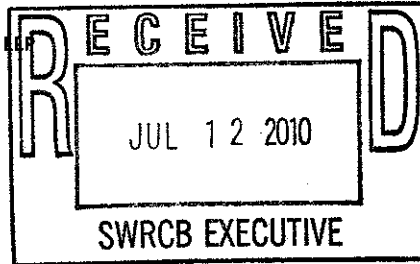


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July 12, 2010

VIA EMAIL AND FAX DELIVERY

Chair Charles R. Hoppin and the Members of the State Water
Resources Control Board
C/O Jeanine Townsend
Clerk to the Board
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

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Re: **Comments on the State Water Resources Control Board's Consideration of a Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu Civic Center Area**

Dear Chair Hoppin and Board Members:

I am submitting comments on behalf my client Malibu Realty, LLC ("Malibu Realty"), which owns residential property in the Malibu Civic Center area. My client's property is potentially affected by the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (the "Basin Plan"), adopted by the California Regional Water Quality Control Board, Los Angeles Region (the "LARWQCB") on November 5, 2010 (the "Proposed Amendment"). If approved by the State Water Resources Control Board ("SWRCB") as adopted, the Proposed Amendment would prohibit "new" subsurface discharges from on-site wastewater disposal systems ("OWDSs") in the Civic Center area of the City of Malibu. All wastewater discharges in Civic Center commercial areas and residential areas from "existing" OWDSs would be prohibited on November 5, 2015 and November 5, 2019, respectively.

The SWRCB is accepting comments on the Proposed Amendment as adopted by the LARWQCB at its regular board meeting on November 5, 2009. On October 8, 2010, on behalf of Malibu Realty, we submitted written comments to the LARWQCB regarding the Proposed Amendment. Those comments are attached hereto. Though we believe that the LARWQCB staff failed to respond to or inadequately responded to a number of our written comments, for reasons set forth in this letter, we also believe that the LARWQCB corrected the most critical deficiency in the version of the Proposed Amendment adopted on November 5, 2009. For this reason, we will only comment on a single issue in the body of this letter.

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Malibu Realty Public Comments at the RWQCB's Consideration of the Proposed Amendment

On November 5, 2009, the LARWQCB considered for adoption the LARWQCB staff's proposed amendment to the Basin Plan. Malibu Realty, in the public comment period, requested that the RWQCB clarify staff's proposed amendment to permit future discharge from OWDSs in the "permitting pipeline." Without the requested clarification, Malibu Realty was concerned that staff's proposed amendment would force property owners to consider abandoning their redevelopment efforts, unacceptably diminish property owners' significant investment of time and resources, impact the health of neighborhoods, increase the risk of blight, and increase the need to truck generated wastewater offsite. At the November 5, 2009 meeting, the LARWQCB appropriately revised staff's proposed amendment to deem certain projects that had already progressed through the entitlement process to be existing OWDSs. The LARWQCB listed these existing projects in Basin Plan Table 4-zz, which is included in the Proposed Amendment being considered by the SWRCB. By including these specific residential projects, the Proposed Amendment, as drafted, ensures fairness, reflects good governance, and is supportive of the SWRCB's and LARWQCB's water quality objectives.

Comments on SWRCB Consideration of the Proposed Amendment

Should the SWRCB approve the Proposed Amendment adopted by the Regional Board on November 5, 2009, we respectfully request that the SWRCB's approval recognize the LARWQCB's sound decision with respect to existing residential development projects and that such SWRCB approval maintain the list of "deemed existing" dischargers identified in Basin Plan Table 4-zz. The characterization of those residential properties in Table 4-zz as existing dischargers is supported by substantial evidence demonstrating that discharge from those properties would not be expected to have any adverse impacts on groundwater quality in the Civic Center area.

We appreciate the opportunity to submit these comments for the SWRCB's consideration. We respectfully request that all of our public comments, including those herein and those previously filed with the LARWQCB, be given appropriate consideration, be placed in the administrative record for this rulemaking, and be maintained in the agency's records. We also ask that our previous written comments that were either not addressed and inadequately addressed by the LARWQCB staff be incorporated into this comment letter by reference.

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Should you have any questions or wish to discuss our comments and proposals, please feel free to contact me at 213-891-8332.

Respectfully submitted,



Gene A. Lucero
of LATHAM & WATKINS LLP

Attachment: Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu Civic Center Area submitted October 8, 2009 to Dr. Rebecca Chou, LARWQCB

HAND DELIVERED

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2009 OCT 13 PM 1:04

October 8, 2009

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VIA EMAIL AND HAND DELIVERY

Dr. Rebecca Chou
Chief Groundwater Permitting Unit
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu Civic Center Area

Dear Dr. Chou:

We are submitting comments on behalf of a number of business and residential property owners potentially affected by the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (the "Basin Plan") to prohibit subsurface discharges from on-site wastewater disposal systems ("OWDSs") in the Civic Center area of the City of Malibu (the "Proposed Prohibition"), which is under consideration by the California Regional Water Quality Control Board, Los Angeles Region (the "RWQCB"). Our comments also refer to, and incorporate by reference, a series of reports which have been submitted separately to the RWQCB as comments. Most importantly, based on our concerns, we have also attached for Staff's and the Board's consideration a set of proposed changes to the text of the proposed amendment which would address the concerns we discuss below.

The parties on whose behalf we submit these comments share the RWQCB's vision of clean water as they live, work, and play in the City of Malibu and enjoy the natural beauty that is the Santa Monica Bay. However, as drafted, the Proposed Prohibition raises many questions and will very likely have far-reaching, unintended, and potentially adverse environmental and economic consequences for the Malibu Civic Center area and its receiving waters. At a minimum, many of the impacts we are concerned about have not been evaluated or addressed in the Proposed Prohibition and the supporting documentation.

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We are especially concerned that the Proposed Prohibition will not allow discharges after the effective date of the amendment from the following systems because they are technically not yet "existing discharges" and would be prohibited as "new discharges":

- (1) Permitted but not-yet-operating systems;**
- (2) New OWDSs that have substantially completed the City of Malibu or RWQCB wastewater discharge permitting processes; and**
- (3) OWDSs that upgrade or replace existing systems.**

With respect to the first two categories above, prohibiting these discharges after the effective date places a very unfair economic hardship on property owners in the Civic Center area who have made substantial investments to install advanced OWDSs capable of protecting the waters of the state and who may now be forced to either abandon their homes or businesses or arrange to truck all generated wastewater offsite. For property owners such as those who are replacing homes lost in fires or are in the process of upgrading their OWDSs to provide a higher quality of effluent treatment, this regulatory effect is unfair, inconsistent with the Board's objectives to encourage better water quality, and not justified by any data or evidence provided in the Technical Reports supporting the Proposed Prohibition.

Likewise, banning new discharges from systems that may be installed after the effective date to upgrade or replace old, less effective and in some cases non-compliant systems makes no sense from a public policy perspective. Because such discharges from such upgraded or replacement systems would be banned after the effective date by the current text of the Proposed Prohibition as "new discharges", the amendment creates incentives not to make such changes in the transitional period (i.e., from the effective date to the date of the complete ban), which is exactly the opposite of what the Board wants to achieve. Another unintended consequence of the current text of the Proposed Prohibition is that it militates against upgrading OWDSs to increase the amount of treated wastewater that can be recycled for use in landscape irrigation. As drafted, the Proposed Prohibition does not provide any certainty for those property owners who wish to upgrade their systems to treat wastewater so it can be used for irrigation that this use is not a "new discharge" which would be banned after the proposed amendment becomes effective. Because California is facing an unprecedented water crisis, the Regional Board has already made clear that encouraging water recycling is a top priority, and it would appear very inconsistent with that objective to dissuade upgrades for this purpose.

As explained in further detail below, there is substantial evidence that allowing such discharges from these categories of OWDSs would not be expected to have any adverse impacts on groundwater quality in the Civic Center area and, in fact, will support the RWQCB's water quality objectives. For these reasons, we propose revisions in the language of the text of proposed Amendment which we have set out in Attachment 1, which we believe will address these concerns. **We ask that the Regional Board Staff consider incorporating them into a revised Resolution.**

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DETAILED COMMENTS

The discussion below describes in greater detail our concerns with the Proposed Prohibition. We offer these comments after having consulted with recognized experts at Earth Consultants International, CB Richard Ellis, and Matrix Environmental, the comments from which are submitted under separate cover and incorporated by reference herein. In addition, with respect to the likelihood that a centralized wastewater treatment system can be in place and operational by the proposed date of the total ban of OWDSs in 2014, we have evaluated the comments submitted under separate cover by Jim Arnone of Latham & Watkins, a recognized expert in CEQA compliance, and incorporate them in our comments as well. We have attached a copy of all those additional comments to this letter and incorporate them by reference herein.

Allowing Discharge Through Substantially Permitted New Systems and Replacement Systems During the Transitional Period Supports the RWQCB's Stated Goal of Protecting the Beneficial Uses of Water in the Malibu Civic Center

Substantially Permitted Systems¹

Civic Center properties with substantially permitted new systems (the RWQCB has referred to these systems as "In Pipeline") will treat effluent with advanced onsite wastewater treatment systems ("OWTSS" rather than "OWDSs") that will, in operation, improve the quality of the regional groundwater by discharging water that meets or exceeds Basin Plan water quality objectives. Because the City of Malibu and the RWQCB require upgrading the level of treatment for any OWDSs currently in the permitting process (in the case of the City of Malibu, it requires upgrading to secondary treatment with disinfection), the RWQCB can take confidence that the substantially permitted new systems will result in fewer pollutants entering the State's waters. Allowing such properties to proceed to begin discharging, even after the effective date, will allow property owners to realize their substantial investment in improving their home or business while still accomplishing the RWQCB's water quality objectives.

As documented in the comments submitted by recognized Earth Consultants International, which are set out in Attachment 2, there is a limited universe in the Civic Center area of substantially permitted new systems and nearly all of them involve the installation of advanced OWDSs. Revising the text of the Basin Plan Amendment to allow this limited number of properties to discharge once fully permitted and/or operational will not have an adverse impact on the receiving groundwater and surface waters, such as Malibu Lagoon and Malibu Creek; in fact, it is more likely that such upgrades will have a positive impact because of improvements in the quality of water that will be discharged. Nearly all on-going development activity in the Civic Center area involves either the full demolition and reconstruction of

¹ By substantially permitted we mean any residential OWDS for which the City of Malibu's Environmental Health Review Division has received and approved the initial application for Conformance Review or a complete wastewater discharge permit application has been submitted to the RWQCB, as appropriate, before the effective date of the Proposed Prohibition.

