

## Response to Comments

### MOU between City of Malibu, Los Angeles Regional Water Quality Control Board and State Water Resources Control Board Tentative Resolution No. R14-XXX

Comment Letters	Commented by	Date
1	Heal the Bay	Nov. 4, 2014
2	Joan Lavine	Two letters separately dated Nov. 3 and Nov. 4. 2014
3	Serra Canyon Property Owners Association (SCPOA)	Nov. 4, 2014

#	Comments	Response to Comments
1-1	<p>The 2011 MOU compliance deadlines for Phase I, II, and III properties are as follows: Phase I – November 5, 2015, Phase II – November 5, 2019, and Phase III – November 5, 2025. In 2012, the City of Malibu informed the Regional Board and the public that it would likely be unable to meet the November 5, 2015 deadline for Phase I commercial properties. Nonetheless, the City stated that it anticipates any delay in compliance with Phase I requirements will be no longer than nine to twelve months or by November 5, 2016. Since then, the City has consistently assured the Regional Board and stakeholders that it would do its best to make up for this delay during the construction process. Importantly, the City has not indicated that it expects any further delay with respect to Phase I.</p>	<p>Comment noted.</p>
1-2	<p>No meaningful justification for extending the Phase I final deadline beyond the 9 to 12-month delay, of which the Regional Board and all interested parties have been aware of, was provided in the Tentative Revised MOU or supporting documents. In addition to proposing a significant delay to Phase I interim and final deadlines, the Tentative MOU seeks to extend the final Phase II compliance deadline, and associated interim deadlines, by three years. Specifically, the proposal calls for a shift in the final deadline from November 5, 2019 to November 5, 2022. Once again, no justification for this significant delay is provided.</p>	<p>Consistent with the 2011 Memorandum of Understanding (2011 MOU), the City of Malibu has made substantial progress in meeting the agreed-upon dates for the tasks identified in the 2011 MOU. The City has provided appropriate justification for the need for additional time in oral reports to the Regional Board and in submittals to the Regional Board. Additional time is needed primarily due to unexpected time it took to prepare the draft environmental impact report, which depends on the completion of complex technical reports, and the need to obtain additional funding for Phase I through the establishment of a Community Facilities Assessment District. In addition, the requested extension will allow additional time after completion of Phase One to evaluate its operation to better prepare for construction and operation of Phase Two. Given the complexity of the project, additional time is appropriate.</p>

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1-3	<p>Any attempts to amend the Septic Prohibition’s deadlines and requirements through the 2011 Septic MOU are illegal. Since the stated goal of the 2011 MOU is to implement the Septic Prohibition we, regardless of our support of Malibu’s efforts to accomplish the construction of the Civic Center WWTF, cannot support the proposed unjustified extension of the Septic Prohibition Phase I and II timelines from six years and ten years, respectively, to seven and a half years and thirteen years, respectively.</p>	<p>The Tentative Revised MOU, like the 2011 MOU, does not amend the Basin Plan Amendment (i.e., the prohibition). The Basin Plan Amendment remains in effect. In the MOU, the Regional Board agrees not to enforce the prohibition deadlines if the City is in compliance with the schedule. The MOU does not allow any new systems to be built.</p>
1-4	<p>Allowing septic systems to continue polluting impaired waterways years beyond the deadlines outlined in the Septic Prohibition, as proposed in the Tentative Revised MOU, directly contradicts the intent and letter of the Prohibition and will result in continued degradation of designated beneficial uses for the Malibu Creek and Lagoon and coastal waters. The Regional Board should not allow this delay.</p>	<p>The Tentative Revised MOU does not amend the Basin Plan Amendment. The MOU is an agreement between the parties to coordinate in the implementation of a wastewater treatment plan.</p>
1-5	<p>Under the Tentative Revised MOU, “If an assessment district is not approved by dischargers, the Los Angeles Water Board <i>may enforce</i> all State policies, plans, or regulations to gain compliance, including the requirement to upgrade each OWDS to advance treatment, or other appropriate means by November 5, 2019...All property owners that are required to upgrade their system will need to obtain City of Malibu building permits and obtain an operating permit in accordance with City ordinances....”.</p> <p>Under the Septic Prohibition, no property owners would be allowed to discharge treated wastewater via on-site wastewater disposal systems in the Civic Center Area beyond Septic Prohibition deadlines. Because the language provided above is inconsistent with the Regional Board’s obligations and legal requirements, it should be removed from the Tentative Revised MOU.</p>	<p>The language quoted is from Article VI, paragraph G, of the Tentative Revised MOU. This paragraph is not new language; it is the same language contained in the 2011 MOU and no revisions are proposed. The Regional Board does not agree that the language is inconsistent with the Basin Plan Amendment. If the Regional Board chooses to enforce the prohibition, it has many tools, including those set forth in the MOU. The Regional Board does not agree that the language should be deleted; it does not preclude the Regional Board from enforcing the prohibition’s dates. In fact, the MOU specifically reserves the right of the Regional Board to enforce the Basin Plan Amendment. See Article VI, Paragraph E. If the assessment district is not approved in a timely manner, depending on the actions that the Board selected to proceed with, advanced treated septic tanks would provide better interim water quality protection than existing systems .</p>
1-6	<p>The construction of the Civic Center Wastewater Treatment Facility is an extremely important project for water quality protections in the City of Malibu and the impaired Malibu Creek, Malibu Lagoon and nearby beaches. Despite our opposition to the 2011 MOU as an implementation tool for the Septic Prohibition, Heal the Bay and Waterkeeper have consistently supported the efforts of the City of</p>	<p>The Regional Board agrees that the construction of the wastewater treatment facility is an extremely important project for water quality protections in the City of Malibu.</p> <p>Also, see response 1-3</p>

