
Los Angeles Regional Water Quality Control Board

TO: Regional Water Board Members

FROM: Samuel Unger, PE 
Executive Officer

DATE: August 29, 2016

SUBJECT: Regional Water Board Staff Response to Los Angeles Waterkeeper and Natural Resources Defense Council's Petition for Review of Approval of the North Santa Monica Bay EWMP Pursuant to the LA County MS4 Permit

This memorandum has been prepared for the Regional Water Board's consideration of the "Petition for Review of Los Angeles Regional Water Quality Control Board Executive Officer's Action to Approve the North Santa Monica Bay EWMP Pursuant to the L.A. County MS4 Permit" (Petition) that was filed by Los Angeles Waterkeeper and Natural Resources Defense Council (collectively, Petitioners) on May 19, 2016 pursuant to Part VI.A.6 of the LA County MS4 Permit. The main contentions raised in the Petition center around the fact that a substantial portion of the coastal zone in the North Santa Monica Bay Enhanced Watershed Management Program (NSMB EWMP) has special status as an "Area of Special Biological Significance" (ASBS). Discharges to ocean waters in California are governed by not only the regional water boards' basin plans, but also by the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan). That plan includes special protections for ASBSs and includes additional requirements for discharges to ASBSs, including MS4 discharges. These ASBS special protections and additional requirements contained in the Ocean Plan are the focus of many of the Petitioners' contentions.

This memorandum is organized under the following headings:

- Part I: Because of the centrality of the Ocean Plan and its ASBS provisions to the Petition, Part I of this memorandum provides background on the relationship of the NSMB EWMP area to the Laguna Point to Latigo Point ASBS ("ASBS 24") as well as background on the Ocean Plan and the ASBS special protections and requirements it contains.
- Part II: Part II provides a summary of the NSMB EWMP development, review, and approval process, including stakeholder participation.
- Part III: Part III provides responses to the specific contentions raised in the Petition.

I. BACKGROUND

A. NSMB EWMP and ASBS 24 Geography

The NSMB EWMP area is the westernmost coastal area in Los Angeles County. It encompasses 86 square miles, including 20 subwatersheds and 28 freshwater coastal streams as identified in Chapter 2 of the Basin Plan. All receiving water bodies in the NSMB EWMP are ultimately tributary to Santa Monica Bay, and thus the regulations set forth in the Ocean Plan are also applicable to the NSMB EWMP. Ten of these subwatersheds drain to the Laguna Point to Latigo Point ASBS, also referred to as ASBS 24.¹ **Figure 1** shows the overall NSMB EWMP area as well as the portion that drains to ASBS 24.²

ASBSs are designated by the State Water Resources Control Board (State Water Board) and protected through the Ocean Plan (as described in Part I.B., below). ASBSs are ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS 24 was established in 1974 by the State Water Board to preserve sensitive marine habitat.³ It stretches 24 miles, spanning the westernmost portion of Los Angeles County and the southeastern part of Ventura County. Approximately 12.8 miles border the NSMB EWMP area in Los Angeles County. It contains 11,842 marine acres and is the largest ASBS along the mainland of Southern California. A wide range of sandy substrate, rocky reef, and coastal pelagic species can be found within ASBS 24.

The southern and central portions of ASBS 24 that are located in Los Angeles County are subject to direct discharges from roads, landscape runoff, homes, and small businesses. In general, the near-coast stormwater runoff along ASBS 24 within Los Angeles County is conveyed through storm drains and/or natural drainage courses before it is discharged at multiple locations along the beach. There are 26 identified outfalls owned, operated/maintained, or monitored by the NSMB EWMP agencies that are located within the ASBS 24 drainage area; ten of these outfalls have been identified as major outfalls.⁴

The requirements set forth in the State Water Board's Resolution No. 2012-021, "Exceptions to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses" apply to MS4 discharges to ASBS 24.⁵

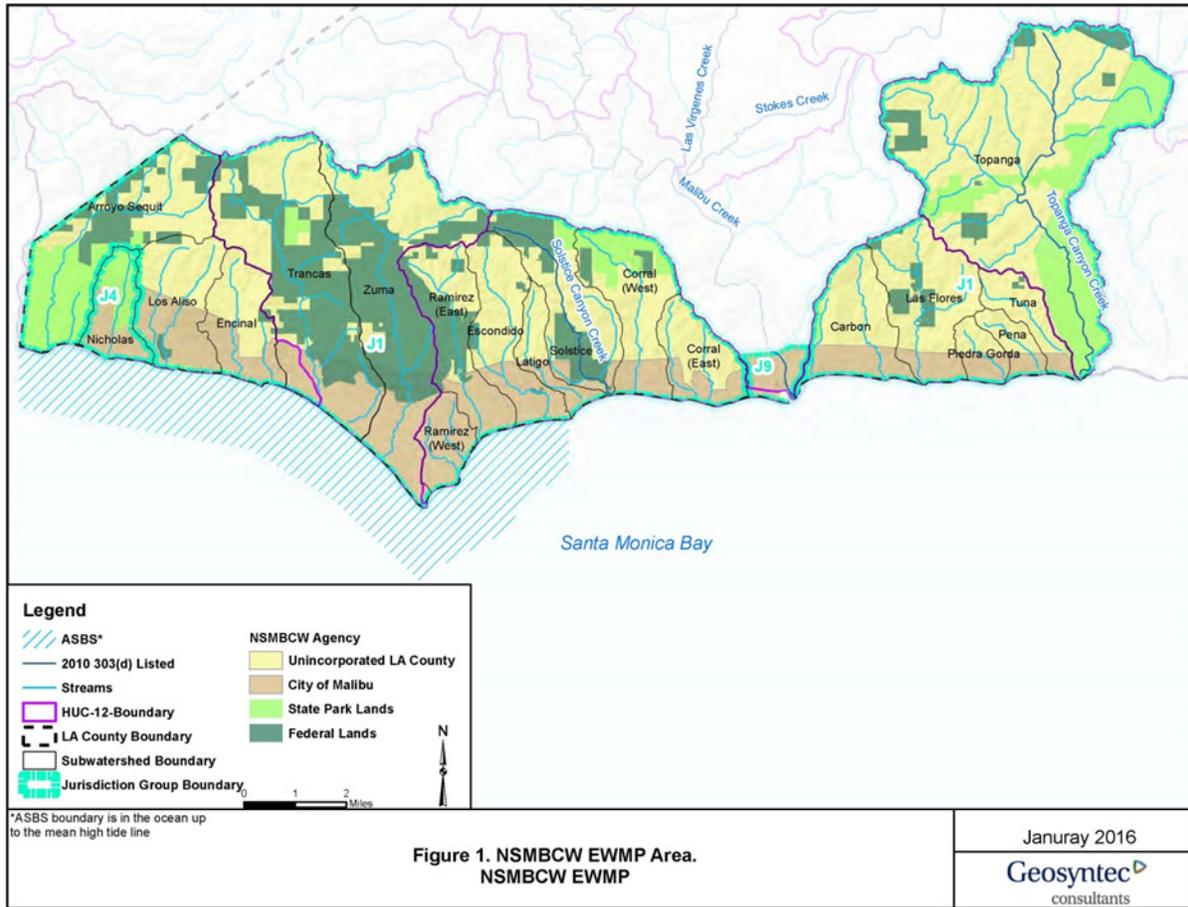
¹ The geographic boundaries of ASBS 24 are defined as the "Ocean water within a line originating from Laguna Point at 34° 5' 40" north, 119° 6' 30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the mean high tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point" (State Water Board Resolution No. 74-28).

