

EXHIBIT C

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STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

IN THE MATTER OF

**Amendment to the Water Quality
Control Plan for the Coastal Watersheds
of Ventura and Los Angeles Counties to
Prohibit On-site Wastewater Disposal
Systems in the Malibu Civic Center Area**

**REQUEST FOR
RECONSIDERATION OF
RESOLUTION NO. R4-2009-007
IN LIGHT OF RECENT
SCIENTIFIC INFORMATION OR
ALTERNATIVELY REQUEST TO
AMEND THE WATER QUALITY
CONTROL PLAN FOR THE
COASTAL WATERSHEDS
OF VENTURA AND
LOS ANGELES COUNTIES**

[Water Code §§ 13240, 13280; Cal.
Code Regs. title 24 § 2050]

REQUEST

The City of Malibu respectfully requests that the Los Angeles Regional Water Quality Control Board reconsider and amend Resolution No. R4-2009-007 in light of recent scientific information or, alternatively, that the Board commence proceedings to amend the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereafter Basin Plan).

BACKGROUND

On November 5, 2009, the Regional Board adopted Resolution No. R4-2009-007, to prohibit on-site wastewater disposal systems (OWDS) in the Malibu Civic Center area. The prohibition applies to all dischargers in the Civic Center area, including commercial and industrial facilities, public facilities, and residences. New septic discharges are prohibited and existing commercial and industrial dischargers and public facilities must cease discharge by November 2015 and residences by November 2019. This amendment is currently pending review by the State Water Resources Control Board.¹

The prohibition was adopted without the benefit of recent, in some cases published subsequent to the hearing on the prohibition, studies and data that establish that the prohibition lacks scientific support. In fact, the recent scientific evidence is quite contrary to the information that was presented by the RWQCB staff at the hearing. What point is there to forcing the expenditure of millions of dollars to implement a centralized sewer system if it won't improve water quality?

The City seeks to direct limited resources effectively and efficiently; to that end, reliance on the most accurate and site specific data and information is critical to implementing solutions that address the actual cause of problems.

The Regional Board's resolution also encompasses an expansive zone of nearly 550 residences and businesses in Malibu's Civic Center. These areas include Malibu Road, the Colony, the Knolls, and other areas. As you know, Malibu Creek is impaired for bacteria and nutrients; however, much of the prohibition zone includes other areas, such as the Winter Canyon groundwater regime. The Winter Canyon area along the coast has not been tested for water quality by the RWQCB and is not on any surface or groundwater impaired body list. Preliminary bacteria results from the USGS study indicate that the Winter Canyon region will easily meet water quality standards for bacteria and nutrients and therefore, there does not appear to be any reason to have this area included in a prohibition zone.

A prohibition of a zone this expansive is technically unfeasible because the infiltration area is not available for dispersing large quantities of treated wastewater into a small aquifer. Despite the City of Malibu's commitment to maximizing recycling opportunities, complying with the Regional Board's resolution would require the City to install an ocean outfall or discharge into the Malibu Creek aquifer to disperse the treated wastewater. Either approach would realistically face staunch opposition from environmental groups and others, which would delay or block progress on improving water quality.

The City's proposal below should account for these issues and provide a mutually beneficial alternative based on sound scientific data. Importantly, the results of the studies described below will help to sharpen the focus on areas within the Malibu Civic Center area that might be best served by a centralized wastewater treatment plant,

¹ Notwithstanding submittal of this request for reconsideration or alternative Basin Plan Amendment, the City reserves its right to raise any and all legal challenges concerning, relating to or arising out of adoption of the Basin Plan Amendment in Resolution No. R4-2009-007, and does not waive any right or argument to present to the State or any court of law in connection with adoption of the subject Basin Plan Amendment in Resolution No. R4-2009-007.

SCIENTIFIC EVIDENCE THAT JUSTIFIES THE CITY'S REQUEST

The City's underlying purpose for reconsideration is to have science lead the solution to improved water quality. Resolution No. R4-2009-007 was presented to the Board based on studies and data that have been superseded by more recent and more specific scientific data and analysis.

The environmental background from which the studies were based has changed over the past fifteen years and as a result, those historical studies and data, dating as far back as 1970 and 1985,² have been superseded by the more complete and specific studies recently conducted. Copies or preliminary summaries of some of the following studies, and others, are submitted with this request and incorporated herein by this reference. Each of these studies supports the conclusion that Civic Center OWDSs and OWTSSs are *not* a significant source of groundwater contamination or degradation of water quality in the ocean or the Creek. In other words, disinfection in the OWTSSs works and should be considered as a realistic option for protecting water quality.