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	<p>Malibu and the Regional Board to accomplish this goal by the deadlines set forth in the Septic Prohibition. As discussed, however, we oppose the Tentative Revised MOU's proposal to significantly extend Phase I and II deadlines. We urge the Regional Board to reject further significant extensions of the deadlines and to clarify in the MOU language that the Board will take steps to ensure compliance with the Septic Prohibition and the Basin Plan.</p>	
2-1	<p>The pending proposed resolution that is the subject of the pending proceeding and this comment proposes again fails to exempt already permitted residential properties constructed pursuant to permits and relied on and does not propose to effectively exempt them in the future. The septic ban regulations fail to exempt any fully permitted residential property within the ban zone or to grandfather them in in order to continue to be used as lawfully permitted. I object that they also fail to provide any procedural mechanism to allow property owners to petition for exemption for good cause.</p>	<p>The Tentative Revised MOU which is the subject of the pending proceeding constitutes an agreement between the parties to address the need for a centralized wastewater treatment system. Your comments address the Basin Plan Amendment itself, which became final in 2010 and is not the subject of the pending proceeding.</p>
2-2	<p>California state law exempts permitted construction that has been commenced and/or completed and permitted use. It does not grant exemptions to construction projects which have not been granted permits and/or have not commenced substantial construction and/or permitted use.</p>	<p>Your comment appears to address the Basin Plan Amendment establishing the prohibition which became final in 2010, and is not relevant to the pending proceeding to consider the Tentative Revised MOU.</p>
2-3	<p>The proposed amended MOU lacks either legal or a factual basis, just as the original MOU lack(ed) same, and the underlying septic ban prohibition lack(ed) a legal and/or factual basis. It is contrary to the USGS findings, in a report published in 2012 and peer-reviewed, and an April 30, 2014, referenced herein geology report served on the LARWQCB in our about April 30, 2014. See attached documents in full on enclosed CD disk. It is contrary to the SWRCB's own published interactive mapping of the Malibu Civic Center area.</p>	<p>The Regional Board has the authority to enter into the MOU based on California Water Code section 13225(a), (b), and (j). The Basin Plan Amendment was adopted based on scientific peer-reviewed studies and after extensive opportunity for public comment. The Tentative Revised MOU does not amend the Basin Plan Amendment. Therefore, your comments are not relevant to the MOU since the Basin Plan Amendment became final in 2010.</p>