² NSMB EWMP, Fig. 1, p. 9. All references to the NSMB EWMP refer to the final EWMP dated March 2016 unless otherwise indicated.

³ *Ibid.*

⁴ See NSMB EWMP, Table 32, p. 143. Within the entire NSMB EWMP area, there are a total of 48 identified outfalls owned, operated/maintained, or monitored by NSMB EWMP agencies.

⁵ Minor modifications to Resolution No. 2012-0012 were made through State Water Board Resolution No. 2012-0031.



B. The Ocean Plan and Its ASBS Special Protections

In 1972, the State Water Board adopted the Ocean Plan (revised in 1978, 1983, 1988, 1990, 1997, 2000, 2005, 2009, 2012, and 2015). The Ocean Plan establishes water quality objectives for California's ocean waters and provides the basis for regulation of wastes discharged into California's coastal waters. It is applicable to both point source discharges, such as MS4 discharges, and non-point source discharges. The Ocean Plan prohibits the discharge of waste to designated ASBSs.

The Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the State Water Board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served. In 2004, the State Water Board notified a number of entities that they must cease the discharge of stormwater and nonpoint source waste into ASBSs or request an exception to the Ocean Plan's Discharge Prohibitions. The State Water Board received 27 applications for an exception to the Ocean Plan prohibition against waste discharges into an ASBS, including from the City of

Malibu, County of Los Angeles, and the Los Angeles County Flood Control District (LACFCD) for MS4 discharges to ASBS 24.⁶

In March 2012, in Resolution No. 2012-0012, the State Water Board adopted a General Exception to the Ocean Plan prohibition against waste discharges to ASBSs for discharges of stormwater and nonpoint source waste by the 27 applicants provided that:

1. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit and/or waste discharge requirements; and
2. The authorization incorporates all of the Special Protections, contained in Attachment B to Resolution No. 2012-0012, which are applicable to the discharge.

The State Water Board found that granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply with the prohibitions and special conditions that comprise the Special Protections. The State Water Board also found that granting the requested exceptions was in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, and maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security).

MS4 discharges from the City of Malibu, County of Los Angeles, and LACFCD are covered under the Los Angeles County MS4 Permit, which incorporates the applicable ASBS Special Protections set forth in State Water Board Resolution No. 2012-0012.⁷

C. ASBS Compliance Plans and ASBS Monitoring Data Evaluation

The ASBS Special Protections require the City of Malibu, County of Los Angeles, and LACFCD to specifically address the prohibition of non-stormwater discharges, and the requirement to maintain natural water quality for stormwater discharges, to an ASBS in an ASBS Compliance Plan to be included in its Storm Water Management Plans (SWMP).⁸ The ASBS Compliance Plan is subject to approval by the Executive Director of the State Water Board or Executive Officer of the Regional Water Board. In the case of the LA County MS4 Permit, for permittees that opt to develop a Watershed Management Program or an EWMP, the permittees' SWMP is their WMP or EWMP.

The City of Malibu, County of Los Angeles, and LACFCD initially submitted a draft ASBS Compliance Plan in September 2014 that assesses stormwater and non-stormwater discharges to ASBS 24 and provides a plan to comply with ASBS standards. The State Water Board provided comments on the draft ASBS Compliance Plan on March 17, 2015. As required by the State Water Board, the County and City submitted a revised ASBS Compliance Plan in September 2015, addressing the State Water Board's comments. The revised ASBS Compliance Plan is currently under review.

⁶ State Water Board Resolution No. 2012-0012, Attachment A.

⁷ Attachment B of the resolution contains the ASBS Special Protections.

⁸ State Water Board Resolution No. 2012-0012, Attachment B, Part I.A.2.

To guide development of the ASBS Compliance Plans as well as future data evaluation, the ASBS Special Protections require dischargers to conduct a water quality assessment to evaluate compliance with the Ocean Plan narrative objective regarding alteration of natural ocean water quality. The assessment has two required elements:

- An evaluation of ocean water quality within the ASBS relative to natural ocean water quality; and
- If ocean water quality in the ASBS is altered compared to natural ocean water quality, an evaluation to determine whether there is a linkage between altered ocean water quality and the quality of MS4 stormwater discharges to the ocean in the vicinity.

Attachment 1 to the ASBS Special Protections, reproduced as **Figure 2** here, provides a flowchart that illustrates this data evaluation and the required regulatory steps based on the outcome. Per this decision framework, pollutant concentrations in post-storm ocean receiving water are compared to those in pre-storm ocean receiving water. They are also compared to the 85th percentile threshold of unimpacted ocean reference site concentrations. When post-storm ocean water concentrations are greater than pre-storm concentrations *and* are greater than the 85th percentile threshold for two or more consecutive storm events, the constituent(s) are classified as causing exceedances of natural ocean water quality.

For these constituents, the MS4 outfall stormwater data for the discharge closest to the ocean receiving water site are then evaluated. If the MS4 outfall data exceed the Instantaneous Maximum Water Quality Objectives in Table 1 Chapter II of the Ocean Plan, then the Permittees must propose best management practices (BMPs) to control their MS4 stormwater discharges to achieve on average the following target levels: (1) Table 1 Instantaneous Maximum Water Quality Objectives or (2) A 90% reduction in pollutant loading during storm events, for the Permittee's total discharges.

The City of Malibu, County of Los Angeles, and LACFCD collected data on ocean receiving water quality and MS4 stormwater discharge quality in 2013 and 2014 to perform the data evaluation described above. Three ocean monitoring sites in ASBS 24 were monitored. Each ocean monitoring site was paired with a MS4 outfall to evaluate whether there was a linkage between ocean water quality and MS4 stormwater discharge quality. The data collection and evaluation conducted by the Permittees is described in detail in Appendix E of the NSMB EWMP and is summarized in Parts III.B and III.C, below.