An independent UCLA study conducted in 2009 determined that human bacteria rarely exist in the area water bodies during dry weather. 95% of samples (58 out of 61) taken during the dry weather study do not show any human bacteria. 85% of samples (11 out of 13) taken during the wet weather do not show any human bacteria. This data strongly supports the conclusion that bacteria from the area's OWDSs and OWTSSs are not impacting the bacteria at Malibu Creek and the ocean and that stormwater runoff is a much higher cause of concern. The purpose of the UCLA study is to increase understanding of the dynamics of bacteria in Malibu Lagoon and the adjacent ocean waters by looking at spatial and temporal patterns of bacteria concentrations as well as the sources as they may exist today. During a 2 week study of Malibu Creek and Lagoon in April/May of 2009, there were no detections of human bacteria in the samples. Keep in mind the FIB during this same time reportedly exceeded TMDL standards. Further, data reports for other dates show virtually no human specific bacteria markers exist during dry weather, indicating that OWTSSs may have little to no effect on the cause of the bacteria levels in the lagoon. Human specific bacteria markers were found in a few wet weather samples **indicating stormwater is a potential significant source of human bacteria.**³ Finally, the UCLA study concluded that there is no correlation between Fecal Indicator Bacteria and Human Bacteria Markers.

A USGS study conducted in July 2009 has shown that Fecal Indicator Bacteria (FIB) increased during high tide at three sampled beaches. USGS concluded this is consistent with the washing of FIB from the rack line and beach sands. Levels of FIB during low tide were within acceptable water quality standards. Previous work had shown that FIB, indicative of fecal contamination,

² See e.g. Table 7, Technical Memo No. 3 -Pathogens in Wastewater that are in Hydraulic Connection with Beaches Represent a Source of Impairment for Water Contact Recreation (November 5, 2009); RWQCB Staff Presentation, Proposed Prohibition On-site Wastewater Disposal Systems (Septics) Malibu Civic Center Area, slide 21 (November 5, 2009).

³ Importantly, the City has constructed a stormwater treatment facility in the Civic Center area that has been online since February 2, 2007, and is well along in construction of its stormwater treatment facility in Legacy Park, which will substantially help to address the pathogens in stormwater.

are present in Malibu Lagoon and at ocean beaches near Malibu, at concentrations that exceed recreational water-quality standards.

The source, or combination of sources, of fecal material to the lagoon and near-shore ocean water is not precisely known but may include: (1) natural sources either directly deposited by birds and other wildlife, or indirectly mobilized as tides and wave wash beach sands and material accumulated at the high-tide line (rack line) along the beach; (2) surface flow into the Malibu Lagoon; and/or (3) groundwater containing residential or commercial treated effluent. FIB present in the lagoon could be a source of contamination to the near-shore ocean by surface flow from the lagoon to the ocean or by groundwater flow from the lagoon through the berm separating the lagoon from the ocean. Data collected during the sampling period included: (1) groundwater-level data; (2) Radon-222 (222Rn) data and direct-current (DC) resistivity data to estimate groundwater discharge to Malibu Lagoon and the near-shore ocean; (3) fecal indicator bacteria concentrations in groundwater, Malibu Lagoon, and near-shore ocean water; and (4) bacterial source tracking data including genetic, molecular, and chemical data. FIB were present at only low concentrations, in 10 of 11 sampled water-table wells. In contrast, high concentrations of FIB were present in Malibu Lagoon. Given the general absence of FIB in groundwater, measured rates of groundwater discharge to the lagoon, and other hydrologic conditions at the time of sample collection, **groundwater discharge was not a likely source of FIB to the lagoon.** Enterococcus concentrations in excess of the U.S. EPA single sample standard for recreational water (104 MPN per 100 ml) in near-shore ocean water near the lagoon berm were related to movement of water through the berm at the mouth of the lagoon during low tide. FIB concentrations in near-shore ocean water at three sampled beaches were higher at high tide and are more consistent with FIB associated with wave run-up washing fecal material from beach sands and the rack line at high tide, than with discharge of groundwater contaminated with septic wastewater which would be expected to be greater at low tide. Enterococcus concentrations occasionally exceeded the U.S. EPA single sample standard for recreational water at the three beaches during the sample period.