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2-4	The Malibu Civic Center residential property owners are the subject(s) of spot zoning and have been subjected to invidious, uneven-handed, discriminatory, confiscatory regulations and confiscatory regulatory takings in violation of the Due Process and Takings Clauses of the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 13A, 13B, 13C, 13D, and 13E, California Constitution.	The pending proceeding is not subject to the constitutional provisions cited.
2-5	These prohibitions violate the California Constitution requirement that the State of California FUND what it mandates. I object to the attempt, successful so far, of the SWRCB and the LARWQCB to illegally cost-shift any cost of its sewer installation mandates to residential property owners in violation of California Constitution, Article 13B, Section 6. Same is confiscatory and confiscatory regulation.	The comment is aimed at the Basin Plan Amendment itself, which became final in 2010, and is not the subject of the pending proceeding.
2-6	The entire septic ban amendment, the MOU and this revised MOU, and the 2012 OWTS Policy, SWRCB Regulation 2012-0032, violate federal law under the Uniform Relocation Assistance, etc. Act, 42 USC 4601, et seq.	The Regional Board disagrees with the comment. The Tentative Revised MOU is an agreement between the parties. The Regional Board may enter into the agreement under the authority of California Water Code section 13225(a), (b), and (j). To the extent your comments address the Basin Plan Amendment, that Amendment became final in 2010 and is not the subject of the pending proceeding.
2-7	This proposal is invidiously discriminatory against residential property owners. Each property and proposed project on it have the effect of advancing an agenda or set of agendas that will likely destroy or substantially reduce the residential community. It has the substantial adverse effect of displacing and/or making homeless and destitute, several hundred residents, many of whom are seniors without resources to relocate. Replacement housing for up to 1500 residents will likely be required. No provisions are made to mitigate this housing loss and residents' dislocation.	The pending proceeding is an agreement regarding construction of a community wastewater treatment system and is not discriminatory against residential properties.

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2-8	<p>The effect of the septic ban in the Malibu Civic Center is to ultimately create an “open” zone and to make the Malibu Civic Center into solely a commercial district contrary to the City of Malibu democratically, constituent-established, voted-on choices of the electorate. The cumulative effect of advancing the multiple large-scale commercial projects has significant adverse effects on the Malibu Civic Center area, which is dedicated to residential and recreational use. Altogether, the pending several commercial ventures would make the Malibu Civic Center into a “downtown” commercial zone. This is entirely contrary to and overwhelmingly conflicts with the City of Malibu General Plan.</p>	<p>The comment appears to address the Basin Plan Amendment itself, which became final in 2010, and is not the subject of the pending proceeding.</p>
2-9	<p>The City of Malibu Land Use Plan provides for protection of recreational and residential uses, facilities, activities and environment. This proposal therefore undermines, conflicts with, runs counter to and violates the City of Malibu Local Land Use Plan and Coastal Land Use Plan.</p>	<p>The Regional Board does not have authority with respect to the City’s land use planning decisions.</p>
2-10	<p>This proposal fails to support, fails to advance, and fails to implement resident-serving uses or needs.</p>	<p>Comment noted.</p>
2-11	<p>The previous granting of exemptions to several massive commercial ventures whose construction is not permitted. The substantial adverse effect is of advancing and implementing a strategy of commercial property owners and commercial developers to cost-shift to residents and residential property owners the installation of infrastructure to commercialize the Malibu Civic Center and Malibu in general. The cumulative adverse effects are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. The proposal has the potential to degrade the quality of the environment by creating substantial amounts of pollution.</p>	<p>The comment addresses land use planning issues, which are within the purview of the City of Malibu, not the Regional Board.</p>
2-12	<p>The significant adverse effects of the massive traffic increases would make the area generally inaccessible for residents and recreational day users of the parks and public beaches.</p>	<p>It is unclear how this comment relates to the pending proceeding. The Tentative Revised MOU does not impact traffic.</p>

