

## Malibu's Responses to RWQCB Staff's Responses to Comments

In addition to the specific comments set forth City's July 9, 2010 Comment letter, the City maintains its comments to the RWQCB on October 8, 2009 by reference (found in Exhibit H) and finds that the RWQCB staff failed to adequately address<sup>1</sup> the comments as follows:

4. City maintains its opposition based on financial hardship because the tremendous costs associated with a compliance project in the prohibition area are a major factor in assessing the feasibility of a project and must be addressed..
5. City maintains that the wastewater solution in the Civic Center area should respond to the what is learned from the studies and the response does not resolve that point. Preliminary study results do contradict RWQCB staff's findings, as explained in this comment letter.
13. City maintains that proper access was not provided to the peer review memos until after having paid \$900 for a copy of the administrative record. There is no authority to support the position that peer reviews are not part subject to public comment. As a mandatory part of the Basin Plan Amendment process, the adequacy and availability of peer reviews are appropriate for public review and comment. Further, "Early Technical Reviewers" objected to the first versions of Tech Memo #3 and were replaced by other technical reviewers; comments by the Early Technical Reviewers were never disclosed to the public, despite several requests by the City.

Tech Memo #1 - As set forth in this July 9, 2010 letter, the City challenges the basic assumption upon which Tech Memo #1 relies, that the dischargers have poor records of compliance.

14. City maintains that the Basin Plan Amendment is premature and the response does not resolve that point. City disagrees that beneficial uses of groundwater for municipal supply are impaired. The groundwater in the Civic Center Area is not a viable source of drinking water for municipal supply. Technical Memos 2, 3 and 4 are flawed. The basin plan amendment is for the protection of the potential use of groundwater in the MVGB. There has been no scientific evidence to demonstrate a direct correlation of the alleged groundwater impairments and exceedences recorded at the beaches or the lagoon. These allegations have been further refuted in the recent scientific studies undertaken by UCLA and the USGS.

15. City maintains that other appropriate solutions exist and the RWQCB staff response is not responsive to the City's comment. The City has complied with the terms of the MOU and undergone the activities as agreed upon with the RWQCB. It is outrageous that RWQCB can only assert it only "enforce[s]" permitted facilities as much as possible," yet the City's compliance with MOU requirements is being used as evidence to support the

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<sup>1</sup> The comment numbers in this document correspond to the RWQCB Staff's Responses to Comments Matrix, found in the Administrative Record at 2-32 through 2-102.

Ban. The Regional Board staff asserts that the IWIMS database is inaccurate and not well populated. This statement is erroneous and unsupported. The database is populated and the system is effective and in daily use. The response comment also misstates the onerous requirements of the Operating Permit Program. These responses demonstrate the Regional Board's misunderstanding of the City's extensive OWTS management program.

18. City maintains that the City's existing OWTS management program is effective and the response does not remedy the faulty premise in the Tech Memo. WDR violations, in and of themselves, are not evidence of impairment to beneficial water uses.

19. City maintains that the OWDS Ban disregards the aggressive (and costly) program to upgrade systems and the response does not remedy the faulty premise in the Tech Memo. The City has complied with the terms of the MOU and has anticipated future progress in improving water quality in the Civic Center area through administration of AB885 regulations, which have not been issued to this date. AB885 regulations were supposed to have set performance standards for upgrades to existing wastewater systems that potentially could impair beneficial uses of surface water and/or groundwater. RWQCB staff failed to demonstrate that "wide-spread groundwater pollution" was caused from onsite wastewater system discharges. New research calls these findings into question.

Tech Memo #5- As set forth in this July 9, 2010 letter, the City challenges the basic assumption upon which Tech Memo #5 relies, that wastewater flows in the Civic Center Area have been increasing.

29. City maintains that the OWDS Ban area does not encompass intensive land uses and the response does not remedy the faulty premise in the Tech Memos.

31. The City maintains that water use has not increased and the response is factually flawed and does not acknowledge the City's reduction in water usage. For example, the City has undertaken aggressive water conservation activities, where water consumption will be reduced by 15%. The limited growth in the City of 1% per year does not support the allegation that wastewater flows have increased as high as 15% over 4 years.

32. The City maintains that the calculation of residences in the Civic Center area is inaccurate and the response did not remedy the faulty premise in the Tech Memos.

33. City maintains that the hauling data for Cross Creek is inaccurate and the response did not remedy the faulty premise.

34. The City maintains that the water usage for septic is an assumption and not supported by evidence. The response did not remedy the faulty premise in the Tech Memos.

35. The City maintains that the spill data was misleading, as most of the data was from areas outside the prohibition area.