II. NSMB EWMP DEVELOPMENT, REVIEW, AND APPROVAL PROCESS

The NSMB Coastal Watersheds group, which includes the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District (collectively, Permittees), agreed to collaborate on the development of an EWMP for the North Santa Monica Bay subwatersheds. Pursuant to Part VI.C.4.c of the LA County MS4 Permit, the Permittees submitted a draft NSMB EWMP to the Regional Water Board on June 29, 2015 for review. The NSMB EWMP was extensively reviewed using the same process as for the other 11 EWMPs. In conducting its reviews, Board staff developed a list of review and evaluation questions that was used to ensure a comprehensive and consistent review of all draft EWMPs relative to permit requirements, including the NSMB EWMP. Each EWMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. Lai. Staff was overseen by the MS4 Unit Chief, Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy.

On the basis of Board staff's review, and in consideration of written and oral comments made by interested persons during the public written comment period and first workshop (as described below under "Stakeholder Participation"), the Board provided written comments to the Permittees on the draft NSMB EWMP in October 2015 detailing the Board's comments on the draft EWMP and identifying revisions that needed to be addressed prior to approval of the EWMP. The Permittees were directed to submit a revised draft EWMP addressing the Board's comments by January 2016. The Permittees submitted a revised NSMB EWMP on January 19, 2016.

Per Part VI.C.4.c of the LA County MS4 Permit, the Regional Water Board, or I on behalf of the Board, was scheduled to approve or deny the revised draft NSMB EWMP within three months of its submittal. Part VI.C.4.e specifies that Permittees that do not have an approved EWMP within 40 months of the Permit's effective date (thus, by April 28, 2016) shall be subject to the baseline requirements of Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A and with applicable interim and final water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).

Both before and after submittal of the revised draft NSMB EWMP, Board staff participated in meetings, phone calls, and email exchanges with the Permittees. Between March 2016 and April 19th, 2016 there were three more iterations of the revised NSMB EWMP to address minor remaining issues, along with two more sets of Board staff reviews of the EWMP.

After reviewing the revised draft NSMB EWMP in relation to the Board's written comments, Board staff concluded that the final NSMB EWMP satisfied the requirements of the LA County MS4 Permit. On April 19, 2016, on behalf of the Regional Water Board, I approved the NSMB EWMP pursuant to the LA County MS4 Permit.

A. Stakeholder Participation

Beginning on June 29, 2015, the Regional Water Board provided a 61-day public review and written comment period on the draft NSMB EWMP along with the other EWMPs. During the written comment period, the Regional Water Board held a public workshop at its regularly scheduled Board meeting on July 9, 2015 and provided permittees and interested persons an opportunity to make oral comments on the draft EWMPs submitted to the Board, including the draft NSMB EWMP.

The Petitioners (with Heal the Bay), as well as other interested persons, submitted comments on the draft EWMPs. The Petitioners and Heal the Bay submitted their joint comment letter on August 31, 2015, which included written comments specific to the draft NSMB EWMP. Regional Water Board staff considered the written comments received during its review of the draft NSMB EWMP. Where Board staff agreed with the written comments, those comments were incorporated into the Board's review letter on the draft NSMB EWMP to ensure that the public's comments were addressed in the revised EWMP. The Board's October 2015 review letter included comments related to the incorporation of ASBS requirements into the NSMB EWMP.

The Regional Water Board held a second public workshop on the draft EWMPs during the Board's regularly scheduled meeting on November 5, 2015, where permittees and interested persons were provided an opportunity to make oral comments on the draft EWMPs, including the NSMB EWMP. Board staff also met with Petitioners and Heal the Bay in February and March 2016 regarding the revised EWMPs.

The Regional Water Board held a third and final public workshop on March 3, 2016 for permittees and interested persons to specifically discuss the revised draft EWMPs, including the NSMB EWMP, with Board members (which were invited to attend) and Board staff, including myself. In consideration of the public interest on the EWMPs, Regional Water Board staff prepared responses to the written comments received on the draft EWMPs. For the NSMB EWMP, these responses were made available on May 11, 2016.

III. Responses to Petitioners' Contentions

On May 19, 2016, the Petitioners filed a "Petition for Review of Los Angeles Regional Water Quality Control Board Executive Officer's Action to Approve the North Santa Monica Bay EWMP Pursuant to the L.A. County MS4 Permit"⁹ The Petitioners allege that I improperly approved the NSMB EWMP despite its failure to: 1) "comply with the relevant terms of the MS4 Permit," 2) "comply with the conditions of State Board Resolution No. 2012-0012 ('ASBS Exception')," and 3) "consider relevant, available ASBS stormwater and non-stormwater data and to comply with the ASBS Exception's prohibition against non-stormwater discharges."¹⁰ The Petitioners seek an order by the Regional Water Board to invalidate my April 19, 2016 final approval of the NSMB EWMP, and an order remanding the matter to the Board with instructions for staff to require compliance with Permit requirements.¹¹ While the Petitioners seek an order invalidating my approval of the NSMB EWMP as a whole, the Petitioners only take issue with how the EWMP addresses MS4 discharges to the ASBS portion of the EWMP area.

The Petition raises two specific areas of concern. First, the Petitioners contend that the NSMB EWMP fails to apply the Ocean Plan General Exception standards to stormwater discharges to ASBS 24 and the General Exception's prohibition against non-stormwater discharges. Second, the Petitioners contend that the NSMB EWMP fails to consider, and utilize in the Reasonable Assurance Analysis (RAA), stormwater and non-stormwater data for discharges to ASBS 24 generated by the Permittees. Because of these perceived deficiencies, the Petitioners conclude that my approval of the NSMB EWMP was "an abuse of discretion, inappropriate and improper, not based on substantial evidence, contrary to law, and therefore must be overturned."¹²

The LA County MS4 Permit includes a number of provisions that implement the ASBS Special Protections, including applicable ASBS standards. These provisions include, but are not limited to:

- Part III.A "Prohibitions – Non-Storm Water Discharges," including Part III.A.3, pertaining to non-stormwater discharges to ASBS 24 specifically;

⁹ The Petition was filed pursuant to Part VI.A.6 of the LA County MS4 Permit. The petition indicates that it also serves as a petition to the State Water Board pursuant to Water Code section 13320. The State Water Board may choose to conduct separate proceedings on the petition pursuant to Water Code section 13320.

¹⁰ Petition for Review, pp. 2-3.

