

Effective Date: _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
AND
CITY OF MALIBU
REGARDING ONSITE WASTEWATER TREATMENT SYSTEMS**

I. BACKGROUND

Section 13260 of the California Water Code (CWC) requires any person discharging waste or proposing to discharge waste that may affect waters of the State, except to a community sewer system, to file a report of waste discharge with the local California regional water quality control board which has jurisdiction over the discharge. In accordance with section 13260 of the CWC, the California Regional Water Quality Control Board, Los Angeles Region, hereafter referred to as the Regional Board, issues waste discharge requirements (WDRs) to dischargers covering specific waste discharges or types of waste discharge, including discharges from onsite wastewater treatment systems.

Section 13269 of the CWC authorizes a regional board to waive the requirement for a report of waste discharge or waive the need for the regional board to issue WDRs where such waiver is consistent with any applicable state or regional water quality control plans and is in the public interest.

Sections 13290 and 13291 of the CWC require the State Water Resources Control Board to establish statewide standards for the regulation of onsite wastewater treatment systems and authorize the Regional Board to delegate implementation of these standards to a Qualified Local Agency (QLA).

In 1952, the Regional Board adopted Order 52-4, which waived the requirement of homeowners to obtain WDRs for residential septic systems in the Region. According to section 13269 of the CWC, the Regional Board must review and renew these waivers by June 30, 2004. The waivers may not exceed five years in duration and may be terminated by the State Board or Regional Board at any time.

Onsite wastewater treatment systems have been used as a form of wastewater disposal for many decades. Currently, the number of individual residential systems in the Region (Ventura and Los Angeles Counties) exceeds 100,000. In many instances, the discharge from these systems does not adversely affect the beneficial uses of groundwater or surface water quality.

In some areas, the distance between the leach field or seepage pit and the groundwater may not be sufficient to provide adequate treatment of wastes discharged to onsite wastewater treatment systems. In some cases, the proximity of these systems to surface water bodies may result in surface water contamination from inadequately treated wastes. In other instances, the areal density and cumulative effects of numerous systems may result in inadequate waste treatment. Additional factors may also impede the effectiveness of these systems and create conditions that adversely affect water quality.

II. DESIGNATION AND AGREEMENT

The Regional Board designates the City of Malibu as the QLA for the implementation of applicable siting, permitting, construction, inspection, monitoring, and performance requirements for certain onsite wastewater treatment systems within the City of Malibu's jurisdiction as detailed in section I.V. of this MOU. This MOU establishes *City of Malibu Ordinance No. 242* hereafter referred to as the Code, as the legal document governing applicable siting, permitting, construction, inspection, monitoring, and performance requirements for certain onsite wastewater treatment systems within the City of Malibu's jurisdiction as detailed in section IV. of this MOU. The City of Malibu as QLA, agrees to enforce all applicable provisions of the Code pursuant to the provisions of this MOU. The City of Malibu agrees to amend the Code within the timeframe established in this MOU to revise provisions for the siting, permitting, construction, inspection, monitoring, and performance requirements for onsite wastewater treatment systems to be substantially equivalent to any statewide standards adopted pursuant to CWC sections 13290 and 13291. Additionally, until statewide standards are adopted pursuant to CWC sections 13290 and 13291, the City of Malibu agrees to take interim measures as noted below to increase the effectiveness of its permitting program to address water quality concerns.

III. PURPOSE

It is the joint goal of the City of Malibu and the Regional Board to protect water quality and public health. This MOU is intended to assist in the creation of a partnership between the City of Malibu and the Regional Board to provide protection of water quality and public health in areas where onsite wastewater treatment systems are utilized. This MOU satisfies the requirements of section 13269 of the CWC and enables the Regional Board to issue waivers of WDRs for those onsite sewage treatment systems regulated by the City of Malibu as detailed in this document.

IV. APPLICABILITY

1. This MOU is applicable for all onsite wastewater treatment systems within the City of Malibu's jurisdiction.
2. The City of Malibu shall have lead responsibility for onsite wastewater treatment systems that:
 - a. generate 20,000 gallons per day or less, and
 - b. generate domestic or similar waste that is disposed of below the ground surface, and
 - c. discharge waste from single family residential structures not covered under item #3.b. below, or
 - d. discharge waste from non-food related commercial facilities that generate 2000 gallons per day or less.

Except that the Regional Board shall become lead agency on a specific project upon agreement by the City of Malibu and the Regional Board.