36. City maintains that drive-through inspections are not indicative of waste flow increase and should not be used as evidence of such. The response is not responsive to the comment. The staff does not differentiate between pumping of sludge for maintenance and the pumping of effluent. Pumping of OWT/S is addressed in the USEPA Guidelines for Onsite Systems as a standard practice, with established guidelines for pumping schedules.

Tech Memo #2- As set forth in this July 9, 2010 letter, the City challenges the basic assumption upon which Tech Memo #2 relies, that discharges from OWDS to groundwater impair underlying groundwater as a potential source of drinking water.

42. City maintains that groundwater is not a source of potential drinking water in the OWDS Ban area and that the analysis did not study the correct water bearing zone. The response does not remedy these flawed arguments in the Tech Memos. For all of the reasons stated in the attached letter, City disagrees that the groundwater in the Civic Center Area may be suitable for drinking. First, inter-tidal influences flush salt and nutrients into the groundwater, making the water unsuitable for drinking purposes. Historically, settlers in the area did not find drinking water in the area. Frederick Hastings Rindge and May Knight Rindge began purchasing their 17,000 Malibu ranch in 1892. They had a thriving cattle and pottery enterprise. Like the Native Americans before them, access to potable water along the Malibu coast defined their living and working perimeters. They depended on extraction of drinking water from wells along Malibu Creek. The extraction was limited and what was pumped was high in salt content because of the influence of the ocean. After searching for a dependable source of drinking water in all areas of the Malibu Civic Center area, they finally determined that Malibu Creek flows were the only dependable source.

The Marblehead Land Company was formed in 1921 to open up their vast ranch to development. Subsequently, the Malibu Water Company was formed and by 1924, construction began 2.5 miles north of Malibu Lagoon on the 100-foot-high Rindge Dam with a 574 acre-foot reservoir to conserve the water of Malibu Creek. By 1926, an 8-inch pipeline brought water from its reservoir to be distributed as part of the MWC system. The reservoir filled with silt in less than twenty-five years and by 1961, all Malibu Civic Center area wells were abandoned and Los Angeles County has supplied municipal drinking water to Malibu since that time. The Los Angeles RWQCB Basin Plan map of the Malibu Valley Groundwater Basin, designated as a potential source of drinking water, is a very rough depiction of what could possibly be the Malibu Valley drinking water source. Notwithstanding the historical failure of this expansive area as a potable drinking water source, a more accurate delineation of the Malibu Valley Groundwater Basin is now possible. Extensive geologic, geotechnical, and hydrogeological investigations have been completed within the Civic Center area in the past decade, which included in depth data mining of historical and contemporary soil borings, monitoring well construction information, water level and water quality analysis, geophysical studies, and the construction and application of both site-specific and regional numeric groundwater flow models.

Historical groundwater quality data for Total Dissolved Solids (TDS) from the Malibu Water Company was submitted to the RWQCB on behalf of the City in a letter from Jenkins & Hogin dated October 8, 2009 (see the figure titled Total Dissolved Solids Lower Malibu Wells Trend Line Graph, Malibu Water Company, prepared by Pomerooy & Associates, March 1961). These data show TDS concentrations exceeding 3000 mg/L in two Civic Center deep aquifer wells (Well #1 and Well #5). The SWRCB Sources of Drinking Water Policy (Resolution No. 88-63, as revised by Resolution No. 2006-0008) states that sources of surface and ground waters where TDS concentrations exceed 3,000 mg/L (5,000 uS/cm, electrical conductivity), and the sources are not reasonably expected by Regional Boards to supply a public water system, are excepted from being considered suitable, or potentially suitable, for municipal or domestic water supply. Based on the water demand requirements of existing development, Civic Center groundwater cannot be reasonably expected to supply a public water system. In the early 1960's under a pumping regime intended for municipal use, seawater began to intrude into the basin and the Civic Center groundwater developed TDS concentrations exceeding 3000 mg/L. Therefore, Malibu Civic Center area groundwater should not be considered a viable source of drinking water for municipal supply and Basin Planning purposes.

Moreover, a major shortcoming in the RWQCB staff response is the failure to differentiate between the two water bearing zones in the Civic Center area. The upper water bearing zone is where the majority to data was collected, while the lower and more permeable aquifer is where the historic water supply production was located. Impairment to any potential beneficial uses of the lower aquifer from onsite wastewater disposal systems has not been demonstrated.

44. City maintains that there are other sources of nitrogen and the response does not remedy the faulty assumptions in the Tech Memo. Staff's "belief" is not substantial evidence. There is no technical evidence beyond presumption to demonstrate a causal relationship between OWDS and monitoring wells.