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2-13	Has a CEQA review and proceeding been conducted for the septic ban? If not, why not? Isn't this agency sufficiently committed to the septic ban, cost-shifting infrastructure to the residential and non-commercial property owners and destruction of the residential and recreational uses of the area that CEQA environmental proceedings and review are required under California law?	The comment addresses the Basin Plan Amendment itself, which became final in 2010. The Regional Board complied with CEQA in adopting the Basin Plan Amendment.
2-14	State of California and its agencies have failed to fund the installation, operation and other costs of a sewer system, as required by California Constitution, Art. 13B, Sec. 6, and Water Code, § 13291.5 the alternative it seeks to impose, a sewer system.	Comment noted.
2-15	The pending resolution lacks either factual or legal bases and are null and void.	The comment is not clear. The Regional Board has authority to enter into the agreement pursuant to California Water Code section 13225 (a), (b), and (j).
2-16	A current list of properties, listed by Los Angeles County Assessor's ID Number and by locally known street addresses, covered by and in the Malibu Civic Center septic ban zone has not been attached to this proposal. The mapping is too vague to identify the properties affected by this MOU and MOU as revised and amended. This impairs my ability to provide a complete comment based on the nature and extent of the proposal, the proposed projects, and the proposed resolution. It is essential that this agency identify exactly which properties are subject to the septic ban. The vague mapping and ambiguous, changing lists of "exemptions" cause a prejudicial lack of fair, reasonable and actual notice of the nature and extent of the ban/prohibition. It violates the rights to reasonable, fair, mailed notice and to Due Process of Law under the 5th and 14th Amendments, U.S. Constitution.	The comment addresses the Basin Plan Amendment itself, which became final in 2010, and is not relevant to the pending proceeding.
2-17	The use of email notice and the waiver by the involved officials of the federally required written, mailed notice under 40 FCR, §25.5 as provided for in Art.VI(A), p. 10 of proposed revised MOU.	The pending proceeding regarding the Tentative Revised MOU is not subject to the federal regulations you cite.
2-18	The regulations adopted and enacted in SWRCB Resolution No. 2010-0045 and LARWQCB R4-2009-007, and also the 2012 OWTS Policy, SWRCB No. 2012-0032, lack either factual or legal bases and are null and void. They are overbroad, confiscatory, discriminatory and not even-handed. They are illegal "spot zoning".	The comment addresses actions taken in 2010 and 2012 and is not relevant to the pending proceeding.

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2-19	Constitutionally adequate, fair notice has not been given to the property owners, residents, occupants and others materially affected as required by federal law.	Federal law does not apply to the pending proceeding.
2-20	The proposed general order fails to comply with federal Clean Water Act regulatory requirements for adequate written, mailed notice to interested parties under Title 40 CFR, Sec. 25.5, and Due Process of Law reasonable notice and reasonable opportunity to be heard requirements of the 5th and 14th Amendments, U.S Constitution.	Neither the federal Clean Water Act, the regulations cited, nor the U.S. Constitution apply to the pending proceeding.
2-21	<p>The California State Water Resources Quality Control Board and California Regional Water Quality Control Board, Los Angeles Region/Region 4 lack statutory or delegated authority to ban septic systems in a manner that denies all reasonable viable, beneficial economic use of the property, because it does not have authority to do so. Thus, California State Water Resources Quality Control Board California Regional Water Quality Control Board, Los Angeles Region/Region 4 exceed their jurisdiction and act without jurisdiction by banning the use of septic systems in the Malibu Civic Center.</p> <p>This undersigned property owner objects that a septic system ban directed at her property and the entire Malibu Civic Center far exceeds the statutory and constitutional authority and jurisdiction of the state board or regional board to obtain compliance with minor violations by the giving of a notice to comply pursuant to Water C. § 13399.2. Said boards exceed their jurisdiction to act and act without jurisdiction by banning septic systems where their enforcement authority is limited by statute as set forth hereinabove. Said assertions of authority without it having been granted to them prejudicially violates Due Process of Law, as guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 13, 16 and 19, California Constitution.</p>	The comment addresses the Basin Plan Amendment, which became final in 2010, and is not relevant to the pending proceeding.
2-22	The regulations regarding the implementation of the complete prohibition of a septic ban in the Malibu Civic Center constitute unconstitutional presumptions of wrong-doing and liability, in some ways irrebuttable. There is no mechanism or protocol or procedure by which a property owner can challenge in a fair, impartial proceeding these presumptions. Joan Lavine objects to this failure to provide an adequate legal process as they have objected.	The comment addresses the Basin Plan Amendment, which became final in 2010 and is not relevant to the pending proceeding.