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previous structures (some of which were lost in the fire of 2007), or a partial remodel of existing homes and businesses. Though some of these remodels may include additional fixtures, the volume contribution from these properties to the entire Civic Center system will be essentially unchanged. Also, because many of these substantially permitted systems are actually replacing a previous OWDS onsite, water that will be discharged from the newly remodeled or rebuilt properties will be processed through a new and fully upgraded advanced OWTs and in many cases will meet Title 22 water quality standards for recycled water (especially in the case of commercial developments). For these reasons, it is expected that discharges from such substantially permitted systems support the RWQCB water quality goals and will have a beneficial impact on the Civic Center's receiving waters.

Replacement Systems

Similarly, allowing systems that upgrade or replace existing OWDSs after the effective date of the Proposed Prohibition to discharge will not have an adverse impact on Civic Center receiving waters; rather, as a matter of simple logic, these upgraded systems will discharge a higher quality treated effluent to the subsurface, resulting in an outcome which clearly promotes the RWQCB's water quality objectives.

Replacement systems by their very definition will replace conventional, and in many cases noncompliant, OWDSs. And, generally, flows through such replacement systems are not expected to be significantly higher than what passed through the previous OWDS. Even where individual discharges increase when the capacity of some OWDSs is expanded, such increases will not substantially change the cumulative flows into the Civic Center area and are not expected to make an adverse difference, since the water discharged from such replacement systems will be of a better quality, treated to meet the RWQCB Basin Plan standards and in many cases Title 22 standards for recycled water.

Allowing Discharge Through Substantially Permitted New Systems and Replacement Systems Will Help Prevent Urban Decay in the Malibu Civic Center

Substantially Permitted Systems

As documented in the comments submitted by CB Richard Ellis and Matrix Environmental, which are set out in Attachments 3 and 4, allowing property owners to discharge through their substantially permitted new systems will allow these property owners to recover their significant investments to date and complete their projects so they can move into their remodeled or rebuilt homes and open their businesses. However, the Proposed Prohibition as written would prevent discharge from these new but not yet operational systems, which would force property owners to consider abandoning their redevelopment efforts because they are unable to discharge their wastewater. In such cases, these unfinished projects will likely contribute to in blight to the Civic Center area and have significant impacts on the health of neighborhoods.

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Replacement Systems

Similarly, the effective prohibition of replacement systems that results from the current language in the Proposed Prohibition also threatens to contribute to urban decay and blight in the Civic Center. Under the Proposed Prohibition during which no additional or new waste discharge from a replacement system would be permitted, the ban would result in limiting the reuse of commercial properties as building interior adaptations will generally be required to accommodate the needs of new tenants and require the upgrading or expansion of the current OWDSs. If the existing system cannot handle the new flows or treat wastewater to the City of Malibu's or RWQCB's standards, commercial reuse will be effectively prohibited. This will lead to a reduction in marketability of commercial properties and an inevitable increase in vacancies, which in turn would significantly reduce the potential rent. Lower rents would lead to fewer funds being available for maintenance and upkeep. Effectively, the Proposed Prohibition creates a disincentive for property owners to improve their businesses or homeowners to remodel as it may trigger a prohibited discharge.

Allowing Discharge Through Substantially Permitted Systems and Replacement Systems Will Reduce the Need to Pump and Haul Waste Offsite

As also documented in the comments submitted by CB Richard Ellis and Matrix Environmental, which are set out in Attachments 3 and 4 respectively, the Proposed Prohibition will have potential significant impacts on the Malibu community by increasing waste hauling from property owners who will be prevented from discharging through their substantially permitted systems or who are prevented from replacing a failing system. If homeowners and businesses are not able to use their substantially permitted OWDSs or replace their aging failing systems with new advanced treatment systems, many of these property owners will be forced to either (A) abandon their business or home; or (B) haul all of their generated wastewater offsite until such time as a centralized wastewater treatment plant comes online. As described in those Attachments, the RWQCB has not considered these significant impacts in evaluating the viability of the Proposed Prohibition.

General Concerns With the Proposed Prohibition

The RWQCB Failed to Adequately Consider the Potentially Significant Impacts of the Proposed Prohibition and Timing Constraints on any Comprehensive Compliance Project

California Environmental Quality Act and California Public Recourse Code

As documented in the comments submitted by Matrix Environmental, which are set out in Attachment 4, there is a concern that the Environmental Staff Report does not comply with the basic requirements of Public Resources Code Section 21085.5 or the basic requirements of CEQA, as it does not adequately describe the proposed activity, does not evaluate the reasonably foreseeable environmental impacts of the proposed activity, and does not provide for alternatives or mitigation measures to reduce the significant adverse effects on the environment.

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We believe that the RWQCB's Environmental Staff Report failed to adequately assess the impacts associated with the integrated facilities, interceptor sewer and decentralized facilities that could be implemented as part of the Proposed Prohibition. The analysis within the Environmental Staff Report evaluates these new wastewater systems "on a conceptual basis only" and indicates that additional project-specific environmental analysis is to be conducted. As the project-specific analyses would occur following implementation of the Proposed Prohibition, there is no certainty that the prohibition would not lead to direct and indirect impacts that are greater or equally objectionable to those that the prohibition is seeking to address. Furthermore, because of the limited analysis done to date, we believe that it will be incredibly difficult to have one of these proposed solutions in place within five years.

Timing of a Comprehensive Civic Center Solution

As also documented in the comments submitted by James L. Arnone of Latham & Watkins LLP, which are set out in Attachment 5, the Proposed Prohibition fails to adequately consider the very real possibility that a centralized wastewater treatment facility or other regional solution will not be available in five years when the Proposed Prohibition takes effect. At a minimum, the RWQCB should consider extending the time period to six or seven years before the total ban takes effect. Given the importance of time to obtain approvals and implement an alternative system to the current OWDSs within the Civic Center area, we also believe that the effective date should not be retroactive to the date of the RWQCB's approval of the amendment, but should be drafted to account for the additional time it will be necessary to process the proposal. We have included language in Attachment 1 to address this issue.

The RWQCB should be particularly concerned with the potentially significant impacts of the waste hauling that will be necessary if the ban takes effect without a regional solution in place. CB Richard Ellis determined (as expressed in their comments attached hereto as Attachment 3) that assuming on an average 2,000-gallon truck, at least 46,000 tank truck trips per year would be required each year to pump and haul the ban area's wastewater. This would have a significant impact on local traffic congestion, air quality and other environmental concerns. The RWQCB estimated that currently 7% of the generated waste in the study area is hauled offsite. See Technical Memorandum #5: *Dischargers with Unsuitable Hydrogeologic Conditions for High Flows of Wastewaters Resort to Hauling Liquid Sewage and Sludge to Communities that have Sewer and Wastewater Treatment Facilities (Draft Dated July 31, 2009)*. Based on this estimate, the RWQCB calculated that hauling activity in the Civic Center currently produces 252 tons of carbon dioxide per year. In five years, if a solution is not in place when the total ban goes into effect, pumping and hauling wastewater from the Civic Center will have to be expanded considerably and using the RWQCB's own estimates, these circumstances would result in an estimated additional 23,436 tons of carbon dioxide a year. These potential effects on climate change have not been evaluated by the RWQCB in assessing the viability of the Proposed Prohibition.

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Conclusions

We believe that the text of the Proposed Prohibition has serious flaws which need to be addressed before the Board acts on it. We have included proposed changes to that amendment in Attachment 1, which we believe address the most serious of our concerns.

We appreciate the opportunity to submit these comments for the RWQCB's consideration. We respectfully request that all of our public comments, including those herein and included in attached technical reports, be given appropriate consideration, be placed in the administrative record for this rulemaking, and be maintained in the agency's records.

We are available to meet with the RWQCB to discuss these comments and believe that such would be advantageous in fully understanding the issues and concerns raised in these comments. Should you have any questions or wish to discuss our comments and proposals, please feel free to contact me at 213-891-8332.

Respectfully submitted,

Gene A. Lucero

Gene A. Lucero
of LATHAM & WATKINS LLP

Attachments

1. Proposed Revisions to the Language of the Text of the Proposed Basin Plan Amendment
2. Comments on the RWQCB's Proposed OWDS Prohibition For the Malibu Civic Center Area Prepared by Earth Consultants International
3. Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region Prepared By CB Richard Ellis
4. Comments on the Environmental Staff Report in Support of the Proposed Amendment to the Water Quality Control Plan to Prohibit On-Site Wastewater Disposal Systems in the Civic Center Area of the City of Malibu Prepare by Matrix Environmental
5. Comments Concerning Unrealistic Timing Assumptions for the Environmental Analysis, Project Consideration, Potential Litigation, Election on Potential Assessment District, Obtaining of State Loan, Public Bidding Process, and Construction of Potential Centralized Wastewater Treatment Facility in the Malibu Civic Center (Scheduled for RWQCB Consideration on Nov. 5, 2009) Prepared by James L. Arnone of Latham & Watkins LLP

**Comments on Proposed Amendment to the Water Quality Control Plan for
the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu
Civic Center Area**

INDEX OF ATTACHMENTS

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ATTACHMENT 1

EFFECTIVE DATE OF THE PROHIBITION	SUGGESTED BASIN PLAN AMENDMENT LANGUAGE
<p>I. Set the effective date of the prohibition after approval of the Basin Plan amendment by the Office of Administrative Law; prohibit all discharges five years from the effective date.</p>	<p><i>Effective 30 days after approval of this amendment by the California Office of Administrative Law, (the "Effective Date"), all wastewater discharges from residential, commercial, and public on-site wastewater disposal systems in the Malibu Civic Center area shall be prohibited except as follows:</i></p>
CATEGORY OF DISCHARGE	SUGGESTED BASIN PLAN AMENDMENT LANGUAGE
<p>I. Discharges Through Permitted Systems</p>	<p><i>With respect to any wastewater discharges from an operational on-site wastewater disposal system, including a permitted but not yet operating system, as of the Effective Date, such discharges shall not be prohibited until five years after the Effective Date.</i></p>
<p>II. Discharges Through Substantially Permitted or "In Pipeline" Systems</p>	<p><i>With respect to any wastewater discharges from on-site wastewater disposal systems for which the City of Malibu's Environmental Health Review Division has received and approved the initial application for Conformance Review or a complete wastewater discharge permit application has been submitted to Regional Water Quality Control Board, as appropriate, before the Effective Date, but which is permitted after the Prohibition's Effective Date, such discharges shall not be prohibited until five years after the Prohibition's Effective Date.</i></p>
<p>III. Discharges Through Replacement Systems</p>	<p><i>Any repairs, maintenance, or replacement shall not affect or modify the dates the prohibition takes effect for the on-site wastewater disposal systems described in subsections 1 and 2 above provided that such repairs, maintenance, or replacement does not increase the amount or timing of discharges in such a way that would adversely affect the beneficial uses of receiving waters of the State of California.</i></p> <p style="margin-left: 40px;"><i>Any replacement on-site wastewater disposal system described in Subsection 3 above shall be designed to treat wastewater to the water quality standards established for new on-site</i></p>

