture of widespread, but somewhat localized potential pathogen impairment. Data indicate that houseboats consistently have been and still are a significant source of potential pathogen pollution in the Bay. They also indicate that vessel discharges in certain recreational boat marinas are a significant potential pathogen source.” It should be noted here, as well as elsewhere, that the houseboats and recreational boat marinas are well removed from historic or potential shellfishing areas and that there is no evidence that the discharges significantly affect coliform levels in those areas.

Also in Section 4.7, the last sentence should be deleted, as additional wet-weather monitoring would be unlikely to achieve better characterization of the magnitude and relative contributions from sanitary sewer overflows and stormwater.

In Section 6.3, the discussion of the relative percentage of exceedances during the wet season and dry season should include a statistical analysis of the likelihood that the difference in relative percentages is due to chance rather than a difference in actual conditions. Without such an analysis, these data should not be used to support “the conclusion that stormwater runoff could potentially be a source of pathogens loading to the Bay.”

Also in Section 6.3, the last three sentences regarding the need for additional monitoring should be deleted as the monitoring approach described is not relevant to the TMDL project objectives nor is it technically sound.

In Section 7.5 (Seasonal Variation), in the first sentence, the phrase “due to factors such as stormwater runoff” should be deleted as there has been no statistical analysis as to whether the data support this conclusion.

Because this is a density-based TMDL, Section 8 (Linkage Analysis) must discuss the geographic relationship between the identified sources (houseboats and marinas) and the uses (water-contact recreation and shellfishing), and the extent to which discharges at the source locations may affect, or not affect, water quality where the uses actually occur or could potentially occur.

In Section 10.2 (Water Quality Monitoring), Table 18, MCSTOPPP should be deleted from the list of sampling entities as we are not currently engaged in the monitoring of Bay waters, have no expertise in such monitoring, and are not interested in cancelling a portion of our pollution-prevention activities in order to divert funds to pay for monitoring. In addition, the monitoring approach should be revisited and reconsidered. It would make the most sense to fully implement the controls described in Section 9 for houseboats and marinas before conducting limited follow-up sampling in those areas to confirm the effectiveness of the additional measures. Because of the sporadic and variable nature of stormwater discharges and sanitary sewer overflows, it is very unlikely that water-quality monitoring would be able to detect a response to additional BMPs at a statistically significant level.

We appreciate your consideration of our comments. If you have any questions regarding these comments please contact me at 415-499-6583.

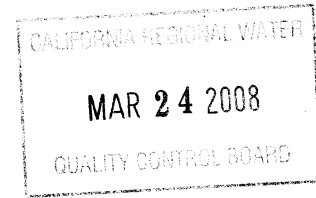
Sincerely,



Terri Fashing
Stormwater Program Administrator

cc: MCSTOPPP Agency Staff Committee
MCSTOPPP Citizens Advisory Committee
Farhad Mansourian, Director of Public Works, County of Marin
Liz Lewis, Watershed Program Director, Marin County Department of Public Works
Marla Lafer, San Francisco Bay RWQCB
Alex Hinds, Marin County Community Development Agency Director
Brian Crawford, Marin County Community Development Agency Assistant Director
Phil Smith, CDA Deputy Director of Environmental Health Services
Ben Berto, Richardson Bay Regional Agency
Bill Price, Richardson Bay Regional Agency
Richardson Bay Pathogen TMDL Stakeholder Workshop Group

1717 Powell St Suite 300
San Francisco, CA 94133



March 21, 2008

Farhad Ghadrati
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Pelican Harbour Response
Pathogens in Ricardson Bay Total Maximum Daily Load; Preliminary Project Report

Dear Mr. Ghadrati;

I am writing in response to the "Pathogens in Richardson Bay Total Maximum Daily Load (TMDL) Preliminary Project Report" of September 2007. I represent Pelican Harbour and have managed the harbor for over 10 years. My family has owed Pelican Harbour for over 35 years and we consider ourselves good stewards of the marina, Richardson Bay and environment. We were surprised to read in the report that Pelican Harbour had exceeded "fecal coliform water quality objectives for water contact recreation" on more than one occasion.

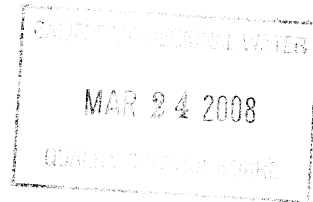
After reviewing the report I wish to contribute the following to the public comment section:

- 1) **The report makes no attempt to evaluate the current status of pump out facilities in Richardson Bay.** The report does generalize as to the conditions at the marinas and makes general recommendations for change but no where does it state that many marinas have already make significant updates to their pump out systems.

In 2001, as part of a major renovation of all of the marina's systems, Pelican Harbour installed new pump out, a SaniSailor; Marine Pump-out System. There are hook ups at every other berth and service is available to every single berth in the marina. It is free and available 24 hours a day. It is routinely maintained and is used daily by the tenants at Pelican Harbour. Additionally, every tenant has signed a Berthing Lease Agreement and addendum specifically stating that they will not discharge sewage into the Bay. Copies of both of these documents are attached. We recently sent out a notice reminding tenants that there is no discharge allowed into the Bay with instructions on the use of the pump out system. This is attached as well.

Pelican Harbour also has toilets and showers on site as well as a laundry area available 24 hours a day.

- 2) **The report underestimates the effects of marine wildlife.** The report states several times that exact numbers are difficult to obtain and yet still concludes that wildlife is not a contributing factor. As stated in the report in Section 5.6 Wildlife (page 32);



Page 2

“while local problems may be present in certain areas of the Bay where wildlife densities are particularly high, only low fecal coliform levels have been observed at the control sampling station that is not affected by human activities (control station C).” This location that has been chosen to monitor and to highlight, Control Station C, is in an area in the middle of Richardson Bay with much tidal activity and no nearby haul out area for marine mammals. The report dismisses the wildlife impact on Station B due to its proximity to the marinas and its supposed distance from the wildlife. I would argue that it is the other way around, Location B is more impacted by wildlife than Location C due to it being close to many popular haul out opportunities for marine mammals. **And further that, Pelican Harbour is at the center of the “local problems” stated in the report. All three of the marinas listed in the report that tested high for fecal matter also have the highest number of nearby wildlife inhabitants.**

- a. **Our marine mammal neighbors include harbor seals that reside year round** on the various floats right next to our Harbour. The colony of seals can number as many as 18 permanent residents. This, in addition to the regular population of cormorants, seas gulls & numerous smaller marine birds. Sea otters have even been spotted in Pelican Harbour, a sign of a healthy marina and Bay. Please note the attached photos of our year round marine neighbors.
- b. Seasonally, we have sea lions and pelicans. In the winter during the herring season especially, **literally thousands of marine birds of all types and sizes and countless numbers of marine mammals descend into Pelican Harbour and the area adjacent from Clipper Yacht Harbor to the north and Sausalito Yacht Harbor in the south**

More specific sampling of the wildlife impact is needed in order to accurately account for the amount of fecal matter emitted by the marine mammals before its “load allocation” can be determined for future monitoring.

- 3) **The report is lacking in site observations at the time the samples are taken.** It would be helpful in the future if site observations were made at the time of sampling. Current and recent weather conditions and the types and number of marine animals are two suggestions.
- 4) **The report underestimates the impact of terrestrial wildlife.**
 - a. **We have a colony of raccoons living under the docks.** They roam the docks night and even swim around the harbour in the early evening and early morning. We have made every effort to get rid of these animals but the only viable option has been to learn to co-exist with them. When the raccoons do leave dropping on the docks, the harbormaster no longer sweeps them into the Bay; she disposes of them into the trash.

Page 3

- b. **Dog run at the end of Pine Street.** As stated in section 5.3 Urban Runoff (page 27); *“Dog waste are readily observed near many of the sampling Stations along Richardson Bay shoreline and are a potential source of pathogen loading to the Bay”* One such site is located within 20 feet of the Pelican Harbour. The rocky beach area at the foot of Pine Street is used almost exclusively by dog owners and few of whom clean up after their dog when they poop in the rocks. All of this waste is washed out into the Bay through Pelican Harbour with each high tide. Additionally, dog owners often walk their dogs on our docks as well and kick any doggy droppings directly into the Bay instead of disposing of it in the trash. Our tenants have been notified that this practice is no longer permitted.
- 5) **The report does not address municipal runoff.** There are 3 storm drains nearby to Pelican Harbour. Two of these storm drains flow directly into Pelican Harbour. One is located at 501 Humboldt Street and the second is between B & C Docks at Sausalito Yacht harbor just south of Pelican.
- 6) **Lack of sampling data in the historical shellfish beds.**
- 7) **Lack of sampling at the Mill Valley sewage treatment plant.** The number of sanitary sewer overflows is listed in the report but none of the samples are from that area of Richardson Bay. After the release of approximately 5 million gallons of nearly raw and untreated sewage in late January 2008, (see attach article from the Marin Independent Journal) this would seem to be one of the biggest sources of fecal matter in Richardson Bay. If it is not considered a significant source than that should be addressed in the report as well.
- 8) **Lack of discussion of the main purpose of the report; the restoration of the historic shellfish beds.** Who are the 20 organizations – government, not-for profit, and volunteer interested in this project? What is the ultimate goal? Is it a commercial shellfish industry? Is it historical? Is it educational? In order to create a cooperative environment, I would suggest that this section of the report be more detailed. Without knowing the goals and purpose of the restoration it is difficult to create a groundswell of support for the stricter Water Quality for shellfish harvesting versus the Water Quality for water contact for recreation.

Clearly there is something more going at Pelican Harbour than simply recreational boaters discharging raw sewage into the Bay. If this was happening on a regular basis it would be noticeable to the harbormaster and to the boat owners. I urge you to assist us in examining this situation more closely and to gather more specific data, before imposing a new regulatory system on us. **There must be a way to distinguish between the sources that the marinas can control; the vessels and our own sewer systems and the sources over which we have no control; the marine mammals, birds, raccoons, dog walkers, the City of**

Mr. Farhad Ghadrati
San Francisco Bay Regional Water Quality Control Board
March 21, 2008

Page 4

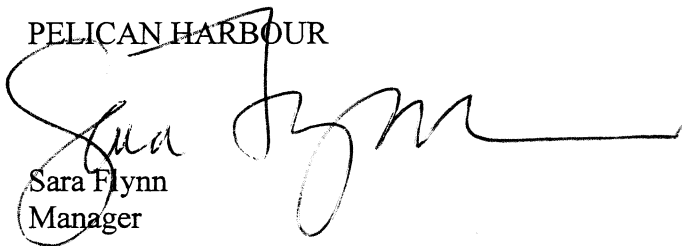
Sausalito storm drains etc. Without more detailed information, how are we to implement site-specific management measures to reduce our pathogen contributions?

All of us, marina owners, employees and tenants have a vested interest in keeping the Bay healthy, beautiful and safe. Since taking over the management of Pelican Harbour, I have noticed with satisfaction, the dramatic increase in the amount of marine wildlife within the marina and in the waters adjacent to the marina. I take this as an encouraging sign that the San Francisco Bay is healthier and that a clean Pelican Harbour is an attractive spot for these animals to set up residence.

I appreciate your taking the time to read these comments and I look forward to working with the Regional Water Quality Management Board.

Sincerely,

PELICAN HARBOUR

A handwritten signature in black ink, appearing to read 'Sara Flynn', written over the printed name and title.

Sara Flynn
Manager

PELICAN HARBOUR ASSOCIATES, LLC

P.O. Box 495
Sausalito, Ca 94966
(415) 332-0723

BERTHING AGREEMENT AND DEPOSIT RECEIPT

(With Closing Deposit Inspection Form)

This is intended to be a legally binding agreement-read it carefully.

Received from: _____ hereinafter referred to as Tenant, the sum of _____ paid by _____, as a deposit, which upon acceptance of this rental agreement (Agreement) by Pelican Harbour Associates, LLC (Harbour), will be credited by the Harbour towards the rental of:

Berth No. _____, being _____ feet in length, and _____ feet in width located at Pelican Harbour, 200 Johnson Street, Sausalito, California 94965.

Said sum shall be applied as follows:

Rent for the period _____ to _____	\$ _____
Last Month's Rent	\$ _____
Closing Deposit (Closing Inspection form shall be attached as page ____ and become an integral part of this agreement. Closing Deposit is not applicable to last's month rent)	\$ _____
Other _____	\$ _____
TOTAL	\$ _____

Tenant agrees to rent from Harbour the Berth identified above on a month-to-month basis pursuant to the terms and conditions stated herein:

- I. **TERM:** The term hereof shall commence on _____ 20 _____ and continue on a month-to-month basis thereafter, until either party shall terminate the same by giving the other party thirty (30) days advance written notice delivered to the resident Harbormaster or at the offices of the Harbour at the above address.
- II. **RENT:** Rent shall be \$ _____ per month, payable in advance and without offset, upon the first (1st) day of each calendar month to Harbour, the Harbormaster or its authorized agent at either the office of the Harbormaster at the Harbour or mailed to the above address. For purposes of this Agreement, all amounts payable by Tenant pursuant to this Agreement, whether or not denominated as such, shall constitute additional rental hereunder.
- III. **LATE CHARGES:** In the event rent is not paid within four (4) days after the due date or if mailed and not postmarked by the U.S Post Office within four (4) days after the due date, beginning on the fifth (5) day a late charge will be assessed. Tenant agrees that although exact costs may be difficult to ascertain, it would be reasonable to affix late charges in the amount of three (\$3.00) per day as additional rent for each day until receipt of payment to cover costs the Harbour may incur in administration, rebilling, preparation and service of notices, and extra accounting procedures. Tenant further agrees to pay twelve (\$12.00) as additional rent for each dishonored check. Failure to pay either charge shall constitute a default under the terms of this agreement.

Tenant(s) Initials _____ / _____

- IV. **OCCUPANCY AND USE:** The assigned Berth shall be occupied only by _____ Name of Boat (Vessel)

Whose measurements are:

Bowsprit _____ ft.	Length on Deck _____ ft.	Boomkin _____ ft.	L.O.A. _____
Draft _____ ft.	Beam _____ ft.	Gross tonnage _____ tons	

The berthing is to be used only for berthing of the vessel described above and no other boats or vessels of any type shall be berthed at any time. Tenant agrees that the berthing will not be used for the operation of any type of business, including, but not limited to, ship and boat building and/or repair. Tenant shall not commit, or suffer to be committed, any waste upon any property belonging to Pelican Harbour, or engage in any conduct reasonably deemed offensive or a nuisance to others, or do any other act or thing that may disturb the quiet enjoyment of other users of Pelican Harbour.

- V. **INSURANCE AND REGISTRATION:** Tenant shall carry vessel and property insurance coverage with the appropriate limits and combined limits of liability of not less than \$300,000. Tenant shall provide a copy of the California Vessel Registration or Documentation papers and proof of insurance. Each policy of insurance required to be carried by Tenant shall: (a) name Harbour and any other parties in interest that Harbour reasonably designates as additional insureds; (b) provide that the policy shall not be subject to cancellation, lapse, or change, except after at least thirty (30) days' prior notice to Harbour; (c) be primary insurance such that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage of Harbour and (d) not have a deductible in excess of any amount reasonably approved by Harbour. Failure to obtain and maintain registration and insurance shall constitute a default under the terms of this Agreement and shall give the Harbour the right to terminate this agreement immediately at its option.

Insurance Company _____	Agent _____
Policy Number _____	Telephone No. _____
California Regis. No. _____	U.S. License No. _____

Tenant(s) Initial _____ / _____

VI. **SUBROGATION:** Each party hereby waives any right of recovery against the other for injury or loss due to hazards covered by insurance, to the extent of the injury or loss covered thereby. Any policy of insurance to be provided by Tenant pursuant to this Agreement shall contain a clause denying the insurer any right of subrogation against the Harbour.

VII. **VESSEL:** Tenant warrants that he/she/it is the owner of the Vessel described in Paragraph IV (the "Vessel"). If the Vessel moored hereunder is jointly owned, the person signing this Agreement represents that he/she/it has obtained the consent of all owners and is authorized to bind all the owners of the Vessel to the terms of this Agreement. Tenant shall perform all necessary and regular maintenance on the Vessel in accordance with the terms of this Agreement. The Vessel shall be subject to physical inspection and approval by the Harbourmaster or its representative upon its arrival and during the term of this Agreement. Tenant shall maintain the Vessel in proper and safe condition including, without limitation, maintaining the Vessel in a seaworthy and fully operable state, and keeping the Vessel well painted, cleaned, sanitary and in yacht condition.

