

## Department of Public Works



# COUNTY OF SAN MATEO

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March 15, 2010

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

Dear Ms. Anderson:

**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, including Special Protections for Beneficial Uses**

The County of San Mateo Department of Public Works (County) appreciates this opportunity to comment on the Initial Study (IS) and Notice of Preparation (NOP) of a statewide program environmental impact report for a general exception (Exception) to the California Ocean Plan (Ocean Plan) waste discharge prohibition for selected discharges into Areas of Special Biological Significance (ASBS), including Special Protections for beneficial uses, which was released for comment on February 9, 2010.

On December 31, 2007, the County submitted an application to the State Water Resources Control Board (Board) requesting coverage under an Exception from the ASBS waste discharge prohibition found in Section III.E.1 and III.H.2 of the Ocean Plan for discharges into the James V. Fitzgerald (Fitzgerald) ASBS. We received a letter from the Board on July 22, 2008 stating the County Exception application was complete. Since then, the County has actively participated in the Special Protections ASBS stakeholder and Board Ocean Unit staff (staff) meetings to discuss draft versions of the Special Protections document. It is important to note that the Special Protections document referenced and included as Attachment A of the IS is still a draft and has not been adopted by the Board.

The County appreciates the Board's efforts to grant an Exception in order to protect beneficial uses while also allowing continued essential public services, including flood control, slope stability, erosion prevention, and protection of public health and safety. We also appreciate staff's efforts to obtain feedback from the dischargers and non-governmental organizations during the development of the draft Special Protections document. However, it is the County's opinion that:

- 1) the IS Project Description is not adequate;

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- 2) the Special Protections are an integral part of the “project” and thus should be finalized prior to completing environmental review;
- 3) the Board failed to consider economic impacts to the dischargers during the development of the proposed draft Special Protections and should recognize the need for an extended compliance schedule given current municipal budget constraints and uncertainties; and
- 4) there are additional environmental concerns and potential impacts that were not addressed in the IS.

Our comments on the NOP and IS, including the proposed Special Protections, are given below.

**Initial Study – Part I, Project Description**

The “project” as described in the IS involves granting a general Exception to the Ocean Plan prohibition against waste discharges into ASBS, including the proposed draft Special Protections, to the 27 listed applicants. We believe that the IS Project Description is inadequate. As written, it lacks the substance and specificity that is necessary to accurately determine potential environmental impacts. Implementation of the Special Protections will likely result in construction and installation of a range of Best Management Practice (BMP), treatment, and diversion projects. The potential types of projects, anticipated environmental impacts, examples of mitigation measures, and economic impacts to the dischargers should be included in the CEQA analysis. The Special Protections are a primary component of the “project”, thus we feel that the IS Project Description should be revised to include detail on key elements of the Special Protections. Because the Special Protections are such a defining piece of the “project”, we feel strongly that they should be finalized prior to completing the CEQA environmental review. Potential environmental impacts cannot be accurately assessed until the “project” is fully defined. During the Special Protections ASBS stakeholder and staff meetings there were numerous comments, suggested improvements, and points of clarifications that stakeholders felt were necessary prior to finalizing the Special Protections. It appears that many of the comments and suggestions were never addressed or resolved in the draft Special Protections included as Attachment A of the IS. A few examples of those issues are discussed below and should be addressed prior to defining the IS Project Description and completing the environmental review. We understand that finalizing the Special Protections and completing the environmental review will take additional time; therefore, we request that the Exception be retroactive.

The proposed draft Special Protections appear to have multiple standards of compliance, including: 1) natural ocean water quality in an ASBS, 2) water quality objectives in Chapter II of the Ocean Plan, and 3) a 90% reduction in pollutant loading for the Ocean Plan Table B parameters. As written, it is not clear whether the discharger must comply with one or all of the three of the standards. A primary standard for compliance with the Exception should be clarified in the Special Protections and then included in the IS Project Description.