EFFECTIVE DATE OF THE PROHIBITION	SUGGESTED BASIN PLAN AMENDMENT LANGUAGE
	<p><i>wastewater treatment systems in the vicinity of impaired water bodies by Title 27 Division 5 Chapter 1 Article 1 of the California Code of Regulations (as required by Assembly Bill 885 adding Chapter 4.5 (Section 13290 to 13291.5) to Division 7 of the California Water Code), as well as any applicable requirements of the City of Malibu, including, but not limited to, secondary treatment with disinfection.</i></p>
<p>IV. Discharges Through Systems Capable of Recycling 100% of Effluent Generate Onsite</p>	<p><i>With respect to any wastewater discharges from an on-site wastewater disposal system where the prospective discharger demonstrates before or after the Effective Date that (i) reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site; (ii) will not contribute to an adverse rise in the water table; and (iii) will contain and properly handle any brines and/or off-specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the Basin Plan, such wastewater discharges shall be permitted by the Executive Officer.</i></p>

ATTACHMENT 2

Project No: 2918
October 7, 2009



To: California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Attention: Dr. Rebecca Chou
Chief Groundwater Permitting Unit

Subject: Comments on the RWCQB's Proposed OWDS Prohibition for the Malibu Civic Center Area

Dear Sirs:

At the request of our client, Earth Consultants International (ECI) has prepared this letter as a public comment in response to the Regional Water Quality Control Board's proposed Prohibition Zone for the Malibu Civic Center Area and their supporting Technical Memorandum. Our comments fall within four general areas, as divided out below:

1. The groundwater quality in the Civic Center area has shown consistent improvement since 2006:

OWDSs are not the sole causative factor in the degradation of the water quality in Malibu Lagoon, but no other alternative causes are evaluated. Major conservative assumptions are made with respect to wastewater volumes passing through OWDS, bacterial and nutrient loads, groundwater flow velocities, and soil cleaning potential. Despite these large assumptions, the Board's own data show that the water quality has made significant improvement in the last few years.

Table 2 in Tech Memo 3 actually shows a stark reduction of the bacteria problem in the sampling sites around the Lagoon. Three of the five sites (60%) show ZERO days of exceedence in 2008, a significant decrease in 2007, and all show declining impact days across the board. Actually this table seems to show that the City of Malibu has been quite proactive in trying to solve the Board's concerns since 2006, and the Board's plot shown in their Fig. 6 in Tech Memo 3 demonstrates this. In that chart, the highest values come from SMB-12, which is not even shown on their map, as it is likely outside the Civic Center Prohibition Zone, like SMB-13.

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In Tech Memo 1, the Board uses "Failure of Wells" as a datum to show that nearly all of the wells in the Civic Center have failed. What they do not reveal in their Memo's writeup is that most of these "failures" occurred only once in a well's 5-year history, and generally this was in 2003-2004. In any managed system, a failure can occur. The important aspect that should be analyzed is to understand the cause of a failure, whether that failure was rapidly corrected, and whether it has remained corrected. The City of Malibu's aggressive regulation and inspection of OWDS within their jurisdiction has clearly shown this to be the case. An accurate use of these wells' test data would reveal that in the period between 2003-2008 the water quality of the Civic Center fails to support the Board's position.

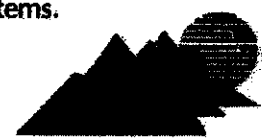
When one considers that these test results are only obtained from the shallow, upper, unconfined aquifer, which was never a groundwater resource and which has no pre-OWDS baseline data, instead of raising the red flag, it looks more like a success story for OWDS operations and environmental management than as the justification for a Prohibition Zone.

Numerous other examples of the Board's reliance on old data exist. For example, a 1996 report comparing bacterial exceedence days for sewered and non-sewered beaches, and a 2002 Heal the Bay report, both show significantly high values for Surfrider Beach. But, these values have plummeted in the last few years as shown by the Board in Tech Memo 3.

The City has made considerable progress in regulating improvements in Civic Center (and City-wide) OWDS treatment systems in both residential and commercial systems. The Board fails to credit any of this progress by using outdated data to justify its position, but generally doing this non-transparently in their statements and charts. Use of more modern data would generally fail to support the Board's conclusions. The use of old data at the expense of new data shows bias in the Board's analysis, and fails to support their case for a Prohibition.

2. There are a limited number of proposed new and remodeled homes in the Civic Center area:

Those business or residential entities who, in good faith, entered into expensive development plans in the last few years, and who will be stalled by this Board prohibition are being particularly penalized. None of these contributed to the condition of the groundwater in the Civic Center area before they applied for development permits. Many of these new permits are really redevelopment proposals for existing homes or businesses. In these cases, the prior OWDSs will be replaced with advanced onsite wastewater treatment systems [OWTS] that will, in operation, be improving the groundwater quality of the region over the prior, and in many cases still operating, OWDS systems.



Nearly all on-going activity involves either the full demolition and reconstruction of previous structures (some of which were lost in the fire of 2007), or a partial remodel of existing homes and businesses. In all of these cases, the volume contribution of the site's wastewater to the entire Civic Center system is essentially unchanged. The only change is that the wastewater that will be discharged will either be so completely treated that it is essentially drinking water quality, or in the case of individual homes, be processed through a new and fully upgraded advanced OWTS. Little to no change in overall volume is expected from the upgraded OWTS. The recharged effluent-water quality will be improved from all upgraded systems, as they are required to meet or exceed the City's requirements.

3. These homes generate trivial volumes of wastewater to the area:

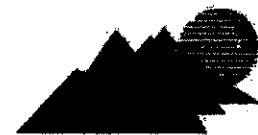
Individually, any single residence's OWDS contribution is minor compared to any single commercial discharge. For example, if a residential remodel required an increase in wastewater flow to accommodate a remodel or rebuild, it is not expected to have an adverse impact on water level or quality, a fact quietly acknowledged by the Board in that they only focused their volumetric analysis on the commercial discharges.

The City's assignment of wastewater volumes based on 100 gallons per day per bathroom is outmoded and conservative. Per the City's Plumbing Code, a remodeled home now is required to utilize water conservation features, such as low-flow toilets and flow reducers on shower heads and sink faucets. The overall water awareness campaigns, and the price of water, have all driven water usage volumes lower, resulting in lower wastewater discharge volumes for most new structures.

4. Even if discharges are the same or larger, the water quality discharged from these advanced treatment systems improves the current water quality in the Civic Center area

All of the currently proposed new commercial systems utilize advanced sterilization and treatment solutions, with substantial on-site reuse of the treated water for landscaping. The OWTS result in no bacterial and negligible nitrogen discharges to the groundwater, but the Board's analysis does not consider whether advanced treatment systems are in effect which might change their nitrogen production rates. New residential OWTS units result in similar reductions of nitrogen and bacteria.

There is no consideration in the Board's analysis that adding modern advanced wastewater treatment systems to the Civic Center area would help to improve the current situation even in advance of their 2014 prohibition. The Board's intent to prohibit any OWDS improvement during the coming 5 year prohibition period is counter-productive to improving the Civic Center's water quality.



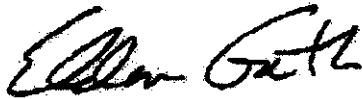
Over time, all of the OWDSs in the City will be upgraded to the advanced OWTS process. This is how change comes to communities. The Board should be encouraging the City's progress towards modernizing the OWDS within the Civic Center area, but this proposed Prohibition essentially freezes in place any of that progress, and leaves all existing non-conforming systems in place for at least the next 5 years.

If a permit application has been processed, it should be allowed to move forward, with the clear awareness that eventually it will be subject to the requirements of the regional treatment solution when that becomes available. Additionally, and especially for residential systems, any conversion from an OWDS to an OWTS should be permitted, and encouraged.


Based on the Board's own data, the incidence of bacterial exceedence days at the Lagoon beaches are now below even sewerred beaches like Will Rogers farther east, the incidence of failing water quality in wells is almost zero, and the percentage of correct discharger reporting is way up.

Respectfully submitted,

EARTH CONSULTANTS INTERNATIONAL, INC.



Eldon Gath, CEG 1292
President

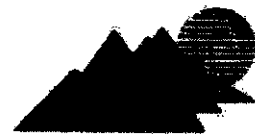


Dr. W. Richard Laton, PG 7098
Sr. Consultant/Professor of Hydrology

Distribution: (1) Addressee

Eldon Gath, President of Earth Consultants, a Past-President of the Association of Engineering Geologists and a PhD Candidate at UC Irvine, has 30 years of geologic consulting experience in southern California. He was the senior author of the 1994 Leighton & Associates report on the geologic conditions in the Malibu Civic Center, and the geologist responsible for the removal of the State's active fault zone across Winter Mesa.

Dr. Richard Laton, a Senior Consultant at Earth Consultants International and the current NWWA National Lecturer in Hydrogeology is also an Associate Professor of Hydrogeology at California State University @ Fullerton.



ATTACHMENT 3

CBRE CONSULTING



355 South Grand Avenue, Suite 1200
Los Angeles, CA 90071-1549

T 213 613 3750
F 213 613 3780
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October 7, 2009

Dr. Rebecca Chou
Chief Groundwater Permitting Unit
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RE: Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region

Dear Dr. Chou:

Through a proposed amendment to its Water Quality Control Plan, the California Regional Water Quality Control Board, Los Angeles Region (CRWQCB) has proposed a ban in a portion of the City of Malibu on discharges from on-site wastewater disposal systems (OSWDSs) for new development and on increases in currently permitted levels of discharge from on-site wastewater disposal systems for existing developments for a five-year period. After that five-year period, the amendment would prohibit any discharge from any OSWDS, including all existing permitted systems.

If OSWDS discharges are banned, property owners would not be able to occupy and conduct business on their properties unless they were able to make other arrangements for treatment and disposal of the sewage and wastewater generated in their businesses or residences.

CB Richard Ellis was engaged to investigate the potential impact that the proposed amendment and ban on waste water discharge would have on physical aspects of the real estate in the Ban Area.

The Ban Area encompasses the Malibu Civic Center area. That area represents the major commercial core of the City of Malibu, with three major shopping centers and numerous freestanding commercial stores and restaurants, totaling over 200,000 square feet.

A physical survey of the area on Sept 26, 2009 found numerous vacant establishments totaling over 25,000 square feet, including a major restaurant site, a gas station site and a half dozen infill retail storefronts.

The proposed ban will have a significant adverse impact on the economic viability of the commercial centers in the Ban Area, potentially causing physical blight conditions which impacts have not been addressed in the RWQCB Environmental Assessment.