¹¹ Should the Regional Water Board deny Petitioners' request, Petitioners seek "an order by the State Board to invalidate the Regional Board Executive Officer's April 19, 2016 final approval of the NSMB EWMP, any approval by the Regional Board thereof, and an order remanding the matter to the Regional Board with instructions for staff to require compliance with Permit requirements" (Memorandum of Points and Authorities in Support of Petition for Review [Mem. P. & A.], p. 16).

¹² Mem. P. & A., p. 2.

- Part V.A “Receiving Water Limitations;”
- Part VI.C “Watershed Management Program Provisions;” and
- Part VI.E “Total Maximum Daily Load Provisions,” including Part VI.E.5.a.ii-iii “Water Quality-Based Effluent Limitations for Trash.”

The NSMB EWMP implements the requirements of the LA County MS4 Permit and includes, as part of the overall program, the revised “Area of Special Biological Significance 24 Compliance Plan For The County of Los Angeles and City of Malibu,” dated September 20, 2015.¹³ The ASBS Compliance Plan includes an evaluation of available ASBS stormwater and non-stormwater data for ASBS 24.

To aid the Regional Water Board in understanding my rationale for approving the NSMB EWMP on behalf of the Board, detailed responses to the specific contentions raised in Section III (Argument) of the Petitioners’ Memorandum of Points and Authorities in Support of Petition for Review (Mem. P. & A.) are provided below.

A. Response to Petitioners’ Contention that the NSMB EWMP and RAA Fail to Utilize Applicable ASBS Stormwater Standards

The EWMP utilizes appropriate standards for stormwater from the Ocean Plan. The Receiving Water Limitations contained in Part V.A of the LA County MS4 Permit include the numeric objectives in Table 1 of the Ocean Plan and the Ocean Plan narrative objective that there shall be no alteration of natural ocean water quality in an ASBS due to a discharge.¹⁴ These ASBS stormwater standards are identified and utilized in the data assessments for the ASBS presented in Attachment E of the NSMB EWMP.¹⁵ Further, Part VI.E.5.a of the LA County MS4 Permit, along with Attachment M Part B.2, implements the ASBS Special Protections provision prohibiting the discharge of trash.¹⁶ The application of these standards in the RAA is discussed in Part III.C, below.

B. Response to Petitioners’ Contention that the NSMB EWMP Fails to Consider Relevant, Available ASBS Stormwater Data

For their contention that the EWMP fails to consider relevant available ASBS stormwater data, Petitioners largely rely on a single sentence in the NSMB EWMP that “no MS4 discharge monitoring data were available at the time of this assessment.”¹⁷ The sentence referenced by

¹³ NSMB EWMP, Appendix E.

¹⁴ Per Attachment A of the LA County MS4 Permit, “Receiving Water Limitation” means “[a]ny applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.”

¹⁵ See NSMB EWMP, Appendix E, Tables ES-1-1, 4-1, 4-2, 4-3, 4-4, 5-1, 5-2, 5-3, 5-4, and 5-5 as well as Section 4.2, p. 69.

¹⁶ See Ocean Plan, Attachment B, Part I.A.1.b-c.

¹⁷ NSMB EWMP, p. 43.

the Petitioners is included in Part 2.1.3 “MS4 Discharge Quality” of the NSMB EWMP’s Water Quality Characterization, which states:

Stormwater and non-stormwater discharges have not yet been characterized within the NSMBCW EWMP Area. *No MS4 discharge monitoring data were available at the time of this assessment*, but discharge characterization will occur as part of the implementation of the CIMP (NSMBCW EWMP Group, 2014d). Since outfall monitoring data from the CIMP were not available at the time of EWMP development, information from regional MS4 land use studies (e.g., Los Angeles County, 2000) and/or TMDL technical reports were used in Section 2.2 for the water body-pollutant prioritization.

(NSMB EWMP, p. 43) (emphasis added).

The Petitioners state that the “express language of the NSMB EWMP itself that *no* stormwater or receiving water data for ASBS 24 were considered in the EWMP assessment directly contradicts” Regional Water Board staff’s statement in response to comments that appropriate data were reviewed and considered.

First, a plain reading of the sentence, and in the context of the section in which it is included, does not indicate that “no stormwater or receiving water data for ASBS 24 were considered in the EWMP assessment.” This section only addresses MS4 outfall monitoring data, not receiving water data, which are addressed in Section 2.1.2.¹⁸ Neither is this section specific to ASBS 24 MS4 discharge data, but rather the EWMP area as a whole. Regional Water Board staff has interpreted this as recognition that there are limited MS4 outfall monitoring data for the EWMP area, since outfall monitoring was not previously required for the non-ASBS area of the EWMP. For the ASBS area, recent data on MS4 discharges are limited to only three to four snapshot events in 2013-2014 at only three locations.

Second, the relevant available ASBS stormwater data that the Petitioners assert were not considered are included and evaluated in Appendix E of the NSMB EWMP, which is part of the EWMP. Appendix E is the revised ASBS Compliance Plan that the Permittees prepared pursuant to the ASBS Special Protections in the Ocean Plan. It includes an evaluation of MS4 stormwater discharge data as well as ocean receiving water data for ASBS 24 as compared to ASBS standards.¹⁹

C. Response to Petitioners’ Contention that the RAA Fails to Consider Relevant, Available ASBS Stormwater Data

The Petitioners take issue with the use of generalized land use data to conduct the RAA, and suggest that the RAA should have used the ASBS data described above. The ASBS stormwater data were not used in the RAA for two reasons.

¹⁸ Section 2.1.2 “Receiving Water Quality” lists Bight ‘08 data among the monitoring data reviewed and analyzed to characterize receiving water quality within the EWMP area. The Bight ‘08 monitoring program included sites in ASBS 24. See NSMB EWMP, pp. 36-43.

¹⁹ See NSMB EWMP, Appendix E, Tables ES-1-1, 4-1, 4-2, 4-3, 4-4, 5-1, 5-2, 5-3, 5-4, and 5-5 as well as Section 4.2, p. 69.

First, the ASBS stormwater data collected were not sufficient in terms of the number of sites or sampling events for calibrating or validating the SBPAT²⁰ model used in the RAA. The use of the generalized land use pollutant loading data is consistent with the RAA requirement in Part VI.C.5.b.iv.(5) of the LA County MS4 Permit: “The RAA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis.”²¹ In the future, however, MS4 discharge data along with receiving water data collected under the NSMB EWMP Coordinated Integrated Monitoring Program (CIMP) may be used to help with model re-calibration, if necessary.