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3-1	<p>The Serra Canyon Property Owners Association (SCPOA) is concerned that the proposed MOU imposes unsupported, arbitrary, and capricious obligations on “Phase Two” SCPOA property owners, fails to acknowledge a technically-based path to become exempt from mandatory connection to the proposed Civic Center wastewater treatment plant, and imposes unnecessary regulatory burdens that are grossly disproportionate to any environmental benefit gained.</p>	<p>The Regional Board disagrees with the comment. The 2011 MOU imposes no duties on any properties. The 2011 MOU is an agreement between the City of Malibu, the Regional Board, and the State Water Board that memorializes their agreement to coordinate in the implementation of a wastewater treatment plan in the Malibu Civic Center Area. It imposes no duties on any other entities. In addition, it is not enforceable and can be terminated at any time by any of the parties. It acknowledges that additional data could support the conclusion that some areas of the Malibu Civic Center currently included in the Basin Plan Amendment prohibition are not contributing to the impairments of the groundwater or surface waters in the vicinity. It will take several years at a minimum to make such a determination. The Tentative Revised MOU would revise the agreed upon schedule in the MOU to provide the City with additional time both to construct a community wastewater treatment system for Phase I, and operate it for some additional time before construction of Phase II. The MOU cannot require any property to connect to the community sewer. However, the MOU does not amend the Basin Plan Amendment that prohibits the use of on-site systems based on a phased schedule. By signing the MOU, the Regional Board has agreed not to enforce the prohibition on all properties subject to the prohibition if the City implements the actions according to the schedule. The MOU does not preclude entities such as SCPOA from providing information to the Regional Board to justify a change to the Basin Plan Amendment in the future. The MOU does not impose any regulatory burdens on any entity other than that the City of Malibu has agreed to take actions set forth in the MOU. The Basin Plan Amendment prohibiting the use of on-site systems was based on substantial technical information that on-site systems in the Malibu Civic Center Area are contributing to very significant impairment of surface and groundwater in the area.</p>
3-2	<p>SCPOA requests that the Regional Board</p> <ol style="list-style-type: none"> <li>1. Amend the MOU to give Phase Two Serra Canyon property owners the same ability as Phase Three properties to opt out of the wastewater treatment plant connection requirement subject to the successful completion of a similar water sampling program with similar requirements.</li> <li>2. Specify in writing the exact process by which Phase Two Serra Canyon property owners can "test out" of the wastewater treatment plant connection requirement if they show that the subject homes have no contribution to bacteria or nutrient impacts to Malibu Creek and Malibu Lagoon.</li> </ol>	<p>Serra Canyon properties are within the contaminated watershed area identified in the documents supporting the Basin Plan Amendment. The purpose of the MOU is to memorialize the parties' agreement to coordinate in the implementation of a wastewater treatment plan to address the impacts caused by the discharges from on-site systems. The MOU is an agreement with the City and the Water Boards since the City is the entity that has agreed to provide an alternative wastewater disposal system for properties within the Malibu Civic Center Area. It is not appropriate to include other parties to the MOU since it specifically addresses the City's actions. The MOU acknowledges that some areas may not be contributing to the pollution. The MOU does not preclude other entities from providing information for the Regional Board to consider in determining whether those areas should not be excluded from the</p>



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	<p>3. In addition, specify in writing the exact times or milestones in the MOU process by which the RWQCB will fairly consider the proposition that Phase Two Serra Canyon property owners can be excluded from the wastewater treatment plant connection requirement.</p>	<p>prohibition area; however, it is premature to consider any of these determinations at this time. The MOU, however, does not amend the Basin Plan Amendment; any changes to the phases in the Basin Plan Amendment may only be changed through the basin planning process.</p> <p>SCPOA submitted a report entitled “Water Quality Study – Work Plan for Serra Canyon” prepared by Citadel Environmental Service, Inc. on September 16, 2014. The Regional Board staff provided comments on November 12, 2014 suggesting the need for and the process to provide additional information regarding water quality and impacts from SCPOA’s on-site systems. .</p> <p>It is not appropriate at this time to consider any amendments to the Basin Plan Amendment. Additional information set forth in the Tentative Revised MOU and other information obtained by the Regional Board may be used in the future to consider if revisions to the Basin Plan Amendment are appropriate.</p>
3-3	<p>Despite the RWQCB staff contentions to the contrary, RWQCB has no specific evidence showing that existing on-site wastewater disposal systems ("OWDS") within Serra Canyon contribute bacteria or nutrient impacts (including nitrates and phosphorous) to receiving waters. To the contrary, the evidence reviewed to date suggests that the City and the RWQCB entered into an expedient agreement to include Serra Canyon parcels in Phase Two due to some of the Serra Canyon parcels' proximity to Malibu Creek-a decision made without the benefit of specific scientific evidence or site-specific testing.</p>	<p>The Basin Plan Amendment prohibiting on-site wastewater disposal systems in the Malibu Civic Center Area is based on extensive scientific and technical studies that concluded that discharges from “on-site wastewater disposal systems” (OWDS or on-site systems) have polluted groundwater in the Malibu Valley Groundwater Basin. For example, 84 percent of groundwater wells tested did not meet drinking water standards due to excessive levels of fecal coliform, and 43 percent of groundwater wells tested did not meet drinking water standards due to excessive levels of nitrogen. Polluted groundwater also moves in the subsurface and eventually reaches Malibu Lagoon, Malibu Creek, Malibu Beach, Malibu Lagoon Beach, and Carbon Beach polluting these surface water bodies. Each of these waterbodies does not meet water quality objectives for bacteria, making them unsafe for their designated uses, including swimming. Nutrients in wastewater discharged from on-site systems are also transported into the Malibu Lagoon either directly from groundwater or from tidal inflow which significantly impair aquatic life.</p> <p>The Basin Plan Amendment, which became final in 2010, was based on this and other extensive technical information confirming the impact of on-site wastewater treatment systems on water quality in the Malibu Civic Center Area. See, for example, Technical Memo No. 2 – Pathogens and Nitrogen in Wastewater Impair Underlying Groundwater as a Potential Source of Drinking Water, dated November 5, 2009, which has groundwater data confirming the impact on groundwater quality within the Malibu Civic Center watershed.</p>