California Health & Safety Code Sec 33035 states that "The existence of blight... constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety and welfare of the people..." It contributes substantially to the problems of crime prevention, the preservation of the public health, and the maintenance of adequate police fire and other public services.

Causes of blight include conditions that prevent or hinder the viable reuse of buildings or vacant lots and result in abnormally high vacancies with subsequent physical deterioration. This is a likely outcome resulting from the proposed ban.

Based on a review of various CRWQCB technical reports, a compilation of property information from the Los Angeles County Assessor's Office, a survey of the commercial properties themselves as well as research into the cost of pumping and hauling discharge to disposal sites outside the Ban Area, CB Richard Ellis has reached the following conclusions with respect to the potential adverse physical impact of the proposed ban on waste water discharges in the Malibu Civic Center area (Ban Area).

1. A survey of the non-residential properties in the Ban Area revealed significant vacant space, especially in the vast majority of the properties that are at least 20 years old and which would be likely candidates for significant physical upgrades or renovation upon tenant turnover or earlier
2. For the five years during which no additional discharge would be permitted, the ban would result in limiting the reuse of properties if interior building adaptations are required to accommodate the needs of new tenants.
3. This reduction in marketability and certain increase in vacancies would significantly reduce the potential rent and result in less funds being available for maintenance and upkeep.
4. Without a sewer system in place by year five, when the total ban on discharges becomes effective, the economic burden on both residential and non-residential properties would be extremely large. At a cost of \$0.20 per gallon for removal and average daily discharge of over 250,000 gallons:
 - a. The cost of pumping and hauling all sewage for the Ban Area is in excess of \$20 million per year.
 - b. The average cost of pumping/hauling for a single residence is \$26,000.
 - c. The pumping/hauling cost burden for commercial businesses will likely range from \$25 per square foot for general retail to \$50 per square foot for restaurants and \$100 per square foot for fast food establishments.

With annual rents of \$40 to \$60 per square foot, this added burden will force many businesses to close.

- d. The reduced maintenance and subsequent deterioration would result in blighted conditions and urban decay with additional adverse spillover effects on nearby properties.
- 5. Based on average 2,000-gallon truck, at least 46,000 tank truck trips per year would be required to pump and haul off all of the effluent if the total ban becomes effective. This would have a deleterious impact on local traffic congestion, air quality and other environmental impacts.

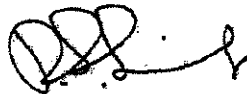
The greater these economic burdens are compared to the value of the commercial activities on individual parcels, the greater will be the adverse physical impact that will result and spillover to other properties.

Exhibit 1 presents a tabulation of the discharge estimated by the CRWQCB for properties in the Ban Area. It also presents an estimate by CB Richard Ellis of the annual cost of hauling and pumping the discharge with a full ban on discharge in effect. Exhibit 2 presents a tabulation of all the parcels in the Ban Area with the age and square footage of selected parcels. Exhibit 3 presents photographs of representative vacant properties in the Ban Area taken on September 26, 2009. The type of blight and urban decay depicted in these photographs is illustrative of the type of adverse physical impact that could result from the proposed amendment.

Sincerely,



Thomas R. Jirovsky
Senior Managing Director



Ross S. Selvidge, Ph.D.
Managing Director

Mr. Jirovsky and Dr. Selvidge both have more than 30 years experience in real estate and land use consulting. They have conducted numerous analyses of the potential for urban decay in accordance with the California Environmental Quality Act as well as negotiating terms of transactions in redevelopment project areas that have the object of eliminating blight.

Exhibit 1
Malibu CRWQCB Discharge Ban Area

	Discharge GPD	Discharge GPYr	Total Annual Pump and Haul Cost	Annual Cost PSF
Sector 1				
HRL - 3011 Malibu Cyn Rd	3,426	1,250,480	\$250,088	\$1.14
LA Co Mah Yard - 3837 Winter Cyn Rd	252	91,980	18,396	
Malibu Colony Plaza - Disposal in Winter Cyn	16,617	6,066,206	1,213,041	\$9.94
Malibu WPCP - 3280 Vista Pacifica	22,500	8,212,500	1,642,500	
Webster Elementary - 3602 Winter Cyn Rd	5,000	1,825,000	365,000	
Our Lady of Malibu - 3825 Winter Cyn Rd	2,500	912,500	182,500	
Malibu Presbyterian Nursery School - 3324 Malibu Cyn Rd	1,500	547,500	109,500	\$7.06
Sector 2				
Serra Retreat - 3401 Serra Rd	720	262,800	\$52,560	
Sector 3				
Malibu Animal Hospital - 23431 PCH	500	182,500	\$36,500	
Malibu Adm. Center - 23519 Civic Cir Wy	4,038	1,473,870	294,774	
Request Club - 23847 Stuart Ranch Rd	1,600	547,500	109,500	
Prudential Realty - 23405 PCH	480	184,280	32,850	\$15.83
Malibu Country Mart I - 3835 Cross Creek Rd	5,400	3,066,000	613,200	
Malibu Country Mart II - 23410 Civic Cir Wy	6,900	2,299,500	459,900	\$13.06
Malibu Country Mart III - 3900 Cross Creek Rd	3,400	1,241,000	248,200	\$7.18
Malibu Shell - 23367 PCH	300	109,500	21,900	\$12.66
Malibu Prof. Arts Bldg - 23440 Civic Cir Wy	450	164,250	32,850	\$2.80
Malibu Lumber - 23478 PCH	8,500	3,102,500	620,500	
Mira Mar Properties - 23805-23815 Stuart Ranch Rd	3,200	1,168,000	233,600	
J & P Limited - 3805 Cross Creek Rd	500	182,500	36,500	
So. Calif. Edison	400	146,000	29,200	
Verizon South, Inc. - 3705 Cross Creek Rd	400	146,000	29,200	
Malibu Land Company, LLC - 3728 Cross Creek Rd	400	146,000	29,200	
Malibu Creek Plaza/Malibu Village - PCH Cross Creek	11,000	4,015,000	803,000	
Sector 4				
Malibu Rd., LLC - 23676-23712 Malibu Rd	400	146,000	\$29,200	\$2.42
Morton-Gerson - 23730 Malibu Rd	400	146,000	29,200	\$9.08
LA Co Fire Station #68 - 23720 Malibu Rd	540	197,100	39,420	
Lisa Kraenoff - 23855 Malibu Colony Rd	400	146,000	29,200	\$8.88
Mess, LLC - 23915 PCH	400	146,000	29,200	
Sector 5				
Surfider Co. Beach - 23080 PCH	3,188	1,163,820	\$232,724	
Malibu Pier State Park - 23000 PCH	3,000	1,095,000	219,000	
Malibu Shores Motel - 23033 PCH	2,843	1,037,865	207,536	\$44.84
Malibu Beach Inn - 22878 PCH	2,843	1,037,865	207,536	\$9.36
Jack-In-The-Box - 23017 PCH	4,500	1,642,500	328,500	\$299.61
Malibu Plaza - 22917 PCH	1,500	547,500	109,500	\$4.43
Malibu Inn & Restaurant - 22969 PCH	6,200	2,263,000	452,600	\$63.00
Surf Shack/Fish Grill - 22835 PCH	400	146,000	29,200	\$22.50
Spd & Span Cleaners/Chabad - 22941 PCH	400	146,000	29,200	\$10.81
TOTAL	129,287	47,182,453	\$9,438,481	

Gallons Per Truck Trip 2,000
Trips Per Year 23,591
Trips Per Day 66

Source: RWQCB Report 8-5-09 Table 1 - Page T4-20 and CB Richard Ellis

Exhibit 1 Continued
Malibu CRWQCB Discharge Ban Area

	Total Discharge GPD	Total Discharge GPYr	GPD Discharge Per Home	Total Annual Pump and Haul Cost	Annual Cost Per Home
Sector 1					
Residential 81 Homes	17,800	6,497,000	292	\$1,299,400	\$21,302
Sector 2					
Residential 83 Homes	31,100	11,361,500	375	2,270,300	\$27,353
Sector 3					
Residential 2 Homes	800	292,000	400	58,400	\$29,200
Sector 4					
73 of 180 Res. @50% Flow to Lagoon	25,800	9,453,500	356	1,890,700	\$26,900
107 of 180 Res. @20% Flow to Lagoon	39,900	14,563,500	373	2,912,700	\$27,221
Sector 5					
Residential 23 Homes	10,600	3,942,000	470	788,400	\$34,278
Total	126,300	48,099,500	362	\$9,219,900	\$28,418

Number of Homes 349
Gallons Per Truck Trip 2,000
Trips Per Year 23,050
Trips Per Day 63