3. The Regional Board shall have lead responsibility for onsite wastewater treatment systems that:
 - a. generate over 20,000 gallons per day, or

- b. discharge wastes from residential developments of more than two homes, or
- c. discharge wastes from multifamily residential facilities, or
- d. discharge wastes from commercial facilities that generate over 2,000 gallons per day, or
- e. dispose of sewage containing any industrial waste, or
- f. are proposed to utilize above ground dispersal or storage of sewage effluent.

V. GENERAL PROVISIONS

City of Malibu Responsibility:

1. The City of Malibu shall enforce all applicable Code requirements for the siting, design, approval, installation, operation, maintenance, and monitoring of onsite wastewater treatment systems within the City of Malibu's jurisdiction.
2. The City of Malibu shall amend the Code within six months of the effective date of any statewide standards adopted pursuant to sections 13290 and 13291 of the CWC, if necessary, in order to retain lead agency status over onsite wastewater treatment systems identified in section IV.2.
3. The City of Malibu shall immediately begin an inventory of all onsite residential wastewater treatment systems within the City of Malibu's jurisdiction¹. The inventory shall be completed in one (1) year, unless extended by the Executive Officer.

The inventory shall include:

- The total number of existing onsite wastewater treatment systems under the City of Malibu's jurisdiction.
 - The location of each existing onsite wastewater treatment system, by street address, by parcel number, GPS location, or intersection.
 - The estimated depth to groundwater from each existing onsite wastewater treatment system. Regional groundwater data may be used to estimate depth to groundwater for individual onsite wastewater treatment systems.
 - The distance of the nearest point of any part of the onsite wastewater treatment system to any stream, channel, or other watercourse or water body. If exact location of the onsite wastewater treatment system is unknown, the City of Malibu shall provide the distance between the nearest point of the property boundary to any stream, channel, or other watercourse or water body.
4. The City of Malibu shall ensure that there is a local mechanism in place to notify the Regional Board within 30 days of receiving proposals to use onsite wastewater treatment systems that fall under the Regional Board's responsibility as outlined in Section IV. Item #3.

¹ The City of Malibu shall obtain the required information based on a review of City of Malibu permitting records, Assessor records, through point of sale transactions, and by other means that do not require the City of Malibu to gain access to private property.

5. The City of Malibu may review and act upon requests for exceptions to the Code requirements provided such exceptions will not violate any statewide standards adopted pursuant to CWC sections 13290-13291.7 and are consistent with the protocol for exceptions detailed in the Code. The City of Malibu shall forward any exceptions requested to the Code requirements that would violate any statewide standards adopted pursuant to CWC sections 13290-13291.7 to the Regional Board for Regional Board action.
6. The City of Malibu shall issue permits for the commercial systems specified in section IV.2.d. in accordance with Regional Board Order No. 01-031 in order to retain lead agency status for these systems.

Regional Board Responsibility:

1. The Regional Board shall conduct an evaluation of the City of Malibu at least once every five years to ensure the onsite wastewater treatment system program is in conformance with any statewide standards adopted pursuant to CWC sections 13290-13291.7 based upon the information submitted by the City of Malibu as indicated in Appendix A.
2. The Regional Board shall provide adequate assistance to the City of Malibu upon request from the City of Malibu. This assistance may be in the form of technical guidance, training opportunities, and/or review of onsite wastewater treatment systems.
3. The Regional Board shall provide notice to the City of Malibu at the earliest point in the development of regulations, of any proposed or Basin Plan amendments, Regional Board Orders or policies that regulate onsite wastewater treatment systems.
4. The Regional Board shall invite input from the City of Malibu and other stakeholders during the review of any statewide standards adopted pursuant to CWC, sections 13290-13291.7, or during the Basin Plan amendment process or the development of Regional Board Orders or policies that regulate onsite wastewater treatment systems.
5. On projects requiring WDRs, the Regional Board shall ensure that the operator has obtained any additional required permits from the City of Malibu.
6. The Regional Board shall provide the City of Malibu copies of waste discharge requirements, notices of violation, and any other permitting and enforcement actions related to onsite wastewater treatment systems within the City of Malibu.