45. The City maintains there is no MCL for Ammonia and the response did not remedy the faulty premise.

47. City maintains that the staff over-counted total and fecal coliform and the response did not remedy the faulty premise.

48. The City maintains opposition to the number of samples and the response did not remedy the faulty premise.

50. City maintains that the analysis is inaccurate and the RWQCB staff's response is not responsive to the comment. As stated above, a major shortcoming in the RWQCB staff response is the failure to differentiate between the two water bearing zones in the Civic Center area. The upper water bearing zone is where the majority to data was collected, while the lower and more permeable aquifer is where the historic water supply production was located. Impairment to any potential beneficial uses of the lower aquifer from onsite wastewater disposal systems has not been demonstrated.

51. City maintains that staff's analysis disregards the upgrading to advanced treatment and the response does not remedy the faulty premise in the Tech Memo. Staff acknowledges it is unable to validate basin-wide improvements, but fails to consider the City's new scientific studies. Furthermore, the City has anticipated future progress in improving water quality in the Civic Center area through administration of AB885 regulations, which have not been issued to this date, but which will require upgrades to onsite wastewater systems in areas of high risk to beneficial uses to meet SWRCB performance standards.

52. City maintains that ammonia is erroneously counted twice and the response did not remedy the error.

53. City maintains that the wastewater solution should be based on all available science and the response does not remedy the faulty premise in the Tech Memo. City maintains its comments as to the substance, availability and consideration of City scientific studies because an effective wastewater management strategy in the Civic Center must be based on a comprehensive understanding of the local hydrology and pollutant sources. Also, the page numbers listed in the RWQCB staff's response do not correspond to pages of the administrative record and it is unclear what studies staff considered and did not consider.

Tech Memo #3- As set forth in this July 9, 2010 letter, the City challenges the basic assumption upon which Tech Memo #3 relies, that there is a demonstrated relationship between bacterial in Civic Center groundwater and bacteria at the beaches.

54. City maintains its comment and the response does not remedy the faulty premise in the Tech Memo. City and Staff disagree factually on: (a) the relationship between OWDS and bacteria in the groundwater; (b) the transport and fate of pathogens among and between OWDS, groundwater, surface water, and the beach environment; and (c) the assumption that new science could not disprove old science. Early Technical Reviewers informed the RWQCB staff that a linkage between pathogen source(s), transport pathway(s), and receptor(s) was not demonstrated in Tech Memo #3 (see Administrative Record, Volume 2, RWQCB staff responses to No. 61; p. 2-61; and p. 2-71). The subsequent peer reviewers never substantively addressed the question of whether RWQCB staff successfully demonstrated the existence of a complete exposure pathway from potential pathogen sources at OWDS to human receptors in the beach environment. The full content of the Early Technical Reviewers comments were never disclosed to the City – even though they were requested on several occasions.

55. City maintains that the connection between human illness and natural sources of bacteria is still unknown and the response acknowledges disagreement,

56. City maintains that the scientific method was not used in Tech Memo #3 and the response does not remedy this flaw.

57. City maintains that there is no evidence to support a connection between OWDS and the beach and the response does not remedy the faulty premise in the Tech Memo. Scientists are just beginning to understand the hydrology in the Civic Center area and sources and movement of bacteria near the Lagoon. See also comments above on No. 54.

58. City maintains that a better understanding a groundwater transport of bacteria is necessary and the response does not remedy the faulty premise in the Tech Memo. Scientists are just beginning to understand the hydrology in the Civic Center area and sources and movement of bacteria near the Lagoon. Despite RWQCB staff's theoretical discussion of virus fate and transport and health risks, there currently are no applicable recreational contact water quality standards for viruses.

59. City maintains that the epi studies show stormwater as a cause of illness and the response is not responsive to the comment. It is not clear how acknowledging that run-off is a source of bacteria and then inferring that OWDS could not be eliminated as a source of bacteria because they were not identified as such in the Haile report. Also, in very limited epidemiological studies conducted in marine waters, swimmers do experience varying degrees of illness depending on the source of bacteria. Health professionals and water quality experts have not resolved the connection between (or linked) human illness and non-human sources of bacteria. Avian fecal matter is being implicated in waters where people report illness and there is no evidence of a human fecal source.

60. City maintains that the water quality is improving and the response does not remedy the faulty premise in the Tech Memo. Stormwater has been demonstrated to be a significant source of bacteria and staff's analysis does not consider the water quality improvements from the stormwater treatment facility, Legacy Park and any other activities associated with compliance with the Santa Monica Bay Beaches Bacteria TMDL. As set forth in this July 9, 2010 letter, the City challenges the basic assumption upon which the Tech memo relies that OWDS are the source of bacteria. The City believes the performance evaluation of OWDS upgrades was not based on a representative sample of upgraded wastewater systems. See also comments above on No. 54.

