COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: WM-9

March 10, 2005

TO: Each Supervisor

FROM: Donald L. Wolfe DLW
Acting Director of Public Works

CALIFORNIA OCEAN PLAN
DISCHARGE PROHIBITIONS

We want to inform you about an issue with potentially significant economic impacts to the County. Public Works received a letter dated October 18, 2004, on behalf of the County, from the State Water Resources Control Board (State Board) (Attachment A). The State Board mailed similar letters to 19 other recipients Statewide and to Caltrans. The letter demanded that the County either cease all discharges of rainfall runoff and dry-weather flows into the Area of Special Biological Significance (ASBS) that stretches from Latigo Point to Mugu Lagoon or, alternatively, request an exception for the discharges. An ASBS is an area within the coastal waters off California, as identified in the Ocean Plan, that contains significant marine life that is to be protected.

Public Works contacted the State Board to obtain more information regarding the discharge prohibition and exception process. We contacted the other Southern California municipal recipients of the letter, including Caltrans and the City of Malibu to determine the likely response from these agencies. We began discussions with the California Stormwater Quality Association, whose membership includes many of the municipal stormwater dischargers throughout the State that also received the letter. Public Works responded to the State Board indicating that we were applying for an exception, but reserved our rights to challenge the requirement should we choose to do so in the future (Attachment B). On January 13, 2005, the State Board conducted a workshop. We and County Counsel attended the workshop.

This issue could have a major impact on the County, the City of Malibu, and private entities. The area covered by the ASBS that impacts the County is currently subject to the requirements contained in the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load (TMDL) and will be included in future TMDLs for metals and organics. Complying with TMDLs alone is proving to be technically and economically challenging. Meeting the far more stringent requirements of the ASBS discharge prohibition will likely prove economically impractical.

Attachment C contains additional detailed information on the subject, including an article which appeared in the February 9, 2005, edition of the *Monterey Herald*. The article provides information on the cease and desist order issued by the State Board to dischargers into the Monterey Bay ASBS. We will keep you informed on this issue as significant developments occur.

If you have any questions, please call me or your staff may contact Rod Kubomoto at (626) 458-4300.

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Attach.

cc: Chief Administrative Office
Executive Office
Department of Beaches and Harbors
Burhenn & Gest
California Stormwater Quality Association
County Counsel (Judith Fries)

ATTACHMENT A

STATE WATER RESOURCES CONTROL BOARD
LETTER DATED OCTOBER 18, 2004

State Water Resources Control Board

Executive Office
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • http://www.swrcb.ca.gov

Terry Tamminen
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

OCT 18 2004

Mr. James Noyes, Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

Dear Mr. Noyes:

PROHIBITION OF WASTE DISCHARGES INTO THE MUGU LAGOON TO LATIGO POINT AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE

The California Ocean Plan (Ocean Plan), adopted by the State Water Resources Control Board (State Board) and approved by the U.S. Environmental Protection Agency (U.S. EPA), lists 34 coastal marine waters which the State Board has designated as Areas of Special Biological Significance (ASBS). ASBS are defined as "those areas designated by the State Board requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable."

The Ocean Plan, Section III.E.1., requires that: "Waste* shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." "Waste" is defined as the "total discharge, of whatever origin." Your discharge of storm water (dry and wet weather runoff) into the Mugu Lagoon to Latigo Point Area of Special Biological Significance is subject to the prohibition against waste discharges to an ASBS.

The Ocean Plan, Section III.I.1, allows the State Board to grant exceptions to this prohibition, provided that the exception "will not compromise protection of ocean waters for beneficial uses, and, [t]he public interest will be served." Prior to granting an exception, the State Board must hold a public hearing, and there must be compliance with the California Environmental Quality Act (CEQA). The U.S. EPA must also concur.

Information regarding the Ocean Plan, ASBS, or existing exceptions to the Ocean Plan may be found at http://www.swrcb.ca.gov/plnspols/oplans/index.html .

Because you do not already have an exception issued by the State Board for discharges to the ASBS, you are required to cease discharging. You may, however, request an exception to the prohibition if you believe your discharge will not compromise protection of ocean waters for beneficial uses, and the public interest will be served. Please notify the State Board prior to January 1, 2005 whether you intend to cease discharging to the specified ASBS or whether you will seek an exception. We will discuss further steps with you subsequently. Your response should be sent to Dominic Gregorio of the Division of Water Quality, Ocean Standards Unit, with a copy sent to the Los Angeles Regional Water Quality Control Board.