VI. INTERIM MEASURES

1. Point of Sale Ordinance:
The City of Malibu proposes to adopt a Point of Sale ordinance within one (1) year. Owners of commercial and residential properties, including single family, multiple family, duplexes, apartments, and condominium occupancies, shall be required to obtain a Certificate of Inspection from a City registered Onsite Wastewater Treatment System Inspector prior to entering into an agreement to sell or convey an interest in such property. The inspection report shall be submitted to the City on a standard form developed by the City. Upon determination

of compliance of the OWTS, a renewable Operating Permit shall be granted for the system. The permit shall be valid for a period of five (5) years for conventional systems, and three (3) years for advanced treatment systems when issued for a single-family residence. The permit shall be valid for a period of two (2) years for commercial and multifamily occupancies. Inspections shall be required prior to permit renewal. "Compliance of the OWTS" shall indicate that the OWTS has been inspected by a registered City of Malibu inspector and has conditionally passed all requirements established within the Official Inspection Form for Onsite Wastewater Treatment Systems. Single-family residences, condominium occupancies and duplexes that cannot demonstrate compliance through inspection shall provide adequate vertical separation to demonstrate compliance. If such facilities cannot provide adequate vertical separation, they shall require secondary treatment with disinfection. All commercial and multifamily occupancies shall require secondary treatment with disinfection. In addition, denitrification shall be required as indicated by applicable total maximum daily loads (TMDLs).

2. IWIMS:

The City of Malibu shall implement all facets of the Integrated Wastewater Information Management System. All data from the LA County Assessors records will be imported into the database. The inventory of all OWTS will be uploaded into the system. The system will be used to facilitate the day-to-day OWTS management and track the effectiveness of the Wastewater Management Plan. The City shall require all commercial and multifamily systems required to obtain a WDR from the Regional Board to submit all Groundwater Monitoring results required by the WDR to the City for inclusion into the IWIMS database. The database shall be utilized to further evaluate the need for additional code amendments to address any specific impacts indicated.

3. Malibu Lagoon and Beaches Bacterial Contributory Areas:

Ordinances shall be drafted by staff, and recommend for adoption by City Council, within two (2) years requiring all OWTS within the six - month time-of-travel zone, as identified in the Risk Assessment Report, to provide advanced treatment and disinfection. The six-month time-of-travel zone shall include all areas contributing to Malibu Creek and Lagoon, and beaches between Sweetwater Canyon outfall and Winter Canyon outfall. OWTS located outside of the six-month time-of-travel zone that cannot demonstrate compliance through inspection or that are identified as impacting groundwater by any other means shall provide adequate vertical separation and/or advanced treatment with disinfection. "Compliance" shall indicate that the OWTS has been inspected by a registered City of Malibu inspector and has conditionally passed all requirements established within the Official Inspection Form for Onsite Wastewater Treatment System.

4. Malibu Lagoon Nitrogen Contributory Areas:

Ordinances shall be drafted by staff, and recommend for adoption by City Council, requiring property owners within the contributory area to obtain an Operating Permit within one (1) year. An ordinance shall be drafted within three (3) years requiring all commercial and multifamily occupancies within the lagoon contributory area to provide secondary treatment with disinfection and denitrification. Within two (2) years, the City shall establish denitrification standards for residential OWTS to be implemented at the time of major repair, renovation or

replacement of OWTS within the contributory area and at point of sale. OWTS located outside of the contributory area that cannot demonstrate compliance through inspection or that have been identified as impacting groundwater by any other means shall provide adequate vertical separation and/or advanced treatment with denitrification. "Compliance" shall indicate that the OWTS has been inspected by a registered City of Malibu inspector and has conditionally passed all requirements established within the Official Inspection Form for Onsite Wastewater Treatment System.

5. Water Resource Management:

Develop programs to advance the sustainability of the City's and LARWQCB water quality management programs based on the findings of the Risk Assessment Report as an ongoing project. The City will continue to fulfill a leadership role in the development and implementation of the Santa Monica Bay bacterial TMDL. The City will continue the regional groundwater-quality sampling program in the Civic Center area utilizing the existing monitoring wells, contingent upon funding source allocation. The sampling shall be expanded to include nitrogen constituents and Microbial Source Tracking for bacteria, contingent upon funding source allocation. Data loggers within existing wells shall be maintained and data collected. All hydrogeology data associated with OWTS applications shall be submitted to the City as a condition of the Operating Permit, with such data entered into the IWIMS for cataloging and retention purposes.

6. Registration Programs:

Ordinances shall be drafted by staff, and recommended to City Council for adoption, establishing registration criteria and programs for all associated disciplines of OWTS installation and management within four (4) years. Registration shall be established for all OWTS designers, installers, pumper-haulers, and maintenance contractors. Programs shall be established for the training and testing of each discipline.

7. Onsite Wastewater Treatment System Information Manuals:

The City will develop and produce a comprehensive OWTS information manual applicable to all OWTS systems within the City. The manual shall provide guidelines for the acceptable design, siting, installation and maintenance of all OWTS's.

