



# City of Malibu

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March 15, 2010

Ms. Constance Anderson, Environmental Scientist  
Ocean Unit  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

RE: COMMENTS ON THE NOTICE OF PREPARATION OF A STATEWIDE PROGRAM ENVIRONMENTAL IMPACT REPORT FOR A GENERAL EXCEPTION TO THE CALIFORNIA OCEAN PLAN WASTE DISCHARGE PROHIBITION FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS), INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES

Dear Ms. Anderson:

This letter is in response to the State Water Resources Control Board's ("Board") Notice of Preparation and invitation to comment on the scope and content of the program environmental impact report (EIR) for a general exception to discharges into ASBS.

The City is very supportive of this Exception process. Accordingly the City provides these comments to ensure the Exception undergoes a legally adequate environmental review and that the EIR sufficiently discloses to the public and the decision makers the potential impacts of the Exception and the Special Protections (mitigation measures).

## Initial Study and Scope of the EIR

In general, this Initial Study ("IS") lacks sufficient explanations for identified impacts, and has a heavy reliance on deferred mitigation. CEQA requires the State to analyze reasonably foreseeable environmental impacts of the reasonably foreseeable methods of compliance with the Exception and Special Protections. Public Resources Code § 21159(a)(1). Deferral of substantive environmental analysis may be problematic and the level of analysis in both the IS and the ultimate EIR should be detailed enough such that the public and Board are fully informed of the environmental impacts associated with the Exception and how the Special Protections will mitigate identified impacts, to the extent that information is reasonably foreseeable.

The Environmental Checklist and accompanying discussion in the IS consist of many unsubstantiated conclusions that lack evidentiary support. The ultimate findings need to be supported by substantial evidence by citing to sources or the basis for which factual determinations made and conclusions reached. The findings in the IS and ultimately in the EIR should consider the reasonably foreseeable impacts from all of the twenty-seven applicants' discharges and mitigation measures.

The IS identifies impacts as either 'potentially significant' or 'less than significant' and then fails to explain why or how those determinations were made. It repeats over and over again, "...depending on what measures each applicant uses to comply with the proposed exception, there may be an impact on [X]". The IS doesn't list any sources (e.g., reports, studies, etc.) used in making these determinations. The IS also lacks any meaningful discussion of potential impacts from discharges from any of the twenty-seven specific project applicants; the EIR should consider the potential impacts from each location.

Regarding deferred analysis, the IS contemplates several potentially significant environmental impacts but provides no meaningful information as to the nature of the anticipated impacts or how they may be mitigated. To the extent that some impacts are reasonably foreseeable at this stage, meaningful analysis in a program-level EIR cannot be deferred. If such analysis cannot be completed at this time, the environmental documents should explain why. Throughout the document, Board staff says it "...believes that mitigation is available to reduce any potential impacts to [X] to less than significant levels... [and] the mitigation measures would be implemented at the project-specific level." Appendix A does provide limitations on point source storm water, dry weather discharges and nonpoint source discharges, but the document as a whole does not specify what mitigation measures (or elements of the special protections) are intended to mitigate particular impacts. This analysis is imperative and must be included in the EIR.

Water Board staff also states in descriptions of several environmental factors sections that the general exception project has the potential to violate the ASBS waste discharge prohibition of the Ocean Plan if existing inadequate controls currently in force are allowed to continue." It is not clear what inadequate controls Water Board staff is referring to. Please clarify whether this is reference to inadequate controls statewide that are necessitating this process or if it is a reference to any particular location. The City of Malibu takes great pride in its Clean Water Program and feels that very effective and protective controls have been put in place to manage water resources.

The following comments address more specific sections in the IS:

### Introduction

This general exception is for applicants' discharges to the ASBS. Applicants have raised the issue of private drainage with Water Board staff at various workshops during this process; however, the IS and the Special Protections do not sufficiently address this issue. Many of these private drains do not connect to, and are therefore not a part of an applicants' MS4s. Therefore an applicant would have limited jurisdiction over those drains. Many were historically authorized by other entities many years ago. If this general exception is only for stormwater and nonpoint discharges by the applicants to the affected ASBS, how will this program account for private drains?



