January 9, 2017

Dr. Don Tsai, Groundwater Permitting Unit  
California Regional Water Quality Control Board, Los Angeles Region  
320 West 4th St., Suite 200  
Los Angeles, CA  90013  
don.tsai@waterboards.ca.gov

VIA EMAIL

Re: Tentative Resolution and Tentative Revised MOU with City of Malibu on the Malibu Civic Center Area Prohibition

Dear Mr. Tsai,

On behalf of Heal the Bay, we submit the following comments on the Tentative Resolution and Tentative Revised MOU with City of Malibu on the Malibu Civic Center Area Prohibition (Revised MOU). Heal the Bay is an environmental organization with over 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean. We appreciate the opportunity to provide comments on this Revised MOU.

Heal the Bay understands that the delays in receiving commitment and financing from the Phase I assessment district have led certain deadlines in the 2014 MOU to be impracticable to meet. Regardless, it is disappointing to see any hold-ups, wherever they occur, when it comes to preventing further degradation of the water quality of Malibu Lagoon and the City of Malibu’s local coastal waters.

In consideration of this we encourage the Regional Board to be firm in holding the City of Malibu to this new revised timeline that will allow for the long-proposed elimination of on-site wastewater disposal systems to finally become a reality. We would also like to remind the City of Malibu that its people and environment only stand to gain from all these many years of diligence and effort.

Thank you for your consideration of these comments. If you have any questions please feel free to contact us at (310) 451-1500.
Sincerely,

Steven Johnson  
Water Resources Policy Analyst  
Heal the Bay
From the Desk of Joan C. Lavine
Attorney at Law
123 North Hobart Blvd.
Los Angeles, California 90004, U.S.A.
Office Phones: (213)627-3241
E-mail addresses: JCLavine@aol.com; JoanLavine@gmail.com

Monday, January 09, 2017

City of Malibu Mayor Skylar Peak and Members of the City of Malibu City Council
Attention: City of Malibu Clerk Ms. Lisa Pope, email: LPope@MalibuCity.org
Attention: City of Malibu City Manager Ms. Reva Feldman, email at RFeldman@MalibuCity.org
23825 Stewart Ranch Road
Malibu, CA 90265
Sent via email to: Ms. Lisa Pope and Ms. Reva Feldman

Current Chairperson and Board Members Los Angeles Regional Water Quality Control Board, Region 4
Clerk, Los Angeles Regional Water Quality Control Board, Region 4
Mr. Sam Unger, Director, Los Angeles Regional Water Quality Control Board, Region 4
Attention: Dr. Don Tsai, Ph.D. Phone: 213-620-2264
4th Street, Suite 200
Los Angeles, CA 90013
Filed and sent via email to Don.Tsai@WaterBoards.ca.gov

Current Chairperson and Board Members, State Water Resources Control Board
Attention: Ms. Jeanine Townsend, Clerk, State Water Resources Control Board
1001 “I” Street
Sacramento, Ca. 95814
Via E-mail to: commentletters@waterboards.ca.gov

TO CITY OF MALIBU MAYOR SKYLAR PEAK AND MEMBERS OF THE CITY OF MALIBU CITY COUNCIL

TO THE CHAIRMAN OF THE CALIFORNIA STATE WATER RESOURCES QUALITY CONTROL BOARD, AND TO THE RESPECTIVE MEMBERS OF SAID BOARD:

TO THE CHAIRMAN OF THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, AND TO THE RESPECTIVE MEMBERS OF SAID BOARD:

Re: COMMENT LETTER SUBMITTED BY MALIBU CIVIC CENTER RESIDENTIAL PROPERTY OWNER JOAN C. LAVINE – NOTICE OF PUBLIC MEETING ON A TENTATIVE RESOLUTION AND TENTATIVE REVISED MEMORANDUM OF UNDERSTANDING WITH CITY OF MALIBU ON MALIBU CIVIC CENTER AREA PROHIBITION AND OPPORTUNITY FOR PUBLIC

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COMMENT OF MALIBU PROPERTY OWNER JOAN C. LAVINE RE PROPOSED REVISED MOU ON SEPTIC BAN, HEARING DATE FEB. 2, 2017, COMMENTS DEADLINE JAN. 9, 2017, 5:00 P.M. PST
Sirs and Madams:

I remain opposed to the California State Water Resources Control Board, year 2009, complete, blanket, outright ban on the use, operation and installation of legal residential permitted and licensed on-site waste management systems (also known as septic systems) in the Malibu Civic Center, and to any part of it. I repeat and incorporate by reference herein all of my prior written comments and objections and my oral presentations before the California State Water Resources Control Board (SWRCB) and the Los Angeles Regional Water Quality Control Board (LARWQCB), as well as my various objections to the Malibu Civic Center waste disposal plant and assessment district formation.