The State Board staff will hold a workshop, at a date and location as yet to be determined, for those parties interested in pursing an exception. The purpose of this workshop will be to provide information on the procedures for applying for an exception and possible funding sources that may be available to address discharges into ASBS. You will receive an invitation to this workshop in the near future.

If you have any questions, please feel free to contact Stan Martinson, Chief, Division of Water Quality, at (916) 341-5458 (marts@swrcb.ca.gov) or Dominic Gregorio, Division of Water Quality, Ocean Standards Unit, at (916) 341-5488 (gregd@swrcb.ca.gov).

Sincerely,

Tom Howard for

Celeste Cantú
Executive Director

cc: Mr. Don Knabe, Chair
Los Angeles County Board of Supervisors
Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Mr. Jonathon Bishop, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT B

PUBLIC WORKS RESPONSE LETTER
DATED DECEMBER 30, 2004

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: WM-9

December 30, 2004

Mr. Dominic Gregorio
Division of Water Quality
Ocean Standards Unit
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Gregorio:

NOTIFICATION OF REQUEST FOR EXCEPTION FOR DISCHARGES TO AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE

This letter is in response to a letter sent to Mr. James Noyes, former Director of Public Works for the County of Los Angeles, dated October 18, 2004. The letter indicated that "[y]our discharge of storm water (dry and wet weather runoff) into the Mugu Lagoon to Latigo Point Area of Special Biological Significance is subject to the prohibition against waste discharges to an ASBS." The letter also indicated that a response was required by January 1, 2005, if an exception was sought from the State Board with respect to discharges to the ASBS.

This response is being made by the County of Los Angeles Department of Public Works on behalf of all elements of County government that might qualify as "dischargers" to the ASBS, and thus, potentially subject to the October 18 letter.

Public Works understands that the discharges in question have been identified in the report "Discharges Into State Water Quality Protection Areas" dated July 2003 and prepared by the Southern California Coastal Water Research Project (SCCWRP). While the October 18 letter did not identify which discharges in the above-referenced ASBS are considered to be the responsibility of the County, we have identified 23 flood control discharges that are operated by the County and that appear to discharge to the ASBS during dry and/or wet weather.

To the extent that these sources are considered to be discharging into the ASBS, this letter is to formally notify the State Board that the County is requesting an exception for such discharges. Moreover, this letter is to notify the State Board that the County is also requesting exceptions for other discharges to the ASBS, if any, as to which a County government entity is the "discharger."

We wish to respectfully note in this letter that our request for exceptions is subject to any and all objections and defenses that may be raised to the applicability of the Ocean Plan, the Porter-Cologne Act, or the Public Resources Code to such discharges. Such objections and defenses include, without limitation, that the Ocean Plan should not be applied to stormwater discharges in the absence of a statewide stormwater policy and also that the Board is obligated, pursuant to Water Code Sections 13241 and 13242, to conduct an analysis of the impacts of the application of the Ocean Plan to stormwater discharges, which it has not done. Moreover, we wish to note that we reserve the right to challenge a determination by State Water Board staff that any particular point source is discharging to the ASBS.

We plan on attending the workshop to be held at the Scripps Institute in La Jolla on January 13 and look forward to discussing these issues further with staff at that time.

If in the interim, you have any questions for Public Works, please contact Mr. Dan Lafferty of my staff at (626) 458-4325.

Very truly yours,

DONALD L. WOLFE
Interim Director of Public Works

Rod H Kubomoto

ROD H. KUBOMOTO
Assistant Deputy Director
Watershed Management Division

CI:dbm
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cc: Los Angeles Regional Water Resources Control Board (John Bishop)

ATTACHMENT C

ASBS DISCHARGE PROHIBITION AND EXCEPTION PROCESS

ATTACHMENT C

ASBS DISCHARGE PROHIBITION AND EXCEPTION PROCESS

The County of Los Angeles Department of Public Works (Public Works) received the attached letter dated October 18, 2004, on behalf of the County from the State Water Resources Control Board (SWRCB). SWRCB mailed similar letters to 19 other recipients Statewide and to Caltrans. The letter requested that the County either cease all discharges into the Area of Special Biological Significance (ASBS) that stretches from Latigo Point to Mugu Lagoon or, alternatively, request an exception for the discharges. Public Works responded by sending the attached letter dated December 30, 2004, to SWRCB indicating that we were applying for an exception, but reserved our rights to challenge the requirement should we choose to do so in the future. The other entities receiving letters for discharging into this ASBS are Caltrans and the City of Malibu.