Sources: RWQCB Report 8-5-09 Table 1 - Page T4-20 and CB Richard Ellis

Cost Per Gal \$0.20

Exhibit 2
Malibu Ban Area Parcels

APN	Property	Street No.	Street name	Owner	Description	Year Built	Square Feet Improvements
4458-029-001	COMMERCIAL	00000		HUGHES RESEARCH LABORATORIES INC	Industrial / Vacant land		6,830
4458-029-006		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing	1983	90,648
4458-029-016		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing	1983	5,273
4458-029-015	HRL Labs, LLC - Malibu Facility	03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing		115,673
4458-029-013		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing		
4458-021-003		03542	COAST VIEW DR	WAVE PROPERTY INC	Heavy manufacturing		
4458-027-034		03547	WINTER CANYON RD	LEMONNIER	Nursery or Greenhouse		
4458-022-025		03700	LA PAZ LN	KNAPP	Store and residential combination		
4452-011-024		03728	CROSS CREEK RD	MARIPOSA LAND COMPANY LTD.	Commercial / Vacant land		
4452-011-035	J and P Limited	03738	CROSS CREEK RD	MARIPOSA LAND CO LTD	Nursery or Greenhouse		
4458-020-014	Malibu Country Mart I	03806	CROSS CREEK RD	PARTNERSHIP	Store and residential combination		
4452-011-042	Malibu Country Mart III	03835	CROSS CREEK RD	CREEK LLC	Office Building		
4452-011-059		03900	CROSS CREEK RD	ACQUISITION CO.	Shopping center (neighborhood)	1972	25,832
4452-005-031	Malibu Beach Inn	22878	PACIFIC COAST HWY	LLC	Shopping center (neighborhood)		
4452-019-011		22917	PACIFIC COAST HWY	MALIBU BEACH INN INC	Stores	1989	8,724
4452-019-004		22959	PACIFIC COAST HWY	EQUITIES LLC	Motel - Under 50 units / 3 stories	1989	22,165
4452-019-008	Jack in the Box #160	23017	PACIFIC COAST HWY	WAVE SOUND INC	Office Building	1989	24,739
4452-019-002	Malibu Shores Motel	23033	PACIFIC COAST HWY	Q-RECLER BOARD PROPERTIES INC	Restaurant	1950	7,184
4452-011-043		23359	PACIFIC COAST HWY	LEON	Restaurant	1969	1,871
4452-011-033	Malibu Shell	23387	PACIFIC COAST HWY	MALIBU RETAIL ACQUISITION CO.	Motel - Under 50 units	1953	4,628
4458-020-002	Prudential Malibu Realty	23410	PACIFIC COAST HWY	OIL LLC	Shopping center (neighborhood)	1954	1,731
4458-020-010	Malibu Country Mart II	23410	CIVIC CENTER WAY	CROSS CREEK REAL ESTATE GROUP LLC A	Service station	1947	2,102
4458-020-004	Malibu Professional Arts Bldg	23440	CIVIC CENTER WAY	MALIBU CROSS CREEK LTD	Office Building		35,230
4458-020-015		23614	PACIFIC COAST HWY	PARTNERS LLC	Commercial	1972	12,644
4458-001-007		23641	PACIFIC COAST HWY	CHEVRON USA INC	Professional Building		
4458-007-019	23736 Malibu Road	23644	MALIBU RD	LAND CORP.	Service station		
4458-002-018	Malibu Colony Plaza	23700	MALIBU RD	PERENCHIO	Commercial		
4458-019-002		23730	MALIBU RD	23576 AND 23726 MALIBU RD LLC	Industrial / Misc.		
4458-022-011	Miramar Building (23805-15)	23755	MALIBU RD	GENSON	Bank	1960	12,050
4458-021-006		23789	STUART RANCH RD	CITY NATIONAL BANK	Office Building		3,224
4458-019-010		23833	STUART RANCH RD	MALIBU BAY COMPANY	Commercial / Vacant land		
4458-021-002		23841	MALIBU RD	MIRAMAR PROPERTY INVESTMENT CO	Commercial / Vacant land		
4458-019-003		23947	STUART RANCH RD	YAMAAGUCHI	Commercial		
4458-018-004		23900	PACIFIC COAST HWY	COLONY LLC	Nursery or Greenhouse	1974	9,900
4458-028-020		23915	MALIBU RD	MALIBU RACQUET CLUB	Shopping center / Lift		
		24000	CIVIC CENTER WAY	LAND CORP.	Club		
				MESA LLC	Professional Building		
				LAND CORP.	Store and residential combination		
				LAND CORP.	Commercial		

Exhibit 2 Continued
Malibu Bain Area Parcels

APN	Property	Street No.	Street name	Owner	Description	Year Built	Square Feet
4452-019-008	INSTITUTIONAL	22931	PACIFIC COAST HWY	CHABAD OF MALIBU	Religious		
4452-020-098		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-020-089		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-020-076		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-019-010		22935	PACIFIC COAST HWY	CHABAD OF MALIBU INC	Religious	1963	1,298
4458-088-010		24355	PACIFIC COAST HWY	PEPPERDINE UNIVERSITY	College		
4458-025-023		03324	MALIBU CANYON RD	MALIBU PRESBYTERIAN CHURCH	Church	1951	15,536
4458-027-024		03625	WINTER CANYON RD	ROMAN CATHOLIC ARCHBISHOP OF L.A	Church	1949	4,854
4458-027-035		00000	WINTER CANYON RD	ARCHDIOCESE OF L.A EDUC AND WELFARE	Religious		
4458-027-025		03625	WINTER CANYON RD	ARCHDIOCESE OF LOS ANGELES EDUCATK	Religious		
4452-019-009		22941	PACIFIC COAST HWY	ROMAN CATHOLIC ARCHBISHOP OF L.A	Religious	1970	5,290
4458-021-172	Vineyard Christian Church	23825	STUART RANCH RD	CHABAD OF MALIBU	Religious	1962	2,700
4458-027-800	UTILITY	00000		VINEYARD CHRISTIAN FELLOWSHIP OF MA	Religious		
4458-023-022		00000		50 CALIF EDISON CO SBE PAR 1 MAP 14	Utility		
4452-011-803	Edison	03808	CROSS CREEK RD	MALIBU PARK PLACE LLC	Utility		
4458-022-802		03705	CROSSCREEK RD	50 CALIF EDISON CO SB OF E PAR 1 MA	Utility		

Exhibit 2 Continued
Malibu Ban Area Parcels

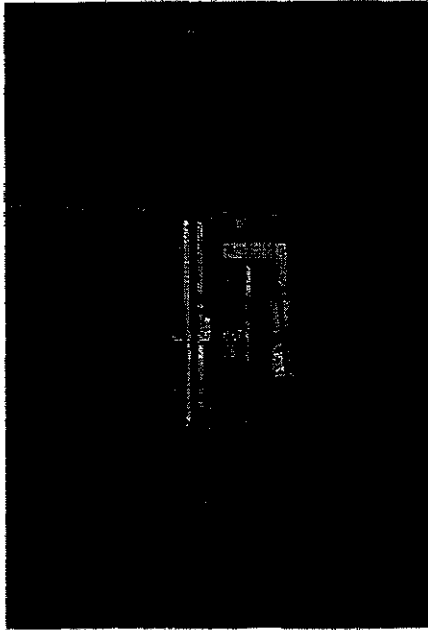
APN	Property	Street name	Owner	Description	Year Built	Square Feet Improvements
GOVERNMENT PROPERTIES						
4458-023-902			STATE OF CALIF	Govn't owned property / Sewer		
4458-023-903			SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-027-903			SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-027-900	Road Maintenance Yard 336	WINTER CANYON RD	L.A. COUNTY	Govn't owned property / Open		
4458-027-904			SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-002-900	Fire Station No. 88	MALIBU RD	L.A. COUNTY CONSOLIDATED FIRE PRO DI	Govn't owned property / Police & Fire stations		
4458-022-903			LOS ANGELES SMSA LTD SBE 2332-19-18	Govn't owned property / Govn't services		
4458-022-904		CMC CENTER WAY	L.A. CO CAPITAL ASSET LEASING RP	Government Property		
4458-019-900		PACIFIC COAST HWY	L.A. CO WATERWORKS DIST NO 29	Govn't owned property / Sewer		
4452-011-903			STATE OF CALIF	Govn't owned property / Open		
4452-011-901			STATE OF CALIF	Govn't owned property / Vacant		
4452-018-903			STATE OF CA MITNS RECREATION AND COI	Govn't owned property / Vacant		
4452-018-900			STATE OF CA MITNS RECREATION AND COI	Govn't owned property / Vacant		
4452-018-902			STATE OF CA MITNS RECREATION AND COI	Govn't owned property / Vacant		
4452-006-903			STATE OF CALIF	Govn't owned property / Vacant		
4452-005-902	Malibu Pier State Park		STATE OF CALIF	Govn't owned property / Open		
4452-018-901			STATE OF CA MITNS RECREATION AND COI	Govn't owned property / Vacant		
4452-005-901			L.A. COUNTY	Govn't owned property / Vacant		
4452-007-903			STATE OF CALIF	Govn't owned property / Vacant		
4452-006-902			L.A. COUNTY	Govn't owned property / Open		
4452-007-900			STATE OF CALIF	Govn't owned property / Open		
4452-012-902			STATE OF CALIF	Govn't owned property / Open		
4452-007-902			L.A. COUNTY	Govn't owned property / Vacant		
4458-028-900			L.A. COUNTY	Govn't owned property / Open		
4458-012-900		PACIFIC COAST HWY	L.A. COUNTY	Govn't owned property / Vacant		
4458-020-901			L.A. COUNTY	Govn't owned property / Open		
4458-012-902			STATE OF CALIF	Govn't owned property / Vacant		
4458-018-903			STATE OF CALIF	Govn't owned property / Vacant		

CBRE CONSULTING

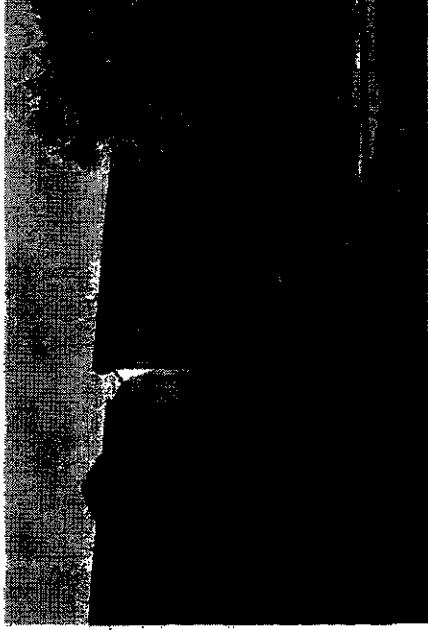
CBRE
CB RICHARD ELLIS

Exhibit 3
Malibu Ban Area Vacant Properties

APN 4458-019-008



APN 4458-019-010

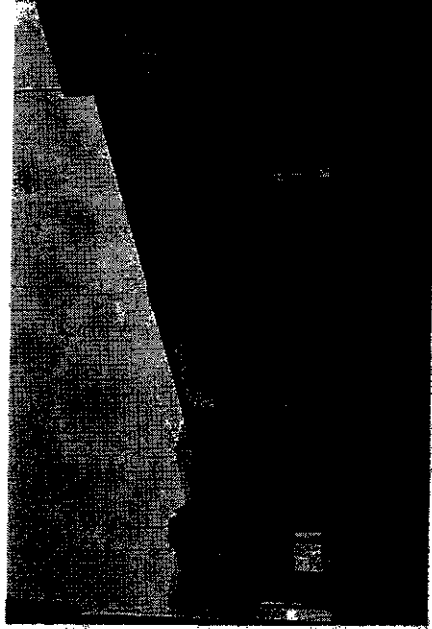
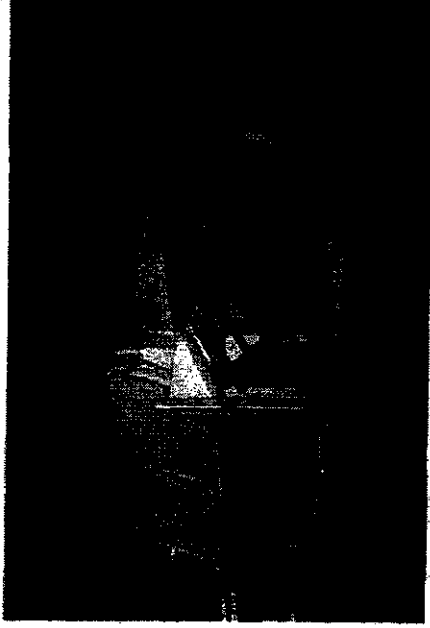
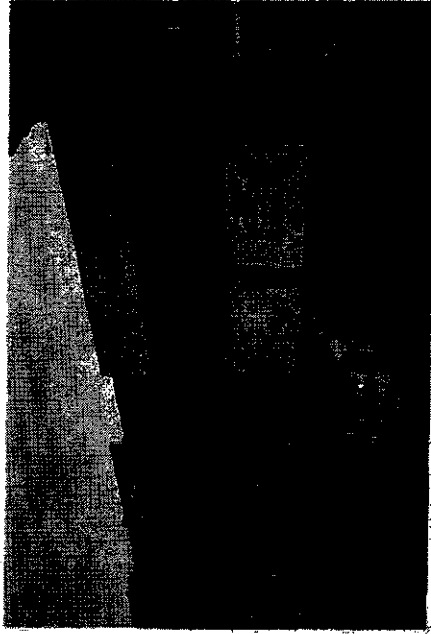