61. City maintains that Tech Memo #3 does not provide sufficient evidence and the response is not responsive to the comment. The frequency with which Malibu Civic Center area beaches exceed water quality objectives for enterococcus is presented in a significant level of detail, but no connection between OWDS and these exceedances has been demonstrated by RWQCB staff. Numerous other factors known to elevate enterococcus levels during the dry season, such as bird population, decomposing kelp, etc. These factors are present at beaches in the Malibu study area, but despite the City's request for their consideration, RWQCB staff have failed to evaluate to what extent they are statistically confounding by being responsible for causing the exceedances of water quality objectives for enterococcus. The map of kelp beds in Santa Monica Bay published by the Santa Monica Bay Restoration Commission shows the distribution and abundance of kelp at "septic" beaches and "sewered" beaches. A review of this map clearly shows

there is more kelp present on the "septic" beaches than on the "sewered" beaches, and a strong association between enterococcus concentrations in seawater and kelp on adjacent beaches has been demonstrated in numerous peer reviewed scientific studies.

62. City maintains Staff admits to having considered the City's new scientific studies, but failed to include them in the administrative record, or even reconcile or acknowledge that the preliminary findings of the studies would contradict older assumptions on hydrology and pathogen sources in the Civic Center.

64. City maintains reaffirms its comment as the RWQCB staff and City disagree on the geometric mean calculations.

65. City acknowledges the response.

66. City maintains that the data is not accurate and the response does not remedy the faulty analysis.

67. City maintains that the statement is misleading and the response does not remember the flaw. Groundwater flow is specific to hydrogeologic conditions, which vary within the Civic Center Area. A majority of groundwater flow does not constitute a valid argument that all groundwater in the area does, or could, flow to the lagoon.

69. City maintains that the table does not show SMB-12 and the response does not remedy the flaw.

70. The City continues to question the accuracy of the figures and the response does not remedy the flawed analysis.

71. City maintains that the coefficient correlations do not show consistent bacteria at the beach and the response does not remedy that flaw. The predicted numbers of cases of illness are based on a statistical upperbound correlation; they represent the highest number of illnesses that may occur taking into account uncertainties in the epidemiologic data. The most likely number of illnesses would be a lower number. See response to No. 61 with regard to statistical confounding by background concentrations of indicator bacteria.

72. Malibu maintains that the statements and data are inaccurate and the response does not remedy the inaccuracies.

73. City maintains that the TMDL does not reference OWDS as a source and the response does not remedy this flaw. Please provide specific citation where Santa Monica Bay Beaches TMDL includes OWDS's as a possible non-point source. City is not aware of where OWDSs were quantified or listed as a bacteria load in load that needs reduction in either wet weather or dry weather conditions. The groundwater contributory area(s) potentially affecting the lagoon and beaches were not identified in the TMDL documents. The Stone (2004) study updated the state of knowledge regarding OWDS risks. The

RWQCB's expansion of the prohibition boundary beyond the high risk areas identified by Stone (2004) is not justified by accepted risk assessment methods

74. City maintains that the argument and the response does not remedy the flawed analysis. Staff admits in the response to not have provided a conclusive link between OWDSs and the Beach water quality, which is required as evidence to support the Ban.

75. City maintains that the cross section is flawed. The response does not remedy that flaw.

77. The City maintains that the evidence does not support adoption of the Basin Plan Amendment and the response does not remedy that flaw. The City disagrees with LARWQCB response - The nitrogen cycle response in comment is incorrect. The six - month time of travel is pertinent to bacteria not nitrogen in groundwater.

78. The City maintains that impairment to aquatic life from nitrogen has not been demonstrated and the response does not remedy this flaw. LARWQCB staff flow nets were apparently not provided for review.

79. The City maintains that Regional Board staff did not follow the proper scientific method and the response does not remedy that analytical flaw.

80. The City maintains its comment on the modeling and analysis and the response does not remedy that flaw. LARWQCB staff did not explain why previous modeling and analyses of nitrogen loading were not appropriate, nor were LARWQCB model parameters and assumptions sufficiently justified.

81. The City maintains that the prohibition boundary area differs from that in the Risk Assessment and the response does not remedy this flaw.

82. The City maintains a challenge the staff's flow calculations and the response does not remedy that flaw.

83. The City maintains the comment and the response does not remedy that flaw. Attachment 4-1 of Tech Memo #4 does not present the modeling approach in a way that allows an independent investigator can reproduce the results. The response indicates that the McDonald Morrissey model is acceptable to the regional board staff.