Tenant(s) Initial _____ / _____

In keeping the Vessel maintained, no paint removal equipment or chemicals, and no sanders or spray guns, may be used on topsides or above decks. No person shall engage in the burning of paint in Pelican Harbour. No major construction or repair, no painting and no overhauls are permitted while the Vessel is berthed in Pelican Harbour. The Harbour shall be the sole judge as to what constitutes "major construction or repair".

Tenant shall be responsible for mooring the Vessel so that it does not endanger or disturb Pelican Harbour or other vessels berthed therein and hereby agrees that Harbour may re-moor or remove the vessel from the assigned berthing space, or take whatever other action is reasonably deemed necessary with respect to the vessel for its protection or for the protection of Pelican Harbour, and other vessels berthed therein.

VIII. **MAINTENANCE:** Tenant acknowledges that the Berth is in good order and repair, unless otherwise indicated herein. Tenant shall, at his own expense, and at all times, maintain the slip in a clean, orderly, and debris-free condition including equipment such as corner wheels, rubber edging, grommets, and tie downs. Normal wear and tear and damage by acts of god excepted.

Tenant agrees to use only pre-approved, light-weight, fiberglass, white dock steps. Dock steps shall be no wider than one-half the width of the finger between vessels and no longer than five (5) feet.

Tenant is responsible to secure dock box lid to prevent damage and shall be fully liable for all damage and repairs resulting from Tenant's failure to secure the dock box lid. No additional dock boxes are allowed. Tenant agrees not to store any personal or any boating items on the docks including, but not limited to, bicycles, plants, dinghies or inflatable boats.

Tenant(s) Initial _____ / _____

IX. **EMERGENCY REPAIRS:** Tenant authorizes Harbour to perform any action to insure safety of the vessel and of Harbour as economically as possible, which will be charged to the Tenant. All Tenants must advise Harbour office of any changes in phone contact numbers, both home and Tenant's place of business, and current mailing address.

X. **HARBOUR RULES:** Tenant agrees to abide by any and all rules and regulations of the Harbour as may be promulgated by the Harbour from time to time, and rules and regulations of any governmental authority having jurisdiction or control over the Harbour or its vessels.

XI. **LIVING ABOARD VESSEL:** Living aboard vessel is not permitted.

XII. **DAMAGE:** Tenant shall be responsible for all repairs for damages caused by Tenant's negligence and that of Tenant's family, invitees or guests.

XIII. **LIENS:** Harbour shall have a right to a lien under Section 505 of the Harbor and Navigation Code against the above-described vessel, her appurtenances and contents, for unpaid sums due, for damage caused or contributed to by the above-described vessel or by Tenant, crew, or guests, to any dock property of Harbour or that of any other vessel or person on premises.

XIV. **UTILITIES:** Tenant is responsible for payment of all utilities and service charges related to occupancy of the premises, except for garbage collection which Harbour will pay. All utilities and service charges shall be billed and paid by Tenant pursuant to the *Addendum to Residential Agreement/Rental Agreement and Utility Invoicing Agreement*, which is attached to this Agreement as Exhibit "A". Tenant agrees to adhere to water conservation measures should it be deemed necessary by the Harbour.

XV. [REDACTED]

XVI. **PETS:** Any pet visiting the Harbour must be leashed at all times and under the control of the pet owner. Any pet found without tags, or running loose, or making excessive noise will be removed by the Marin County Humane Society and all fees and fines will be the responsibility of the Tenant. Pets, including cats, may not be left unattended on Vessels.

Tenant(s) Initial _____ / _____

XVII. **PARKING LOT:** The Harbour and its agents shall not be liable to the Tenant for any loss or damage of any kind to any personal property including vehicles, left in the parking lot or the Harbour premise for any cause whatsoever. Tenant agrees to abide by any and all Parking Rules whether promulgated before or after the execution of their Agreement.

XVIII. REMOVAL OF VESSEL UPON TERMINATION: In the event Tenant fails to remove the vessel from Pelican Harbour immediately upon termination of this Agreement, Harbour is hereby authorized to remove the vessel from its berthing to such other place as Harbour may choose for the purpose of storing said vessel, and Tenant hereby agrees to pay Harbour its reasonable costs incurred in removing the vessel and the reasonable cost of storing the same; and hereby agrees that Harbour shall have a lien upon the vessel for the amount of such costs. Tenant agrees that upon termination of this Agreement for any cause, Harbour shall be entitled to immediate possession of the berthing and may immediately relet the same.

XIX. SALE OF TENANT'S VESSEL: Tenant agrees to immediately notify Harbour in writing in the event of any sale or transfer of any ownership interest in the Vessel. The sale or transfer of any ownership interest in the Vessel shall automatically terminate this Agreement effective thirty (30) days after the landlord receives Tenant's written notice of such sale or transfer.

In the event Tenant should desire to sell the Vessel to a purchaser prior to terminating this Agreement, Tenant may give the Harbour written notice requesting that the Purchaser be allowed to continue occupancy of the Slip. The Harbour may approve, disapprove, or take other action upon such request in its sole and absolute discretion. Nothing in this agreement shall obligate the Harbour to allow the purchaser of a Vessel to continue occupancy of the Berth. Any new agreement executed with the Purchaser shall be subject to a transfer in accordance with the schedule established by the Harbour.

XX. ASSIGNMENT AND SUBLETTING: Tenant shall not assign this Agreement, and shall not sublet the berthing, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the said berthing or any portion thereof. Any attempted sublease, assignment or transfer shall constitute a breach of this agreement and shall give the Harbour the right to terminate this agreement immediately at its option.

XXI. ABANDONMENT: In the event that Tenant shall be absent from the premises for a period of five (5) consecutive days, while in default, Tenant shall, at the option of the Harbour be deemed to have abandoned the Berth and any property left on the premises shall be considered abandoned and may be disposed of by Harbour as Harbour shall see fit. All property on the premises is hereby subject to a lien in favor of the Harbour for payment of all sums due hereunder. Harbour will store Tenant's property and re-rent premises. Tenant agrees to pay a reasonable storage fee to Harbour. After ninety (90) days Harbour may sell such belongings unless redeemed by Tenant.

XXII. INDEMNIFICATION: Tenant agrees to protect, indemnify, hold harmless and defend Harbour and each of its partners, directors, officers, agents and employees, successors and assigns, regardless of any negligence imputed to Harbour as owner of the premises involved in an injury, from and against: any and all loss, cost, damage, liability or expense as incurred (including but not limited to attorneys' fees and legal costs) arising out of or related to any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death, or property damage sustained by such person or persons which arises out of, is occasioned by or is in any way attributable to the use or occupancy of the berth including the floating docks or finger floats adjacent thereto by Tenant or the acts or omissions of Tenant or its agents, Tenant's family, invitees or guests.

XXIII. DEFAULT: Any failure by Tenant to pay rent when due, shall, at the option of the Harbour or Harbour's agent, subject Tenant to a three-day notice to pay or quit and eviction proceedings.

In the event of default by Tenant, Harbour may elect to (a) continue the agreement in effect and enforce all his rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenants rights hereunder and recover from Tenant all damages he may incur by reason of the breach of agreement, including the cost of recovering the premises and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the period exceeds the amount of such rental loss.

XXIV. ATTORNEY'S FEES: In any action to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

XXV. WAIVER: No failure of Harbour to enforce any term hereof shall be deemed a waiver, nor shall any acceptance of a partial payment of rent deemed a waiver of Harbour's right to the full amount thereof.

XXVI. VALIDITY: In the event that any provisions of this agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining portions of this agreement.

XXVII. CLOSING DEPOSIT: In accordance with civil code, section 1950.7, the Closing Deposit set forth above shall secure the performance of tenant's obligations herein. Harbour, or Harbour's agent, shall apply portions or all of said deposit on account of Tenant's obligations as described in Paragraphs II, III, and VIII and any charges as described in the closing deposit Inspection Form at the time of moving out. Tenant agrees not to apply said Closing Deposit to last month's rent nor to use the Closing Deposit as credit for rent or other charges at any time. Tenant further agrees to maintain the Closing Deposit in its full and original amount at all times.

XXVIII. TIME: Time is of the essence of this agreement.

XXIX. EXHIBITS: Exhibit "A" (*Addendum to Berthing Agreement and Utility Invoicing Agreement*) is incorporated into this Agreement by reference and made a part hereof.

By _____
Pelican Harbour Associates, LLC

By _____
Tenant

By _____
Tenant

Dated: _____

Dated: _____

Pelican Harbour Associates LLC
P.O. Box 495
Sausalito, CA 94965

**Addendum to Berthing Agreement
Marine Toilets**

Marine Toilets: All boats berthed in Pelican Harbour equipped with a marine toilet (head) shall contain an adequate holding tank, incinerator re-circulation device or other device that receives and retains sewage from the boat's head to prevent the discharge of sewage in the waters of the Harbour; or the marine toilet must be rendered inoperable when the boat is berthed in Pelican Harbour.

As stated in the Berthing Agreement in paragraph XV, dumping of any solid or liquid waste into the Harbour is forbidden. Violation of this provision shall be cause for the immediate termination of Tenant's the use and occupancy of Pelican Harbour.

By _____
Pelican Harbour Associates, LLC

By _____
Tenant

By _____
Tenant

Dated: _____

Dated _____



To All Tenants

Pelican Harbour prides itself on being ecologically and environmentally responsible. Our policy of promoting a clean harbor includes providing facilities to enable boaters to discharge their waste in an easy and safe manner, 24 hours a day, seven days a week. Pelican Harbour has zero tolerance for any black water released into the bay. If you prefer, there are companies you can hire to come pump out your holding tank for you. If you observe any sewage being released into the bay, please contact the harbor office. This environmentally sensitive area needs our help to stay clean.

Pump Out Stations

Pelican Harbour provides pump-out facilities at every berth, making it easy and convenient to empty the holding tanks when needed. All vessels are required to have working holding tanks if they are equipped with functioning heads. A portable hose for each dock is located at the head of the harbor, rolled up on an aluminum cart that can be brought to your berth. The hose should be fully unrolled off the cart to ensure maximum draw from your tank. Attach the short hose from the cart to the dock station and the long hose leads to your boat. Push the green button located on a dock box near your berth to start the pump, building pressure to draw the black water from your boat. The pump will run for five minutes, after which the green button will need to be pressed again. Open the valve at the dock and fill a bucket (attached to the cart) with fresh water to prime the pump. Place the nozzle in the bucket of water, open the valve at the nozzle, and prime the pump. Close the valve at the nozzle and place the nozzle into your waste fitting. Reopen the valve and check the clear sight tube to see if you have suction from your tank. When no more waste is seen coming from the tank, close the nozzle, place it in a clean bucket of fresh water, and draw at least 3 buckets of water through the hose to clear any residual waste. If needed, push the red button located next to the green button to stop the pump when you are finished. If you have any questions about the operation of the system, please call the office and we will be glad to help you. Or, if you would like to contact MT Head (www.mthead.com) to do the pump-out for you, they can be contacted through their website.

Pet Poop

All pet waste, dog or cat, is to be disposed of in the trash. No waste is to be washed into the bay off of the docks. This animal waste, when placed in the water, carries pathogens that are as harmful to the bay as human waste.

Boat Cleaning

Environmentally friendly cleaners should be used whenever possible. The fewer chemicals we put into the water, the more the wildlife and vegetation can flourish. And remember the old commercial, "A little dab'll do ya"? Use the smallest amount required to do the job. It will save you money in the end, too.

Pelican Harbour Response
Pathogens in Richardson Bay Total Maximum Daily Load; Preliminary Project Report
Photo Attachments

March 21, 2008



Marine Birds; Looking toward Pelican Harbour, March 2008.

Pelican Harbour Response
Pathogens in Richardson Bay Total Maximum Daily Load; Preliminary Project Report
Photo Attachments

March 21, 2008



Marine Mammal; Another convenient haul out adjacent to Pelican Harbour, March 2008.

Pelican Harbour Response
Pathogens in Richardson Bay Total Maximum Daily Load; Preliminary Project Report
Photo Attachments

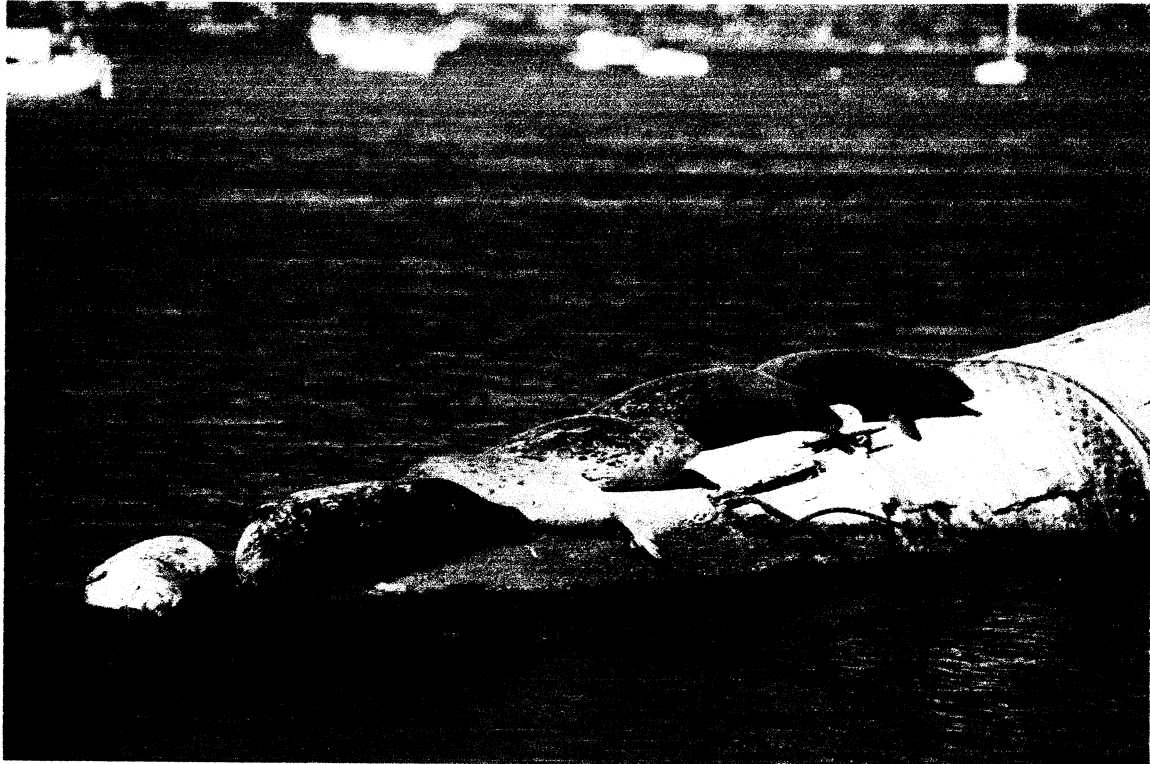
March 21, 2008



Marine Mammals; adjacent to Pelican Harbour, March 2008.