CBRE CONSULTING

CBRE
CB RICHARD ELLIS

**Exhibit 3 (Continued)
Malibu Ban Area Vacant Properties**

APN 4452-011-903



CRWQCB PROPOSED BAN - ECONOMIC WHITE PAPER

ATTACHMENT 4



October 8, 2009

Dr. Rebecca Chou
Chief Groundwater Permitting Unit
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, California 90013

RE: Comments on the Environmental Staff Report in support of the Proposed Amendment to the Water Quality Control Plan to Prohibit On-Site Wastewater Disposal Systems in the Civic Center Area of the City of Malibu

Dear Dr. Chou,

Matrix Environmental (MATRIX) on behalf of a number of parties potentially affected by the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (the "Basin Plan") has reviewed the Environmental Staff Report prepared for the proposed prohibition of on-site wastewater disposal systems in the Civic Center area of the City of Malibu (the "Project"). MATRIX is a specialized environmental consulting firm led by Stephanie Eyestone-Jones and Bruce Lackow, recognized leaders in the environmental consulting field who together have over 40 years of environmental consulting experience in preparing legally sound CEQA and National Environmental Policy Act (NEPA) documentation for many of the most high-profile projects in southern California.

MATRIX has reviewed the Environmental Staff Report for the Project with regards to its adequacy for serving as the CEQA document for the proposed Project. Based on this review we offer the following comments.



Dr. Rebecca Chou
Chief Groundwater Permitting Unit
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION
October 8, 2009 - Page 2

Comments Regarding Environmental Assessment Prepared Regarding the Prohibition of On-site Wastewater Disposal Systems in the Malibu Civic Center Area

The State of California Regional Water Quality Control Board, Los Angeles Region has prepared the "Environmental Staff Report Containing Substitute Environmental Documentation in Accordance with the California Environmental Quality Act in support of an Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area." A review of this document, hereinafter referred to as the Environmental Staff Report, was conducted. Based on this review and as demonstrated by comments provided herein, the Environmental Staff Report does not satisfy the basic requirements of the California Environmental Quality Act (CEQA) Statute (See Cal. Public Resources Code, § 21000 *et. seq.*) and the CEQA Guidelines (See Cal. Code Regs. tit. 14, § 15000 *et. seq.*)

THE DOCUMENT FAILS TO MEET THE BASIC REQUIREMENTS OF CEQA (E.G., PUBLIC RESOURCES CODE § 21085.5)

Public Resources Code Section 21085.5 (a) provides that "when a regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section." In addition, Public Resources Code Section 21085.5 (d)(3) states that the plan or other written documentation required by the regulatory program shall include "a description of the proposed activity with alternatives to the proposed activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity." The Environmental Staff Report does not comply with these basic requirements



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of Public Resources Code Section 21085.5 or the basic requirements of CEQA as it does not adequately describe the proposed activity, does not evaluate the reasonably foreseeable environmental impacts of the proposed activity, and does not provide for alternatives or mitigation measures to reduce the significant adverse effects on the environment. Additional documentation based on substantial evidence must be provided in order for the decision maker to make an informed decision about the proposed activity.

Inadequate Project Description

The "Proposed Action" or "Project" set forth in the Environmental Staff Report is to prohibit the discharge of wastewater through on-site wastewater disposal systems (OWDS) in the Civic Center area of the City of Malibu. Existing residents, businesses, and public facilities that discharge wastewater through OWDS in the Civic Center area would be affected by the proposed prohibition as well as future dischargers who may plan to discharge in this area. As set forth in the Environmental Staff Report, the Project would immediately prohibit all new discharges from OWDS in the Civic Center area and would establish a five-year schedule to cease discharges from existing systems. The Project Description in the Environmental Staff Report fails to recognize that in order to implement the proposed ban, a new wastewater system must be in place and thus, such a system must be fully described so that the reasonably foreseeable impacts of the system can be disclosed to the public and decision-makers. Rather, the Environmental Staff Report states that "it will be the responsibility of the community and stakeholders to select a strategy for compliance [with the ban] and it will be the responsibility of a local government (local agency) to perform a specific project-level analysis and disclose those environmental impacts." While three conceptual wastewater systems that could be implemented as part of the Proposed Action are described in the Environmental Staff Report, such concepts have not been fully vetted and described. Thus, no meaningful evaluation of environmental impacts of the Project has been provided. As a result, the Environmental Staff Report is "piecemealing" the Project and inappropriately deferring analysis of potential environmental impacts. California courts have considered separate activities as one CEQA project and required them to be reviewed together where, for example, the second activity is a reasonably foreseeable consequence of the first activity (See Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263 [118 Cal. Rptr. 249, 529 P.2d 1017]); the second activity is a future expansion of the first activity that will change the scope of the first



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activity's impacts (Laurel Heights I, supra, 47 Cal.3d 376); or both activities are integral parts of the same project (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal. App. 3d 223 [242 Cal. Rptr. 37]); see also Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116.)

In addition, based on public comments made at the September 1, 2009 Public Workshop at Pepperdine University on the Proposed ban, it appears that the Environmental Staff Report was completed without input from several key agencies and stakeholders. For example Dr. Radal Orton told the Regional Board at that Public Workshop that the Las Virgenes Municipal Water District was not consulted and any system that relies on the Tapia Treatment Facility may not be feasible. As a result, the Project Description has not been fully vetted and the basic components of the Project need modification. For example, the boundaries of the ban appear to be in flux and it also appears that the use of Legacy Park to implement any of the new wastewater systems identified in the Environmental Staff Report may also be difficult as Legacy Park also has percolation capacity constraints. (See Final Integrated Water Quality Management Feasibility Study, Questa Engineering Corporation (April 28, 2005).) Another example of the short-sightedness of the Project Description and associated environmental analysis is that the new wastewater system(s) described and evaluated in the Staff Report do not provide for growth set forth by the General Plan. Specifically, page 35 of the Environmental Staff Report states that the compliance projects are expected to be sized to replace existing OWDS flows only and no new connections are anticipated. Again, without an adequate Project Description, the reasonably foreseeable environmental implications cannot be adequately disclosed.

Based on public comments regarding the proposed ban at the September 1, 2009 and October 1, 2009 Public Workshop at Pepperdine University, it also appears that additional study of potential environmental solutions to address water quality in the Project vicinity is currently underway. We understand these studies include work done by the University of California, Los Angeles, the United States Geological Survey, the Southern California Coastal Water Research Project, and Stone Environmental. Numerous comments have been made stating that these studies, which include studies of stormwater and urban runoff, should be completed prior to approval of the proposed ban since such studies could provide key information and new solutions that may change the proposal to ban OWDSs. The public should be provided the opportunity to review and comment on



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these studies within an adequate timeframe and such studies should also be presented to the decision makers so that they may make an informed decision regarding the Project.

Inadequate Analysis of Environmental Impacts

The analysis of impacts associated with the integrated facilities, interceptor sewer and decentralized facilities that could be implemented as part of the proposed ban is insufficient. The analysis within the Environmental Staff Report evaluates these new wastewater systems "on a conceptual basis only" (p. 3) and indicates that additional project-specific environmental analysis is to be conducted. As the project-specific analyses would occur following implementation of the prohibition, there is no certainty that the prohibition would not lead to direct and indirect impacts that are greater or equally objectionable to those that the prohibition is seeking to address. Thus, given the broad and profound implications of the prohibition, a comprehensive analysis of the environmental impacts of the Project is necessary at this time. Further, the Environmental Staff Report repeatedly makes the assumption that all impacts can be mitigated. This assumption is erroneous and unfounded since the analysis was completed on a conceptual basis and in many cases, the analysis was simply deferred. As demonstrated by the comments provided below, the Project has the potential to result in numerous significant environmental impacts that are not identified in the Environmental Staff Report, including impacts associated with the following issue areas:

Construction Impacts

- The Environmental Staff Report states that construction impacts are not significant as they are short-term. While construction impacts may be considered short-term in the context of the operational life of the Project, the mere fact that impacts are short-term is not sufficient unto itself to declare impacts less than significant as evidenced in the examples below.
 - *Traffic/Circulation*
 - In-street construction impacts are problematic with regard to traffic, buses, bicyclists, and pedestrians.



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- Two options, by themselves or in combination, are available to address in-street impacts – lane closures and/or rerouting traffic:
- Lane closures along PCH would be particularly problematic given the role of PCH as a life line connecting Malibu to areas up and down the coast as well as inland connectors to the regional freeway system.
- Given the multiple purposes that PCH serves, these impacts would be realized not only during commuting hours but throughout the day as PCH is the main roadway to access coastal recreational resources.
- Potential impacts in terms of limiting coastal access during non-commuting periods (e.g., weekends and during the summer) would also be of concern to agencies such as the California Coastal Commission.
- Re-routing works when the streets used for re-routing have comparable capacities and are arranged in a grid pattern. Neither is the case with regard to PCH. Adequate and convenient alternatives for rerouting traffic, as well as buses, bicyclists and pedestrians are extremely difficult.
- Construction traffic may also result in significant impacts to intersections and street segments.
- *Parking*
 - The loss of parking during construction will be of concern to businesses and residents. The Environmental Staff Report defers this analysis.
- *Air Quality*
 - The SCAQMD has established daily thresholds in terms of regional emissions and requires analysis of localized impacts based on ambient air quality standards which are expressed in terms of 1-hr, 8-hr, and 24-hour thresholds depending on the pollutant. As a result, Projects lasting a day or less can result in significant impacts.