What does Water Board staff consider to be anthropogenic erosion? Please clarify.

The document states that a fundamental requirement includes, “maintenance of natural water quality within ASBS, including during precipitation (design storm) events” yet does not define what is considered a design storm. A design storm is not defined in the Ocean Plan under the Implementation Provisions for ASBS either, but one inch per day is included in the Special Protections. How will Water Board staff address a storm event greater than the design storm proposed, in particular if the conditions of a storm event greater than a design storm could potentially affect natural water quality?

### Project Description

First, the project description lacks sufficient detail to inform the public and the decision makers of the Exception’s vast geographic scope, covering a large portion of the California coast. The project description itself should include a more detailed description and a map, depicting the precise locations and boundaries of the project area and the scope of the discharges covered by the Exception. For example, the description does not specify the size and load of the covered discharges for the applicants, information that is imperative to a meaningful discussion on the impacts of allowing certain discharges subject to the Special Protections and the effectiveness of these Protections as mitigation measures.

The description also states that the wet weather runoff will not alter “natural water quality,” but does not indicate how natural water quality is defined and where this natural water is found. Similarly, the project description should explain what the marine life beneficial uses are and how they will be protected. The project description also contains a conclusion, that “the Special Protections will assure protection of beneficial uses while allowing the continuation of essential public services;” such a conclusion is only appropriate after the requisite environmental analysis of the specific impacts from the Exception and it has been demonstrated that the Special Protections (mitigation measures) will successfully meet this goal.

The State first notified the City of the discharge prohibition and the opportunity to apply for an exception in October 2004. The City has been actively involved in the process since then. For example after submitting its application, the City, along with other applicants, also participated in a biological data assessment, undertaken by Professor Raimondi, at Board staff’s request to assess all of the biological data submitted in the Exception applications and SCCWRP’s Bight ’08 study. Having taken many years to implement the Exception, the City respectfully requests that the project description be revised to clarify that the Exception will apply retroactively to 2004 when the State first initiated this procedure. While the City understands and appreciates the challenges and time required to implement a program of this scope and difficulty, the applicants could potentially be held liable for Ocean Plan violations while having actively participating in good faith in this application process. Having the Exception apply retroactively could prevent this unfair result.

Alternatively the State Board could insert a time schedule into the Ocean Plan to allow time for municipalities to comply with the Special Protections and expressly declare the period for which the Exception applies. For example, the Exception could expressly state that there is a 15-year compliance schedule (starting 2001) applying through 2016 when the exceptions are final and the applicants must be in compliance. Such a provision is a reasonable and would make clear that the Exception applies to discharges during the period that the applicants are working towards obtaining the Exception.



Lastly, the fifth paragraph on page 7 discusses stormwater runoff samples. It states, “data indicates that wastes are present in storm water runoff.” This should explain and clarify whether these samples were taken as part of the applicants’ requests for exception or some other program. In addition, many of these ASBS are in less developed areas with unique geological formations where it is likely that sediments with high metals or mineral content due to naturally occurring erosion could be carried in storm water runoff and could be detected in water quality samples. The drain may have been installed specifically to preserve coastal slope stability (a stated intent of this program) and only be carrying non-anthropogenic related discharge. Why would this material be considered “waste”? In these instances a water quality objective from the Ocean Plan’s Table B could conceivably be exceeded with no anthropogenic influence. Will Water Board staff be considering a natural sources exclusion or site specific objective to address these issues when an applicant may not be able to control or account for natural background levels of constituents?

### Environmental Impacts

The State is not considering some environmental factors that could potentially be affected by this project. They include Land use/Planning, Geology/soils, and utilities/service systems. The specific concerns will be addressed in the order that they are presented in the IS.