Pelican Harbour Response
Pathogens in Richardson Bay Total Maximum Daily Load; Preliminary Project Report
Photo Attachments

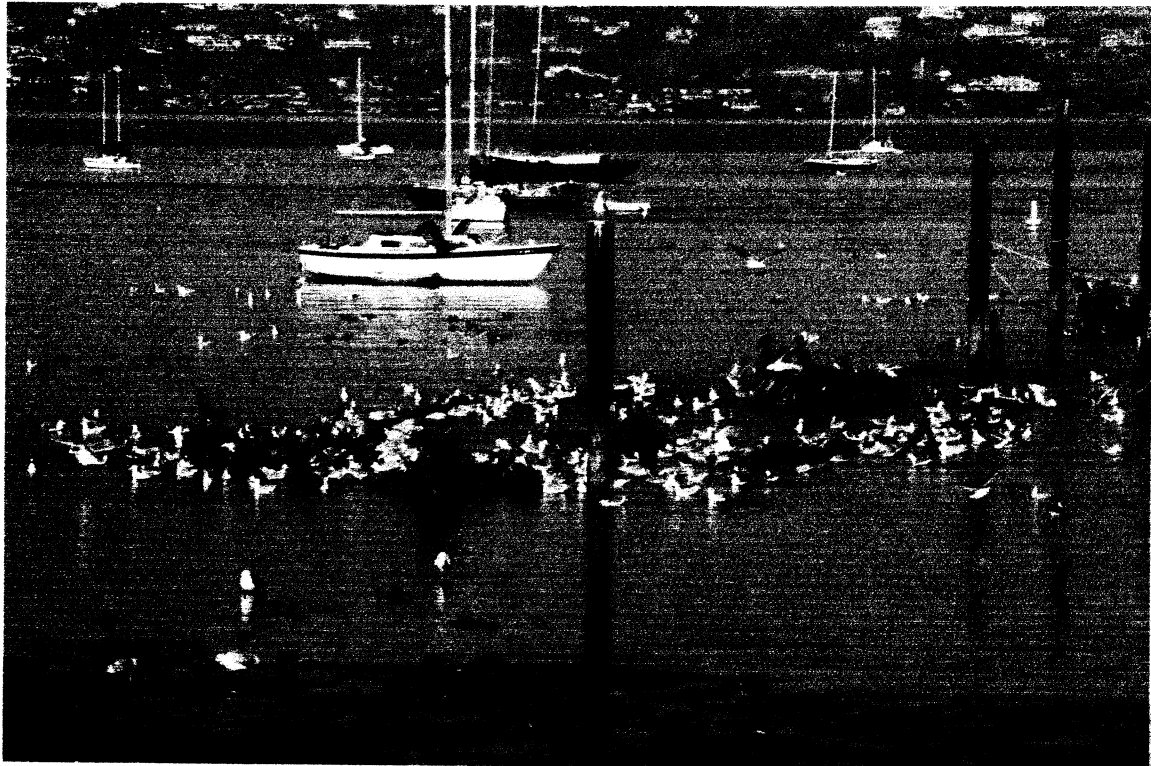
March 21, 2008



Marine Mammals: Photo from the Pelican dock looking just north of the harbor about 15 feet, March 2008.

Pelican Harbour Response
Pathogens in Richardson Bay Total Maximum Daily Load; Preliminary Project Report
Photo Attachments

March 21, 2008



Marine Birds; Typical number of birds in the “non-herring” season.

Marin
Independent
Journal
Feb 13 2008

See SEWAGE, page A2

Federal EPA cites problems with sewer agencies

October study notes insufficient preparation and maintenance

By Mark Prado
Marin Independent Journal

Federal investigators concluded after a study last year that the Sewerage Agency of Southern Marin was "ill prepared to respond to a spill, catastrophic or otherwise."

> Map of joint
agencies /A2

The report, released Tuesday, was based on an October 2007 review at the agency's Mill Valley plant by inspectors for the U.S. Environmental Protection Agency, who targeted the plant because of its higher-than-average spill rates.

The plant has come under increased scrutiny over the past two weeks after it released more than 5 million gallons of nearly raw and

SEWAGE: Federal EPA study shows plenty of problems

From page A1

partially treated sewage in two separate incidents.

Inspectors who studied the plant last year found problems both with the Mill Valley sewage agency and its surrounding collection systems that send sewage to the wastewater treatment plant.

At the sewage agency, inspectors found an overall lack of sufficient documentation on past spills and noted it relied on "Post-It"-type notes to record spill information from the community instead of formal documentation.

"Overall, the (spill) documentation was judged to be poor and unreliable," according to the report, which was expedited by the EPA because of the recent spills.

The report also noted the sewage agency did not have the equipment to respond to and contain spills or lessen their impacts. Instead, the agency had a verbal agreement with a sewer-line clearing service in Novato, 18 miles away.

"Therefore it is unlikely that a response time would be less than 25 minutes," according to the report. "Other factors could lengthen time considerably, e.g. traffic on U.S. 101."

The report noted: "The lack of equipment and formal written agreements does not appear to be in compliance with (state) requirements and SASM appeared ill prepared to respond to a spill, catastrophic or otherwise."

The report is being reviewed by the sewage agency, which plans to hire an investigator to look at the issues, said Mill Valley police Capt. Ansel Ber-

nal, acting spokesman for the agency.

The EPA also examined sewage collection systems that flow to the sewage agency's treatment plant.

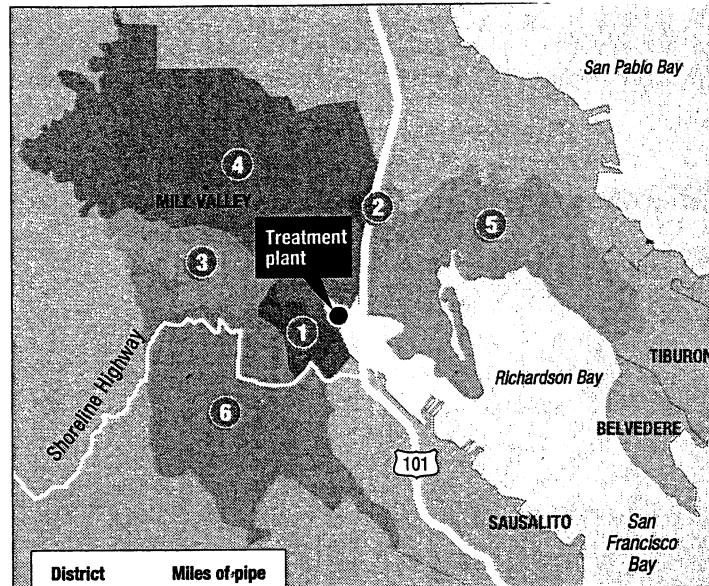
The sewage agency — formed in 1979 — is composed of six member agencies including the city of Mill Valley, Tamalpais Community Services District, Almonte Sanitary District, Alto Sanitary District, Homestead Valley Sanitary District and Richardson Bay Sanitary District. In all, 28,000 residents use the system. Each of the six agencies owns and operates its own separate collection system that feeds into the sewage agency's collection system; treated wastewater is eventually discharged into Racoon Strait off Tiburon.

Part of the spill problem is attributed to the "inflow and infiltration" of rainwater, which finds its ways through holes and cracks into pipes that in some cases are more than 50 years old. That water gets into the system and then overwhelms the plant.

On a normal day, the plant processes 2.5 million gallons of sewage, but when rains hit, the total can be between 17 million and 20 million gallons, according to the EPA report.

"That is in the higher tier of Bay Area agencies," said Ken Greenberg, chief of the EPA's clean water compliance act office.

A Jan. 25 spill at the sewage plant occurred when a storm filled up a pond holding excess sewage. As more water came into the plant, workers feared a flood at the site and released 2.45 million gallons of virtually raw sewage into Rich-



District	Miles of-pipe
1. Almonte	5.5
2. Alto	6
3. Homestead Valley	11
4. City of Mill Valley	59
5. Richardson Bay	44
6. Tamalpais	28

Southern Marin sewer agencies

Six agencies flow sewage to the treatment plant in Mill Valley. Old, porous pipes are part of the reason for excess water in the system leading to spills.

Source: U.S. Environmental Protection Agency

Richardson Bay. A Jan. 31 spill of 2.7 million gallons of partially treated sewage occurred when the treatment plant failed to operate all of its pumps.

"The public may be surprised to learn we have many neglected sewage collection systems, which are small, underfunded and undermanaged," said Alexis Strauss, the EPA's water division director for the Pacific Southwest region.

"These systems will continue to pose threats to San Francisco Bay if communities fail to upgrade and maintain their systems sustainably. We at the EPA will continue ... to work with the California Regional Water Quality Control Boards and the systems directly to achieve long-overdue assessment, repair and replacement."

Because many of the agencies bill customers based on residential connections rather than flow, they have limited incentive to reduce the overall

flow to the treatment plant, the report noted.

The report said the sewage agency should take a lead role in coordinating and sharing information with all the agencies in the service area.

"Since the member agencies are relatively small in size, all of the agencies would appear to greatly benefit from the sharing of information such as spill response forms and procedures," the report states.

Greenberg said the Southern Marin system needs to be looked at more closely.

"We would like to see an examination of where the inflow and infiltration is coming from," he said. "A lot of what we are seeing here is par for the course for smaller agencies; it is not unusual."

"Can they do better? You know they can."

Contact Mark Prado via e-mail at mprado@marinij.com

RICHARDSON'S BAY REGIONAL AGENCY

State Water Resources Control Board
TMDL/Planning Division
1515 Clay Street, suite 1400
Oakland, CA 94612



April 17, 2008

Dear Board Members:

Please accept this letter commenting on the proposed Basin Plan Amendment (or Total Maximum Daily Load (TMDL) plan) for Richardson's Bay. Concerning the timing of this letter, the RBRA Board only meets every two months. Our previous meeting occurred before the release of the draft public comment TMDL, and the meeting date of the letter occurred after the first State Water Resources Control Board (SWRCB) meeting on this topic, but before the SWRCB meeting on potential TMDL adoption. If it were within the constraints of the Richardson's Bay Regional Agency's (RBRA) meeting schedule, we would have submitted this letter by March 24. The two of you have attended an RBRA meeting and have also met with RBRA staff about the TMDL on more than one occasion. Given the ongoing dialogue between the RBRA and your agency, we trust that these comments will be incorporated into the public record and the SWRCB's deliberations.

The RBRA Board has a number of comments and concerns directed at both the language and thrust of the TMDL, as follows:

- 1) As previously expressed, the RBRA has some serious reservations about the underlying basis for the TMDL, namely that shellfish harvesting in Richardson's Bay was, is, or realistically can be considered a "beneficial use". Non-attainment of water quality standards in support of the shellfish harvest water quality objective is the putative reason for justifying imposition of a TMDL in Richardson's Bay. The RBRA recognizes that Richardson's Bay is listed as a "non-attainment" area for shellfish harvest water quality standards in the San Francisco Bay Basin Plan. However, many parts of San Francisco Bay, for example Oyster Point, have higher pollution levels than Richardson's Bay, and more history of shellfish use. The RBRA is not opposed in concept to a program that supports RBRA's goals and ongoing efforts to clean up Richardson's Bay. However, it should be noted for the record that the shellfish beneficial use appears to be merely an historical artifact, a reminder of by-gone years at/before the turn of the 19th century, when a commercial oyster harvesting industry existed in Richardson's Bay. Richardson Bay's industry was based on non-native Eastern oysters, the young fry of which were imported in boxcars from the East Coast, and which never propagated in Richardson's Bay. That industry and its oysters have been gone from Richardson's Bay for at least 80 years. What occurs now is a population of native Olympia oysters that previously have not and currently do not have human consumption beneficial use value. At maturity, Olympia oysters are the size of a nickel, unlikely to ever be consumed. Given the lack of any real evidence to support native Olympia oyster shellfish harvesting as a beneficial use, a TMDL based on the shellfish harvest water quality objective is

unreasonable and unachievable since it would be based on "potential" (and highly unlikely) future uses, and not "probable" future uses.

RBRA has no objections to a TMDL using a water-based recreation water quality objective or standard.

- 2) In several parts of the implementation plan portion of the proposed TMDL, the RBRA is identified as being responsible for various implementation actions. If the TMDL is to be imposed, RBRA requests that the following language be changed: delete the phrase "onboard holding tanks" everywhere it occurs, and substitute instead "onboard sewage collection systems."
- 3) The spirit in which the TMDL is administered by the RWQCB is very important. In the course of several discussions with your agency's two staff persons Farhad Ghodrati and Naomi Feger and particularly Naomi, RBRA has been given to believe that good faith development and performance of the implementation program (specifics of which are to be developed by our agency) is more important per se than attainment of the shellfish harvest water quality objective. This "good faith effort" versus rigid attainment orientation is important to our Board in determining, for example, whether or not to undertake a formal "use attainability analysis" that would likely eliminate the shellfish harvest water quality objective for the reasons summarized in item 1 above. RBRA and the public agencies it represents place a strong emphasis on environmental protection. The fact that shellfish harvest standards are currently sometimes met in Richardson's Bay illustrates the environmental commitment of RBRA's jurisdictions. If unreasonable and punitive enforcement actions were to arise from our (and other agencies') future inability to achieve complete compliance with the shellfish harvest water quality objective, RBRA could be forced to consider legal options such as what transpired in the recent 18 jurisdiction "Cities of Arcadia" Superior Court case.

Please accept this letter in the constructive and reasonable vein it is intended, and do not hesitate to contact Ben Berto, RBRA Clerk (ph.415-499-3658) or Bill Price, RBRA Harbor Administrator (416-971-3919), if you have any comments or questions.

Sincerely,



Charles McGlashan
RBRA Board Acting Chair

CC: RBRA Board

I:\TMDL RWQCB 041708.rev let.DOC



March 24, 2008

Mr. Farhad Ghodrati
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Sent via electronic mail to fghodrati@waterboards.ca.gov

Dear Regional Board Members and Staff:

On behalf of San Francisco Baykeeper (“Baykeeper”) and our thousands of Bay Area members, we are writing to provide comments on the Total Maximum Daily Load (“TMDL”) for Pathogens in Richardson Bay. Richardson Bay encompasses some of the most important habitat in the San Francisco region. It contains the second largest extant eelgrass bed in the San Francisco Bay Area and is the site of current important eelgrass bed restoration efforts. The Bay is also integral to annual winter herring runs, the last commercial fishery in the Bay, and to thousands of local and migrating birds, including the endangered California clapper rail. With its relatively protected waters, Richardson Bay is also the location of native oyster restoration and is a popular destination for swimming, kayaking, and rowing.

As recognized by this TMDL, sewage discharges from houseboats, recreational vessels, storm drains, and sanitary sewer systems have and continue to compromise the designated beneficial uses of Richardson Bay. In addition to pathogenic microorganisms that make shellfish consumption and water contact recreation unsafe, sewage contains a variety of other pollutants that threaten the health of the Richardson Bay ecosystem. These pollutants include nutrients which can contribute to depressed dissolved oxygen levels, and metals and pesticides, which can have sub-lethal but still significant impacts on all aquatic life. While fecal coliform bacteria are the focus of this TMDL, successful implementation should reduce loading of many other harmful pollutants also associated with untreated sewage.

In general, we support adoption of this Basin Plan Amendment, which is necessary to protect Richardson Bay from the harmful impacts of sewage discharges. However, we ask that the following changes be made to the Basin Plan Amendment prior to being considered by the Regional Board for adoption:

- **Impose additional implementation measures on sanitary sewer system owners in southern Marin, and**
- **Divide the wasteload allocation for stormwater agencies into dry and wet weather allocations and translate the allocations into numeric permit limits, as has been done by other Regional Boards in California.**

Apart from these changes, Baykeeper supports the Regional Board’s approach, and especially the use of the water quality objective for shellfish harvesting as the TMDL. Shellfish harvesting is one of the designated beneficial uses of Richardson Bay and, therefore, the TMDL must be sufficiently stringent to protect that use. Establishing the TMDL at the same level (14 MPN/100 mL) as the water quality objective is the best way to ensure that Richardson Bay will eventually support all designated uses as required by the Clean Water Act.



Pollution hotline: 1-800 KEEP BAY
www.baykeeper.org

785 Market Street, Suite 850
San Francisco, CA 94103
Tel (415) 856-0444
Fax (415) 856-0443

We also thank Regional Board staff for including in the Basin Plan Amendment a table of implementation measures. Our comments on previous TMDLs have largely focused on the lack of detail with respect to implementation. Although our comments today still request changes to the implementation measures, the table provided in the Basin Plan represents progress and is something that we hope to see in future TMDLs.

A. Additional Implementation Measures for Sanitary Sewer Systems are Necessary.

The TMDL must specify implementation measures for sanitary sewer agencies in southern Marin County that go beyond mere compliance with existing regulations. Many, if not all, of the sewage treatment plants and collection systems in southern Marin are in poor condition and/or lack the capacity to treat wet weather flows. In January of this year, the Sewerage Agency of Southern Marin (“SASM”) made many newspapers’ headlines when the agency allowed more than 2.5 million gallons of raw and partially treated sewage to flow into the shallow waters of Richardson Bay on two separate occasions.