84. The City maintains that the comment and the response does not remedy that flaw. If LARWQCB staff concurs that Stone (2004) groundwater flow contours are correct, then the area of the prohibition should be limited to the recharge zone to the lagoon as defined by those contours and included in the same report. Tech Memo #4 does not present the modeling approach in a way that allows an independent investigator can reproduce the results.

85. The City maintains the comment and the response did not remedy the flaw.

86. The City maintains the comment and the response did not remedy the flaw.
87. The City maintains that the model is not explained and the response does not remedy that flaw. All calculations on spreadsheet need to be provided and justified to enable City to adequately review analyses. Tech Memo #4 does not present the modeling approach in a way that allows an independent investigator can reproduce the results.
88. The City maintains that the threshold and basis for establishing the threshold were not provided and the response does not remedy that flaw.
91. The City maintains its comment on water usage and the response did not remedy this flaw.
92. The City maintains that the numbers are not accurate and the response did not remedy the flaw.
93. The City maintains that the record does not provide sufficient data and the response does not remedy that flaw.
94. The City maintains that the statement is unsubstantiated and the response does not remedy that flaw. No documentation has been provided to substantiate statement that primary effluent is being discharged.
95. The City maintains that the numbers are not accurate and are assumptions and the response did not remedy the flaw. No specific details were made available to enable the City to review the LARWQCB distribution of flows.
96. The City maintains that the characterization of the commercial sectors is in accurate and the response does not remedy that flaw. Response acknowledges disagreement.
97. The City maintains that the number of homes must be verified.
100. The City maintains its comment and the response did not address that comment.
101. The City maintains that a reduction of nitrogen was not analyzed and the response does not remedy that flaw. A breakdown of nitrogen load by treatment system needs to be provided by LARWQCB to review this response.
102. The City maintains that the properties are incorrectly categorized and the response does not address that flaw.
104. The City maintains that water usage has decreased and the response acknowledges disagreement.

105. The City maintains that the calculations and assumptions are not correct and the response does not remedy that flaw.
106. The City maintains that the tech memo does not explain flow distribution and the response does not remedy that flaw. If the LARWQCB staff used Stone (2004) data, why do the distributions of flow appear to be different? Specific documentation of flows need to be provided to enable the City to review and analyze staff assumptions.
107. The City maintains that the calculations should be recalculated and the response did not remedy that flaw. more specificity is needed to review staff response.
108. The City maintains that the description of groundwater flow is not accurate and the response failed to adequately address this Comment.
109. The City maintains that there is not evidence to show contamination from discharges at the beaches in front of Winter Canyon and the response does not remedy that flaw. Response does not appear to adequately address this Comment. By this logic, any discharge to Santa Monica Bay could affect Malibu Lagoon water quality, which is not realistic.
111. The City maintains that the analysis does not adequately consider nitrogen loading and the response does not remedy that flaw.
112. The City maintains the comment and staff acknowledges disagreement. The City respectfully disagrees with the response and the simple addition approach to the analysis of a complex system.
113. The City maintains that it is not clear how the loading rates were estimated and the response does not remedy that flaw. The response does not address which specific portions of the numerical model and which portions of the spreadsheet were used in the LARWQCB analysis.
115. The City maintains its comment and the response did not address that comment. Response does not adequately address comment, as no rationale is provided for the LARWQCB selection/use of TetraTech's nitrogen mass loading approach and disregarding other approaches.
116. The City maintains its comment and the response did not address that comment. The City agrees with the LARWQCB acknowledgment that "The presumption that the OWDSs in Malibu are responsible for the pollution in the lagoon and in the beach area is not supported by the facts."
117. The City maintains its comment and the response did not remedy the flaw. The City agrees with the LARWQCB acknowledgment that "Winter Canyon Drainage (WCD) is not a source of nutrients which contribute to impairments found in Malibu Lagoon and Surfer Beach." Therefore, why does this acknowledgment apply to bacteria which

have limited time of survival in groundwater? Therefore, this should be basis for removing Winter Canyon from area of concern for nitrogen and bacteria contribution to the Lagoon and Surfrider Beach.

118. The City maintains that OWDS are not the main cause of degradation to water quality in the Lagoon. The response does not adequately address the comment. Relevant factors in the USEPA (2003) Nutrient TMDL should be identified.

119. The LARWQCB did not acknowledge that changes in onsite wastewater system management in the Civic Center area, by the City have resulted in improvement of bacteria and nitrogen loading in the Civic Center area, and that historic water quality data may be no longer appropriate because it does not reflect the upgrades of systems in the Civic Center area permitted by the City.