Second, even if the data were usable in the model for the RAA, it was not necessary to include the data in the model. Part VI.C.5.a.ii of the LA County MS4 Permit specifies the water body-pollutant categories that must be addressed in the RAA. These categories include: (1) water body-pollutant combinations addressed in a TMDL; (2) water body-pollutant combinations listed on the Clean Water Act section 303(d) list; and (3) pollutants which exceed applicable receiving water limitations *and for which MS4 discharges may be causing or contributing to the exceedance*. The category that the Petitioners focus on is category 3. The Permittees did not identify any category 3 pollutants to include in the RAA based on the ASBS data analysis in Appendix E of the NSMB EWMP (i.e., the ASBS Compliance Plan). This is because the 2013-2014 ASBS stormwater data were not found to correlate with the paired ocean receiving water data using the flowchart in **Figure 2**; therefore, MS4 discharges were not found to be contributing to receiving water limitation exceedances in ASBS 24. A summary of this analysis is provided below.

Post-storm ocean receiving water samples from the ASBS indicated an alteration of natural ocean water quality due to selenium, mercury, and polycyclic aromatic hydrocarbons (PAHs). Based on these results, the Petitioners conclude that the Permittees’ MS4 stormwater discharges are the cause of the alteration of natural ocean water quality for these pollutants. However, an evaluation of the paired outfall (“core discharge”) data relative to the applicable Ocean Plan limits in Table 1 found that the Permittees’ MS4 discharges *were not* causing the altered ocean water quality for these pollutants.²² The ASBS Compliance Plan concludes, “[t]he results of the comparison indicate the discharges to the ASBS from point sources (outfalls) are currently achieving, and significantly below, the target levels.”²³

Additionally, while MS4 outfall samples collected by the Permittees demonstrated exceedances of Ocean Plan limits for ammonia, cadmium, chromium, copper, lead, nickel, and zinc,

²⁰ SBPAT means “Structural BMP Prioritization and Analysis Tool.” The SBPAT is one of the models that is identified in the LA County MS4 Permit for the RAA (see Part VI.C.5.b.iv.(5)).

²¹ Much of the data collected in ASBS 24 in support of the Ocean Plan General Exception, which was presented in the Ocean Plan General Exception Program Environmental Impact Report (PEIR) (referred to by Petitioners as the “ASBS Exception EIS”), is older than 10 years (collected in spring 2004 and spring 2006) and was updated by the sampling effort in 2013-2014 for the ASBS Compliance Plan development.

²² See NSMB EWMP, Appendix E, Section 5.0. The EWMP applies the Ocean Plan Table 1 standards in a comparison to MS4 outfall data in Table 5-5 as well as Tables ES-1, 5-1, 5-2, 5-3 and 5-4 of Appendix E. Table 1 does not include instantaneous maximum limits for PAHs; therefore, no comparison is included for PAHs.

²³ NSMB EWMP, Appendix E, p. 81.

monitoring results for the receiving water *did not show alteration of natural ocean water quality* for these pollutants.²⁴

Therefore, no linkage was shown between the MS4 stormwater data and the ocean receiving water quality data collected in 2013-2014 pursuant to the ASBS Special Protections. The pollutants identified as altering natural ocean water quality were not observed in the MS4 stormwater discharge at levels exceeding the Ocean Plan standards; and those pollutants identified as elevated in MS4 stormwater discharges were not observed at levels or a frequency in the receiving water that was deemed as altering natural ocean water quality. Given the outcome of the data evaluation per the ASBS Special Protections flowchart, it was not necessary for the NSMB EWMP's RAA to include these pollutants.

That notwithstanding, the RAA approach is designed to address multiple pollutants. The RAA evaluates the simulated existing load for the priority (or controlling) pollutant for each modeled NSMB subwatershed, then compares this value to the allowable load for the same pollutant.²⁵ The controlling pollutant for most subwatersheds in the NSMB EWMP area is bacteria. The difference between the simulated existing load and the calculated allowable load is the amount of load that needs to be reduced within the modeled subwatershed to reach compliance. The RAA then identifies and evaluates BMP implementation scenarios within the NSMB EWMP area to meet the allowable load. As described in the EWMP, these BMP implementation scenarios maximize stormwater retention and, as a result, are expected to effectively address other pollutants, such as PAHs and metals, which may be elevated in MS4 discharges to ASBS 24.²⁶

Additionally, per the decision framework of the ASBS Special Protections, shown in **Figure 2**, the Permittees are not required to implement additional non-structural and structural controls to address stormwater discharges to the ASBS. Therefore, the outcome of the data consideration in Appendix E of the NSMB EWMP did not require the Permittees to propose additional or different BMPs in the EWMP to protect ASBS 24.

D. Response to Petitioners' Contention that the NSMB EWMP and RAA Fail to Utilize Applicable ASBS Non-Stormwater Standards

The NSMB EWMP also incorporates applicable ASBS non-stormwater standards – namely, the prohibition on non-stormwater discharges to the ASBS. The EWMP implements without modification the prohibition on non-stormwater discharges to the ASBS consistent with the Ocean Plan General Exception and as required by the LA County MS4 Permit. Section 4.1.1 of the EWMP, Non-stormwater Discharge Screening, recognizes this requirement to eliminate 100 percent of non-exempt non-stormwater discharges through the MS4.²⁷ In Section 5.3.2, Reasonable Assurance Analysis – Dry Weather, the Permittees commit to compliance with the

²⁴ See NSMB EWMP, Appendix E, Tables 4-1 to 4-4, pp. 65-70.

²⁵ The concept of a controlling pollutant means the one that requires the most aggressive controls in comparison with other pollutants.

²⁶ See NSMB EWMP, Section 5.1.1.1, p. 97.

²⁷ The Permittees also recognized and stated their commitment to meet this requirement in their EWMP Work Plan, stating “[i]n the ASBS-portion of the NSMBCW EWMP Area and in accordance with the [Ocean Plan] General Exception, non-authorized dry weather discharges have effectively been stopped and responsible agencies will continue to take necessary actions to prevent dry weather discharges” (NSMB EWMP, Appendix B, p. 64).