A general provision for the permitted discharges in the draft Special Protections is that “discharges composed of storm water runoff shall not alter natural ocean water quality in an ASBS”. However, there are not sufficient existing water quality data to determine natural ocean water quality within the Fitzgerald ASBS. The proposed

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State Water Resources Control Board, Division of Water Quality, Ocean Unit

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Regional Integrated Monitoring Program includes characterization of natural water quality in ocean reference areas near the mouths of identified open space watersheds. As defined in the proposed draft Special Protections, natural ocean water quality would be determined by “a comparison to the range of constituent concentrations in reference areas agreed upon via the regional monitoring program(s).” To accurately determine the natural ocean water quality, it may take many years given the variation in ocean conditions (currents, mixing and wave action, large and small scale climate patterns, geology, etc). During recent sampling performed in Southern California and overseen by Southern California Coastal Water Research Project (SCCWRP), reference sites exceeded the Ocean Plan instantaneous maximum and 6-month median standards for several metals. As written, the proposed draft Special Protections do not have a method for dealing with compliance under scenarios such as described above. Data collected from the selected reference sites may not be representative of the Fitzgerald ASBS due to potential impacts from San Francisco Bay, which is located only 20 miles north. Sampling for natural ocean water quality determination in northern California ASBS and issues with background contaminants need to be resolved prior to implementation of the Special Protections. Given these limitations and the difficulty in demonstrating a direct relationship between a given discharge and ocean receiving water quality, natural ocean water quality conditions may not be ideal as a point of compliance within the four year compliance schedule specified in the proposed draft Special Protections. While we agree that determination of natural ocean water quality conditions is important, the dischargers should not be responsible for establishing natural and background ocean water conditions. This should be established by the Board or by ocean scientists and water quality experts prior to implementation of the Special Protections rather than concurrently.

The compliance schedule included in the proposed draft Special Protections is unrealistic in that it does not consider the amount of time that will be required for local governments to complete construction projects and the associated economic impacts. The proposed draft Special Protections require a written report for inclusion into a revised Storm Water Management Plan (SWMP) or Storm Water Pollution Prevention Plan (SWPPP) detailing a compliance strategy and including a time schedule to implement non-structural and structural controls, implementation of non-structural controls within 18 months, and implementation of structural controls within four years. Water quality sampling should be conducted to determine if pollutants are present and at what levels BEFORE SWMP or SWPPPs are revised to include future BMPs. BMPs should not be designed until a problem is documented. The schedule does not provide dischargers adequate time to compile and produce the requested information for the SWMP or SWPPP, conduct analyses to determine where BMPs are needed and which BMPs are most effective and suitable for a given area, design projects, secure the necessary funds, complete environmental permitting, complete the public bidding process, and implement the projects. The Board should recognize that dischargers need sufficient time to develop a plan and secure funding for implementation of these requirements, which are unfunded mandates. This is particularly important given the current difficult financial times and the lack of available funds that could be diverted from existing storm water tasks and/or other existing municipal budget priorities to new storm water projects such as these. The Board should provide dischargers with an opportunity to successfully achieve compliance by allowing additional time for dischargers to attempt to secure additional sources of revenue. The potential funding sources that do not

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require voter approval are limited and are unlikely to provide a substantial fraction of the funds needed to implement the requirements of the proposed draft Special Protections. It is likely that implementation of non-structural and structural BMPs and long-term maintenance will require significant additional expenditures, such as a bond fund and/or a tax or property assessment, which would need voter approval. The dischargers need time to develop financial plans, educate property owners and/or voters on the need for additional funding, attempt to secure voter approval of bonds and/or additional taxes and property assessments, and, if successful, start to collect sufficient funds to undertake the projects needed to comply with the proposed Special Protections. The compliance dates should be adjusted to provide at least a five-year period to attempt to secure and accrue the necessary revenue to meet the proposed requirements. This is in addition to the time that is necessary to determine natural ocean water quality.

There are several other elements of the draft Special Protections that need to be resolved prior to inclusion into the IS Project Description. "Naturally occurring groundwater seepage via a storm drain" is a permitted non-storm water discharge. There are several cases in San Mateo County in which natural drainages were converted into man-made drainage facilities (e.g., ditches or pipes). In most years, these drainages flow year round as flows are primarily the result of upstream groundwater seepage. However, groundwater may be commingled with unauthorized non-storm water from private residences (i.e. irrigation, car washing) and irrigation discharges from agriculture. It may be difficult to determine when storm water flow ends and non-storm water groundwater flow begins and if non-storm water flow contains sources other than groundwater seepage.