On December 13, 2004, we held a teleconference call with staff from SWRCB, the City of Laguna Beach, and the City of Newport Beach. The City of Malibu and the City of San Diego were invited to participate in the call but were unavailable. During the call, SWRCB provided some indication of the scope of the ASBS discharge prohibition. SWRCB contends that the California Ocean Plan prohibits discharges of any kind from entering the ASBS during dry weather. Wet-weather flows are permissible so long as the discharger applies to SWRCB and SWRCB grants an exception to the Ocean Plan prohibition.

SWRCB references the California Ocean Plan, Section III.E.1, as justification for its position that all dry-weather flows shall be ceased and all wet-weather flows shall be subject to SWRCB exception process. The Section reads as follows:

> "Waste shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas."

The Ocean Plan defines "waste" as a "discharger's total discharge, of whatever origin, i.e., gross, not net, discharge."

In discussing the exception process, SWRCB indicated that they perceived the exception process followed by and the conditions agreed upon by the Scripps Institute as models for the process and conditions to be followed by other dischargers in all other ASBSs. The process included several workshops and hearings, a full California Environmental Quality Act compliance process, and approval of the exception at a SWRCB hearing. The conditions include complete cessation of all dry-weather flows, monitoring of wet-weather flows, and whatever

programs and projects may be necessary to ensure no adverse effect on the ASBS from the excepted wet-weather flows. Once the exceptions are approved by SWRCB, the conditions for the exception will be included in the Scripps Institute's next National Pollution Discharge Elimination System (NPDES) permit.

On January 13, 2005, SWRCB conducted a workshop at the Scripps Institute for all recipients of the October 18, 2004, letter, which staff from Public Works and attorneys from County Counsel attended. SWRCB provided little additional information beyond what had been discussed in the teleconference call. However, SWRCB did provide additional clarification on the types of discharges they intend to regulate under this prohibition. In addition to the storm drain outlets within the ASBS, SWRCB also intends to address yard drains discharging directly into the ASBS, runoff from stairs leading to the beaches along the ASBS, pedestrian access points from parking lots to the beaches along the ASBS, and unpermitted gray water discharges into the ASBS. SWRCB suggested it would be the responsibility of the local jurisdictions to identify and bring the owners of these various discharge points into the exception process.

The area covered by the ASBS is also subject to the requirements contained in the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load (TMDL). Complying with the requirements of the TMDL will reduce bacteria within Santa Monica Bay to ensure water quality in the bay supports its designated beneficial uses. The ASBS requirements are even more strict than those contained within the TMDL. The TMDL requires water quality to be within certain limits, but it does not specifically require the cessation of all dry-weather flows. Public Works previously identified and reported to the Regional Water Quality Control Board as part of compliance efforts for the TMDL 23 storm drains owned and maintained by the County, which discharge directly into the ASBS. In some instances, these drains merely transport flows from natural streams through pipes under Pacific Coast Highway to the outlets on the beach.

While we anticipate our efforts to comply with the wet-weather portion of the TMDL will also satisfy the water quality requirements for the ASBS wet-weather discharge exception, there are several conditions in the Scripps Institute exception that will be both problematic and costly for the County when applied to discharges into the Latigo Point to Mugu Lagoon ASBS. The Scripps Institute agreed to conduct an extensive monitoring plan as one of the conditions for the exception. The plan calls for monitoring of some kind at over 300 locations. The type of monitoring includes water quality monitoring at all five discharge points and numerous points within their ASBS, sediment monitoring at various locations with their ASBS, and biological assessments, such as bioaccumulation studies for mussels, impacts on sand crab populations, and biodiversity studies within their ASBS. In addition, the Scripps Institute agreed to fund and participate in a study to establish the desired water quality within their ASBS that reflects what the water quality within their ASBS would have been had the Scripps Institute and all other human influences never existed. Complying with the water quality requirements contained in the TMDL alone

presents a significant challenge, both technically and economically. Ceasing the dry-weather flows altogether and satisfying the conditions for the wet-weather flow exception will likely prove economically impractical at the least.

SWRCB intends to include the specific conditions for each discharger within the appropriate NPDES permit. This provides SWRCB with enforcement authority as dischargers not in compliance can be subjected to fines up to $31,500 per day per occurrence. SWRCB has indicated that priority for applying the exception process shall be based on the expiration date of the current NPDES permits affecting the ASBSs. The Los Angeles County NPDES Municipal Separate Storm Sewer System (MS4) Permit expires in December 2006. According to SWRCB, the exception, if granted, is intended to be temporary. The current perspective is that the exception would last for no more than three NPDES permit cycles or 15 years.