In addition to these very large spills from the treatment plant, the southern Marin collection systems experienced an estimated 150 sewage spills in less than three years, which resulted in at least 50,000 gallons of raw sewage flowing to nearby surface waters, including Richardson Bay. Not only is this spill rate unacceptably high and indicative of the dire condition of southern Marin’s wastewater infrastructure, it is likely an underestimate of the actual number and volume of spills. EPA’s inspections of the sanitary sewer system collection systems in southern Marin identified problems in tracking and reporting sewage spills, and Baykeeper’s own experience in reviewing city records shows that cities often experience many more sewage spills than they report to the Regional Board.¹

The TMDL’s sole requirement relating to these aged collection systems—that they comply with the Statewide General Waste Discharge Requirements (“WDR”) for Sanitary Sewer Systems²—is wholly inadequate in light of Marin’s clearly documented sewage infrastructure problems and Richardson Bay’s impairment. All TMDLs must provide “reasonable assurances” that they can and will be implemented in a manner that results in timely attainment of water quality standards.³ Reasonable assurances must include an “actual demonstration that the measures identified will result in the predicted reductions and that the State is able to assure this result.”⁴ The Statewide General Permit, which attempts to ensure that sanitary sewer agencies keep their collection systems in good working order, has been in effect for almost two years but has not prevented or remedied the failing conditions of the Marin sewer systems. In the absence of enforcement or additional regulation, the Marin sanitary agencies will continue to have numerous sewage spills that will cause and contribute to water quality violations in Richardson Bay.

¹ U.S.EPA, Region IX, Sanitary Sewer Overflow Inspection Reports for the Southern Agency of Southern Marin, available at <http://www.epa.gov/region09/water/npdes/compliance.html>.

² California State Water Resources Control Board, Order No. 2006-0003-DWQ (May 2, 2006) (hereinafter “Statewide WDR”).

³ See U.S. EPA, Region IX, Guidance for Developing TMDLs in California, p. 12 (January 7, 2000) (“Cal. TMDL Guidance”); U.S. EPA, EPA440-4-91-001, Guidance for Water Quality-Based Decisions: The TMDL Process, ch. 3 at pp. 5-6, 1991 (available at <http://www.epa.gov/OWOW/tmdl/decisions>). (“Cal. TMDL Guidance”); EPA, 1997. New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs). Memorandum from Robert Perciasepe to Regional Administrators, August 8, 1997.

⁴ Cal. TMDL Guidance at p. 10.

In order to provide the necessary “reasonable assurances,” Baykeeper strongly recommends amending the draft TMDL to identify trackable implementation measures—beyond mere compliance with the General WDR—for reducing sewage spills from the sanitary sewer treatment plants and collection systems in southern Marin. These measures should address the issues identified by EPA’s recent inspections of five of the six sewage collection systems that flow to the SASM wastewater facility. The issues identified by those reports that this Regional Board should address include the following:

- **Inflow and Infiltration Studies.** It is believed that inflow and infiltration (I & I) contributes significantly to treatment plant capacity issues and high spill rates, but the actual I & I rates are unknown. Moreover, the rate agreements between the agencies owning the treatment plants and those owning the collection systems provides no incentive for reduction of I & I in the collection systems.
- **Spill Response and Containment.** Many of the agencies responsible for maintaining the sewage collection system have no ability to respond to or contain sewage spills.⁵ As revealed in the EPA inspections reports, they rely on Roto-Rooter for response, but the Roto-Rooter office is often twenty or more miles away. Additionally, many Marin cities have unwritten agreements with Roto-Rooter and it is unclear whether the company’s response and containment is adequate.
- **Inadequate Spill Tracking and Reporting.** The EPA inspections confirmed what Baykeeper already knows from experience reviewing city records: many agencies that operate collection systems have inadequate spill tracking and reporting procedures and, therefore, are underreporting spills.

Additionally, the Marin agencies should be required to establish a forum for information sharing, discussion and dispute resolution per the recommendation of a 2004 Marin Grand Jury Report entitled “Southern Marin Sewers—So Many Districts, So Few Users.”⁶ This report concluded that the relationships between the agencies responsible for the treatment plants and those responsible for the collection systems creates an institutional barrier to reducing inflow and infiltration and, therefore, spills. The Grand Jury found that “with no overriding mandate to confer and collaborate, it is easy [for the collection agencies] to opt to conduct business as usual.”⁷ The report recommends the creation of a joint powers agreement to enable the eleven agencies serving the area to share personnel, expertise, and physical resources.

Recommendation: Baykeeper recommends that the Basin Plan Amendment be revised to include trackable implementation measures and deadlines addressing each of the issues identified above, including but not limited to:

- Characterization of I & I to the collection systems;
- Acquisition of spill response equipment and development of formal response and containment procedures;
- Development and implementation of accurate spill reporting procedures;
- Comprehensive evaluations of the agencies’ Capacity, Management, Operation, and Maintenance (“CMOM”) programs; and

⁵ Cities must respond to sanitary sewer spills and take all feasible steps to contain and mitigate them. Statewide WDR at p. 7.

⁶ 2003-2004 Marin County Grand Jury Report: Southern Marin Sewers – So Many Districts, So Few Users (April 27, 2004). Available at <http://www.co.marin.ca.us/depts/GJ/main/cvgrjr/2003gj/SouthernMarinSewersReport.pdf>

⁷ *Id.* at p. 11.

- Creation of a joint powers agreement or some other arrangement to facilitate communication, information sharing and dispute resolution amongst the agencies.
- B. The TMDL Should Establish Municipal Stormwater Wasteload Allocations for Wet and Dry Seasons and Should Provide for Numeric Effluent Limits in Stormwater Permits.**

As a preliminary matter, we note that Table 7-3 (“Density-Based Pollutant Wasteload and Load Allocations for Richardson Bay”) of the Basin Plan is confusing and requires some clarification. This table specifies an allocation for “Stormwater Runoff” but it is unclear whether this is a wasteload allocation (“WLA”) for discharges from municipal separate storm sewer systems (“MS4s”) or a load allocation for nonpoint source runoff. Assuming that it is the former, this WLA should be clearly designated as such.

In addition to clarifying the meaning of “Stormwater Runoff,” the TMDL provisions related to stormwater require two changes. First, the TMDL should establish WLAs for MS4s during the wet and dry season. During the rainy season, stormwater flows may carry animal feces and other sources of fecal indicator bacteria into MS4s. During the dry season, however, MS4s should not be a source of fecal indicator bacteria as they should not be discharging to Richardson Bay at all.

Second, the trackable implementation measures for MS4s should include numeric effluent limits. In southern California, the Los Angeles Regional Board used numeric effluent limits to implement dry weather WLAs for Santa Monica Bay beaches. Their rationale for this approach—that dry weather WLAs do not apply to storm water and that the iterative approach in previous permits has failed to eliminate dry weather discharges—applies equally here.⁸

Recommendation: Baykeeper recommends a clarification of the definition of “Stormwater Runoff.” We also request that the stormwater runoff WLA be divided into wet and dry season allocations with numeric limits to implement the dry weather allocation.

C. The Houseboat and Vessel Implementation Measures Should Contain More Detail.

We strongly support the requirement that the county and local cities evaluate the adequacy and performance of sewage systems for all houseboats and vessels. We urge the Regional Board to be more specific, however, about what this requirement entails.

Recommendation: Baykeeper recommends that the trackable implementation measures include annual (or some specified frequency) inspections for each houseboat and vessel, establishment of authority by the cities and by marina operators to inspect houseboats and vessels and enforce against those that are substandard, and establishment of an anonymous hotline for citizens to report violations.⁹

⁸ Los Angeles Regional Water Quality Control Board, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach, Order No. 01-182, NPDES Permit No. Cas004001 (December 13, 2001) (amended on September 14, 2006 by Order R4-2006-0074 and on August 9, 2007 by Order R4-2007-0042).

⁹ Baykeeper regularly receives phone calls from houseboat and vessel owners complaining that other marina tenants are illegally discharging. Frequently, these callers wish to remain anonymous out of concerns about retaliation or, for other reasons, do not want to report the discharge to the harbor master.

D. The Basin Plan Amendment Should Require Water Quality Monitoring and Beach Closures When Water Quality Standards are Exceeded.

While the monitoring data summarized in the TMDL staff report contains data for Schoonmaker Beach, it is unclear whether the Marin County Department of Health or other agency regularly monitors fecal coliform levels at beaches or other locations where water contact recreation is likely. The Earth911 website, a clearinghouse for information on beach water quality, does not include any data for Marin bayside beaches.

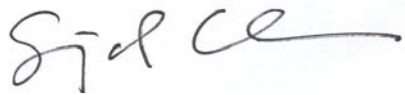
Recommendation: In order to protect human health, the Basin Plan should require regular fecal indicator bacteria monitoring at Schoonmaker Beach and other water contact recreation areas and immediate closures of these areas when water quality objectives are exceeded.

* * *

In conclusion, Baykeeper supports adoption of this TMDL provided that it is first revised to (1) impose additional implementation measures for sanitary sewer systems as necessary to address identified problems with those systems, (2) establish dry and wet weather WLAs for municipal stormwater, (3) specify that municipal stormwater WLAs will be implemented via numeric effluent limits as has been done in other parts of California, (4) provide more detail regarding vessel and houseboat implementation measures, and (5) require beach monitoring and immediate public notification when water quality standards are exceeded.

We appreciate the opportunity to provide comments on this TMDL. Please contact us if you have any questions regarding recommendations made herein.

Sincerely,



Sejal Choksi, Baykeeper and Program Director
Amy Chastain, Staff Attorney

Attachment:

2003-2004 Marin County Grand Jury Report: Southern Marin Sewers – So Many Districts, So Few Users (April 27, 2004).

2003-2004 MARIN COUNTY GRAND JURY

TITLE OF REPORT: SOUTHERN MARIN SEWERS – So Many Districts, So Few Users

Date of Report: April 27, 2004

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

SOUTHERN MARIN SEWERS – So Many Districts, So Few Users

SUMMARY

Are the sewage collection agencies in Southern Marin so focused on their own needs that their actions may be detrimental to their neighbors and counter to the common good?

The Marin County Civil Grand Jury (Grand Jury) reviewed the operations of the eleven agencies that collect and treat wastewater in Mill Valley, Sausalito, Tiburon, Belvedere, and nearby unincorporated areas. The Grand Jury found that, for the most part, these agencies appear to be operating in a responsible and environmentally sound manner. This unique patchwork quilt of agencies, however, lacks a forum for cooperatively examining issues that transcend district boundaries. This has led to disputes in the past. Moreover, it has meant that one agency can make decisions that can harm another without realizing it. The Grand Jury also concluded that closer collaboration and interaction between the professionals who work for wastewater agencies could lead to improved systems operation and maintenance.

The Grand Jury also found that numerous southern Marin residents are unable to vote for the directors of agencies that impose sewer charges on them, a situation that clearly should be corrected.

The Grand Jury recommends that:

- A periodic forum for interagency information sharing, discussion, and dispute resolution be established
- A facilitator-run meeting of the eleven agencies involved in southern Marin's wastewater collection be held to identify opportunities for consolidation, collaboration, and cooperation
- The opportunities identified in the facilitated meeting become the basis for an in-depth study of consolidation options
- The City of Belvedere should explore the advantages of annexation to Sanitation District Number 5 for wastewater collection and treatment services

BACKGROUND

Marin County has a long history of vigorous support for environmental protection and conservation. Keeping our waters clean and safe is a key component of good environmental stewardship. The Grand Jury received a complaint that focused on a contract between two southern Marin County districts responsible for wastewater collection and treatment which would have resulted in the installation of additional facilities and created financial hardship for several agencies. The Grand Jury expanded its investigation of the complaint to evaluate whether the people of southern Marin County and the environment would be better served if there were changes in the governmental structure that provides sewage collection and treatment.

METHODOLOGY

The Grand Jury conducted interviews with professional staff from eleven governmental agencies in the study area, elected representatives from two agencies, and representatives from other government organizations. The Grand Jury also reviewed extensive documentation, including:

- Current budgets from each of the eleven government agencies
- Minutes, audit reports, policy statements, and ordinances from the eleven agencies
- County Registrar of Voters records for all elections by special districts in the past twenty years
- County Auditor-Controller records concerning sewer use fees charged by Marin government agencies
- Reports regarding consolidation dating back to 1967
- Marin Local Agency Formation Commission (LAFCO) documents relevant to operation and consolidation of the southern Marin sanitary districts

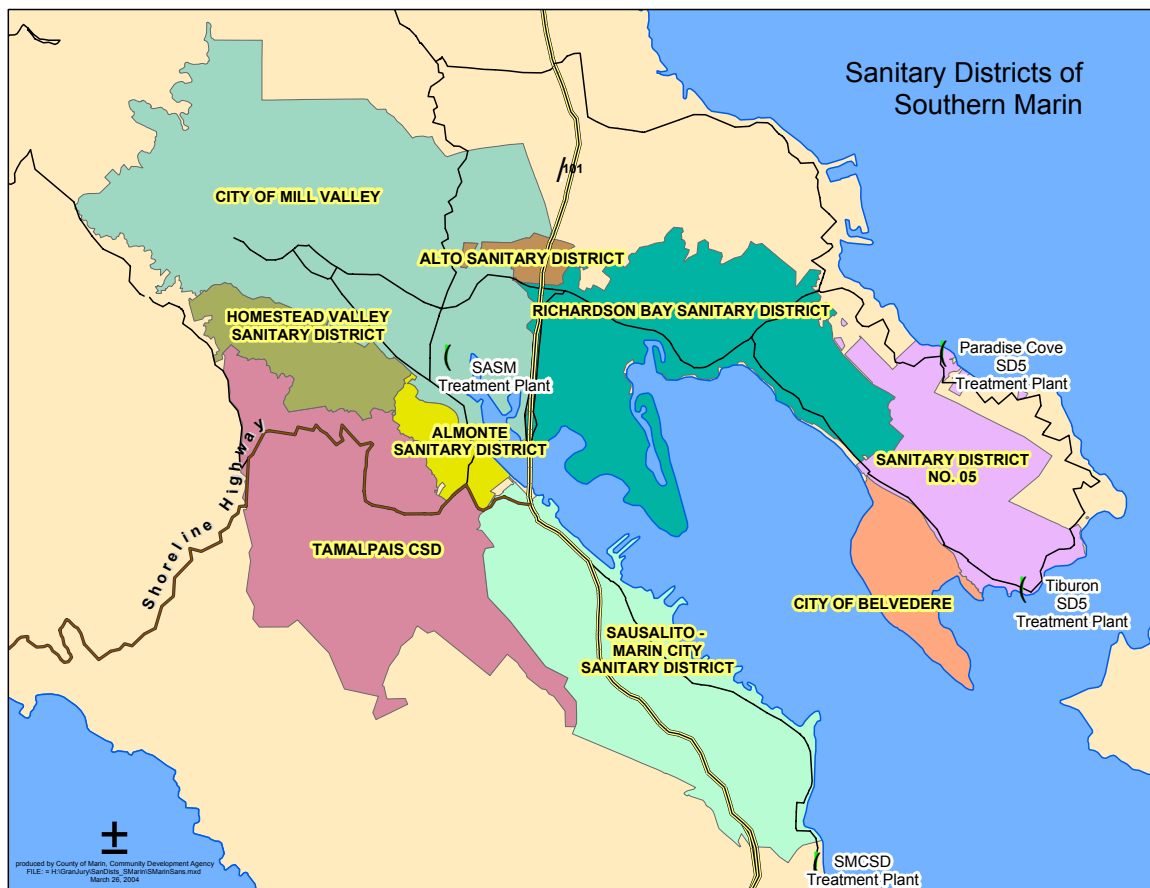
DISCUSSION

Under California law, several types of governmental agencies can be authorized by citizens to collect and treat wastewater. Cities, towns, sanitary districts, and community service districts all perform these services within the southern Marin area. This report focuses on Tiburon, Mill Valley, Sausalito, Belvedere, and the unincorporated areas surrounding these municipalities, including Marin City, Strawberry, Tam Valley, Homestead Valley, and other smaller enclaves. There are three major wastewater **treatment** plants within this area and two small treatment plants on the “back” (north) side of the Tiburon peninsula. These five plants are operated by three different agencies and one private organization. Wastewater **collection** in the area is provided by ten agencies, each having some arrangement with one or more treatment plant operators.