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- No analysis of these potential impacts is provided. Therefore, one cannot independently verify the conclusions that impacts are less than significant because they are so-called "short-term" in nature.
- *Noise*
 - In-street construction whether it lasts one hour, one day, or one year can be significant and detrimental. Noise levels from construction often reach 90 dBA or higher at a distance of 50 feet from the source. No analysis is provided relative to the standards expressed in Section 8.24.040 of the Malibu Municipal Code which states:
 - "No person shall make, or cause or suffer, or permit to be made upon any public beach, occupied by such person, any unnecessary noises, sounds or vibrations which are physically annoying to reasonable persons of ordinary sensitivity or which are so harsh or so prolonged or unnatural or unusual in their use, time, or place as to occasion unnecessary discomfort to any persons within five hundred (500) feet of the place from which said noises emanate or which interfere with the peace and comfort of other occupants of the beach or the residents of the neighborhood or their guests, or the operators or customers in places of business in the vicinity, or which may detrimentally or adversely affect such occupants or residences or places of business."
 - No information is provided regarding the hours of permitted construction. While Section 8.24.060 of the City's Municipal Code provides exemptions for hours of construction, such exemptions are ineffective in terms of addressing the significant noise impacts that could occur from construction between weekday hours of 7:00 P.M. and 7:00 A.M. or at any time on Sundays or holidays.
- *In-Street Capacity*
 - The Environmental Staff Report is inadequate as there is no technical support or information demonstrating that there is adequate capacity in



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the street to accommodate the additional infrastructure or subsurface infrastructure.

- *Risk of Upset*
 - Environmental site assessments have not been conducted. Therefore, there is no discussion of potential presence of subsurface hazardous materials. Therefore, an unknown risk could occur.
 - No analysis is provided regarding potential impacts associated with the subsurface infrastructure accidentally being breached by a third-party after construction is completed.

Trucking

- Due to land area constraints, the new wastewater system(s) may indeed require trucking. Such trucking could result in a number of significant impacts that are not disclosed in the Environmental Staff Report.
- The RWQCB estimated that 7% of the generated waste in the study area was hauled offsite. See Proposed Prohibition Technical Memorandum #5: Dischargers with Unsuitable Hydrogeologic Conditions for High Flows of Wastewaters Resort to Hauling Liquid Sewage and Sludge to Communities that have Sewer and Wastewater Treatment Facilities (Draft Dated July 31, 2009). Based on this estimate, the RWQCB calculated that hauling activity in the Civic Center currently produces 252 tons of carbon dioxide per year. Using the RWQCB's own estimates, in five years, if a centralized wastewater treatment system (or other solution) is not in place, waste hauling from the Civic Center would produce an estimated 23,436 tons of carbon dioxide a year.

Climate Change

- Climate change is not addressed in the Environmental Staff Report. Quantification of greenhouse gas (GHG) emissions associated with project construction and operations is required under CEQA.



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- Information regarding energy usage that would support a climate change analysis is also not provided.
- Mitigation measures that have been independently determined to be reasonable and feasible with regard to reducing a project's GHG emissions are set forth in the Climate Change Scoping Plan prepared by the California Air Resources Board, related GHG documents, as well as by the State Attorney General are not acknowledged or discussed.

Land Use

- The Environmental Staff Report indicates that the land required for the new wastewater system(s) may require changes in land use and that additional land may be required for infiltration when discharge of wastewater to the subsurface is required. However, no analysis of the land use alteration impacts is provided. Rather, the analysis is deferred.

Water Quality

- The Environmental Staff Report states that with the new wastewater system(s), there may not be sufficient demand for recycling of all wastewaters and discharge of flows may be required if adequate subsurface disposal area is not available. The report suggests that an ocean outfall may be required. However, none of the potentially significant impacts associated with the outfall are described and no mitigation is provided.

Groundwater

- The Environmental Staff Report states that for all of the new wastewater system(s) options, termination of discharges from OWDSs would alter groundwater flow patterns. In addition, the report also states that subsurface systems that may be used for the new system options would also alter groundwater flows on a larger scale. However, no analysis of these impacts is provided and no mitigation measures are proposed to



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address these potentially significant impacts. Rather, the report defers the analysis of this impact to future environmental studies.

Air Toxics and Odors

- The SCAQMD has established specific methodologies and thresholds of significance regarding odors and air toxics that are not included.

Urban Decay

- The proposed ban could have a significant impact on the economic viability of the Malibu Civic Center commercial center, potentially causing blight conditions which impacts have not been addressed in the Environmental Staff Report.

Environmentally Sensitive Areas

- The Environmental Staff Report recognizes that there are environmentally sensitive areas in the Project vicinity and that the new wastewater system options could result in significant impacts to such areas. However, no analysis is provided. Rather, the discussion states that mitigation measures would be required by the local agency and does not provide any specificity as to what such mitigation measures may be.

Mitigation Measures

- Throughout the environmental checklist, numerous issue areas are indicated as "less than significant with mitigation incorporation." However, mitigation is referred to but no specific mitigation measures are provided.

Inadequate Analysis of Alternatives

CEQA requires that alternatives be identified to reduce or eliminate the significant environmental impacts of a project. See Cal. Code Regs., tit. 14, § 15350 *et seq.* As indicated above, the proposed ban and associated new wastewater system(s) have the potential to result in significant environmental impacts. Thus, in accordance with CEQA,



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alternatives to reduce or eliminate such significant impacts must be identified and a comparative analysis of such alternatives with those of the Project should be provided. However, the analysis of alternatives within the Environmental Staff Report focuses on just two alternatives that were not formulated with the intent of addressing such significant impacts. Specifically, the first alternative, Alternative 1, includes an initiative by a municipality, utility or other local government to cease discharge through OWDSs by providing community services to collect and dispose/reuse wastewater in a manner that will restore water quality and beneficial uses of impaired waters. The second alternative, Alternative 2, is a no action alternative that assumes dischargers continue to rely on OWDSs. The impact analysis for Alternative 1 within the Environmental Staff Report defers to the analysis completed for the Proposed Action or Project and concludes that all of the impacts for this Alternative would be of relatively short duration and can either be mitigated or alternative options to achieve water quality objectives may be available. The analysis for Alternative 2 merely states that this program alternative would result in continuing worsening impairments to beneficial uses of the water resources in and around the Malibu Civic Center. Thus, neither of the alternatives was designed with the intent of reducing the significant impacts of the Project and no comparative analysis of the environmental implications of these alternatives relative to the Project was included in the Environmental Staff Report.

In addition, as indicated above, studies are underway which may inform what the "Project" should truly be. These studies may demonstrate that other solutions are available to address water quality issues within the Project vicinity and such studies and solutions should also be accounted for in the analysis of alternatives provided in the Environmental Staff Report.

Finally, there are several additional alternatives that have been suggested in public comments made at the September 1, 2009 and October 1, 2009 Public Workshops at Pepperdine University that have not been accounted for in the Environmental Staff Report. For example, upgrades of existing systems should be accounted for as an alternative to the proposed ban. The staff report acknowledges that "dischargers could voluntarily implement projects to achieve water quality objectives and TDML targets" but "staff believes that this is unlikely" and thus no such alternatives are presented.



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Other CEQA Requirements Not Met

Cumulative Impacts

CEQA requires that an analysis of cumulative impacts associated with development of a project and related projects must be evaluated. (See Cal. Code Regs., tit. 14, § 15350 et. seq.). The Project clearly includes a new wastewater system(s) whose impacts must be evaluated in the context of other related projects or future growth. The cumulative impact discussion within the Environmental Staff Report does not comply with CEQA as it does not account for the cumulative impacts associated with a new wastewater system(s) and related projects or future growth in the area. Rather, the discussion defers the analysis of cumulative impacts to later documents.

Growth-Inducing Impacts

The discussion of growth-inducing impacts does not account for the fact that several of the alternative systems have the potential to remove obstacles to growth.

Statement of Overriding Considerations

The Statement of Overriding Considerations does not meet the basic requirements of CEQA and lacks clarity. The purpose of the Statement of Overriding Considerations under CEQA is to balance the benefits of the project against the significant impacts of the project. (See Cal. Code Regs. tit. 14, § 15021.) As discussed above, the Environmental Staff Report does not disclose what the significant impacts of the Project might be and additional analysis needs to be completed to identify such impacts. Thus, the Statement of Overriding Considerations does not weigh the significant impacts of the Project against the benefits of the Project. Furthermore, the discussion assumes that the local agency will adopt mitigation measures or alternatives to reduce significant impacts to less than significant levels.

FIVE-YEAR TIMEFRAME TO IMPLEMENT OPTIONS IS SHORT-SIGHTED

Another shortfall of the Project and the Environmental Staff Report is the short-sightedness associated with the five-year timeframe that has been established for



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imposition of the ban on existing ODWSs. Based on public comments to date, no funding has been identified or approved for any new wastewater system. Moreover, the City of Malibu has recently estimated the cost of a centralized system to be on the order of \$40 to \$60 million dollars as compared to the \$18 million estimate set forth in the Environmental Staff Report. Given the existing state of the economy, such funding will likely take some time to obtain and the fact that the City estimates that the centralized system would cost up to 3+ times more than the original estimate further casts serious doubt as to whether a centralized system could ever be economically feasible. In addition, a substantial amount of time will be required to complete public outreach, consult with agencies, and evaluate, design, and construct a new system. The implications of this impractical timeframe must be accounted for. For example, if the ban were to occur prior to a new system being in place, trucking of wastewater may be necessary. This and other potential ramifications of the proposed five-year timeframe need to be addressed.

CONCLUSION

As demonstrated by the comments above, the environmental analysis provided in the Environmental Staff Report is substantively flawed from a multitude of perspectives. With these flaws, the Environmental Staff Report fails to meet the basic purposes of CEQA including to inform the decision makers and the public about the potential significant environmental impacts of a project, to reduce significant impacts through identification of alternatives or mitigation measures, and to disclose to the public why an agency approved a project if significant impacts are involved. (See Cal. Public Resources Code § 21000 and 21001.)

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The preceding constitutes our comments on the Environmental Staff Report and its supporting documentation available as of this date. As additional information and documentation with regard to the Project is released by the Regional Board we reserve the report to supplement these comments at a later date. Please contact the undersigned with any questions you may have with regard to the comments presented above.

Respectfully submitted,
Matrix Environmental

A handwritten signature in black ink, appearing to read "Stephanie Eyestone-Jones".

Stephanie Eyestone-Jones
President

A handwritten signature in black ink, appearing to read "Bruce Lackow".

Bruce Lackow
President

ATTACHMENT 5

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Ms. Rebecca Chou
Ms. Elizabeth Erickson
Groundwater Permitting
California Regional Water Quality Control Board
Los Angeles Region
320 4th Street, Suite 200
Los Angeles, California 90013

VIA EMAIL DELIVERY

Re: Comments Concerning Unrealistic Timing Assumptions for the Environmental Analysis, Project Consideration, Potential Litigation, Election on Potential Assessment District, Obtaining of State Loan, Public Bidding Process, and Construction of Potential Centralized Wastewater Treatment Facility in the Malibu Civic Center (Scheduled for RWOCEB Consideration on Nov. 5, 2009)

Dear Ms. Chou and Ms. Erickson,

We understand that the proposed November 5, 2014, date by which the Regional Board staff proposes to prohibit any and all discharges from existing septic systems in the Malibu Civic Center area is based on a hypothetical timeline prepared by the City of Malibu that sets forth a "best case" scenario for the potential completion of a centralized wastewater treatment facility in the Civic Center area that would have to exist before the prohibition date to avoid massive environmental and economic disruption. This letter discusses why we believe it is inappropriate to rely on that hypothetical "best case" scenario and why we believe there is no substantial evidence supporting any conclusion that such a centralized wastewater treatment facility could be reliably expected to be completed on any time frame near to the November 5, 2014, date the Regional Board staff proposes.