### *BIOLOGICAL RESOURCES*

The findings for c) (relating to adverse effects on federally protected wetlands) is listed as “no impact”. However, there could potentially be significant impacts that require mitigation. Some habitats have historically become dependent on storm water and even non-storm water to some extent. If these discharges are prohibited, a habitat could be negatively impacted. How does Water Board staff intend to address these potential impacts in the program EIR and Special Protections?

Furthermore, on page 11, Water Board staff discusses that the mitigating terms and conditions of the special protections will result in improved water quality conditions. At this time, it has not conclusively been determined that there are water quality conditions that are impacting the biota, “at these locations, the data was inadequate to attribute the variation to the impacts of the discharge.” If water quality is determined not to be the cause of impacts or even that water quality observed is found to be the natural background level (even after all mitigation and/or projects have been implemented) as this program is implemented, how will Water Board staff account for other causes of impacts to biota including trampling of habitat and taking of wildlife by visitors? It is widely known that public access can have negative effects are to natural habitat. Also, the City respectfully requests that Water Board staff consider this fact and account for provisions in the Special Protections to re-evaluate the provisions and requirements if water quality is not the cause of impact. This would help to reduce the financial burden on applicants be able to focus those resources on other programs that might better protect the ASBS.

### *GEOLOGY and SOILS*

The City completely supports Low Impact Development (LID) and has incorporated site design requirements to prevent runoff into the Local Coastal Plan (LCP) and Planning conditions on projects for years. Since 2005, the City has prohibited new discharges directly to and inland of the ASBS



during the Planning review process by increasing the requirements for permeable and disconnected [from drainage system] pervious areas. However, there are limitations to allowing infiltration and realize that there could be potential impacts to geological conditions that may prohibit these methods on a project.

In addition, many properties along the ASBS are located above the coastline on a bluff. Some private drains have been installed on these properties to prevent additional bluff loss due to sheet flow of storm water runoff. These properties will need to maintain these discharges, however it is not clear how the Water Board staff proposes to regulate these discharges since they are not a part of an MS4 but are necessary to coastal slope stability.

Findings a) iv. (relating to landslides), c) (relating to unstable soils, landslide, lateral spreading, subsidence, etc.), and d) (relating to expansive soils) are all listed as “no impact”, when indeed there could be potentially significant impacts. The City of Malibu, for example, is located in an area where there are pockets of geologically unstable ground, prone to liquefaction and landslides, and other applicants may experience this same condition. The City is concerned that these areas may not be capable of accepting storm water or non-storm water and therefore any development or redevelopment in these areas would require special consideration to allow a new discharge. In addition, private properties located on a bluff would not have the option of an end of pipe solution, as the drain that may be already installed or need to be installed may not be conducive to an end of pipe treatment device. Hence, a determination of “No Impact” may not be accurate and there should be analysis of the potential geological impacts to the finite group of ASBS applicants. Will there be a process for variances or reasonable accommodations from the Special Protections in order to account for unique circumstances?

Finding e) (relating to soils and septic systems where sewers are not available) is also listed as “no impact”. Again, the City finds that there could be significant impact if a mitigation project’s only option was to infiltrate runoff. The City of Malibu relies primarily on onsite waste water treatment systems (OWTS), many with advanced treatment including disinfection, for its wastewater management needs. Consultant engineers to the City have prepared concept mitigation project designs demonstrating that infiltrating water in areas where OWTS are used is a significant concern and this may hinder implementation of mitigation solution options. Hence, a determination of “No Impact” may not be accurate and there should be analysis of the potential geological impacts to the finite group of ASBS applicants. How will Water Board staff account for these limitations in the program EIR and Special Protections?

### *HAZARDS and HAZARDOUS MATERIALS*

Finding a) (relating to transport or disposal of hazardous materials) is listed as no impact. However, an applicant may be required to implement a project that involves treatment chemicals or processes that may generate or concentrate hazardous materials (such as if end of pipe treatment is the only option). Therefore, this finding should be changed to have less than significant impacts with mitigation. Water Board staff should consider and account for these impacts in the program EIR.