Southern Marin is a patchwork quilt of overlapping city and special district boundaries. Currently, sewer service in the area is provided by agencies as small as Alto Sanitary District (which serves less than 1000 people) and as large as the City of Mill Valley, (which serves over 13,000 people). Figure 1 depicts these agencies’ boundaries.

Following is a description of the districts pictured in Figure 1. below:

- Almonte Sanitary District (Almonte) is responsible for wastewater collection in the unincorporated area southeast of the City of Mill Valley. Wastewater is conveyed to the Sewage Agency of Southern Marin (SASM) treatment plant.
- Alto Sanitary District (Alto) provides wastewater collection for areas east of Mill Valley, on both sides of Highway 101, including Sutton Manor and Alto. Wastewater is conveyed to the SASM treatment plant.
- The City of Belvedere (Belvedere) is responsible for the wastewater collection system within its city limits and contracts with Sanitary District No. 5 of Marin County (SD5) for wastewater treatment.

Figure 1. Southern Marin Sewer Agencies

- Homestead Valley Sanitary District (Homestead) serves Homestead, south of Mill Valley. Wastewater is conveyed to the SASM treatment plant.
- The City of Mill Valley (Mill Valley) operates the sewer system within its city limits. Wastewater is conveyed to the SASM treatment plant.
- Richardson Bay Sanitary District (Richardson) collects wastewater from Strawberry and the western half of Tiburon. Wastewater is conveyed to the SASM treatment plant.
- Sanitary District No. 5 of Marin County (SD5) serves the eastern half of Tiburon with a collection system and a wastewater treatment plant on Paradise Drive, just east of downtown. The district also operates a small treatment plant on the north side of the Tiburon peninsula.
- The Town of Sausalito (Sausalito) operates a wastewater collection system and conveys wastewater to the Sausalito-Marin City Sanitary District treatment plant.
- Sausalito-Marin City Sanitary District (SMCS D) provides wastewater collection for Marin City and treatment at a plant south of Sausalito, on Fort Baker Road.
- Sewage Agency of Southern Marin (SASM) operates a wastewater treatment plant in Mill Valley, across from Mill Valley Middle School and Bay Front Park. SASM is a joint powers

agency governed by representatives of its six member agencies (Alto, Almonte, Homestead, Richardson, Tamalpais, and Mill Valley).

- Tamalpais Community Services District (Tamalpais) is responsible for wastewater collection in the Tamalpais Valley region, and conveys wastewater to both the SASM plant and the SMCSO plant. Tamalpais also is responsible for garbage collection and operation of parks and recreation services within its boundaries.

The Town of Tiburon does not provide wastewater collection services to its residents; that service is provided by either Richardson or SD5.

Each of the agencies above (except SASM) is governed by an elected five-member board of directors and employs a part- or full-time manager and, in some cases, staff. A total of 50 elected officials and 41 employees play a role in southern Marin's wastewater collection and treatment.

Table 1: Agency Summary

Agency	Collects Wastewater	Treats Wastewater
Almonte Sanitary District	X	
Alto Sanitary District	X	
City of Belvedere	X	
Homestead Valley Sanitary District	X	
City of Mill Valley	X	
Richardson Bay Sanitary District	X	
Sanitary District No. 5 of Marin County	X	X
Town of Sausalito	X	
Sausalito-Marín City Sanitary District	X	X
Tamalpais Community Services District	X	
Sewage Agency of Southern Marin		X

Many Districts, Few Customers

The southern Marin area served by the eleven agencies listed above has a population of approximately 55,000. In contrast, in other parts of the Bay Area, hundreds of thousands of residents are served by a single sanitary district. That eleven government agencies in southern

Marin play a role in wastewater treatment and collection is an historical artifact of the 1940's and 1950's, when many unincorporated areas had need for sewers but did not want to annex to the cities of Mill Valley, Tiburon, or Sausalito. Historically, a community, regardless of town and city boundaries could band together to form a sanitary district whenever there was a common interest in doing so.

If you look at sewer services in southern Marin today, you see a number of situations that, unless you have district boundaries in mind, would seem strange, even bizarre. Refer to Figure 2 below for the following example: If you live in Tiburon, on Tiburon Boulevard southeast of Gilmartin Drive, your wastewater will be conveyed directly to the SD5 treatment plant in Tiburon (one and half miles away), treated and discharged at Racoon Strait. But if you live next door, west of Gilmartin Drive, your wastewater will go to the SASM treatment plant in Mill Valley, where it will be treated and, with the rest of the wastewater that SASM treats, be conveyed back along Tiburon Boulevard (a total distance of ten miles) – for discharge at Racoon Strait! Why? Historically, the Richardson/SD5 boundary was drawn to maximize the use of gravity flow to treatment plants, and the Richardson treatment plant was located near Blackie's Pasture. As environmental standards for wastewater treatment were raised, the Richardson plant was converted to other uses and the City of Mill Valley's plant (now SASM) began to treat Richardson waste. However, SASM's old discharge point into Richardson Bay was not environmentally acceptable, and a main was constructed to convey treated waste to a discharge point shared with SD5 on Racoon Strait.

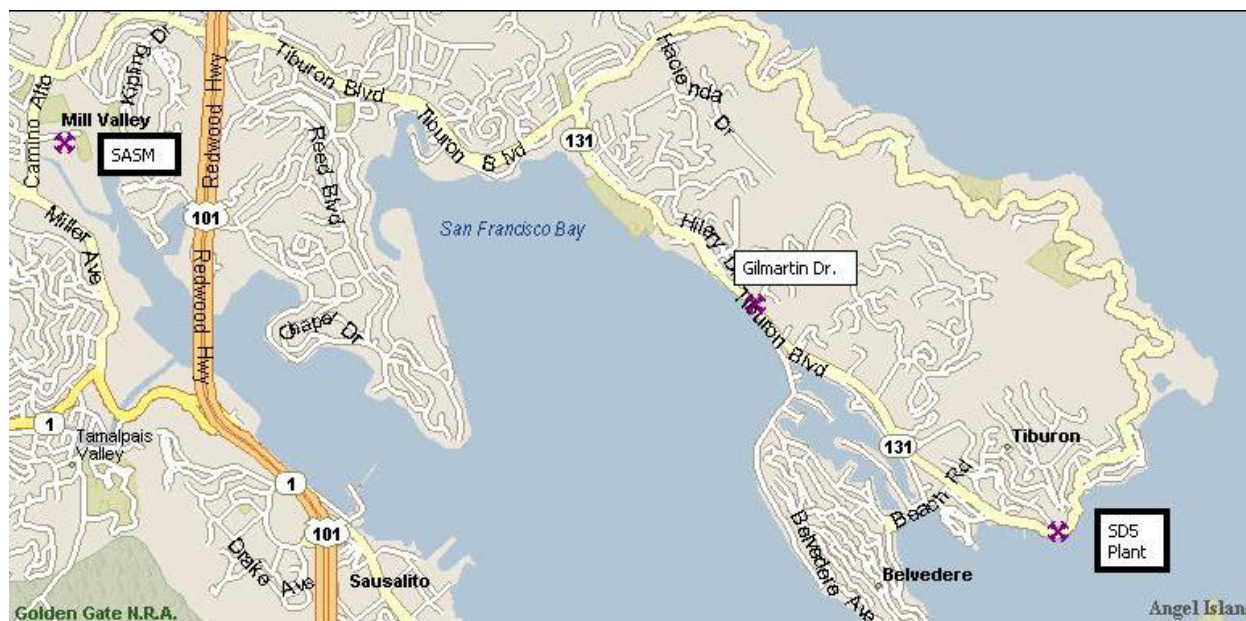


Figure 2. SD5 and SASM Plants Relative to Gilmartin Drive.

The Grand Jury identified several situations similar to the one above. Does it make sense to pay the capital costs to change the current sewer system and convey some of Richardson's wastewater to SD5, or is it more sensible to continue to pay the energy expense of conveying wastewater seven times as far? An engineering study is needed to provide the answer. What concerned the Grand Jury was that no agency has been willing to initiate such a study. It seems agency boundaries are an impediment to cooperative action and problem resolution.

The Grand Jury determined that there were ongoing efforts by the Marin Local Agency Formation Committee (LAFCO) to promote a study of consolidating some of the patchwork quilt of agencies that are involved in sewage collection and treatment in southern Marin. LAFCO is charged by the State with the responsibility for improving the efficiency and reducing the cost of local government. It does so by reviewing and approving changes to city and special district boundaries and conducting special studies to facilitate efficient government operations. However, LAFCO's staff is small and its budget is not large. Therefore, LAFCO proposed to the southern Marin sewer agencies that a consultant be hired to fully evaluate the consolidation options available, with each agency footing part of the bill. Only half of the agencies have shown an interest in participating in such a study; therefore the LAFCO proposal is stalled.

One Citizen, No Vote

Despite the multitude of governmental agencies involved, the Grand Jury learned of a number of anomalies that are tantamount to taxation without representation. The entire City of Belvedere, although it provides its own wastewater collection system, depends on the facility operated by SD5 in Tiburon to treat its waste. However, the population of Belvedere is not part of SD5, and therefore has no representation in the governance of this district. SD5 bills the City of Belvedere for treatment costs, and Belvedere passes that charge on to its taxpayers. Similarly, Tamalpais is served in part by the SMCSO, but has no voting representation on the SMCSO board. The Grand Jury is not offering an opinion concerning the appropriateness of the amounts charged by SD5 and SMCSO. Regardless, in both of these situations, southern Marin residents are being charged sewer use fees by an agency but have no opportunity to elect a representative to that agency's board of directors.

Wastewater Treatment System Operation

The Grand Jury had concerns that the multitude of agencies involved might be adversely affecting the efficient and effective operation of the wastewater treatment plants in the study area. In the course of our interviews we were impressed with the operation of the three major wastewater treatment plants in the area operated by SASM, SMCSO and SD5. Permits issued by the California Regional Water Quality Control Board to these treatment plants specify numerical limits to pollutants discharged. We received no information suggesting that there were either frequent violations of these limits, or widespread complaints from nearby residents. That is not to say that there are no issues that the treatment plants must address on a continuing basis. The SD5 and SASM plants are in the midst of populated areas and need to be sensitive to odor problems.

All wastewater treatment plants in the area have problems with increased flows during wet weather, as rain and runoff water percolate through the soil and seep into cracks and open joints in the wastewater collection system. Termed "infiltration" in the trade, this introduction of essentially clean water into the system can result in ten times the normal amount of wastewater arriving at treatment plants. Engineers design wastewater treatment plants with normal, dry weather flows in mind. It is too expensive to build plant capacity that would only be used a few days a year. Plants are therefore designed with ways of either holding excess wastewater for treatment at a later time when flows have decreased, or providing a reduced level of treatment. Since the infiltration is essentially pure rainwater, the concentration of contaminants in the incoming wastewater at the plant is reduced significantly, so that a reduced

level of treatment can usually meet permit requirements. Nonetheless, there are finite limits to the amount of wastewater that can be handled at the treatment plant and conveyed through the collection system. From the treatment plant operators' perspective, the more that infiltration is minimized, the better.

Another type of infiltration occurs in Southern Marin regardless of rainfall. Many bayside sewer pipes can experience infiltration of salt water into the collection system during high tides. Not only does this extra flow cause needless treatment at the plants, but the presence of sodium in the water makes treatment more difficult.

The Grand Jury found that all of the wastewater collection system operators were taking positive action to reduce infiltration, although some have done more than others. Correcting infiltration is, in most cases, neither easy nor cheap. The most frequent causes of infiltration are breaks in clay pipes, and pipe joint misalignment. Tree root intrusion, careless use of construction equipment, or settling of the land can contribute to this problem. In order to identify the problems in the wastewater collection system, a small television camera is used to collect information on the entire system. Problems are prioritized, and sewer pipes are either excavated and replaced, or "slip-lined" by inserting plastic pipe inside the existing pipe. Identifying trouble spots in the collection system can be time consuming, and repairing or replacing broken lines can be very expensive. This is a major reason why sewer fees increase. Districts and municipalities that have taken action early have saved their ratepayers money, as construction costs have continued to rise. Combining the eleven agencies would better assure that the issues influencing infiltration would be addressed comprehensively rather than piecemeal.

The Grand Jury often heard concerns from treatment system operators and collection system managers alike, about upcoming collection system regulations. New federal sewer system overflow regulations will tighten requirements on collection system operators to ensure that infiltration is minimized and sewers adequately maintained. The new regulations will likely increase sewer maintenance staffing needs and costs. As Alto, Almonte, and Homestead have no maintenance staff on their payrolls, the implications for these districts is significant.

A related concern is that, because SASM has no direct control over wastewater collection in its treatment area, and SMCSO controls only a small part of the collection system feeding its treatment plant, there are institutional barriers between problem and solution. The agencies that operate these treatment plants need the agencies that operate collection systems to reduce the infiltration problem in their systems, but have no direct control over how much wastewater is delivered to them.

Planning and Coordination

When interviewees from the eleven agencies were questioned about their attitude regarding consolidation, no one argued against an investigation of the possibility. What the Grand Jury did hear, to our surprise, was that few interviewees had a good understanding of the points of view of other agencies. When we probed further, we found that there was no forum for all eleven agencies to explore possible efficiencies, cost savings, and each other's viewpoints. There is a monthly meeting of a single elected representative of the six SASM member agencies, and a monthly meeting of the three treatment plant operators. One board member

commented to us that LAFCO's efforts to have a consultant study consolidation were premature. The opinion was expressed that the agencies themselves needed to come to basic agreement as to what options were possible and which were totally impossible.

The most conspicuous failure of the current sewer district patchwork is the inability to plan logically for the future without regard to district and municipal boundaries. This has led to some rather ludicrous situations in the past. For example, part of the wastewater flow from Tamalpais goes to the SASM plant in Mill Valley and part goes to the SMCSD plant in Sausalito. Tamalpais pays each plant for wastewater treatment services. Shopping to get the best price for its ratepayers, Tamalpais investigated rerouting all of its flow to SASM. Such a move would cause major financial problems for SMCSD, because it would need to spread its fixed costs over a smaller user base. Under the terms of its contract with Tamalpais, SMCSD would also have to refund approximately \$2,000,000 that Tamalpais contributed to SMCSD capital costs. Indications are that Tamalpais will not pursue this option. Their inquiry, however, shone a spotlight on the fact that one district could act in the interest of their constituents but to the detriment of other Marin residents, both financially and environmentally.

The Grand Jury concluded that the lack of coordination and consultation between sewer agencies is not a case of an overseeing state or county agency being derelict in its duties. No organization is charged with the responsibility of ensuring, on a continuing basis, that local sewer agencies act for the common good. While Marin LAFCO is responsible for defining and approving agency boundaries and conducting special studies, LAFCO has no ability to mandate joint action. Neither is LAFCO authorized to conduct the type of detailed engineering and environmental studies that are needed to evaluate alternatives like the SMCSD-Tamalpais situation or the Tiburon situation described before Figure 2.

The Case For – And Against – Small Districts

The case was repeatedly made to the Grand Jury that small special districts like Almonte and Homestead Valley serve a valuable role in their communities. They are accessible to their customers in a way that larger, more impersonal agencies cannot be. More than one district board member reported being stopped on the street by a constituent who had a sewer problem. The districts function as a focal point in communities that have no government other than Marin County to represent them. Small special districts know their local situation well, even to the point where individual district board members are aware of which sewer lines require frequent maintenance.

The Grand Jury also heard testimony that questioned whether the multitude of districts in the area made any sense. The interviewees' point was that it can't be efficient to have so many board members and employees of different districts in an area so small. Some also indicated that there was likely duplication of effort among the districts.

One might think that the small size of many of the special districts, and the fact that many of the district manager positions are part-time, would mean that it would be difficult to attract high quality personnel to staff positions in the districts. To the contrary, the Grand Jury was uniformly impressed by the knowledge, experience, and professionalism of the managers we interviewed. The districts have been creative in their use of personnel to accomplish their mission. Semi-retired managers with years of experience are in charge of several districts. One

part-time manager spends the rest of his time at SASM as a treatment plant operator. Two districts share the same manager. Several managers and staff have had extensive experience with large agencies outside of Marin. Many have worked with their treatment plants or collection systems for decades. The upshot is that the small size of the districts does not appear to be a major detriment to attracting capable staff.