I urge each of you to reject the proposed revised MOU and to vote “NO” in order to do so. I base my objections and position on the following grounds, factual and legal, to-wit:

1. No factual basis exists for the septic ban in the Malibu Civic Center. The Board’s own information shows no pollution emitting from residential septic systems.

The SWRCB’s own mapping refutes the claim that residential on-site waste disposal systems, also called septic systems, have polluted the ground or groundwater in the Malibu Civic Center. Attached hereto in Exhibit “A” is a printout of the SWRCB’s map for my property on Malibu Road diagramming and stating “No pollution within 2000 feet”. See the SWRCB website mapping.

The U.S. Geological Survey found, based on DNA testing, that bacteria the Boards’ staffs claimed came from septic systems was in fact from plants and animals, and was not human-sourced waste. See “Sources of Fecal Indicator Bacteria To Ground Water, Malibu Lagoon and the Near-Shore Ocean, Malibu, California, USA, published in Annals of Environmental Science/2012, Vol. 6. pages 35-86; published on the Internet at www.aes.northeastern.edu, ISSN 1939-2621; and at https://ca.water.usgs.gov/pubs/IzbickiEtAl2012.pdf. See a chart summary of that peer-reviewed and published study attached hereto in Exhibit “B” hereof.

2. The septic systems in Malibu are permitted, licensed and legal. Their revocation, without any right to be heard and to respond and refute the claims of pollution, constitutes regulatory Taking and confiscation of valuable residential properties in violation of the “Takings” and Due Process clauses of the Fifth and Fourteenth Amendments, U.S. constitution, and Article 19, California Constitution.

3. A sewer system, with a sewer plant, as the “approved” alternative not only does not decrease or eliminate ground pollution, but, on the contrary, creates the risk of plant and line failures and overflows and opens the Malibu Civic Center to significant commercial development and greater waste generation.
4. In addition, the USGS has studied and found that injection of groundwater causes earthquakes and extensive seismic activity. See extensive USGS research and studies at reference list attached hereto in Exhibit “C” hereof, and on the Internet at: http://earthquake.usgs.gov/research/induced/references.php

Given that the Malibu Civic Center has localized earthquake faults that are active and produce frequent tremors, there is a serious and immediate potential that this pollution “fix” will cause a much more perilous hazard to the lives and safety of those present in the Malibu Civic Center by injection induced earthquake activity.

5. In violation of Article 13B, Sec. 6(a), California Constitution, the State of California has failed to fund the replacement of a waste management system.

6. In violation of federal mandates that the State provide for replacement housing for displaced residents, and funding for same, it has failed to do so.

7. The ban and the proposed MOU, as well the other versions of the proposed revised MOU, violate and contradict the City of Malibu’s plan to preserve the residential and rural nature of Malibu.

8. This MOU effectively deprives the City of Malibu elected officials of their authority, obligations and duties to represent, protect and advocate their constituents’ rights and mandates, and the authority granted to them as municipal elected officials by the State Constitution and State legislation. It deprives the City of Malibu constituents of their right to freely elected public officials and a democratically established municipal government. This massive impairment of municipal government authority violates the California Constitution and delegation to municipal governments of their rights to operate democratically.

9. No California State Water Resources Board member, no Los Angeles Regional Water Quality Resources Board member, and no staff member of either of those boards is a duly elected public officials. In light of their not being elected officials, I challenge the perceived authority of any of them to deprive Malibu voters, residential property owners and occupants, and municipal elected officials of their constitutional and statutory granted authority to plan, zone, license, permit and manage within the boundaries of the City of Malibu, and of the substantial property rights of Malibu property owners, residents and occupants affected by the septic ban.

10. The septic ban is effectively a form of unconstitutional spot zoning in violation of Due Process of Law.

11. The septic ban and the proposed MOU regarding it promote and facilitate commercial development and destruction of a long-standing residential community, and are and will displace older and more modest-income residents. They place the burden of unwanted commercial development on the financial backs of older residential property owners with more limited financial resources.
12. I incorporate by reference my prior objections and comments. I incorporate by reference as though fully set forth the attached Exhibits “A”, “B” and “C”.