## *HYDROLOGY and WATER QUALITY*

Finding d) (relating to altering a drainage pattern of a site and increasing rate of runoff) is listed as “no impact”. However, the Special Protections require that “any proposed or new storm water discharges must be routed to existing storm water discharge outfalls.” The City does not have an extensive MS4 system and the Los Angeles County Flood Control District has limited facilities in our limits, therefore much of the drainage system in the City involves natural canyons, creeks and gullies. Routing a new storm water discharge to one of these natural drainages could have significant impact. Further, constructing a conveyance to transport a proposed or new discharge to an existing manmade storm water discharge outfall if one is available (after all other options have been exhausted) may be the only option and could lead to significant impacts as well. These factors should be considered in the environmental review.

Finding e) (relating to runoff exceeding the capacity of a drainage system or provide additional sources of polluted runoff) is listed as “less than significant impact”. Any proposed or new discharge would require substantial engineering to avoid impacts. Therefore, this finding should be changed to less than significant with mitigation incorporated. Also, the City, as a general policy, will pursue any and all solutions to protecting water quality when based on sound scientifically based information. Arbitrarily requiring an end of pipe solution may not be prudent if it is found that natural water quality will not be affected by the discharge and routing the discharge to another existing discharge is not feasible or could potentially create more significant impacts. How will Water Board staff account for these instances in the Special Protections? Will the Water Board consider a variance provision in the Special Protections for unique circumstances?

Finding h) (relating to structures being placed in the 100-year flood hazard area) is listed as “No Impact”. However, if mitigation is required that involves end of pipe treatment, the mitigation device is likely to be located in a flood hazard area to impede or redirect flood flows. Alternatively, facilities would have to be located sufficiently out of the flood hazard area, construction of which would have its own potential significant impacts. Accordingly, a “No Impact” determination may not be accurate.

Finding i) (relating to risk of loss or injury involving flooding) is listed as “no impact”. However, if a proposed or new discharge were required to be routed to an existing storm water discharge outfall, which is most likely a natural drainage as mentioned, there is no guarantee that under certain storm conditions there will not be a risk or impacts. Therefore, Water Board staff should reconsider this finding as having an impact and likely to need mitigation.

Finding j) (relating to inundation by mudflow) is listed as “no impact”. However, as discussed in the *Geology* section, the City has special geologic conditions that could lead to landslide. In addition, any alterations that would route discharges to a canyon or other existing drainage outlet could have significant impacts. Therefore, Water Board staff should reconsider this finding as having an impact and likely to need mitigation. How will Water Board staff address these potential impacts in the program EIR and are these limitations being considered in the provisions of the Special Protections?



### *LAND USE and PLANNING*

There could be a potential impact to an adopted land use plan. For example, the City's LCP which largely promotes the protection of sensitive resources (environmentally sensitive habitat area – ESHA) could be impacted. This project could create a potential impact to an adopted land use plan if it requires discharges into stream and/or riparian ESHA, or results in an indirect impact to those protected areas? Water Board staff should re-evaluate their findings on this issue. How does Water Board staff propose that these impacts be mitigated? What does Water Board staff propose for any impacts to a local land use plan that may be caused by the proposed Special Protections? Will the Water Board staff consider a variation from requirements provisions for special circumstances such as when there is an effective regulation and framework already in place that may be effective at protecting the ASBS, but conflicts with the State's requirements as proposed?

### *TRANSPORTATION/TRAFFIC*

Finding a) (relating to exceeding the capacity of the existing circulation system) lists a “potentially significant impact” yet there is no discussion to what clarify the potential impacts to traffic may be. How will the Water Board staff be clarifying or addressing this impact in the EIR?