122- 126- City's maintains its arguments against the boundaries, which are discussed more in depth in the July 9, 2010 letter.

127. The City maintains that property owners should be allowed to repair, upgrade and increase flows. The response does not resolve this comment.

#### Responses to CEQA Comments

In addition to City's July 9, 2010 letter, the CEQA maintains all of its comments and arguments (from Exhibit H) that the CEQA analysis for the prohibition is legally inadequate and fails to provide the Board and the public any meaningful analysis of the potential environmental impacts from the OWDS Ban.

Five year schedule of compliance argument on City's letter page 19 not addressed.

131. City maintains that the SOC and Unavoidable Impacts analysis are inadequate as the response does not remedy the inadequate CEQA Analysis in the Environmental Staff Report (ESR). The conclusion still appears to be that there are no significant, unavoidable adverse impacts, and *if there are impacts*, they will be temporary in nature. This noncommittal, elusive summary evidences a lack of any serious effort made to evaluate the environmental impacts of the OWDS Ban. The primary purpose of a CEQA analysis is to analyze the reasonably foreseeable impacts from a project to avoid approving projects with significant environmental effects if there are feasible alternatives or mitigation measures; discussion of the environmental benefits of a project without a concrete analysis of the environmental impacts eludes CEQA's substantive requirements. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. CEQA protects not only the environment, but also informed self-government. The analysis is inadequate and fails to provide the Board and the public with any meaningful analysis upon which to base a conclusion about the potential environmental effects of the proposed project.

133. City maintains that the ESR and checklist fail to adequately analyze the potential impacts as the response does not remedy the inadequate CEQA Analysis in the ESR.

First, evidence shows that the reasonably foreseeable (and staff supported) compliance project is the centralized wastewater system and the impacts of that system should have been analyzed. The notion that there are three alternative potential compliance projects is misleading because when questioned as to whether adopting a prohibition was in essence mandating a centralized system, the Executive Officer admitted that the difference really was just “semantics” and that result of this prohibition would be a “centralized system, centralized plant.” (A.R. 1-506:230-1-508:233). She then went on to testify that the potential alternatives are “just us in an abundance of caution trying to comply with the CEQA requirement, which is that [the Board] consider alternatives.” (A.R. 1-521:265). Further, it is unclear how the RWQCB staff can identify mitigation measures to mitigate environmental impacts that have not yet been *identified*. (see Comment 131 above). The ESR acknowledges on pages 45-6 that many constraints to development exist in Malibu in that more than 83% of Malibu is hillside area, the flat area is subject to flooding and other significant environmental constraints such as seismic characteristics, flood plains, land slides, soil erosion, fire hazards, and liquefaction, fire hazards and liquefactions potential. Yet, the impacts analysis does not substantively analyze any of these constraints.

Moreover, the proposed mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would significantly reduce impacts *that are yet to be determined*. The ESR relies on vague and unsubstantiated conclusions while purporting to shift the burden of identifying mitigation measures to other agencies. (E.g., “The implementation of this prohibition... may result in short-term localized significant adverse impacts to the environment as a [sic] large construction projects may be undertaken in the vicinity of the area. These impacts are generally expected to be limited, short-term or may be mitigated through careful design and scheduling.” Report at p. 24.) Because the “options for compliance projects” are reasonably foreseeable at the present time, and because the RWQCB will retain WDR permitting jurisdiction over the treatment facilities associated with any of the “compliance projects,” the Board cannot rely on another agency to identify feasible mitigation measures or alternatives at a later date. 14 CCR § 15091(c).

Further, the significant new information added to the document after close of the public comment period mandates its recirculation in order to allow the public a meaningful opportunity to comment on all of the new information. The draft document that was circulated was also so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded from the outset. (See Exhibit H). As a result, the City was unable to provide information under Section 15086(d) of the CEQA guidelines. This section also does not alleviate the Lead Agency’s responsibility to conduct legally adequate environmental analyses.

134. City maintains that the checklist fails to identify adequate mitigation measures as the response does not remedy the inadequate CEQA Analysis in the ESR. It is unclear how the RWQCB staff can identify mitigation measures to mitigate environmental impacts that have not yet been *identified*. Moreover, the proposed mitigation measures are noncommittal and vague, and legally inadequate as there is no substantial evidence to support a finding that the measures would significantly reduce the impacts *that are yet to be determined*.

135. City maintains that the cumulative impact analysis is inadequate because the response does not remedy the inadequate CEQA Analysis in the ESR. Other than TMDLs of which the RWQCB drafts, the cumulative impact analysis does not address any past, present or reasonably foreseeable future projects.