MS4 Permit's requirement to eliminate 100 percent of non-exempt non-stormwater discharges from the MS4.²⁸

This commitment is consistent with the non-stormwater discharge prohibition in Attachment B Section I.A.1.e of the Ocean Plan General Exception. This prohibition on non-stormwater discharges to the ASBS is also a provision of the LA County MS4 Permit. Parts III.A.1 and III.A.3 impose a prohibition on non-stormwater discharges to ASBS that is the same as the Ocean Plan General Exception. The Ocean Plan General Exception allows six categories of non-stormwater discharges; these same categories are identified in Part III.A.3, Conditional Exemptions from Non-Storm Water Discharge Prohibition within an ASBS, of the Permit. This part of the Permit clearly states, “[c]onditionally exempt non-storm water discharges shall not cause or contribute to an exceedance of applicable receiving water limitations and/or water quality based effluent limitations in this Order or the water quality objectives in Chapter II of the Ocean Plan, or alter natural ocean water quality in an ASBS”.²⁹ This provision regulates the water quality of conditionally exempt non-stormwater discharges from the MS4 to the ASBS. The Permit does not allow customization of the requirements of Part III.A pertaining to the non-stormwater discharge prohibition through a WMP or EWMP. As such, regardless of whether Permittees are implementing a WMP or EWMP, the Permittees must implement these provisions as set forth in the Permit without modification. As stated above, the Permittees have committed to do so in the NSMB EWMP.

The EWMP proposes a program to eliminate all non-stormwater discharges through the MS4 that consists of series of steps that include non-stormwater outfall based screening, source identification, monitoring, and abatement/elimination. These steps are outlined in Table 11 and shown in Figure 6 of the EWMP and are also described in more detail in Section 4 of the CIMP for the North Santa Monica Bay Coastal Watershed EWMP Group.³⁰ These steps implement the requirements of the LA County MS4 Permit as well as the Ocean Plan General Exception to prohibit non-stormwater discharges to the ASBS.³¹

1. Consistency of the NSMB EWMP Dry Weather RAA with ASBS Non-Stormwater Standards

The Petitioners appear to misunderstand the purpose of the dry weather RAA that is presented in Sections 4.1 and 5.3.2 of the EWMP. The Petitioners state that the semi-quantitative conceptual model used in the dry weather RAA “establishes compliance” with the Permit’s non-stormwater discharge prohibition. This is not an accurate assessment as explained below.

²⁸ See NSMB EWMP, pp. 140-145. The Petitioners question the Permittees’ commitment, through this process, to work toward eliminating, diverting or treating significant non-stormwater discharges that are unauthorized and determined to be causing or contributing to receiving water limitation or water quality based effluent limitation exceedances, perhaps taking issue with the Permittees’ statement that they will “*strive* to eliminate, divert or treat significant non-stormwater discharges” (emphasis added). Regional Water Board staff interprets this not as a lack of commitment, but rather an honest acknowledgement of the on-going challenge of controlling all non-stormwater discharges.

²⁹ See LA County MS4 Permit, Part III.A.3.c.

³⁰ See NSMB EWMP, pp. 66-67.

³¹ Relevant provisions of the Los Angeles County MS4 Permit related to these steps include Part III.A.4.c.-d. pertaining to monitoring and abatement of non-stormwater discharges; Part VI.C.5.b.iv.(2) “Non-Storm Water Discharge Measures;” Parts VI.D.4 and VI.D.10 pertaining to the Permittees’ Illicit Connection/Illicit Discharge Elimination Programs; and Attachment E Part IX “Non-Storm Water Outfall Based Screening and Monitoring.”

First, the RAA required by the LA County MS4 Permit was not intended to evaluate the Permittees' planned actions to eliminate all non-exempt, non-stormwater discharges pursuant to the non-stormwater discharge prohibition in Part III.A.1 of the Permit. The models identified in the Permit for use in a RAA are designed to quantitatively evaluate pollutant load reductions – particularly for stormwater discharges – to provide reasonable assurance that the load reductions will achieve the numeric water quality-based effluent limitations and receiving water limitations. The RAA was not intended to evaluate elimination of all non-stormwater discharges, as demonstrated by a reading of Part VI.C.5.b.iv.(5)(a)-(c) of the LA County MS4 Permit:

The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.

- (a) Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve *applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R* with compliance deadlines during the permit term.
- (b) Where the TMDL Provisions in *Part VI.E and Attachments L through R* do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.
- (c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve *applicable receiving water limitations* as soon as possible.

(Emphasis added).

Second, the purpose of the “four part test” used in the dry weather RAA methodology was not to “establish compliance” as the Petitioners contend, but rather to provide lines of evidence to demonstrate reasonable assurance that MS4 non-stormwater discharges did not appear to be causing or contributing to dry weather receiving water exceedances. The dry weather RAA does not “allow additional exceedances [of the Santa Monica Bay Beaches Bacteria TMDL] to be deemed acceptable” as suggested by the Petitioners.³² The EWMP specifically acknowledges that the dry weather compliance deadlines for the Santa Monica Bay Beaches Bacteria TMDL have passed, and states that the analysis is not intended to support or justify a new compliance schedule.³³

³² See Mem. P. & A., p. 16.

³³ See NSMB EWMP, Section 5.3.2, p. 140.

The Petitioners also seem to contend that the screening criteria in the dry weather RAA are inconsistent with the non-stormwater discharge prohibition. However, criteria 1, 2 and 4 of the “four part test” require documentation of non-existence of MS4 outfalls or elimination of non-stormwater discharges from MS4 outfalls. Criterion 3 requires a demonstration that there have been no exceedances of summer and winter dry weather bacteria limitations per the Santa Monica Bay Beaches Bacteria TMDL permit provisions. Given the stringent requirements of this TMDL, bacteria is considered a controlling pollutant for both stormwater and non-stormwater MS4 discharges for the NSMB EWMP area.³⁴ Additionally, there is a rich shoreline monitoring dataset for bacteria. For these reasons, bacteriological water quality conditions are appropriately used as a criterion in the dry weather RAA.

Finally, notwithstanding the results of this “four part test,” the NSMB EWMP along with its companion CIMP lays out a detailed non-stormwater screening process (as described above), and states that the NSMB EWMP Group’s non-stormwater screening process plays an important role in an on-going demonstration of reasonable assurance of compliance for non-stormwater discharges from the MS4. The EWMP also includes a plan to reevaluate the dry weather RAA with updated data biennially per the adaptive management process where there are any MS4 outfalls (major and minor).³⁵