Should SWRCB successfully enforce the exception process and establish conditions for the exception within the Los Angeles County NPDES MS4 Permit, the County, Caltrans, and the City of Malibu will be confronted with extremely costly monitoring, special studies, projects, and programs to comply with the prohibition and exception. As we have seen with compliance efforts for the TMDL, there are few funding sources available to support compliance efforts and limited options for eliminating or treating current flows.

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Herald.com

Posted on Wed, Feb. 09, 2005

Water board may order halt to runoff

Cities seek delay of plan to protect 2 marine refuges

By LARRY PARSONS
Herald Staff Writer

State water officials are poised to order three Monterey Peninsula cities and the Pebble Beach Co. to stop letting storm water flow into two marine refuge areas.

The proposed cease-and-desist orders by the Central Coast Regional Water Quality Control board are evoking moans and groans from city officials, who say the task could cost millions of dollars and be an engineering nightmare.

"The dollars that pay for this are the same dollars that have to be allocated to police, recreation, libraries, fire and child care," Monterey City Manager Fred Meurer said Tuesday. "Those are the trade-offs."

The regional water board is scheduled to consider the proposed orders -- which would cover storm runoff into Monterey Bay waters off Pacific Grove and into Carmel Bay -- at its meeting Friday in Salinas.

The affected cities -- Monterey, Pacific Grove and Carmel along with the Pebble Beach Co. -- are expected to seek a one-month delay to give them more time to deal with the issue.

"In addition to the fact that we have not had adequate time to respond... questions arise related to research, testing, evaluation, securing of funding and planning," Pacific Grove Mayor Jim Costello said in a letter to the regional water board.

"We better have our act together when we appear before the regional board," Meurer said.

The proposed state action would give the cities and Pebble Beach Co. two options: stop storm-water runoff into the two marine refuges by 2010 or obtain an "exception" by 2008 from the state Water Resources Control Board.

The proposed orders are intended to protect Carmel Bay and a second area known collectively as the Pacific Grove Marine Gardens and Hopkins Marine Life Refuge. The intent is to keep out pollutants such as bacteria, toxic metals and oil that may be carried by storm-water runoff.

The waters off Carmel and Pacific Grove are among 34 "areas of special biological significance" designated by the state in 1974. The 38 areas were put off-limits to waste discharge in the early 1980s.

"These are the state's most valuable and pristine marine resources," said Sarah Newkirk, water quality manager for The Ocean Conservancy, one of several environmental groups pushing for stronger protection of the sensitive marine waters.

Though state rules bar any kind of discharge into the marine areas, a 2003 study showed nearly 1,700 storm drains, wastewater systems and sources of direct runoff were flowing into the 34 marine refuges, Newkirk said.

"They have not been protected at all," Newkirk said. "We've been trying to raise the status of the issue."

The city of Monterey is facing one of the proposed cease-and-desist orders because storm runoff from a 20-acre section of New Monterey flows into Pacific Grove's storm drain system.

Meurer and other city officials said they were caught by surprise by the regional water board's proposed orders. They said Peninsula cities have been working for several years to reduce pollution from their storm-water systems.

"There has been a Monterey Bay area task force working on it for some time," said Carmel City Manager Rich Guillen. "We were working along, thinking we are meeting the federal requirements."

To comply with an order to halt runoff into Carmel Bay, Guillen said Carmel would have to redirect storm water to the Carmel River or build a treatment plant to remove pollutants.

"That would be impossible," he said. "How do you treat for a 100-year storm with a massive plant that would be idle most of the time?"

Getting an exception to a cease-and-desist order would be costly, too, Meurer said.

The exception program would require cities to carry out an extensive pollution monitoring and reporting program and come up with a plan to reduce storm-water pollutants.

"It would be a huge science project," Meurer said, which also could cost millions of dollars.

"We don't generate enough money to meet our current obligations, much less future obligations," he said.

The proposed state orders not only would cover storm-drain systems but other areas where rainwater simply flows down streets or other terrain into the protected waters.

"Imagine trying to capture water flowing over the beach," Meurer said.

Newkirk of The Nature Conservancy said state bond monies and federal funds are available to help local agencies pay for storm-water pollution programs.

"Two major national studies on ocean health have concluded ocean waters are in crisis," she said. "This is the time to increase protection."

Mark Stilwell, executive vice president of Pebble Beach Co., questioned the underlying logic of the state's proposed crackdown.

"It's pretty common sense it would be impossible to comply with the order itself," Stilwell said. "Rainwater has been running into Carmel Bay and on the Pacific Grove side for a million years.

"It's one of those issues that can't be right," he said. "As far as I know, the waters are as pristine as ever."

Larry Parsons can be reached at 646-4379 or lparsons@montereyherald.com.

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