136. City maintains that the growth inducing impact analysis is deficient as the response does not remedy the inadequate CEQA Analysis in the ESR. The City disagrees with the revised growth inducing impact analysis and finds the analysis deficient, the prohibition does remove an existing constraint on development. Removal of that constraint through any one of the three contemplated methods of compliance may foster the development of currently undeveloped parcels in the project area and, consequently, induce population and housing growth in and around the project area. The CEQA Guidelines themselves recognize the removal of this type of constraint as a potentially significant, growth-inducing action. (“Included in this area are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas).”) 14 CCR § 15126.2(d).

137. City maintains that the ERS fails to analyze a reasonable range of alternatives as the response does not remedy the inadequate CEQA Analysis in the ESR and disagrees that the analysis of alternatives complies with CEQA. The Report must include a reasonable range of alternatives that can feasibly accomplish most of the basic objectives of the project while avoiding or substantially lessening one or more of the significant effects. 14 CCR § 15126.6(b). The Report must also include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. 14 CCR § 15126.6(d).

Other than the obligatory “No Project” alternative, the Report fails to identify and analyze a single meaningful alternative. No alternative to a complete ban on OWDSs is analyzed. Even though the City and the Regional Board Executive Officer herself proposed feasible regulatory alternatives, the ESR fails to evaluate and compare the environmental impacts of any actual alternatives to the proposal. The analysis also does not address the feasibility of the proposed compliance projects. For example, while Las Virgenes Municipal Water District could potentially treat some of the wastewater, it does not have a demand for the recycled water nor it is able to provide seasonal water storage. The collection system that would be required through Malibu Canyon would be astronomically expensive and may not be possible because of environmental constraints and existing lines in the roadway. The sheer distance between Malibu and Hyperion and

geologic activity along PCH between the Civic Center and the closest collection line in the City of Los Angeles beyond Topanga create significant obstacles and likely render this project infeasible. The line would be continually subject to breakage due to geologic activity in the area, risking direct spills of raw sewage to the adjacent ocean. Without meaningful analysis of these alternatives the Board is unable to determine which project is the environmentally superior project. For that reason alone, the document is legally inadequate. 14 CCR § 15252; 23 CCR § 3777.

138. Earth. City maintains that the discussion in Checklist 1.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. See City's responses for No. 131 and 133 above.

139. Earth. City maintains that the discussion in Checklist 1.b is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. The purported mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would significantly reduce impacts. See also City's responses for No. 131 and 133 above.

140. Earth. City maintains that the discussion in Checklist 1.c is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. There is no evidentiary basis for the conclusion that there will be no impact. Also, sewers are one of the proposed compliance projects, making it unclear how RWQCB staff's response shows that compliance projects will minimize impact to topography. In fact, Checklist response 1.e specifically refers to the trenching required to install *sewer lines*. These internal inconsistencies evidence a lack of any serious effort made to evaluate the environmental impacts of the OWDS Ban or to respond to the public's comments on the ESR.

141. Earth. City maintains that the discussion in Checklist 1.e is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

142. Earth. City maintains that the discussion in Checklist 1.f is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. There is no evidentiary basis for the conclusion that there will be no impact. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

143. Earth. City maintains that the discussion in Checklist 1.g is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The mitigation measures are noncommittal and vague, and legally inadequate as there is no

evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

144. Air: City maintains that the discussion in Checklist 2.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. The purported mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance. Further, the response does not respond to the City's comments on the timeline for compliance projects, daily hauling, traffic congestion, etc.

145. Air: City maintains that the discussion in Checklist 2.b is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. The purported mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance. Short terms impacts must still be analyzed under CEQA.

147. Water: City maintains that the discussion in Checklist 3.e is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and does not respond to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The City challenges staff's assumptions on discharge.

148. Water: City maintains that the discussion in Checklist 3.f is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and does not respond to the comments. There is no evidentiary basis for determining what the impact will be as the document states that the significant impact will be an improvement in water quality. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

149. Water: City maintains that the discussion in Checklist 3.g is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and does not respond to the comments. There is no evidentiary basis for determining what the impact will be, as the document states that the significant impact will be an *improvement* in water quality. There is no proposed mitigation for this impact, as required CEQA.

150. Water. City maintains that the discussion in Checklist 3.i is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

152. Noise. City maintains that the discussion in Checklist 6.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance. The response underestimates potential noise from installing sewer lines and construction of treatment facilities near sensitive receptors.