E. Response to Petitioners’ Claim that the NSMB EWMP and RAA Fail to Consider ASBS Non-Stormwater Data

Many of the Petitioners’ contentions in Part II.B.4.b of the Petition focus on the Draft ASBS Compliance Plan and do not consider the additional inspections of outfalls for non-stormwater discharges presented in the NSMB EWMP. In their discussion, the Petitioners mischaracterize the extent and outcome of the outfall inspections conducted in 2012 and 2013. To clarify, according to the September 2015 revised ASBS Compliance Plan, the Permittees inspected 31 outfalls (not 13 as indicated by the Petitioners) over a two-year period covering eight months. During this period, the Permittees observed non-stormwater discharges on 73 out of 251 occasions. During the 2012 inspections, most of which were prior to the adoption of the ASBS Special Protections in March 2012, there were 59 observations of non-stormwater discharges, 16 of which were unauthorized (i.e., over-irrigation, “sudsy water”). During the 2013 inspections, there were 14 observations of non-stormwater discharges, 3 of which were unauthorized (i.e., over-irrigation, construction site discharge). While there were repeated incidences of undetermined or unauthorized non-stormwater discharges in 2012 at ASBS-001, ASBS-002, and ASBS-004, according to the 2013 inspections, these discharges have either ceased, or have been significantly reduced. In conclusion, of the 251 outfall inspections, unauthorized or undetermined non-stormwater discharges were identified in approximately 10% of inspections.³⁶

The Petitioners express concerns about non-stormwater discharges identified as “hillside dewatering” or “natural stream” flows in the ASBS Compliance Plan, and suggest that additional data are required to support these characterizations. However, there is no requirement in the ASBS Special Protections for Permittees to provide additional data beyond what has already

³⁴ As previously explained, the concept of a controlling pollutant means the one that requires the most aggressive controls in comparison with other pollutants.

³⁵ See NSMB EWMP, Section 5.3.1, p. 137.

³⁶ See NSMB EWMP, Appendix E, Section 3.2.4 and Tables 3-3 and 3-4, pp. 50-53.

been included for the non-stormwater discharge inspections in the ASBS Compliance Plan. They further suggest that Permittees must indicate whether the discharges are permitted or unpermitted. However, this is not necessary, since hillside dewatering and natural stream flows are among the allowed non-stormwater discharges in the ASBS Special Protections and in the LA County MS4 Permit.³⁷

The Petitioners also allege that the draft ASBS Compliance Plan “distinguishes, without basis, between discharges that land on the beach in ASBS 24, and those that flow to the surf line” and state that the draft ASBS Compliance Plan does not adequately address “the numerous dry weather flows that the plan reports as not reaching the ‘surf’.”³⁸ However, as stated above, of the 251 inspections, in only approximately 10% were there observations of unauthorized or undetermined non-stormwater discharges. The remaining non-stormwater discharges that were observed were from sources that are allowed, as described above. For unauthorized and undetermined non-stormwater discharges, the ASBS Compliance Plan outlines a suite of measures that include focused outreach, inspections, and enforcement -- not just outreach as suggested by the Petitioners. Regardless, the Permittees commit to ensuring that discharges of non-authorized, non-stormwater do not occur, whether they reach the surf or not.³⁹

Next, the Petitioners incorrectly state that the RAA for dry weather discharges considers no data. Five years of shoreline bacteria monitoring data were considered in the evaluation presented in Table 31 of the EWMP.⁴⁰ As noted above, there is a rich shoreline monitoring dataset for bacteria. For these reasons, bacteriological water quality conditions are appropriately used in the dry weather RAA.

Lastly, Petitioners take issue with the draft ASBS Compliance Plan for not proposing or reporting additional inspections or monitoring of non-stormwater discharges, while simultaneously taking issue with the EWMP for proposing to repeat the process conducted pursuant to the Ocean Plan General Exception. Additional outfall inspections, and commitments for future inspections and monitoring, are included in the NSMB EWMP. The EWMP actually contains more up-to-date non-stormwater outfall screening data than the ASBS Compliance Plan. These data are from 2014-2015, while the ASBS Compliance Plan non-stormwater discharge inspection data are from 2012-2013. In Table 31 and Appendix F, the EWMP presents the results of additional inspections for non-stormwater discharges for major MS4 outfalls, which were conducted on August 19, October 21, 29, 30, and November 12, 2014, and for minor MS4 outfalls on April 13, 2014, May 19, 2015, and June 19, 2015. As to future commitments, the EWMP and its companion CIMP include a detailed non-stormwater outfall based screening, monitoring, and abatement program.

With regard to concerns about repeating the outfall screening process, continual screening of MS4 outfalls is appropriate due to the highly variable nature of non-stormwater discharges. The Petitioners also misread the EWMP schedule, stating that initial screening of outfalls for non-stormwater discharges will not be complete until December 2017. Actually, source identifications will be completed for 50% of outfalls with significant non-stormwater discharges

³⁷ See LA County MS4 Permit, Part III.A.3.a, p. 30 and State Water Board Resolution No. 2012-0012, Attachment B, Part I.A.1.e.(2), p. 2.

³⁸ Mem. P. & A., p. 8.

³⁹ See NSMB EWMP, Appendix E, Section 3.2.4.2, p. 50.

⁴⁰ See NSMB EWMP, Table 31, p. 141.

by December 28, 2016, and for 100% of outfalls by December 28, 2017.⁴¹ The timing of monitoring and abatement actions related to non-stormwater discharges is consistent with the requirements in the LA County MS4 Permit. Petitioners also express concerns about a delay in implementation. However, many of the measures identified in Appendices B and D of the EWMP address non-stormwater discharges. These measures are currently being implemented, and will continue to be; therefore, there will not be a two-year delay.

In addition, Section 3.0 Dry Weather Compliance of the 2015 ASBS Compliance Plan outlines the measures the Permittees are currently taking to eliminate non-authorized, non-stormwater discharges, how these measures will be maintained over time, and how these measures are monitored and documented.⁴² This was required by the ASBS Special Protections.

F. Response to Petitioners' Concerns Regarding the Status of Revised ASBS Compliance Plan Relative to NSMB EWMP

Regarding the status of the ASBS Compliance Plan itself, as discussed in Part I.C., above, the County of Los Angeles, LACFCD, and City of Malibu submitted a revised ASBS Compliance Plan in September 2015, addressing the State Water Board's comments. Specifically, in response to the State Water Board's concerns regarding ASBS-required sampling, and measures to prevent alteration of natural ocean water quality, or to prevent non-stormwater discharges, the Permittees revised the ASBS Compliance Plan to include additional sampling, monitoring, and reporting of non-stormwater discharges.⁴³ For ocean receiving water monitoring, the ASBS Compliance Plan was revised to include data and discussions resulting from additional sampling at three sites (24-BB-03R, 24-BB-03Z, and 24-BB-02Z) during a December 1, 2014 storm event. Based on these results, and in accordance with the ASBS Exception, there were no exceedances of natural water quality.⁴⁴ Furthermore, the revised ASBS Compliance Plan includes additional future sampling, including sites ASBS-S02 and ASBS-028 for one additional event, and site 24-BB-3-03R and its associated outfall 24-BB-03Z until three sampling events are completed. Results from the additional sampling will be reported in accordance with ASBS Special Protections Section I.A.2.h.