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		<p>The MOU does not amend the Basin Plan Amendment. The MOU provides that the City may provide information to the Regional Board that if it demonstrates that certain areas are not contributing to the pollution of the ground and surface water in the Malibu Civic Center Area would be placed in a Phase Three. The MOU does not preclude other entities, such as SCPOA, to also attempt to make such a demonstration.</p>
3-4	<p>Despite SCPOA's completion of preliminary water quality testing and its proposed Work Plan (defined below) for an extended groundwater monitoring regimen and hydrologic modeling, the proposed MOU does not allow for any possible exclusion of SCPOA properties from Phase Two's mandatory sewer connections.</p>	<p>The Tentative Revised MOU is an agreement between the City of Malibu, the Regional Board, and the State Water Board to set forth a process for coordinating in the implementation of a wastewater treatment plan in the Malibu Civic Center Area. The MOU does not preclude agreements with other entities. The MOU does not amend the Basin Plan Amendment, nor change the boundaries. All properties within Phase Two, as defined in the Basin Plan Amendment, are subject to the prohibition that goes into effect on November 5, 2019. In the MOU, the Regional Board has agreed not to enforce that deadline against all residential properties if the City implements the actions in the MOU. In other words, the MOU does not exclude any properties from Phase Two as set forth in the Basin Plan Amendment.</p>
3-5	<p>SCPOA proposes the following revisions (as underlined) to the proposed MOU language concerning Phase Two:</p> <p><b>B. Phase Two:</b> <u>Prior to the start of Phase Two, the City shall complete a water quality sampling program for Serra Canyon properties to determine the level of bacteria and nitrogen that these properties contribute to the Malibu Creek and Malibu Lagoon.</u> By November 5, 2022, within the coral-colored area shown on the attached Boundary Map, the City shall require all those developed properties to be connected to a central Wastewater Treatment Facility, <u>except for any properties in Serra Canyon that the Los Angeles Water Board concludes and the City has demonstrated to have no contribution to bacteria or nutrient impacts to the Malibu Creek and Malibu Lagoon.</u> The Facility shall be the same Facility as .....which includes the property owners served by Phase Two, <u>except for those deemed to have no contribution to bacteria or nutrient impacts to the Malibu Creek and Malibu Lagoon.</u> Once formed, all property owners within the approved assessment district are required to connect to the Wastewater</p>	<p>SCPOA has conducted some sampling and the Regional Board staff has provided comments regarding the need for and the process to provide additional information regarding water quality and impacts from SCPOA's on-site systems. The Regional Board suggests that SCPOA work with the City of Malibu as well as the Regional Board to coordinate regarding groundwater monitoring.</p> <p>The Regional Board does not propose to make the suggested changes to the MOU. SCPOA appears to be seeking an amendment to the Basin Plan Amendment's prohibition through this MOU. The MOU does not amend the Basin Plan Amendment and cannot amend the Basin Plan Amendment without additional procedures and notice. A Basin Plan Amendment is required before any properties may be excluded from the prohibition.</p>