First, from discussions with City staff it is clear that the "best case" scenario timeline was never intended to be the City's actual prediction of what would happen in the future. The City's draft timeline was intended to show an optimistic "best case" scenario of what is theoretically possible assuming that everything that can go easily does go easily and assuming that a broad consensus of all interested stakeholders is reached. That, of course, is not the current situation and is not likely to occur. Based on our expertise in land use permitting, in assisting with environmental assessments, in litigation over environmental and land use matters, in public finance matters, and based on the evidence submitted to the Regional Board, a timing estimate that assumes completion of such a treatment facility by November 5, 2014 is completely

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unrealistic given the facts as they actually exist today.¹ We also believe that there is no substantial evidence that supports a November 5, 2014 date and that a reasonable timing estimate would be closer to ten years from the final adoption of any septic ban.

To highlight the unrealistic assumptions in that "best case" scenario, we point out that for the City's hypothetical timeline to work all of the following things must occur.

1. The "best case" timing scenario assumes that there will be no substantial opposition to the basic idea of having a centralized treatment system in the Civic Center area. This timing scenario is impossible with substantial opposition so any such opposition to the basic idea of such a system would derail the timing. Given the tremendous interest the Regional Board staff has seen from the community on this issue, it is clear that a vast portion of the Malibu community believes that the Regional Board has not made a compelling case for such a system and based on the current evidence would oppose such a system.

2. The "best case" timing scenario assumes that there will be no substantial opposition to the specific configuration of a potential centralized treatment system that the City might create. However, the City has stated that it believes any such system would require off-site wastewater dispersion locations that have not been identified, would require a substantial portion of treated water to be sent back to the locations from which waste water originated, and that some degree of pre-treatment may be needed at the source locations. All of those issues are yet to be described and are likely to create concerns and opposition from impacted stakeholders.

3. The "best case" timing scenario appears to assume an illegal CEQA process that would run afoul of the California Supreme Court's recent decision in Save Tara v. City of West Hollywood. The scenario calls for the City to acquire land for the future placement of the treatment facility and wastewater dispersal facilities nearly a full year before the City certifies an EIR for the project. This is exactly the sort of initial public action on a project preceding the project's EIR that the Supreme Court firmly rejected.

4. The "best case" timing scenario assumes that the CEQA process will proceed in a streamlined fashion, with a Draft EIR being published in July 2010 (just about nine months from now for a highly complex technical document that has not yet been started) and without any comments being made on the Draft EIR that would necessitate substantial revisions or recirculation. That is completely unrealistic for any high-quality EIR for a project of this complexity and with this level of community interest. A period of two years or more for a high-quality Draft EIR under a situation like this is far more likely.

¹ The signer of this letter is a partner of the international law firm of Latham & Watkins LLP, a nineteen year practitioner of environmental and land use law, a frequent author and lecturer on environmental and land use legal issues, and has been an adjunct faculty member at USC Law School since 1997 where he teaches Environmental Law. He is a 1990 graduate of Harvard Law School, cum laude, and a 1987 graduate of UCLA. His professional biography is enclosed.

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5. The "best case" timing scenario assumes that the City's Planning Commission and City Council will be fully satisfied with whatever Draft EIR is given to them without requiring revisions or further work on the CEQA document. That is an unrealistic assumption in light of the obligation that those bodies exercise their "independent judgment" as CEQA requires. If either body determines that more assessment is needed, as is often the case, then an additional year or more can be required to complete that work and circulate it for public comment.

6. The "best case" timing scenario assumes that the City's Planning Commission and City Council will approve the treatment system project at the first request, without changes or more work being needed on the project itself, even though there are many concerns already being expressed by members of the public and by members of those two City bodies and even though it is illegal for any such action to be prejudged in any way.

7. The "best case" timing scenario assumes that there will be no litigation challenging the City's presumed approval of the EIR and the project. That is an extremely unlikely assumption in light of the great controversy over this proposed treatment facility and the frequency of litigation over Malibu land use decisions for matter with far less controversy and impact than this. Even if the City were to win such litigation in the trial court and in the appellate court, that process typically takes about two years assuming that the City wins at every step and assuming that the Supreme Court does not accept the case for review.

8. The "best case" timing scenario assumes that there will be broad public and landowner support for the financing mechanism – a new assessment district that requires an affirmative vote of the property owners expected to pay the new assessment – even though no one has even begun to educate the impacted people about how much money this might cost them. The City recently unveiled potential system designs with costs in the range of \$40 million to \$60 million. Those estimates may well prove to be far too low, too, as the actual costs will not be known until a public bidding process is completed. It is common for predictions of bids to be far lower than actual bids. Even using the City's rough cost estimates, there are only approximately 387 businesses and residences that would be in the assessment district so that would mean that the average parcel would be expected to pay a total of about \$103,000 to \$155,000 each, plus substantial interest from any loan or bond, all for a system that duplicates septic systems that property owners already have and paid for and that have not been shown based on adequate evidence to cause any environmental harm that a reasonable enforcement process could not completely solve.

9. The "best case" timing scenario assumes that a state loan will be available to the City but there is no adequate basis to make that assumption given the severe economic recession and widespread state budget cuts to crucial, high-priority services like health care, education, nutrition to the poor and the ill, state parks, fire fighting, the state court system, and so forth. It is unrealistic to assume that it will be an easy thing for a small city known for having wealthy residents to get such a loan on reasonable terms in the current economic environment. It is also unrealistic to assume, as the scenario does, that it will take only two months from the

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City's filing of a final loan application to approval and funding of the presumed loan. Even if a state loan is available, it is reasonable to expect that it will take much longer to complete.

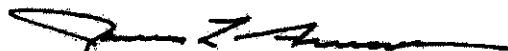
10. The "best case" timing scenario assumes that the treatment system will be easy to bid out for construction work, that there will be no glitches in the highly-regulated public bidding process, that there will be no litigation from disappointed bidders, and that the costs of the successful bidders will be within an acceptable range. It assumes that no re-bidding will be needed, though re-bidding is often needed for public projects. It is unwise to assume that none of those common sorts of glitches or delays will happen here.

11. The "best case" timing scenario assumes that the treatment system will be easy to build and will be on-time and on-budget. In fact, the scenario calls for only eleven months of construction from the awarding of the construction contract to the completion of all construction. That is an extraordinarily optimistic construction assumption. There is no adequate basis for concluding it is likely to work out that way and it is unwise not to factor in a healthy time cushion for the countless things that can and often do go wrong during construction to slow things down and/or to drive costs up. For example, Malibu has a long and rich history of having a Native American culture that has existed for hundreds of years and it is entirely possible that Native American resources or remains could be found that require a halt in construction and possibly major re-routing or other changes to minimize the impacts on those resources. That is the sort of thing that is reasonably foreseeable in Malibu and that can make an overly optimistic eleven month construction period last several years.

In all, it is clear that the City's "best case" timing scenario for the potential completion of a treatment system is extremely optimistic and extremely unlikely to occur. A great many of the factors that dictate timing of such a system – if one is approved and survives legal challenge – are unknowable at this time. We believe based on our expertise, experience, and review of the evidence that at least ten years is needed to account reasonably for the many steps that must occur, for the litigation that is likely to occur, for the election over an assessment district that is needed, for other financing mechanisms to be found, if needed, and for these actions to take place for this major public works project in an environment of great controversy and disagreement over its value and need. Ten years is not a long time for major public works projects in a controversial environment and it is unreasonable based on the information available today to be confident that a shorter time would occur.

While it is one thing for the City to create a "best case" timing scenario of what could happen if everything proceeded perfectly and without controversy, it would be irresponsible for the Regional Board to assume that optimistic state of affairs when imposing a ban on septic system discharges that would devastate the Malibu business and residential communities if such a system were not approved and completed before the ban came into effect.

Very truly yours,



James L. Arnone
of LATHAM & WATKINS LLP

James L. Arnone

Partner

Practices

Air Quality Regulation
Climate Change
Contaminated Properties/ Waste
Environmental Litigation
Environmental Regulatory
Land Use
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Bar Qualifications

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JD, Harvard Law School, 1990
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Experience

Jim Arnone is a partner in the Los Angeles office of Latham & Watkins and is a member of the Environmental, Land & Resources Department. Mr. Arnone practices land use and environmental law, focusing on high-controversy real estate developments and local government-related disputes. He advises clients and litigates highly controversial matters implicating a wide range of state and federal environmental and land use laws, including having handled many matters arising under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the federal and California "Superfund" laws, the Clean Air Act and regional air quality regulations, the Clean Water Act, state and local water quality and water supply regulations, the Endangered Species Act, the California Coastal Act, historic preservation laws, California's "Proposition 65," California's "Unfair Competition Law" and nuisance and trespass law. Mr. Arnone also advises clients and litigates many matters arising from state government and local government law, including matters arising under the Ralph M. Brown Act, the Public Records Act, state and local laws governing initiatives and referenda and state and local government contracting laws. Mr. Arnone also advises clients on the implications of current and pending global climate change rules and regulations and serves on the South Coast Air Quality Management District's Global Climate Change CEQA Working Group.

Mr. Arnone has extensive courtroom experience, both in the trial courts and in the appellate courts. He has handled many writ of mandate trials and other dispositive court hearings in land use, environmental and local government-oriented cases. Mr. Arnone is a frequent author and lecturer on environmental and land use law. Mr. Arnone is an adjunct professor at the University of Southern California Law School, where he has taught Environmental Law since 1997. He recently co-authored a global climate change chapter in an ABA-published Environmental Litigation book, authored articles on case law developments and proposed environmental and land use rules. He has spoken on many expert panels on global climate change, CEQA and land use topics.

Mr. Arnone is also active in bar associations and charitable activities. He previously served on the Executive Committee of the Los Angeles County Bar Association's Environmental Law Section, where he served as Chair of its Land Use Committee, Chair of its Litigation and Insurance Committee and Chair of its Legislation Review Committee. He currently serves as Chairman of the Board of AIDS Project Los Angeles, as a board member of the Ketchum-Downtown YMCA and as Board Treasurer of the West Hollywood Library Fund. He has previously served on the board of the Western Center of Law and Poverty.