The Grand Jury's conclusion was that most of the cited advantages and disadvantages of small districts were illusory. If these districts were the focal points of local communities, one would expect the public to occasionally attend board meetings or to contest a board election. By their own admission, districts seldom had members of the public attend their board meetings, and a contested election was a rare event. While some community members may know their local sanitary district board member by sight, we question whether that is common. We do know that when customers phone one of the small special districts they are answered not by a human voice, but by an answering machine that tells them that if their problem is urgent they should call Roto-Rooter, a private company that works under contract to almost all of the special districts. Roto-Rooter investigates the issue. If the problem is in the district system, Roto-Rooter resolves it and bills the district. If the problem is in the homeowner's piping, the homeowner has the option of either retaining Roto-Rooter at his own expense or resolving the problem another way.

Similarly, the most frequently cited disadvantage of the many special districts, inefficiency, is illusory. The small districts appear to be very cost-effective for their local areas, keeping spending down to an absolute minimum. Almonte, Alto, and Homestead Valley districts have no full-time employees. As previously noted, most rely on Roto-Rooter for sewer maintenance, so there is no continuing overhead expense. District Board members receive only token compensation, and the Grand Jury did not identify any large economies of scale that could arise from combined management.

It is true that district board members know their community well, and the Grand Jury saw no evidence to suggest that board members are anything other than public-spirited individuals who are dedicated to good service and low sewer rates. It is also true that public attendance at district board meetings and a contested election for a district board is rare. It is troubling that there is no watchdog individual or group as is so often seen at meetings of other, larger, public agencies. A larger sewer authority might attract more attention and get more public input.

The Grand Jury found that the biggest disadvantage of small districts was at the root of the complaint that began our investigation. Each district, responsible only to a small constituency, and striving to keep its rates low, has the potential to make decisions that are harmful to other agencies. Actions can be taken by one district that either seriously affect another district or are detrimental to the region as a whole. At some interviews, we heard that a district was grappling with problems that another district had just solved. Regionalization could bring to the table a view of southern Marin that is neither parochial nor blinded by political boundaries. In the area of wastewater collection and treatment, it should be logic, good engineering, cost-effective solutions, and environmental protection **for the entire region** that rule the day. If these districts were combined, the resulting staff might well contain the perspective and skills needed to achieve these objectives. The Grand Jury cannot leave this topic without pointing out that it talked with district and city personnel whose knowledge and enthusiasm for specific topics, like sewer rehabilitation or asset management, was obvious and refreshing. The Grand

Jury believes that the wastewater professionals in southern Marin could readily bring their expertise to a wider geographic area if there were an uncomplicated way for this expertise to cross district boundaries.

Consolidation Possibilities

If the Grand Jury were starting with a blank sheet of paper, it could envision a single agency operating all of the wastewater collection and treatment facilities in Southern Marin. Viewing the current status quo, it is hard to see how such a change can take place without a powerful ground swell of public opinion to move it along. Interestingly (but not surprisingly), many district representatives did see the value of dispensing with or consolidating districts **other** than their own. But, as we were told “they’ve been studying that since the Sixties and it hasn’t happened yet.”

A single district would not be easy to create. The California state legislation that created local area formation commissions in 1963 was intended, among other things, to ensure that special districts did not spring up willy-nilly without the concurrence of existing governments. In southern Marin, special districts had already established themselves before the LAFCO law passed, and there is no easy way of arranging for them to consolidate, even if their communities and elected boards were 100% behind such a move. The Grand Jury sought examples of such mergers from other parts of the state, and found few. This is obviously not a common situation. As best we can understand, if two districts did want to merge, the voters in those districts would have to simultaneously approve a new “super-district” and abolish the old districts. The more districts involved in this consolidation, the more complicated it becomes.

In southern Marin the situation is made more complex by the presence of multiple **types** of agencies. In other words some agencies do more than just waste water collection and/or treatment. Only like districts can merge. Each type of government – in this case municipality, sanitary district, and community service district – has its duties described and limited by a separate piece of California law. Because a community services district (such as Tamalpais, which handles wastewater, garbage collection, and parks and recreation) cannot merge with a sanitary district or a city, a far more complicated annexation process would have to take place.

A joint powers agency that assumed some of the duties of the individual special districts and cities is another possibility, with the specific boundary crossing duties negotiated with all the affected agencies. That this is possible is evidenced by SASM, which is governed by representatives of six different agencies, with management (personnel, accounting, procurement, etc.) provided by one of the member agencies (Mill Valley). A joint powers agreement could enable the eleven agencies to share personnel, expertise, and physical resources more easily and evaluate area-wide technical issues.

Clearly, in the situation that these eleven agencies are in, with no overriding mandate to confer and collaborate, it is easy to opt to conduct business as usual. It will require the initiative of each of the agencies to move forward and explore the possibilities that the Grand Jury has pointed out in this report. The Grand Jury recognizes the difficulty of this first step, and encourages LAFCO to use its good offices to aid the agencies. It is suggested that, rather than funding a consultant to prepare reports that may be ignored, LAFCO hire an impartial facilitator to forge initial agreements between all of the agencies regarding desirable improvements.

Future reports could then be based on a firm foundation, and focus on how best to achieve these improvements.

FINDINGS

- F1. It is unusual for an area as small as southern Marin to be served by so many sewage collection and treatment agencies.
- F2. The sewage treatment plants in southern Marin are operated in conformance with applicable State and Federal law and regulations.
- F3. The eleven agencies charged with the responsibility for sewage collection and treatment in their jurisdictions in southern Marin appear to be operating satisfactorily.
- F4. Belvedere residents and some Tamalpais residents have no elected representatives on sanitary district boards that impose charges on them.
- F5. Having the responsibility for sewage collection and treatment spread between so many agencies inhibits the investigation of issues that cross agency boundaries.
- F6. One agency is occasionally pitted against another as it seeks the lowest cost service for its constituency.
- F7. The public is neither vigilant nor knowledgeable about the management of the agencies that perform sewage collection and treatment, and about the price they pay for these services.
- F8. Southern Marin sewage agencies have secured the services of experienced, competent professionals to manage their affairs.
- F9. Sewage collection and treatment agencies have generally monitored the condition of their systems and planned for rehabilitation in a timely fashion.

RECOMMENDATIONS

- R1. A forum should be established, and meet regularly, as a way for staff and elected officials from all eleven sewage agencies to exchange ideas and experiences.
- R2. An impartial facilitator should be engaged to conduct a meeting of agency representatives at which opportunities for consolidation, collaboration, and cooperation are explored and short-term objectives set.
- R3. After the facilitated meeting is held, based upon consensus regarding consolidation established by the agencies, LAFCO should proceed with a study of alternatives.
- R4. The City of Belvedere should consider the possible advantages of annexing itself to Sanitary District 5 for purposes of wastewater collection and treatment.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

- Almonte Sanitary District to F5, F6, R1, R2, and R3.
- Alto Sanitary District to F5, F6, R1, R2, and R3.
- The City of Belvedere to F4, F5, F6, R1, R2, R3, and R4.
- Homestead Valley Sanitary District to F5, F6, R1, R2, and R3.
- The City of Mill Valley to F5, F6, R1, R2, and R3.
- Richardson Bay Sanitary District to F5, F6, R1, R2, and R3.
- Sanitary District No. 5 of Marin County to F4, F5, F6, R1, R2, R3, and R4.
- The Town of Sausalito to F5, F6, R1, R2, and R3.
- Almonte Sanitary District to F5, F6, R1, R2, and R3.
- Sausalito-Marín City Sanitary District to F4, F5, F6, R1, R2, and R3.
- The Sewage Agency of Southern Marin to F5, F6, R1, R2, and R3.
- Tamalpais Community Services District to F4, F5, F6, R1, R2, and R3.

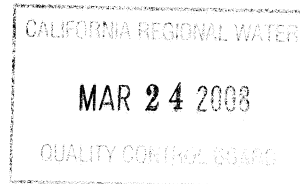
Although not required by law, the Grand Jury also invites responses from:

- The Marin Local Agency Formation Commission to all findings and recommendations.



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March 20, 2008

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Att: Farhad Ghodrati

Topic: Comments on establishing a Total Maximum Daily Load (TMDL) for Pathogens in Richardson Bay and an implementation plan to achieve the TMDL

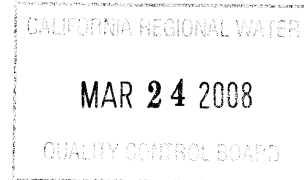
Table 7-3 topic "d." states that wildlife is not believed to be a significant or readily controllable source of pathogens therefore no management measures are required. This appears to be a very high level statement without any statistically valid proof provided to support such a broad statement in the report. I agree that it is not a readily controllable source of pathogens however I disagree with the statement that it is not a significant source of pathogens. In the study conducted only marinas were statistically measured. The traditional shellfish harvesting areas have not been measured for pathogen levels. I have a hypothesis that if the traditional shellfish harvesting areas were to be measured they would probably meet the shellfish harvesting standard now. Traditional shellfish harvesting areas have different forms of animal life than do the marinas. The marinas, contrary to popular belief, actually encourage and have very high levels of animal life. If there are higher levels of animal life in and around the marinas than there are in the shellfish harvesting areas it would account for higher levels of pathogens.

In support of this hypothesis I submit photos of extensive bird and seal populations lounging in and around the marinas. You will note in the pictures with the birds that there are extensive white areas on the docks which are direct evidence of the birds contributing to a higher pathogen count. Additionally, the marinas in Sausalito have a high raccoon population which roam the marinas at night and also contributes to the higher pathogen levels. I have a picture of the deposits left by raccoons. These three large populations of seals, birds and raccoons are in fact a significant contributing source of pathogens. They are also clearly out of the control of marinas. Another blanket statement in the report is that "Bacteria levels are low at monitoring sites that contain wildlife but are minimally impacted by human activities. This suggests that wildlife may not be a significant, widespread potential source of pathogens in Richardson Bay." If you look at the pictures of the large seal population well over a hundred animals they are all lounging in and around the marina. If you look at the pictures with seals you will note that you will not see any seals farther out into Richardson Bay where control stations "B"



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and "C" are located. Control station "B" is closer to the seal population than is control station "C". Control station "B" has a higher tidal flow than does the marina. The seal population is closer to the marina than it is to Control station "B". Control station "B" consistently has higher pathogen levels than does control station "C" which lends credence to the theory that the animal populations indeed do have an impact upon the pathogen levels. Control station "C" is farther out in Richardson Bay where there is a very strong tidal action and no lounging bird, seal, or raccoon populations which contribute to higher pathogen levels. Control "C" consistently has the lowest readings due to greater tidal action and lower lounging seal, bird, and raccoon populations.

The marinas have less tidal action and higher lounging populations of birds, seals, and raccoons all contributing to the pathogen level. The traditional shellfish harvesting areas have not been tested at all. I maintain that you can't make a final decision on the pathogen levels until you actually test the areas that you are trying to save. If you make a decision on pathogen levels while only testing the marinas and not testing the traditional shellfish harvesting areas it is a clear bias against marinas. I would go as far to suggest that it is designed to indirectly put marinas out of business and has nothing to do with protecting shellfish since the shellfish harvesting areas have not been tested at all.

If any levels are to be set they should be dual levels. The traditional shellfish harvesting areas of Richardson Bay should have the shellfish harvesting standard and the marinas and the rest of Richardson Bay should be set to the water contact recreation standard numeric target. Prior to setting any standards a proper study needs to be conducted in which all of the areas of Richardson Bay should be tested and analyzed. If you only test one subset of an entire population you quite clearly do not have a statistically valid sample upon which to draw a conclusion. In this case the marinas are the subset of the entire population.

The Sausalito Yacht Harbor has an extensive program already in place. It has two fully operational pump-out facilities which, based upon current use, are adequate for a marina our size. One of the two stations is brand new, having been replaced within the last year. All of the houseboats in the marina are attached to the sewer system. They have all been inspected to ensure that they are connected to the sewer system. Approximately 12% of the boats in the Sausalito Yacht Harbor are on a regular pump out schedule with MT Head. The Sausalito Yacht Harbor strongly encourages its tenants to utilize the services of MT Head as well as the free pump-out facilities which are open 24 hours per day. MT Head is a service which goes to the boats and pumps out the holding tanks of the boats. The Sausalito Yacht Harbor has requested its tenants to turn in any tenant that they observe discharging sewage into the bay. The Sausalito Yacht Harbor has also sent out a letter to all of its tenants describing the above harbor pump-out policy. See attachment "A" for a copy of the letter sent to tenants. Additionally, the Sausalito



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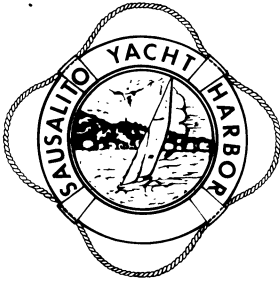
Yacht Harbor has documented memos on the inspections conducted at each of the houseboats in the marina. See attachment "B" for sample memo written. MT Head provides a periodic report to the Sausalito Yacht Harbor listing the tenants in the marina that are being serviced by MT Head. See attachment "C". Contrary to a popular misconception our customer base is very ecological minded and they do care about the environment. But despite our diligent efforts at utilizing best practices the marina is still above the shellfish standard, an artificially low standard which can't be met despite our best efforts.

In reviewing the report it was noted that the pathogen levels go through the roof when it rains. The slowest time of year for marinas is during the rainy season. During the summer the pathogen levels are at their lowest. The summer season is peak boating season. This is a clear indication that the best practices that the Sausalito Yacht Harbor has embraced are clearly working and that factors outside of our control are the real culprits.

Another issue that marinas face is that they are at the end of the pathogen creating cycle. Most of the marinas in Sausalito have city owned storm drains draining right into the various marinas. The Sausalito Yacht Harbor has three of them, Clipper Yacht Harbor has at least one, the former Arques area has at least one, and Pelican Yacht Harbor would be directly impacted by at least two of the three storm drains that are located in the Sausalito Yacht Harbor. The marinas are also the ultimate recipients of sanitary sewer systems overflow, urban runoff, and large seal, bird, and raccoon populations. The marinas have absolutely no control over any of the above mentioned factors yet it is obvious that despite utilizing best practices the marinas are clearly going to shoulder all of the blame for merely being at the end of the pathogen creating cycle.

For example, a few days prior to the last winter sampling event 2/9/07 a large sanitary sewer overflow incident occurred in the Coyote Creek watershed; the data at the Sausalito Yacht Harbor station #3 jumped to 1200 and station #4 760. I believe that there is a direct relationship between the spike and the sewer overflow. The report states that "The relatively sharp jump in the number of wet season exceedances **could** be attributed to wet-season specific sources such as urban runoff and sanitary sewer overflows." I believe word "could" substantially understates the direct relationship that exists between sewer spills, urban runoff and spikes in pathogen levels at the various marinas.

By setting the standard to the shellfish level which is an artificially low standard you will be subjecting the marinas, private individuals, the cities, and other government agencies such as Cal Trans to endless lawsuits because a standard has been set which has not been well thought out or properly studied and which can't be met. I have attached a newspaper article (attachment "D") in which the city of Malibu is being sued for not



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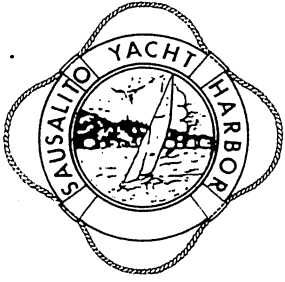
meeting water quality standards which include fecal matter. In the article Baykeeper the litigant declined to suggest how the city could further deal with the issue, saying "it is Malibu's responsibility to figure that out."

In conclusion, if any levels are to be set there should be dual levels set. The traditional shellfish harvesting areas of Richardson Bay should have the shellfish harvesting standard and the marinas and the rest of Richardson Bay should be set at the water contact recreation standard numeric target.

Sincerely

A handwritten signature in cursive script that reads "Jim Madden".

Jim Madden



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Attachment
A

MAILED NOV 28 2007
With Dec 1st
Billing

Dear Tenant:

Discharging any sewage into Richardson bay is illegal. The Sausalito Yacht Harbor wants to do its part in preserving the environment.

The Sausalito Yacht Harbor has two pump-out facilities located on G dock which are open 24 hours a day. There is no charge to utilize these facilities. Additionally we are strongly encouraging our tenants to utilize the services of MT Head if you have difficulty or find it inconvenient to take your boat to the pump-out facility on a regular basis.