This revised ASBS Compliance Plan is the version that is incorporated into the NSMB EWMP. There is no requirement in the Ocean Plan's ASBS Special Protections that the ASBS Compliance Plan is approved prior to its inclusion in the EWMP. Given the deadlines for submitting the draft EWMP and the revised EWMP, and for receiving approval of the EWMP, it was not possible to align the timing of review and approval of the revised ASBS Compliance Plan with the review and approval timeline for the EWMP. State Water Board staff and Regional Water Board staff have agreed to review the revised ASBS Compliance Plan collaboratively. If, after a final review of the revised ASBS Compliance Plan, there are any inconsistencies between the ASBS Compliance Plan and EWMP, I will require the NSMB EWMP Group to update its EWMP through the adaptive management process to ensure consistency with the ASBS Compliance Plan. For example, Part VI.C.8.a.i.(4) of the LA County MS4 Permit requires that Permittees reevaluate water quality priorities based on more recent water quality data for

⁴¹ See NSMB EWMP, Section 4.1.3, p. 68.

⁴² See NSMB EWMP, Appendix E, p. 38.

⁴³ See NSMB EWMP, Appendix E, Section 3.0, pp. 38-39.

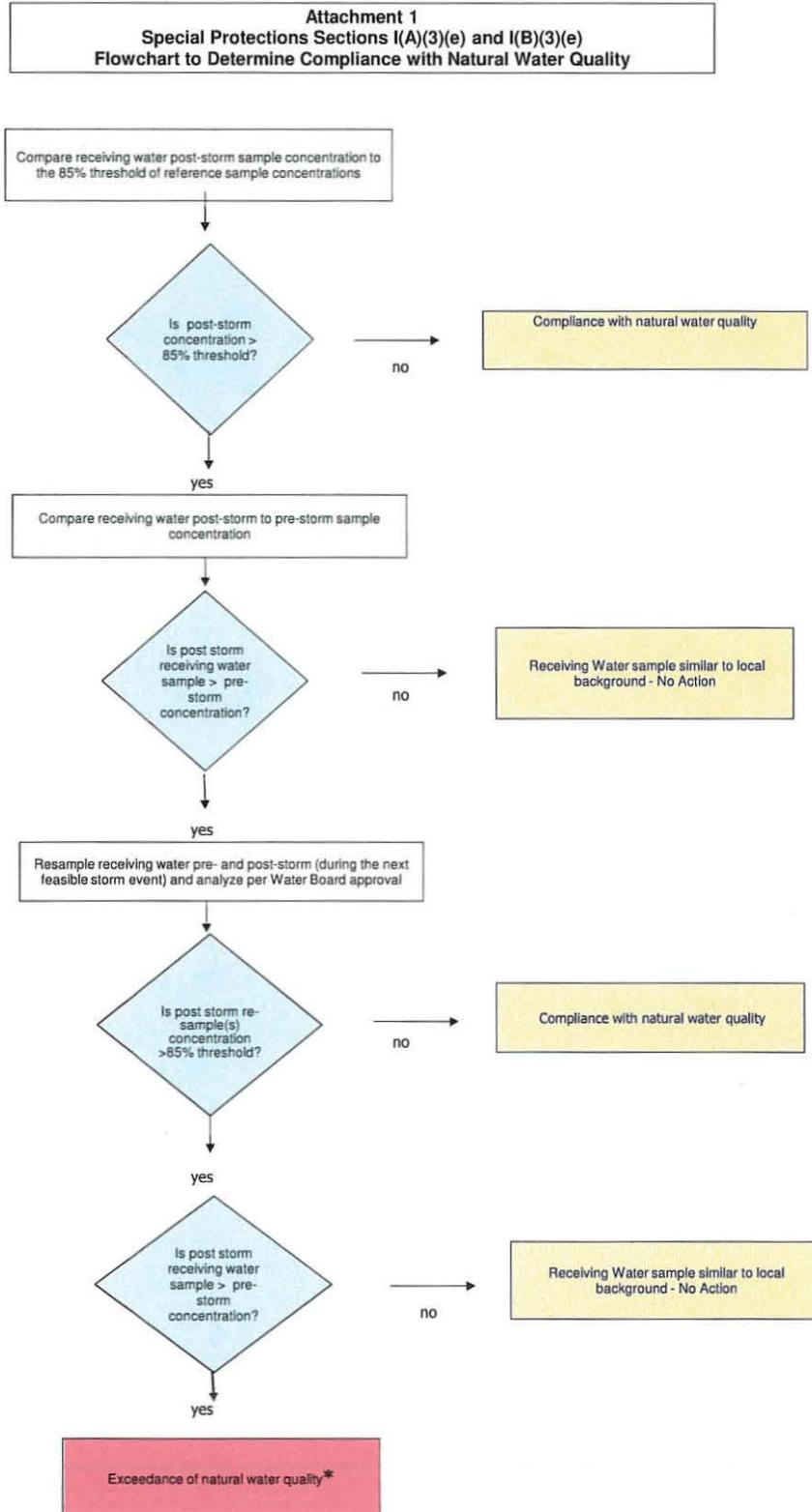
⁴⁴ See NSMB EWMP, Appendix E, Section 4.1.4, p. 69.

MS4 discharges and for the receiving water and reassess sources of pollutants in MS4 discharges, while Part VI.C.8.b.i requires that Permittees must submit an updated EWMP with an updated RAA by June 30, 2021. As such, updates to the NSMB EWMP may include, but are not limited to, incorporation of additional category 3 pollutants based on an evaluation of data from the ASBS monitoring efforts relative to applicable water quality objectives, an update to the RAA to address any such pollutants, and commitments to implement additional structural and/or non-structural BMPs to address the additional pollutants, if necessary.

IV. Conclusion

In conclusion, the NSMB EWMP applies the proper standards from the Ocean Plan's ASBS Special Protections, including the prohibition on non-stormwater discharges; appropriately considers and utilizes available ASBS stormwater and non-stormwater data; and demonstrates reasonable assurance that implementation of the EWMP will meet all applicable standards. As such, in approving the NSMB EWMP on behalf of the Regional Water Board, I determined that the EWMP meets the requirements of the LA County MS4 Permit and the Ocean Plan's ASBS Special Protections provisions for discharges of stormwater and non-stormwater to ASBS 24.

Figure 2



* When an exceedance of natural water quality occurs, the discharger must comply with section I.A.2.h (for permitted storm water) or section I.B.2.c (for nonpoint sources). Note, when sampling data is available, end-of-pipe effluent concentrations will be considered by the Water Boards in making this determination.