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	<p>Treatment Facility.</p> <p>The City shall comply with following deadlines to complete Phase Two of the Plan:</p> <p>1. By <b>June 30, 2018</b>, inform the Los Angeles Water Board whether the City intends to connect properties within the Phase Two boundaries <u>(except for those with no bacteria or nutrient impacts)</u> to the City's Phase One Wastewater Treatment Facility or construct an alternative facility.</p> <p>.....</p> <p>5. By <b>November 5, 2019</b>, complete the formation of an assessment district for all properties within the Malibu Civic Center Area Phase Two <u>(except for those with no bacteria or nutrient impacts)</u> and provide that information to the Water Board.</p> <p>.....</p> <p>8. By <b>November 5, 2022</b>, complete Phase Two project, including successful startup of the Phase Two Wastewater Treatment Facility and the connection of all properties within the Phase Two boundaries <u>(except for those with no bacteria or nutrient impacts)</u> to the Wastewater Treatment Facility. The City is required to operate the Facility in compliance with the WDRs.</p>	
3-6	<p>The Regional Board's unwillingness to consider the possible exclusion of Serra Canyon properties from Phase Two is particularly frustrating in light of the MOU's specific provision allowing Phase Three property owners to opt out of connecting to a central treatment plant, subject to a City conducted and monitored water sampling program. Specifically, the MOU provides that under Phase Three, if testing determines that "implementation of Phase One and Two have resulted in a meaningful decrease in bacteria and nitrogen in Malibu Lagoon" then "any properties that the [RWQCB] concludes and the City has demonstrated to have no contribution to bacteria or nutrient impacts to the Malibu Creek and Malibu Lagoon" shall be excluded from the requirement to connect to the wastewater treatment facility.</p>	<p>The MOU is an agreement between the City of Malibu, the Regional Board, and the State Water Board. The City is the entity that has agreed to construct a community wastewater treatment system. The Basin Plan Amendment itself does not provide for a Phase Three and would have to be amended to accommodate a third phase. The MOU does not preclude other entities from providing information for the Regional Board to consider in determining whether an amendment to the Basin Plan Amendment prohibition boundaries may be supported by substantial evidence.</p> <p>SCPOA has requested that the City of Malibu and the Regional Board staff discuss the impact of wastewater from the Serra Canyon properties in the watershed. The Executive Officer has agreed to participate in those discussions in early 2015. Such discussions may lead to a workplan to provide information to the Regional Board to consider in determining whether an</p>

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		<p>amendment to the BPA prohibition boundaries is appropriate and may be supported by substantial evidence.</p>
3-7	<p>The language proposed for Phase Two above merely ensures that Serra Canyon properties in Phase Two will be treated in an equal manner as similarly-situated properties in Phase Three. See <i>Walgreen Co. v. City and County of San Francisco</i> (2010) 185 Cal. App. 4<sup>th</sup> 424, 434. Furthermore, if SCPOA demonstrates to the RWQCB's satisfaction that its members' OWDS are not contributing to the degradation of the Watershed, then the mandatory transition to sewer facilities will provide no environmental benefit-and constitute a substantial and undue burden to the properties.</p>	<p>The MOU does not preclude entities, such as SCPOA, from providing information to the Regional Board to consider in determining whether an amendment to the Basin Plan Amendment prohibition boundaries may be supported by substantial evidence.</p> <p>The <i>Walgreen</i> case cited by the commenter is not applicable to this situation. <i>Walgreen</i> considered a constitutional challenge to a city ordinance. The MOU is not a regulatory document or a quasi-legislative document. It is merely an agreement between the parties to coordinate on the implementation of a wastewater treatment plan. The Basin Plan Amendment itself is not being considered in this pending proceeding.</p>
3-8	<p>The administrative record in this matter contains significant data generated by the United States Geological Survey, Stone Environmental, and, more recently, Citadel Environmental Services, Inc. ("Citadel") showing that Serra Canyon properties do not degrade or adversely affect Malibu Creek or Malibu Lagoon. These technical studies definitively show that upstream dischargers, such as the Tapia Creek treatment facility, adversely impact the Watershed. We request that the RWQCB seriously consider these studies and data.</p>	<p>It is unclear what you mean by the "administrative record" in this matter. The Regional Board's consideration of a revision to an agreement with the City of Malibu is neither an adjudicatory matter nor a quasi-legislative matter. The administrative record for the Basin Plan Amendment provides substantial evidence that on-site systems in the Malibu Civic Center Area are causing and contributing to ground and surface water pollution. See Response to Comment 3-3. The reports you mention do not demonstrate that Serra Canyon properties do not degrade or adversely affect Malibu Creek or Malibu Lagoon.</p>
3-9	<p>Without additional data supporting its position, no nexus exists between the MOU's mandatory sewer connection for SCPOA Phase Two properties and the environmental benefit purportedly derived from such a requirement. Therefore, such requirement is not reasonably related to the public welfare and imposes an undue burden. See <i>Associated Homebuilders v. City of Livermore</i> (1976) 18 Cal. 3d 582, 604. In other words, under the proposed MOU, the mandatory connection to, and payment for, sewer facilities by SCPOA property owners is wholly</p>	<p>See Response to Comment 3-3.</p> <p>The Basin Plan Amendment prohibits the use of on-site systems according to the phased schedule. For example, following November 5, 2019, any residential on-site system within the Malibu Civic Center Area is subject to the prohibition and to enforcement by the Regional Board, which could include the issuance of cease and desist orders requiring the owner to cease operating the system. The purpose of the MOU is to memorialize the parties' agreement to coordinate in the implementation of</p>