The proposed draft Special Protections require weekly inspections of construction sites during the rainy season, monthly inspections of industrial facilities during the rainy season, and require that commercial facilities be inspected twice during the rainy season. The County inspection programs are not currently funded or staffed to handle the increased frequency of inspections. As written, it is not clear if the construction site inspection requirement is for County projects or for both County and private projects. The frequency of construction site inspections is much more intensive than the recently adopted California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit, which requires construction sites to be inspected monthly during the rainy season. The basis for determining the frequency and location (i.e., County, private, or both) of inspections is not described and should be detailed prior to finalizing the Special Protections.

**Initial Study – Part II. Environmental Impacts**

The environmental factors Land Use and Planning, Utilities and Service System, and Geology and Soils could potentially be significantly impacted by the project. The proposed draft Special Protections state "on the effective date of the exception, all non-authorized non-storm water discharges (e.g., dry weather flow) are effectively prohibited" and "BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm shall be designed to achieve the following target levels....." These requirements may require construction or installation of BMPs to treat storm water discharges and construction of new drainage facilities or expansion of existing facilities to divert non-storm water to an appropriate facility. Construction on the

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highly erodible and seismically active coastal bluffs could potentially lead to increased erosion and landslide activity. Construction would take place within the Coastal Zone and within habitats, such as riparian, wetland, marine, estuarine, sea cliff, that have been designated as sensitive by the County of San Mateo Local Coastal Program (LCP). The projects are likely to be delayed if they were found to be in conflict with the County of San Mateo's General Plan, LCP, and MidCoast LCP Update Project and could potentially result in environmental impacts.

**Initial Study – Part II. Environmental Impacts - 1. AESTHETICS**

The construction projects or installation of BMPs that may be necessary to comply with the proposed draft Special Protections may lead to a potentially significant impact on aesthetics or less than significant impact with mitigation incorporated. For example, installation of a large full-capture trash device or treatment unit could degrade the existing visual character or quality of site and its surroundings.

**Initial Study – Part II. Environmental Impacts - 4. BIOLOGICAL RESOURCES**

At several of the County discharge locations, there are natural channels and wetland habitat immediately upstream of the outfall pipes. If the County is required to divert a non-storm water discharge in order to comply with the Special Protections, construction of new drainage facilities and/or de-watering of the wetland habitat during the summer months could potentially impact federally protected wetlands. Wetlands could also be impacted during installation of a required BMP.

The IS states that “the general exception project has the potential to impact species, habitat, and sensitive natural communities within each of the 26 ASBS identified in this general exception, IF EXISTING INADEQUATE CONTROLS CURRENTLY IN FORCE ARE ALLOWED TO CONTINUE.” First of all, the “project” as defined in the IS Project Description is to grant an Exception with the proposed draft Special Protections. The CEQA analysis should identify potential impacts related to implementing the proposed project rather than potential impacts should the proposed project not be implemented. Secondly, there are currently not sufficient data to demonstrate that current controls are inadequate. This comment also applies to the IS Hydrology and Water Quality section.

The County values the Fitzgerald ASBS not only for its unique and diverse habitat and marine life, but also as a popular San Mateo County coastal destination. We are actively working to develop water quality improvement projects and acquire the necessary funding to implement these projects. In February 2009, the County's James V. Fitzgerald ASBS Pollution Reduction Program was recommended for funding under the Proposition 84 ASBS Grant Program but has not been implemented due to the delay in Proposition 84 funding from the State. The County has also been in discussions with the members of the Monterey Regional ASBS Dischargers Monitoring Program and plans to join their regional monitoring effort if the County's northern geographic location is deemed appropriate and cost effective for the program. We are committed to protecting beneficial uses and ensuring that County discharges are not degrading water quality or negatively impacting biological resources within the Fitzgerald ASBS. We appreciate your consideration of our comments.

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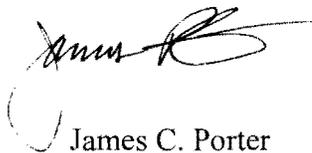
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Please contact Julie Casagrande, (650) 599-1457, if you have any questions regarding these comments.

Very truly yours,



James C. Porter  
Director of Public Works

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cc: Mr. Dane Hardin, Applied Marine Sciences, 911 Center Street, Suite A, Santa Cruz, CA 95060  
Ms. Deborah Penny Bennett, County Counsel  
Mr. Matt Fabry, Program Coordinator, San Mateo Countywide Water Pollution Prevention Program