Stone Environmental conducted a study of groundwater impacts that demonstrated that the groundwater levels in the Civic Center are neither increasing nor decreasing. Groundwater levels are determined by seasonal rainfall and tidal influences. Stone Environmental conducted a civic center wide mounding study, the purpose of which is to determine the influence of wastewater dispersal on groundwater and other OWTSSs within the Civic Center Area. **This study was required by the RWOCB at a cost to the City of \$350k.** The study is nearing completion and the final report is expected by Summer of 2010. Any prohibition without due consideration of this study would certainly be premature and a waste of limited taxpayer funds. Why rush to judgment on a basin plan amendment and a multimillion dollar wastewater treatment facility, when many of the impacts from the existing and future systems are unknown?

ADDITIONAL JUSTIFICATIONS FOR THE CITY'S REQUESTS

There are two additional studies underway which will shed light on how to address effectively the water quality issues in the area.

1. Southern California Coastal Water Research Project (SCWRRP) - Malibu Source ID Study/Ramirez and Escondido Creeks

The Los Angeles County Board of Supervisors allocated funding (\$1 million) for bacterial source assessments to be conducted in Escondido Canyon Creek (ECC) and Ramirez Canyon Creek (RCC). The goal of this project is to use Ramirez and Escondido Canyons as prototypes to develop bacteria source identification protocols, and while doing so, identify the primary bacterial sources in these two watershed systems. This project is headed into its fourth year of analysis and creek testing. The two key findings from this first phase were that 1) the high bacterial counts observed at the beach during the summers of 2004-2006 were no longer prevalent; and 2) the few beach exceedances observed did not appear to result from the watershed, which generally had low bacterial concentrations. This study appears to be in concert with the findings from the USGS study and UCLA study on Malibu Creek.

2. SCCWRP – Epidemiology Study/Surfrider Beach

Over the next three years, epidemiology studies will be conducted in Southern California at three study sites: Doheny (Dana Point), Avalon (Catalina Island), and Surfrider (Malibu) beaches, which cover a spectrum of contamination sources. SCCWRP is undertaking epidemiology studies for two reasons: (1) EPA's national criteria for beach water quality were based on studies conducted at beaches with known wastewater sources reaching the beach and studies were needed to assess whether their findings were applicable to beaches with nonpoint source inputs, which is the predominant beach type in California; and (2) several organizations, including SCCWRP were developing improved approaches based on molecular methods for measuring beach water quality, including measurement of organisms such as viruses, phages, and anaerobic bacteria, but there is a need to establish health risk relationships for these methods before they can be used for public health protection. Sampling and surveys have been completed and analysis is underway. The City expects a draft report in 2010 and final report in early 2011.

The current science demonstrates that there is not a rational relationship between the proposed prohibition and the goal of improved water quality in Malibu Creek and Lagoon, which are impaired for nutrients and bacteria. The forthcoming SCCWRP studies will assist in source identification, which in turn will reveal an effective course of action.

The prohibition is calculated to force a centralized wastewater treatment system for the Civic Center and surrounding area. However, the prohibition is not rational given that the City's proposed centralized wastewater system utilizes the same technology that is used currently in other advanced systems in the Civic Center. As currently configured, the prohibition prohibits OWTSs until the Civic Center property owners construct a larger OWTS; however, the size of the OWTS has no effect on its performance and the treatment technology in the smaller systems is sufficient to meet the Board's goals.

The prohibition boundaries are not based upon impaired water. The boundaries include areas along Malibu Road, the Colony, the Knolls, and other areas that drain into the Winter Canyon groundwater regime and not to Malibu Creek. The Winter Canyon area along the coast has not been tested for water quality by the RWQCB. Preliminary results from the USGS study indicate that this entire region will easily meet water quality standards for bacteria.

The prohibition does not account for the fact that many property owners have converted to OWTSs (with disinfection) since the studies from the 1980s and 90s were conducted. A preliminary review shows that in the prohibition area more than fifty OWTSs have been installed

since 2000, and another ~ 200 parcels in the area are on package treatment systems. OWTSS are not septic systems.

The prohibition does not account for the fact that upstream wastewater discharges by treatment plant operators have now been regulated through the RWQCB and are not a concerns as they were in the studies from the 1980's and 90s.

The RWQCB identified that the "potential" use of the groundwater is impaired for municipal and domestic supply due to onsite septic systems. However, there is no evidence that any water quality tests have been conducted to demonstrate any impairment nor is there any documentation to support the supposition that the lower aquifer, that was the historic water supply source, has been impaired. The prohibition can not be supported by the evaluation of the geologic material in the unconfined upper groundwater aquitard.

The Prohibition also does not address the State Water Resources Control Board's "Sources of Drinking Water Policy." The trial court in *City of Arcadia v. State Water Resources Control Board* found that it is improper to base standards on consideration of potential beneficial water uses and Water Code Section 13241 requires the Regional Board to consider analysis of only probable future beneficial uses in the basin planning process.