153. Noise. See 152 Above.

154. Light and Glare. City maintains that the discussion in Checklist 7.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

155. Land Use. City maintains that the discussion in Checklist 8.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and does not respond to the comments. There is no evidentiary basis for determining what the impact will be. Although the ESR states that a potentially significant impact exists, the substantive discussion fails to consider if the compliance project is not finished by the deadline. The mitigation measures are legally inadequate for the same reasons state above.

Risk of Upset. City reaffirms its comment on Section 10.a of the Environmental Checklist because the RW/QCB staff did not respond to the City's Comment.

156. Population. City maintains that the discussion in Checklist 11.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact and the deferred analysis is legally inadequate for the same reasons state above. The removal of a constraint on development will promote development. Also, the response does not consider where new development will dispose of its wastewater if the compliance projects are not designed to accommodate them.
157. Housing. City maintains that the discussion in Checklist 12.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusion that there will be no impact with mitigation. The deferred analysis and mitigation measures are legally inadequate for the same reasons state above. The response fails to consider the environmental impacts on existing housing by decommissioning exiting OWDS and responds only to what planning activities the City could undertake to prevent the undetermined housing impacts.
158. Transportation/Circulation. City maintains that the discussion in Checklist 13.a,b,c,d, and f is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusions on the impacts. The response does not provide any quantifiable analysis of traffic impacts, nor does it fully examine the reasonably foreseeable traffic impacts of the compliance projects. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.
159. Public Service. City maintains that the discussion in Checklist 14.d and e is inadequate as response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusions on the impacts. What Park is the ESR referring to? The response does not provide quantifiable analysis or discussion on the impacts to the roads if compliance projects are not finished by the deadlines, nor does it fully examine the reasonably foreseeable impacts of the various compliance projects. The response also does not identify any impacts to park land for having to change its wastewater mechanisms to comply with the proposal. No mitigation measures are discussed or proposed.
160. Utilities and Service. City maintains that the discussion in Checklist 16.d.f is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for

the conclusions on the impacts. While the analysis mentions the elimination of existing systems, it fails to actually analyze the potential environmental impacts associated with abandonment. There is also no evidence or analysis to support the impact conclusion for solid waste.

161. Human Health. City maintains that the discussion in Checklist 17.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusions on the impacts. While the analysis mentions that hazardous materials may be transported, it fails to actually analyze the potential environmental impacts associated abandoning existing systems, failure of compliance projects to the ocean and or neighboring residences. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

163. Archaeological/Historical. City maintains that the discussion in Checklist 18.a is inadequate as the response does not remedy the inadequate CEQA Analysis in the ESR and is not responsive to the comments. There is no evidentiary basis for the conclusions on the impacts. The analysis fails to account for the fact that a majority of the Malibu Lagoon has already been identified as an archaeological site. The mitigation measures are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

164. 13241 factors. The City maintains that there is not sufficient evidence in the record to support the finding that any of the 13241 factors have been adequately considered. The probable beneficial use of water are addressed further in the July 9, 2010 letter and staff's unsubstantiated cost estimates do not appear to be an adequate analysis of the economic ramifications of the proposal.

165. The City maintains that the findings are not supported by evidence, as set forth in its October 8, 2009 and July 9, 2010 letters.

166. The City maintains that the groundwater in the Malibu Valley is not a potential source of drinking water. See July 9, 2010 letter.

167. The City maintains that ESR is not adequate. See comments 131-164 above. The primary purpose of a CEQA analysis is to analyze the reasonably foreseeable impacts from a project to avoid approving projects with significant environmental effects if there are feasible alternatives or mitigation measures; discussion of the environmental benefits of a project without a concrete analysis of the environmental impacts eludes CEQA's substantive requirements. The consistent deferral of any meaningful analysis, in spite of the fact that several impacts are reasonably foreseeable at this stage, frustrates CEQA's fundamental

purpose and completely forecloses the opportunity for the Board or the public to make an informed, independent and reasoned judgment on the merits of the proposed project. CEQA protects not only the environment, but also informed self-government. The analysis is inadequate and fails to provide the Board and the public with any meaningful analysis upon which to base a conclusion about the potential environmental effects of the proposed project.

168. The City maintains that the ESR fails to identify adequate mitigation measures.

See comments 131-164 above. The mitigation measures in the ESR are noncommittal and vague, and legally inadequate as there is no evidentiary basis for concluding that the measures would reduce impacts to a level of insignificance.

169. The City maintains that the costs of compliance have not been adequately analyzed and staff's unsubstantiated cost estimates do not appear to be an adequate analysis of the economic ramifications of the proposal.

170. The City maintains the OWDS Ban Boundaries are not justified, as set forth in the July 9, 2010 letter.

171. The City maintains that the TMDL doesn't indicate that a prohibition is necessary.