MT Heads rates are very reasonable. Weekly service is \$64 per month and Bi weekly service is \$43 per month. If you want individual service calls it is \$25 for cash payment or \$27 for credit card payment for each visit. All the prices above assume a 50 gallon max per pump-out. MT Head performs their service at the Sausalito Yacht Harbor on Wednesday of every week.

The MT Head website is www.mthead.com. The best way to sign up for services is through the website.

If you observe anyone discharging sewage into the bay please notify the harbor office at (415) 332-5000.

Very Truly Yours,

Sausalito Yacht Harbor



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Attachment
"B"

Sausalito Yacht Harbor
Topic Houseboat Inspection

December 17, 2007

~~REDACTED~~
Taj Mahal
Berth A840


The Taj Mahal has a series of small holding tanks and pumps which pump each area of the boat into a larger main holding tank with a larger pump. The larger pump then pumps the greywater and waste into a hose which is connected to a pipe on the 800 row. The pipe on the 800 row has a check valve to prevent sewage from going back into the bay should the hose break. The pipe on the 800 row goes up to the standing pier on A dock. There is a hose from the pipe on the floating 800 row to the pipe on A dock which has another check valve to prevent any backflow of sewage should the hose break. The pipe on "A" dock goes out to the city sewage system.

Jim Madden
Manager

M.T.Head Marine Sanitation 650-483-5689

Sausalito Yacht Harbor List

Berth	Frequency	New	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08
1	910	Monthly	x	x								
2	911	Weekly	X	x								
3	912	Bi-weekly	X	x								
4	A 837	BiMonthly	X	x								
5	A-31	Canceled	X	x								
6	A747	Weekly	X	x								
7	A804	Monthly	X	x								
8	A808	Monthly	X	x								
9	A823	Monthly	X	x								
10	A830	Monthly	X	x								
11	A906	Monthly	X	x								
12	B71	Monthly	X	x								
13	B75	Bi-weekly	X	x								
14	B76	Bi-weekly	X	x								
15	B78	Bi-weekly	X	x								
16	C118	Bi-weekly	X	x								
17	C127	Bi-weekly	X	x								
18	C131	Monthly	X	x								
19	C600	Bi-weekly	X	x								
20	C614	On Hold	X	x								
21	C615	Monthly	X	x								
22	C616	Bi-weekly	X	x								
23	C627	Weekly	X	x								
24	D157	Bi-weekly	X	x								
25	D159	Monthly	X	x								
26	D161	Bi-weekly	x									
27	D163	Monthly	X	x								
28	D164	Bi-weekly	X	x								
29	D183	Monthly	x									
30	D509	Monthly	X	x								
31	D518	Monthly	X	x								
32	E 288	Bi-weekly	x									
33	E 331	Bi-weekly	x									
34	E205	Monthly	X	x								
35	E207	Weekly	X	x								
36	E208	Bi-weekly	X	x								
37	E210		X	x								
38	E210	Weekly	X	x								
39	E214	Monthly	X	x								
40	E216	Bi-weekly	X	gone								
41	E218	Bi-weekly	X	x								
42	E224	Bi-weekly	X	x								
43	E228	Bi-weekly	X	x								
44	E229	Monthly	X	x								
45	E231	Bi-weekly	X	x								
46	E232	Bi-weekly	X	x								
47	E235	Bi-weekly	X	x								
48	E236	Bi-weekly	X	x								
49	E239	Weekly	X	x								
50	E248	Monthly	X	x								

Attachment

 Pg 1 of 2

Sausalito Yacht Harbor List

51	E249	Bi-weekly	X	x
52	E252	Monthly	X	x
53	E262	Weekly	X	x
54	E263	Bi-weekly	X	x
55	E266	Bi-weekly	X	x
56	E281	Monthly	X	x
57	E323	Monthly	X	x
58	F401	Monthly	X	x
59	F405	Monthly	X	x
60	F408	Monthly	X	x
61	F409	Monthly	X	x
62	F411	Bi-weekly	X	x
63	F415	Bi-weekly	X	x
64	F416	Monthly	X	x
65	G455	Monthly	X	x
66	G457	Monthly	X	x

Attachment C
Pg 2 of 2

The Malibu Times

Attachment
D
Pg. 1 of 2

NEWS

Malibu's in hot water with enviro lawsuit

Print Page

Published:
Wednesday, June 13, 2007 12:20 PM PDT

Council says politics are behind environmental lawsuit.

By Jonathan Friedman / Assistant Editor

City Council members at their meeting on Monday night alleged that politics rather than a concern for the environment were behind a federal lawsuit being threatened against the city and Los Angeles County by the Natural Resources Defense Council and the Santa Monica Baykeeper. Officials from the environmental organizations said the accusation was baseless, and said if they end up suing it is because Malibu and the county have failed to stop what they say is a continuing pollution of county waters.

City officials said they found it interesting that the Baykeeper would be part of the intention to file a federal lawsuit because they thought the organization was working with them toward curbing the pollution of the Malibu watershed.

"I'm bewildered by why Baykeeper, who we've worked closely with, especially on the Legacy Park Project, to try to clean up [the Malibu watershed], would institute the lawsuit," Councilmember Sharon Barovsky said. "But when I look at who's on the board [of directors], it becomes less mysterious to me."

Barovsky did not specify any particular people, but the Baykeeper board is made up of a who's who of anti-City Council activists, including Ozzie Silna. He said on Tuesday in an interview that the accusation was false.

"The lawsuit I'm involved in has nothing to do with Malibu politics," Silna said. "You think the NRDC is doing this for political purposes? Why would they care about Malibu politics?"

The notice issued to the county and city earlier this month begins a 60-day process toward the filing of a federal lawsuit. The city and county have the opportunity to respond to the notice with their defenses. The notice claims the two governments have violated the federal Clean Water Act. Malibu was accused of discharging contaminated water into Malibu Creek and for polluting the watershed around Latigo Point in Malibu, which they say is a stated-designated Area of Special Biological Significance, or ASBS. And they say that is a violation of state law.

"There have been long standing water quality violations in Santa Monica Bay that have not been solved by the county or Malibu," said NRDC senior attorney David Beckman. "We are not interested in hearing about projects. We are interested in hearing about results."

The notice states that Malibu is responsible for polluting the Malibu Creek, and the Malibu watershed as a whole in the process, with high levels of cyanide, sulfate and fecal bacteria. Surfrider Beach, where the creek and lagoon empties into the ocean, was named one of the top 10 worst beaches for its poor water quality by Heal the Bay, another environmental watchdog. The beach continually receives a grade of "F" for water quality.

The notice served by the NRDC and Santa Monica Baykeeper provides evidence with studies conducted on Malibu's watershed



Malibu Creek and Lagoon empties into the ocean at Surfrider Beach, which is known for high levels of bacterial pollution. The beach was listed on the top 10 worst beach list for water quality by Heal the Bay. The NRDC and the Santa Monica Baykeeper have issued an intent to file suit against Malibu because of its polluted watershed. Photo by Dave Lichten / TMT

last year and in 2005. Since that time, a storm water treatment facility has been constructed in the Civic Center area and the council is planning to develop a sophisticated storm water/wastewater treatment facility with its Legacy Park Project, with a goal to curb pollution of the watershed.

"It's a troubling and unfortunate turn of events," City Attorney Christi Hogin said about the environmental groups' notice at Monday's meeting. "We've [the city] been spending enormous amounts of city resources-staff and financial-toward cleaning up the water and that has been our goal."

But Baykeeper Executive Director Tracy Egoscue said in an interview on Tuesday that it is her understanding the city's plans will only solve a portion of its watershed pollution problem. She declined to suggest how the city could further deal with the issue, saying it is Malibu's responsibility to figure that out.

"The Baykeeper is not in the business of micro-managing so to speak," Escogue said. "We are in the business of enforcing the law. That's what our job is."

With the environmental groups saying the city is not doing enough to clean the watershed and the city officials saying it is, litigation is likely unavoidable. But Beckman said that might not be the case.

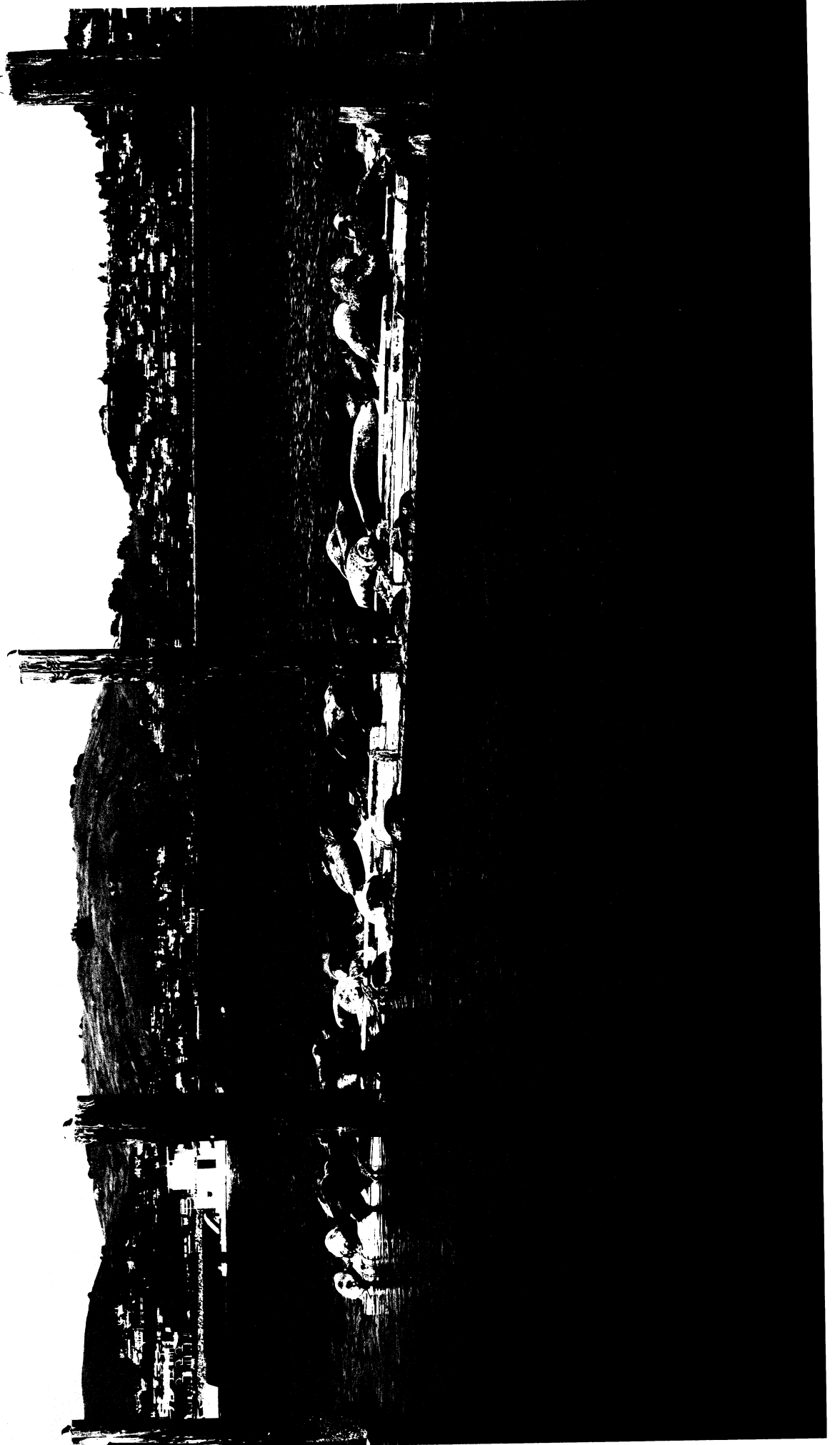
"We're not looking for a confrontation," he said. "We sent them a letter. There's two months provided for conversations. I would say if the city or the county, if they've got the problem licked, then come talk to us. I'm somewhat skeptical, but I would be happy to be wrong."

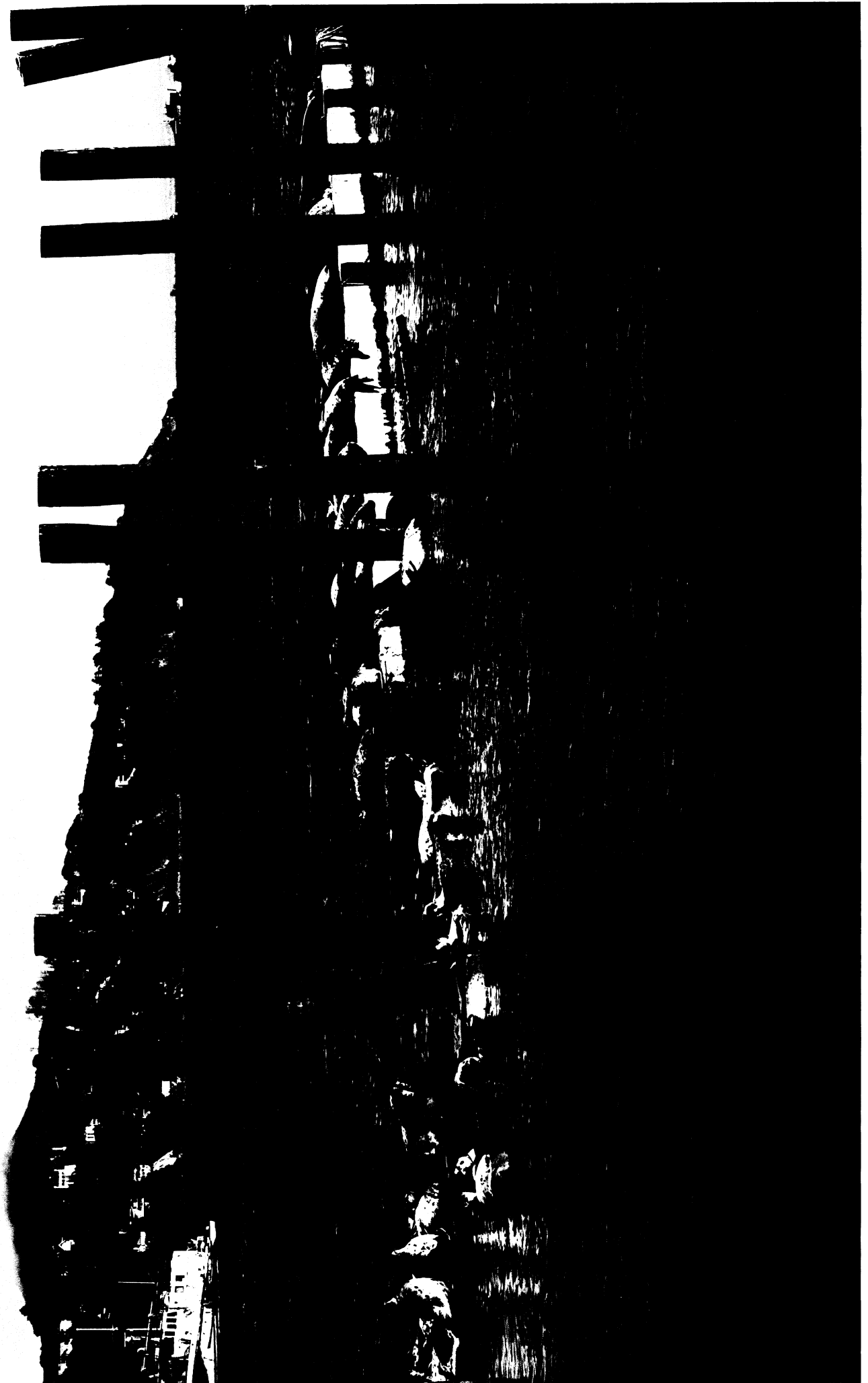
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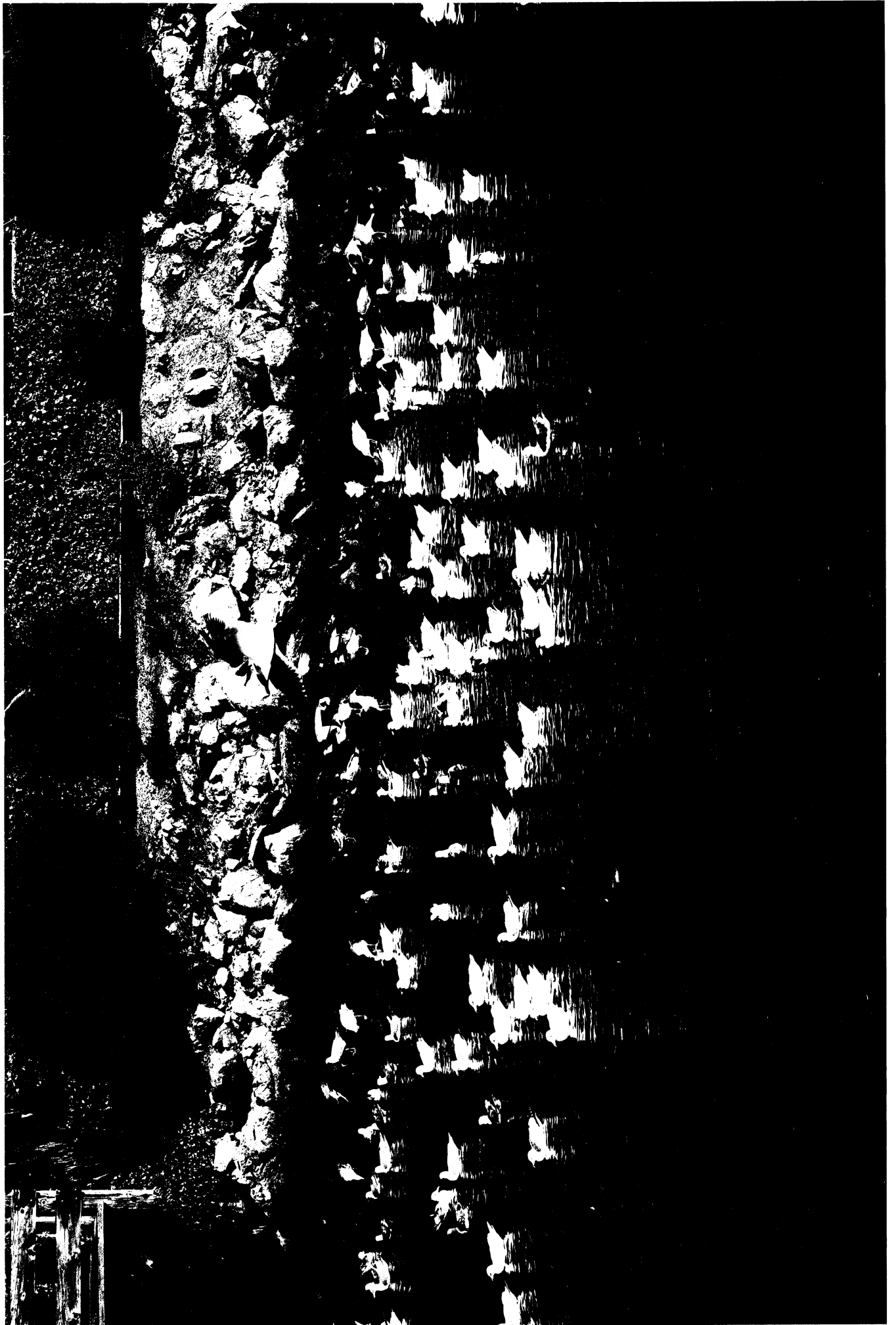