VII. ALTERNATIVE SYSTEMS:

The City of Malibu agrees to evaluate and amend its Code, if appropriate, to allow enhanced onsite wastewater treatment technologies in order to reduce threats to water quality.

VIII. EVALUATION:

This MOU shall be reviewed by June 10, 2009 and every five years thereafter, and re-negotiated if either party desires modification to the terms and conditions contained herein. If neither party requests re-negotiation of the MOU at the five-year review period, the MOU will remain in effect for another five years.

Evaluation of the City of Malibu's onsite wastewater treatment system program is a cooperative process between the City of Malibu and the Regional Board. The intent of the evaluation is to identify those aspects of the program that provide desired results, and those that need improvement.

The City of Malibu shall submit information to the Regional Board as indicated in Appendix A, attached hereto and incorporated herein by reference. The Regional Board may provide comment and recommendations based upon the information submitted by the City of Malibu. The Regional Board shall use this information to perform an evaluation of the City of Malibu's onsite wastewater treatment system regulatory program once every five years and provide constructive input. The Regional Board shall provide at least twenty-one days written notice to the City of Malibu prior to performance of the evaluation. The evaluation process shall be in conformance with Appendix A.

The Regional Board shall provide the City of Malibu for consideration a written summary of findings and recommended program modifications within thirty days of completion of the evaluation. Within thirty days of receipt of the report the City of Malibu shall provide a written response detailing action taken or proposed regarding the findings and recommendations contained in the reports.

IX. ENFORCEMENT OF THE MOU:

The Regional Board and the City of Malibu shall be responsible for assuring that the terms of the MOU are enforced. If evaluation reveals that the Regional Board, or the City of Malibu is not performing its duties as required by this MOU, and the Regional Board or the City of Malibu does not amend its process per agreement, the Regional Board or the City of Malibu may terminate this MOU. This MOU may be renegotiated by request by the Regional Board or the City of Malibu. Either party may terminate this MOU without cause upon thirty day prior written notice to the other party. Termination of the MOU by the Regional Board or the City of Malibu may require that the Regional Board issue Order No. 01-031 or other Regional Board Order to each new or existing onsite wastewater treatment system within the boundaries of the City of Malibu. The Regional Board shall make any determination to terminate the MOU at a publicly noticed hearing.

In addition to the foregoing, in the event that statewide standards under CWC sections 13290-13291.7 are not adopted by July 1, 2005, the Regional Board staff shall provide information, at a public hearing, to the Regional Board as to the status of adoption of the statewide standards, whereupon the Regional Board shall, at its discretion, have the right to terminate the MOU, or direct staff to renegotiate the MOU, or to take other actions as the Regional Board shall deem appropriate.

**DRAFT MEMORANDUM OF UNDERSTANDING
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
AND
THE CITY OF MALIBU**

APPENDIX A

**INFORMATION REQUIRED FOR EVALUATION OF THE ONSITE WASTEWATER
TREATMENT SYSTEM PROGRAM OF THE CITY OF MALIBU**

1. The City of Malibu shall submit the following information to the Regional Board once every five years upon request:
 - The number of permits issued for new construction, repairs, additions, and destruction of standard onsite wastewater treatment systems.
 - The number of permits issued for alternative, and experimental onsite wastewater treatment systems including the type of enhanced treatment device permitted.
 - The results of any monitoring program for onsite wastewater treatment systems including the number of changes of ownership, the number of monitoring inspections, the type of system monitored, flows in gallons per day for each system, the number of properly functioning systems, and those in failure or needing repair.
 - The number and type of complaints pertaining to onsite wastewater treatment systems in the City of Malibu's jurisdiction.
 - The number of corrective actions taken in the City of Malibu's jurisdiction for failing onsite wastewater treatment systems.
 - The number of enforcement actions taken in the City of Malibu's jurisdiction and the status of compliance with those enforcement actions.

2. Once every five years the Regional Board shall evaluate the City of Malibu's implementation of the onsite wastewater treatment system program. This five-year evaluation by the Regional Board may include:
 - Office review of the Code, local ordinances, laws, standards, and policies relating to the regulation of onsite wastewater treatment systems.
 - Field review of staff activity pertaining to the siting, permitting, and monitoring of onsite wastewater treatment systems.
 - Field review of various types of onsite wastewater treatment systems installed within the city.
 - Office review of files, inspection records, monitoring results and reports, plans or other information pertaining to onsite wastewater treatment systems.
 - Review of onsite wastewater treatment system owner outreach, education, and compliance assistance programs.
 - Review of groundwater monitoring program implemented by the City of Malibu.
 - Review of the results of any pertinent water quality monitoring data.