The prohibition was adopted without an adequate analysis of the potential impact of sewers or package treatment plants. A cost-benefit analysis should be done to compare sewers to OWTSS in any given geographical (and hydrological) area.

PROPOSED AMENDMENTS

The above-described scientific studies should shape the scope and form of a feasible plan to improve water quality in the Malibu Civic Center, and for this reason, the City is asking that the Regional Board reconsider its November 2009 decision on banning OWDSs and OWTSS. In this regard, the City has worked with citizens and the environmental stakeholder, Heal the Bay, to develop a feasible and achievable plan that will reduce impacts to Malibu Creek and Santa Monica Bay. Along with community members, the City of Malibu is offering a wastewater treatment solution that is based on sound science and is more targeted, technically feasible and can provide consensus among all of the stakeholders. The community-based wastewater treatment solution will be quicker to implement because of widespread community support and will have new measurable and enforceable milestones to avoid stagnation and inaction. This will ensure continued progress to protect public health and improve water quality.

The community-based wastewater treatment solution would target users with the highest potential impact to groundwater by focusing on the commercial businesses and homes closest to Malibu Creek. It would allow construction of a smaller wastewater treatment plant for which there is adequate percolation area in the Winter Canyon regime. The community-based solution also includes developing an ordinance that would mandate homeowners within the Colony residential area to install disinfection treatment to existing systems for nearly 115 homes. This proposed ordinance will be fully consistent with the statewide standards envisioned by AB 885. The community-based wastewater treatment solution avoids the need for an ocean outfall or a discharge into the Malibu Creek aquifer, which could prevent the protracted legal and political

battles that caused lengthy and costly delays for wastewater treatment projects in other cities, like Los Osos.

A key component to the implementation of a wastewater treatment facility is the need to form an assessment district. Strong public support is essential to the successful financing and to the continued progress of improving water quality. The City has worked extremely hard to develop a consensus among the affected commercial and residential property owners to form a positive consensus of an assessment district. The commercial and residential property owners support the community-based solution – making it more feasible and quicker to implement.

For the purposes of this alternative proposed amendment, the “Malibu Civic Center area” is defined as the area within the Malibu Valley watershed, the boundaries of which are depicted in the map attached hereto as Exhibit 1. The areas marked as Phase 1 and Phase 2 on that map comprise the Malibu Civic Center area.

The City of Malibu is in the process of performing additional scientific studies on potential causes as well as developing additional potential alternatives to address such causes. In this regard, the City has identified a range of remaining uncertainties regarding the proper choice of long term solutions and the studies the City has underway are intended to answer many of the remaining questions.

City of Malibu’s Civic Center Wastewater Treatment Management Plan

The City has also identified a set of specific actions that will advance water quality protection for beneficial uses in the Malibu Civic Center area, and will begin implementing such actions as follows:

The City shall enact an ordinance by November 5, 2010 that will require disinfection for:

Residential facilities in Malibu Colony. There are approximately 115 homes that will be required to upgrade their wastewater treatment systems to include disinfection. All homes will be required to have disinfection installed by November 5, 2019. The requirement will be implemented as permit requirements during this period as OWDS permit renewals, permits required for OWDS upgrades or improvements and the transfer of permits associated with the sale of a residence are issued or occur.

Commercial restaurant facilities east of Malibu Creek to the City’s easterly boundary, on both sides of Pacific Coast Highway, disinfection will be required by November 5, 2019. The requirement will be implemented as permit requirements during this period as OWDS permit renewals, permits required for OWDS upgrades or improvements and transfer of permits associated with a sale of a business are issued or occur.

Phase 1 – Centralized Wastewater Treatment Facility (CWWTF): Even though the on-going studies are establishing that groundwater is only minimally affected by OWDSs or OWTSS in the Malibu Civic Center area, the City has already allocated a total of \$2.9 million to complete the engineering and CEQA documentation necessary for a CWWTF. The CWWTF will require all commercial property owners as shown on Exhibit 1 to hook into the centralized treatment plant. Approximately \$800,000 has already been spent in support of this process. The City will be

maximizing water recycling efforts by incorporating Title 22 water quality standards to the CWWTF. . Phase I is scheduled for construction completion and full operation by November 2015.

Phase 2 – Centralized Wastewater Treatment Facility (CWWTF): The City shall proceed to implement a centralized wastewater treatment project for the residential areas identified in Phase 2 also known as the Serra Retreat area. It is anticipated the residential area will form an assessment district after Phase I. Further, it is anticipated that this residential area will benefit from the use of utilizing recycled Title 22 water generated from the CWWTF for irrigation of large turf areas. Phase 2 is scheduled for construction completion and full operation by November 2019.