### *UTILITIES and SERVICE SYSTEMS*

Finding c) (relating to construction of a new storm water drainage facilities or expansion of existing facilities) is listed as “no impact”, yet this has the potential to be a significant impact. The City therefore requests that the Water Board staff re-consider this finding and properly address it in the EIR. The Special Protections, as previously mentioned, provide that any proposed or new discharge must be routed to an existing storm water discharge outlet. Furthermore, not all discharges will be appropriate to install end of pipe treatment systems or devices, other solutions/BMPs proposed in the Special Protections may be necessary.

### Attachment “A”- Special Protections for Areas of Special Biological Significance

The Special Protections, Attachment “A” to the IS, functions as the project's mitigation measures designed to reduce or eliminate potential environmental impacts associated with the Exception. In addition to the comments submitted above concerning the scope of the environmental review, the City finds it imperative to raise the following additional general comments and questions to ensure that the Protections are drafted as clearly and effectively as possible and are sufficiently analyzed in the EIR.

### Permitted Point Source Discharges of Stormwater

The City requests that the “General Provisions for Permitted Point Source Discharges of Storm Water” be clarified with respect to application to point sources that are not owned or operated by the applicant (i.e. privately owned drains and drains owned by other public agencies) and any discharge size thresholds for permitted discharges.

On page B-2, provision 1.d states that any new or proposed drain “shall not result in any new contribution of waste to an ASBS (i.e., no additional pollutant loading).” Please clarify if it is a mass based or volume base pollutant loading. It is feasible that natural water quality is not pure water and



some level of natural loading of sediment and minerals may be expected. Therefore, the Protections should include a definitions “natural water quality” and “waste” that take into account natural loading.

Please clarify the scope of the Storm Water Management Plans (SWMP) and Storm Water Pollution Prevention Plan (SWPPP) requirement, which presumably apply only to the portion of the relevant ASBS within the applicant’s jurisdiction or control. Also the differentiation between the two plan types is not a uniform standard and it may be difficult for different applicants to determine which type of plan is required. Additionally, does the scope of the plan cover only direct discharges to ASBS, or must the plan cover inland conveyances that *may* drain to the ASBS during a severe rain event?

Please clarify the scope of the inspection requirements for construction, industrial and commercial facilities and stormwater outfall drains. The Protections do not specify how far inland the inspection requirements apply (i.e facilities immediately adjacent to the ASBS, within 200 feet of the ASBS or with direct drainage to the ASBS). Further, the requirements should clarify exactly what types of facilities are covered; as written, the requirements are unduly broad. The stormwater outfall inspection requirement should also include a limitation that it only applies where feasible and safe. For example, due to the terrain and topography in the City, some pipes (such as a roadway drain previously mentioned) discharge to a canyon or gully hillside where access would not only be unsafe, but could unintentionally harm environmentally sensitive habitat. Another example of an inaccessible pipe would be a pipe located up on a bluff to concentrate sheet flow and stormwater runoff to one location in an effort to prevent bluff erosion.

On Page B-3, Condition 2.d, points 1 and 2 discuss pollutant reductions in storm water runoff. However, in the Ocean Plan and in Special Protections Section A.1.b, the actual language of the requirement is to “not alter natural water quality,” a different standard. The former standard presumes that storm water runoff is negatively altering natural water quality in the ASBS, which may not always be the case. These different standards should be reconciled.

Please clarify the “end of pipe” requirement for BMPs on page B-3. Is this specifying that BMPs shall be installed at all outfalls, or only under certain circumstances? Is this requirement applicable to certain size pipes (ex. 18 inches in diameter or greater), is it only applicable to new storm water discharges, or is it to be applied to all ASBS discharges owned or operated by the applicant? How are private drains affected by this requirement? Additionally, the requirement is to meet Table B Instantaneous maximum limits as targets. The Ocean Plan states in II.A.3 that “Compliance with the water quality objectives of this chapter shall be determined from samples collected at stations representative of the area within the waste field where initial dilution is completed.” Accordingly, these targets are not intended as end of pipe effluent limitations, are not enforceable as such and should not be used as the design criteria. Also, Condition 2.d.(1) specifies “instantaneous maximum” as the applicable concentration, but 2.d.(2) does not specify which Table B limiting concentration shall apply. Since these are not intended in the Ocean Plan to be end of pipe measurements, please clarify if they are intended to be guidance numbers or action levels for the purpose compliance with the Special Protections.