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	<p>divorced from whether such requirement will actually eliminate discharges and protect public health. Accordingly, contrary to Section 12 of the proposed resolution authorizing its execution, the proposed MOU is neither fair nor reasonable.</p>	<p>a wastewater treatment plan that will provide for the ability of all of those properties subject to the prohibition to have a way to dispose of their wastewater in a safe and legal way. The MOU, therefore, is fair and reasonable. Without a centralized wastewater treatment facility, the properties will not have a place to dispose of their wastewater once the prohibition is enforced.</p> <p>The <i>Associated Homebuilders</i> case cited by the commenter is not applicable to this situation. <i>Associated Homebuilders</i> considered the validity of a land use ordinance. The MOU is not a land use ordinance. It is an agreement between the parties, which is unenforceable and may be terminated at any time. The MOU does not amend the Basin Plan Amendment nor change any boundaries or phases.</p>
3-10	<p>RWQCB virtually ignored the SCPOA Work Plan for months before RWQCB staff contacted SCPOA officials on Wednesday, October 29, 2014, less than a week before the end of the written comment period on the MOU. This shows a lack of good faith on the part of RWQCB staff, particularly in light of SCPOA's reasonable reliance on direction from such RWQCB staff in expending substantial sums on technical consultants and other professionals.</p> <p>SCPOA is deeply concerned that the proposed MOU does not include any regulatory flexibility to allow for the possible removal of its Phase Two property owners from the connection requirement. [add in rest of comments]</p>	<p>Regional Board staff received the SCPOA Work Plan on September 16, 2014 and provided comments on November 12, 2014. The Regional Board does not agree that this length of time shows a lack of good faith. The Regional Board staff has many duties and must take into account often conflicting priorities and heavy workloads in planning how to complete all the tasks. In addition, the MOU does not directly address SCPOA's concerns. The MOU is an agreement with the City regarding construction of a community wastewater treatment system. It does not amend the Basin Plan Amendment. SCPOA's communications with staff appeared to be requesting an amendment to the Basin Plan Amendment. Staff has been so focused in the last few weeks on preparing revisions to the MOU for the December Board meeting. Staff told SCPOA repeatedly that the MOU would not be addressing its issues; rather its issues could be considered in the context of a future Basin Plan revision. The Regional Board staff looks forward to working with SCPOA on implementing its work plan.</p> <p>Contrary to the suggestion, the Regional Board has not and will not engage in "arbitrary and capricious application of ever-changing positions" on this critical issue. The Regional Board's responsibility and legal duty is to protect the waters of the state from degradation. The Basin Plan Amendment establishing the phased prohibition on on-site systems was based on extensive and substantial evidence that on-site systems in the Malibu Civic Center Area cause and contribute to extensive and significant groundwater and surface water pollution. See Response to Comment 3-3. Prior to making any change to the Basin Plan Amendment, the Regional Board would require substantial evidence to support any revisions to the phases or the boundaries of the prohibition.</p> <p>The Tentative Revised MOU is not a new proposal; it merely extends some of the deadlines in the 2011 MOU. The MOU is not a regulatory document, but rather is an agreement between the parties to coordinate the implementation of a wastewater treatment plan. The MOU provides that if the City complies with the agreed-upon deadlines to build centralized wastewater treatment facilities, the Regional Board will</p>

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		<p>not enforce the prohibition against the property owners. Before any property may be excluded from the prohibition, the Basin Plan Amendment must be revised. The MOU does not revise the Basin Plan Amendment, nor change the phased deadlines set forth in the Basin Plan Amendment. The MOU does not preclude entities, such as SCPOA, from providing information to the Regional Board to consider in determining whether an amendment to the Basin Plan Amendment prohibition boundaries may be supported by substantial evidence.</p>