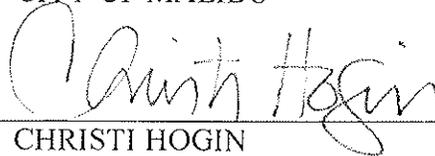
Because these studies and the CEQA review process are underway and being run concurrently, the Board's reconsideration of its November 2009 decision in light of this evolving, persuasive scientific analyses will not materially affect the City's ability to meet the implementation schedules dictated by the deadlines in the Board's decision. The City is committed to completing the ongoing studies to address the uncertainties and begin implementing specific actions that will protect the quality of water for beneficial uses in the Malibu Civic Center area.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Board review and amend Resolution No. R4-2009-007 in light of recent scientific information or, alternatively, that the Board commence proceedings to amend the Basin Plan. Further, at the time the Board considers the City's request, the City also asks that it be provided the opportunity to be present for that decision process to make a presentation in support of this request.

Dated: March 25, 2010

Respectfully submitted,
CITY OF MALIBU



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CITY OF MALIBU

cc: Tracey Egoscue, Executive Officer
State Water Resources Control Board Re Proceedings under Resolution No. R4-2009-007

Attachments:

Exhibit 1

- Malibu Civic Center Area Map

Exhibit 2

- Multi-Tiered Approach Using Quantitative Polymerase chain Reaction for Tracking Sources of Fecal Pollution to Santa Monica Bay, CA (February 28, 2005); Rachel T. Noble, et al.
- Impacts of Stormwater Discharges on the Nearshore Environment of Santa Monica Bay ; Steve Bay, et al.
- Fecal Indicator Bacteria (FIB) Levels During Dry Weather from Southern California Reference Streams (August 14, 2008); Liesl L. Tiefenthlaer, et al.
- Evaluation of Rapid Methods and Novel Indicators for Assessing Microbiological Beach Water Quality; (September 8, 2009); John F. Griffith, et al.
- Enumeration and Speciation of Enterococci Found in Marine and Intertidal Sediments and Coastal Water in Southern California (January 25, 2005); D. M. Feguson, et al.
- Assessing Pathogen Risk to Swimmers at Non-Sewage Impacted Recreational Beaches (February 15, 2010); Mary E. Schoen, et al.
- The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff (1999); Robert H. Haile, et al.
- Water Quality Indicators and the Risk of Illness at Beaches with Nonpoint Sources of Fecal Contamination (January, 2007); John M. Coldford, Jr., et al.
- Sources of Fecal Indicator Bacteria in Urban Streams and Ocean Beaches, Santa Barbara, CA (September 10, 2009); John A. Izbicki, et al.
- Retrospective Evaluation of Shoreline Water Quality Along Santa Monica Bay Beaches; Kenneth C. Schiff, et al.
- Relationship Between Rainfall and Beach Bacterial Concentrations on Santa Monica Bay Beaches; Drew Ackerman, et al.
- Pathogens and Indicators in Storm Drains within the Santa Monica Bay Watershed (June 1992); Mark Gold, et al.
- Multitiered Approach Using Quantitative PCR to Track Sources of Fecal Pollution Affecting Santa Monica Bay, CA (November 16, 2005); Rachel T. Nobel, et al.
- Coastal Groundwater Dynamics off Santa Barbara, California: Combining geochemical tracers, electromagnetic seepmeters, and electrical resistivity (March 15, 2009); Peter W. Swarzenski, et al.
- Malibu Creek, Malibu Lagoon and Surfrider Beach 2009 Human Specific Bacteroidales
- Investigation of FIB and human-specific Bacteroidales within Malibu Creek & Lagoon (2009); Dr. Richard Ambrose, et al.
- Malibu Lagoon Bacteria Study, Dr. Richard Ambrose, et al.
- Preliminary Results of FIB in the Malibu Lagoon (October 29, 2009); U.S. Geological Survey
- Final Report and Abatement Plan for the Redondo Beach Pier Pilot Project (February 24, 2010); County Sanitation Districts of Los Angeles County
- Epidemiology Study at Nonpoint Source Contaminated Beaches; Ken Schiff
- Evaluation of Rapid Microbiological Methods for Measuring Recreational Water Quality (May 2006); John F. Griffith, et al.
- Detection of Human Indicator Bacteria
- Non Detect of Human Indicator Bacteria