Condition 2.d(2) requires a 90 percent reduction in pollutant loading from a baseline that is explained as the effective date of the exception. Instead, the baseline should be set as a date certain so the applicants have the ability to monitor and determine what the baseline shall be. There is also a danger





in using a date to set the baseline because there are differences in the water quality in different seasons of the year. One sample is not accurate enough to set a baseline, which should actually be determined from a series of samples taken over time. The City respectfully requests that the State consider a provision to allow a study to determine the baseline over the course of the first year past the granting of the exception to allow for an analysis and characterization of the storm water discharges.

Condition 2.f on page B-4 provides that “[e]ducation and outreach make it a recommendation that the public is adequately informed that direct waste discharges from private property not entering an MS4 are prohibited.” This statement is unclear, but more importantly, it suggests that private drains must connect to an MS4 to be covered by the Exception. Is that a correct interpretation? Is this intended to prohibit storm water discharges and non-storm water discharges from private drains? Many if not most private drains were installed to prevent soil erosion on bluffs and dunes and are essential for flood control or slope stability. These factors must be considered when drafting the Special Protections and in the environmental review. How does the State intend to address hundreds of privately owned drains throughout the State needing to be re-routed to an established MS4? Will this be studied further in the EIR? Rerouting all private drains to the MS4 may not be physically or economically feasible. As suggested above, the Protections should include a variance or reasonable accommodation procedure for unique or special circumstances.

Condition 2.h.3 on page B-4 discusses the process for reporting storm water sampling results that indicate a cause or contribution to alteration of natural water quality. There is a 30 day deadline in an iterative adaptive program for a discharger to revise its “plan” to incorporate modifications to the “plan.” This document fails to define, however, the time frame that the Regional Water Board should have to review the discharger’s submittal. It is highly recommended that there be a maximum 30 day period for Regional Board, after which the discharger may assume the modifications are automatically approved and proceed with implementing them. Any lost time of implementation while waiting for approval could result in further impact to the ASBS and additional liability for the discharger. The California Department of Fish and game follows a similar policy when an applicant submits a Streambed Alteration Agreement request.

Please clarify the application of the non-stormwater discharge prohibition on Page B-5, condition 3. Does this cover drains outside the MS4? Please also clarify how the report required under Condition 3.b relates to the SWMP/SWPPP “plan requirement.

### Nonpoint Source Discharges

In the glossary, nonpoint sources are defined as “generally... sources that do not meet the definition of point source”, yet point source is not a defined term. Please provide a definition.

The previous draft Special Protections (dated March 2008) inferred that nonpoint sources are those that are not a part of the MS4. Is that still the intention? Overall the application of the requirements to drains that are part of and outside the MS4 (i.e. application to MS4, privately owned and operated, and owned and operated by other public agencies), must be clarified throughout the Protections. Please also clarify what constitutes prohibited nonpoint source discharges.



In condition B.1.a.1, is the State intending to individually permit all of such discharges? Is there a size threshold being proposed to limit the number of applicants to only those of greater threat? B.1.a.2 states that nonpoint source discharges must comply with all of the terms and conditions of these Special Protections. Without a size threshold, this may prove to be an onerous task for the Water Board to review and approve for all discharge locations.

The Planning and Reporting requirements for nonpoint source dischargers in Section B.2 on page B-7 need to be clarified. As mentioned above, the requirements should be clarified to explain what types of drains are covered under these requirements and who is considered the nonpoint source dischargers. The applicants are not always the dischargers and the Special Protections should account for these issues.