SAUSALITO-MARIN CITY SANITARY DISTRICT

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Via EMAIL (fgghodrati@waterboards.ca.gov) AND FAX (510) 622-2460

Mr. Farhad Ghodrati
 San Francisco Bay Regional Water Quality Control Board
 Elihu M. Harris State Building
 1515 Clay St. Suite 1400
 Oakland, CA 94612

Subject: TMDL for Pathogens in Richardson Bay – Proposed Basin Plan Amendment

Dear Mr. Ghodrati:

On behalf of the Sausalito-Marín City Sanitation District, we provide the following comment on the proposed *Pathogens in Richardson Bay Total Maximum Daily Load (TMDL) Proposed Basin Plan Amendment* and the associated Staff Report, both dated February 8, 2008.

In particular, we believe Footnote "a." on Table 7-3 may lead to future confusion and should be revised. It states, in part, "Wasteload allocations apply to any sources (existing or future) subject to regulation by a NPDES permit." The apparent intent of the footnote is to address existing or new sources in the listed pollutant categories. However, the breadth of the statement will lead to future confusion related to source categories *not listed* in Table 7-3. Since the TMDL by its nature will cover all new or newly discovered sources in the affected source categories, it is redundant and confusing to include the sentence in the footnote. We urge deletion of the sentence in question to improve clarity, as follows:

Footnotes from Table 7-3 (recommended deletion in strike-out format)

- | |
|---|
| <p>a. These allocations are applicable year-round. Wasteload allocations apply to any sources (existing or future) subject to regulation by a NPDES permit.</p> <p>b. Based on a minimum of five consecutive samples equally spaced over a 30-day period.</p> <p>c. No more than 10% of total samples during any 30-day period may exceed this number.</p> <p>d. Wildlife is not believed to be a significant or readily controllable source of pathogens; therefore, no management measures are required.</p> |
|---|

We support the Water Board's efforts to reduce pathogens in Richardson Bay, as evidenced by our continuing commitment to compliance with the Statewide Waste Discharge Requirements

Mr. Ghodrati
February 21, 2008
Page 2 of 2

for Sanitary Sewer Systems. We applaud Regional Board staff's efforts in developing a comprehensive plan that is environmentally protective.

Thank you for your consideration of our comment on this important program.

Sincerely,



Robert A. Simmons
General Manager

- cc: Bruce Wolfe, Regional Water Board
- Tom Mumley, Regional Water Board
- Naomi Feger, Regional Water Board
- Monica Oakley, Oakley Water Strategies

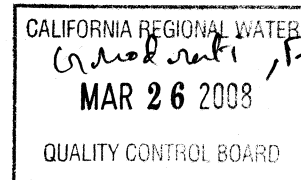


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901



March 19, 2008

Naomi Feger
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street
Oakland, CA 94612

Dear Ms. Feger:

Thank you for the opportunity to comment on the proposed Staff Report and Basin Plan Amendment for the Richardson Bay Pathogens Total Maximum Daily Load (TMDL), dated February 2008. We have reviewed the proposed TMDL and Basin Plan Amendment and find that, upon implementation, should effectively protect the beneficial uses of shellfish harvesting and water contact recreation in Richardson Bay. We support the analysis and urge the Regional Board to approve the proposed TMDL and Basin Plan Amendment. We commend you for your work in developing this TMDL and are pleased to provide the following comments.

1. The proposed Staff Report on page 1 states that the TMDL encompasses and addresses the pathogens impairment in Richardson Bay and at another 303(d)-listed water body, the Schoonmaker Beach. However, we did not find Schoonmaker Beach listed on California's 2006 Clean Water Act 303(d) list. If you will be adding Schoonmaker Beach as impaired to the 2008 303(d) list and addressing it in this TMDL, please clarify this in the Basin Plan Amendment.
2. We support the Board's proposed numeric targets and TMDL for fecal coliform in Richardson Bay to protect the important beneficial use of shellfish harvesting, as well as preserving the beneficial use of water contact recreation. We are particularly supportive of the use of the numeric target (and TMDL) of a median fecal coliform density of less than 14 MPN/100mL, and a 90th percentile fecal coliform density of less than 43 MPN/100mL, for the protection of shellfish harvesting. It is very important to ensure that the beneficial use of shellfish harvesting is protected in the Bay, not only because it is an applicable water quality standard, but also because human health is directly affected by it.
3. On November 16, 2004, EPA promulgated a rule entitled, "Water Quality Standards for Coastal and Great Lakes Recreation Waters" (69 FR 67217 et seq.) and which can be found at 40 CFR part 131.41. This rule was effective December

16, 2004, and requires marine coastal waters (including estuarine waters) of California (except those covered by Regional Water Quality Control Board 4) to achieve certain bacteria standards. We understand this rule applies to Richardson Bay based on the designated body contact recreation beneficial uses in effect. The Staff Report at page 12 states the Water Board also interprets this rule to apply to Richardson Bay.

Under the rule, Designated Bathing Beach Waters must meet an enterococci concentration of no more than 35/100 mL (geometric mean, using analytical methods 1106.1 or 1600 or equivalent method) and a single sample maximum value within a range starting at 104/100 mL (75% confidence level), depending on the frequency of use. These values explicitly apply to enterococci regardless of origin unless a sanitary survey shows that the source of the indicator bacteria are non-human and epidemiological study shows that the indicator densities are not indicative of human health risk.

The proposed Basin Plan Amendment and Staff Report include numeric targets for water contact recreation of a geometric mean enterococci density of less than 35 CFU/100 mL, and a 90th percentile enterococci density of less than 104 CFU/100mL. The Staff Report at page 12 states the Water Board finds that “The current Basin Plan fecal coliform standards for protecting the beneficial use of shellfish harvesting in the Bay are protective of the federal standards, because the fecal coliform standards for shellfish harvesting protection are roughly an order of magnitude more stringent than the standards set to protect water contact recreation. In other words, the fecal coliform standards are sufficiently stringent to result in attainment of the enterococci standards, and there is no need to establish a separate enterococci TMDL for Richardson Bay.” We agree with the Water Board’s analysis that the TMDL, if based on the stringent fecal coliform standard for shellfish harvesting, is sufficiently stringent to result in attainment of the federal enterococci standards for water contact recreation.

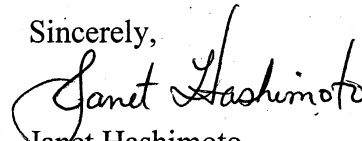
4. We support the Water Board's allocations of zero for sanitary sewer systems, houseboats and vessels (recreational, live-aboard, and anchor-out boats). Since human waste can be a direct and significant source of pathogens, any discharge of it can be considered potentially deleterious to human health particularly given the sensitive beneficial uses of the Bay. We also support the stringent fecal coliform waste load allocation for stormwater runoff and allocation for wildlife.
5. Table 7-3 on page 3 in the proposed Basin Plan Amendment includes wasteload and load allocations. Please include a list of all NPDES permits (stormwater permits) to which wasteload allocations (for stormwater runoff) will apply.
6. Table 7-3 includes a load allocation of zero for sanitary sewer systems. Table 7-4 on page 5 of the proposed Basin Plan Amendment lists the trackable implementation measures for each source category. For sanitary sewer systems, the implementation measure or action is: Comply with the Statewide General

Waste Discharge Requirements for Sanitary Sewer Systems. The proposed Staff Report at section 9.3 on pages 39 and 40 states, "The Water Board notified wastewater collection agencies of the requirements for preparing SSMPs [Sewer System Management Plans] in July of 2005; the notification included required completion dates for each SSMP element." We recommend that more detail of the SSMPs for each sanitary sewer system for which the TMDL applies be included in the implementation section, in order to show what specific actions will take place and by when, to reduce the likelihood of continued sanitary sewer system overflows into Richardson Bay. Additionally, we encourage the Water Board to include as part of the implementation plan for this TMDL any appropriate additional measures to improve the maintenance of sanitary sewer collection systems and to replace aging sewer pipes in order to prevent sewage overflows that contribute pathogens to the Bay.

7. Similarly, Table 7-4 of the proposed Basin Plan Amendment lists trackable implementation measures for stormwater runoff. For stormwater agencies, the implementation action is to implement applicable stormwater management plans, update plans as appropriate, and report progress on the plans to the Water Board. We recommend that more detail of the stormwater management plans for each stormwater system for which the TMDL applies be included in the implementation section, in order to show what specific actions will take place to reduce the likelihood of stormwater runoff contributing to pathogens in Richardson Bay.

We appreciate the opportunity to comment on the proposed TMDL and look forward to receiving the TMDL submittal for our approval. If you have questions concerning this review, please call me at (415) 972-3480.

Sincerely,



Janet Hashimoto

Chief, Monitoring and Assessment Office

cc: Farhad Ghodrati

RICHARDSON'S BAY REGIONAL AGENCY

State Water Resources Control Board
TMDL/Planning Division
1515 Clay Street, suite 1400
Oakland, CA 94612



April 17, 2008

Dear Board Members:

Please accept this letter commenting on the proposed Basin Plan Amendment (or Total Maximum Daily Load (TMDL) plan) for Richardson's Bay. Concerning the timing of this letter, the RBRA Board only meets every two months. Our previous meeting occurred before the release of the draft public comment TMDL, and the meeting date of the letter occurred after the first State Water Resources Control Board (SWRCB) meeting on this topic, but before the SWRCB meeting on potential TMDL adoption. If it were within the constraints of the Richardson's Bay Regional Agency's (RBRA) meeting schedule, we would have submitted this letter by March 24. The two of you have attended an RBRA meeting and have also met with RBRA staff about the TMDL on more than one occasion. Given the ongoing dialogue between the RBRA and your agency, we trust that these comments will be incorporated into the public record and the SWRCB's deliberations.

The RBRA Board has a number of comments and concerns directed at both the language and thrust of the TMDL, as follows:

- 1) As previously expressed, the RBRA has some serious reservations about the underlying basis for the TMDL, namely that shellfish harvesting in Richardson's Bay was, is, or realistically can be considered a "beneficial use". Non-attainment of water quality standards in support of the shellfish harvest water quality objective is the putative reason for justifying imposition of a TMDL in Richardson's Bay. The RBRA recognizes that Richardson's Bay is listed as a "non-attainment" area for shellfish harvest water quality standards in the San Francisco Bay Basin Plan. However, many parts of San Francisco Bay, for example Oyster Point, have higher pollution levels than Richardson's Bay, and more history of shellfish use. The RBRA is not opposed in concept to a program that supports RBRA's goals and ongoing efforts to clean up Richardson's Bay. However, it should be noted for the record that the shellfish beneficial use appears to be merely an historical artifact, a reminder of by-gone years at/before the turn of the 19th century, when a commercial oyster harvesting industry existed in Richardson's Bay. Richardson Bay's industry was based on non-native Eastern oysters, the young fry of which were imported in boxcars from the East Coast, and which never propagated in Richardson's Bay. That industry and its oysters have been gone from Richardson's Bay for at least 80 years. What occurs now is a population of native Olympia oysters that previously have not and currently do not have human consumption beneficial use value. At maturity, Olympia oysters are the size of a nickel, unlikely to ever be consumed. Given the lack of any real evidence to support native Olympia oyster shellfish harvesting as a beneficial use, a TMDL based on the shellfish harvest water quality objective is

unreasonable and unachievable since it would be based on "potential" (and highly unlikely) future uses, and not "probable" future uses.

RBRA has no objections to a TMDL using a water-based recreation water quality objective or standard.

- 2) In several parts of the implementation plan portion of the proposed TMDL, the RBRA is identified as being responsible for various implementation actions. If the TMDL is to be imposed, RBRA requests that the following language be changed: delete the phrase "onboard holding tanks" everywhere it occurs, and substitute instead "onboard sewage collection systems."
- 3) The spirit in which the TMDL is administered by the RWQCB is very important. In the course of several discussions with your agency's two staff persons Farhad Ghodrati and Naomi Feger and particularly Naomi, RBRA has been given to believe that good faith development and performance of the implementation program (specifics of which are to be developed by our agency) is more important per se than attainment of the shellfish harvest water quality objective. This "good faith effort" versus rigid attainment orientation is important to our Board in determining, for example, whether or not to undertake a formal "use attainability analysis" that would likely eliminate the shellfish harvest water quality objective for the reasons summarized in item 1 above. RBRA and the public agencies it represents place a strong emphasis on environmental protection. The fact that shellfish harvest standards are currently sometimes met in Richardson's Bay illustrates the environmental commitment of RBRA's jurisdictions. If unreasonable and punitive enforcement actions were to arise from our (and other agencies') future inability to achieve complete compliance with the shellfish harvest water quality objective, RBRA could be forced to consider legal options such as what transpired in the recent 18 jurisdiction "Cities of Arcadia" Superior Court case.

Please accept this letter in the constructive and reasonable vein it is intended, and do not hesitate to contact Ben Berto, RBRA Clerk (ph.415-499-3658) or Bill Price, RBRA Harbor Administrator (416-971-3919), if you have any comments or questions.

Sincerely,



Charles McGlashan
RBRA Board Acting Chair

CC: RBRA Board

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