Please define or clarify a “parks and recreation facility.” Further, how does the State intend to regulate or account for the national parks system which may be included in the boundaries of the ASBS?

Part IV on page B-12 discusses Monitoring Requirements for all dischargers. As previously expressed in these comments, applicability to discharges not a part of the MS4 is not clear. Please also clarify what is meant by “all dischargers”.

Monitoring Requirements on page B-12 notably refer to Safety Concerns. Safety is always a high priority for the City and therefore, it is appreciated that the State has included this aspect. This condition should further clarify that some sampling locations may be infeasible due to terrain and topography, or protection of sensitive habitats. Will the State consider a waiver or some other alternative to sampling requirements for unique circumstances such as inaccessibility and consider the cost benefit of conducting such sampling in less feasible and unsafe locations.

Monitoring Requirements A.1 Core Discharge Monitoring on page B-13 states that runoff must be collected during “a storm” event. Please clarify if this does in fact mean only one storm?

Monitoring Requirements A.2 on page B-13 discusses flow monitoring. This requirement should clarify municipal “and/or” industrial storm water outfalls and also needs to specify if it is only one storm or more. A.2. b mentions a precipitation season. Is this the same as rainy season? Rainy season and or precipitation season should be defined in the glossary.

Monitoring Requirements A.3 on page B-13 discusses runoff samples from storm events. Condition 3.a.1 needs to clarify whether samples must be taken at end of pipe. Condition 3.a.2 discusses a five-year period and should clarify the starting date for the five-year period.

Monitoring Requirements B.1.a on page B-14 requires sampling storm water prior to and during or after a storm. This requirement should be clarified slightly such that only the receiving waters are sampled “prior to” the storm, as there will not be storm water runoff until during or after the storm.

Please clarify what is meant by “permit cycle” Monitoring Requirements B.1.c on page B-15.

Please clarify how the sediment monitoring on Page B-16 and the Waterfront and Marine Operations on page B-11 apply to standalone piers with no other facilities.



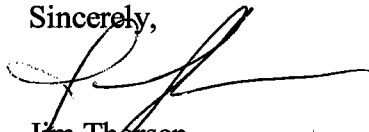
Regarding the Monitoring Requirements generally, will the State consider relaxation of monitoring for some constituents to less frequently if they are found to be lower than detection limits or Table B? Does the State expect dischargers to monitor for Mercury and other similarly expensive analyses indefinitely? This could be cost prohibitive and unnecessary if not detected in initial tests. Perhaps the State could evaluate the number of constituents and frequency of sampling so that dischargers could better use those funds for additional programs that are more protective of the ASBS. Also it is not clear how the State intends to incorporate "natural water quality" limits into these requirements. Dischargers, including Malibu participated in the Bight 08 Regional Monitoring Program. It is not clear how this effort will apply to providing comments to the EIR and Special Protections.

Again, these comments should be addressed and provisions clarified as necessary before the Special Protections can be analyzed as mitigation measures in the EIR.

Thank you for dedicating so much time to this process. As you are aware the City has been and continues to be actively involved in the early voluntary information gathering programs that are integral to this process, including Bight 08 and the biological assessment study, and is committed to the success of the ASBS Exception procedure. The City appreciates the opportunity to provide public comment and welcomes a continuing discussion with Board staff on the issues raised in this letter.

The City has placed and continues to view the environment and water quality as top priorities. We look forward to working with you and protecting this valuable resource. If you have any questions regarding this submittal, please contact Jennifer Voccola, Senior Environmental Programs Coordinator, at (310) 456-2489, extension 275 or [jvoccola@ci.malibu.ca.us](mailto:jvoccola@ci.malibu.ca.us).

Sincerely,



Jim Thorsen  
City Manager

cc: Christi Hogin, City Attorney  
Bob Brager, Public Works Director  
Jennifer Voccola, Environmental Programs Coordinator  
Barbara Cameron, Grants Consultant