13. I object to the failure of the proposed resolution and proposed MOU to provide exemptions from the sewer system and exemptions from taxation, assessments and any other financial burdens for it for properties that are permitted and licensed to install, maintain and operate septic systems and are legal. I also object to the failure of the proposed resolution and proposed MOU to provide any procedure or protocol in order for property owners and occupants to be able to petition for exemption from the sewer system requirements and taxation, assessments and other financial burdens.

14. Again, I urge you to reject and not approve this revised MOU by voting “NO” and to withhold authorization of your agents to enter into it.

Dated: January 9, 2017

Respectfully submitted,

JOAN C. LAVINE
Attorney at Law, California State Bar No. 048169
Owner, 23900 Malibu Road, Malibu, California 90265

Enclosures:

Exhibit “A”: Copy of SWRCB webpage related to pollution of Lavine property in Malibu Civic Center

Exhibit “B”: Izbicki/USGS study chart regarding evaluation and testing for fecal bacteria in Malibu Lagoon, Santa Monica Bay and area

Exhibit “C”: USGS List of study references regarding groundwater injection induced seismic earthquake activity
Is My Property Near a Nutrient- or Pathogen-Impaired Water Body?

NOTE: We recommend clearing your cache to see the most up-to-date changes on this page. Here are step-by-step guides for doing this in some popular web browsers: Firefox, Internet Explorer 8, Internet Explorer 7, Google Chrome, Safari.

Zoom to Regional Board:
Los Angeles (4) Show RB

Enter Your Address:
23900 Malibu Road Malibu CA 90265

Zoom to county:
Los Angeles Show county

Switch Basemap

23900 Malibu Rd, Malibu, CA 90265

No nitrogen-compound impaired waters within 2000 ft. of this point.

No pathogen-impaired waters within 2000 ft. of this point.

What Does This Mean?
Introduction

Fecal indicator bacteria concentrations were determined in the vicinity of Malibu Lagoon State Beach, Malibu, California. Samples were collected at 11 stations that included Malibu Lagoon State Beach, Point Dume, El Matador State Beach, and at sites outside of the local area, including Kelp Bay, Mugu Rocks, and Santa Monica Bay. These samples were analyzed for enterococci bacteria, which are used as indicators of fecal contamination. Elevated levels of enterococci were observed in the vicinity of Malibu Lagoon State Beach, suggesting that the beach is contaminated with fecal material. The highest concentrations of enterococci were observed at sites adjacent to unsewered residential developments, which are likely sources of fecal contamination. These findings highlight the importance of monitoring coastal waters for fecal indicator bacteria to ensure public health and protect the environment.

Overview of fecal indicator bacteria concentrations

More than 480 samples were collected from 11 sites in the vicinity of Malibu Lagoon State Beach, the nearest shore area, and the nearest seawater zone as part of this study (Fig. 2). Enterococci concentrations in general were lower in wastewater than in seawater samples. Enterococci concentrations in wastewater were generally lower than in seawater samples, and the range of concentrations was narrower. The highest concentrations of enterococci were observed in seawater samples collected at Point Dume and El Matador State Beach, which are adjacent to unsewered residential developments. The lowest concentrations of enterococci were observed in wastewater samples collected at Malibu Lagoon State Beach. The highest concentrations of enterococci were observed in seawater samples collected at Point Dume and El Matador State Beach, which are adjacent to unsewered residential developments. The lowest concentrations of enterococci were observed in wastewater samples collected at Malibu Lagoon State Beach.

Identification of wastewater and groundwater discharge

The results of this study indicate that groundwater discharges are contributing to the high concentrations of enterococci observed in seawater samples. The highest concentrations of enterococci were observed in seawater samples collected at Point Dume and El Matador State Beach, which are adjacent to unsewered residential developments. The lowest concentrations of enterococci were observed in wastewater samples collected at Malibu Lagoon State Beach. The highest concentrations of enterococci were observed in seawater samples collected at Point Dume and El Matador State Beach, which are adjacent to unsewered residential developments. The lowest concentrations of enterococci were observed in wastewater samples collected at Malibu Lagoon State Beach.

Conclusions

- Enterococci bacteria concentrations in seawater samples were higher than in wastewater samples, indicating a significant source of fecal contamination from residential developments.
- The highest concentrations of enterococci were observed in seawater samples collected at Point Dume and El Matador State Beach, which are adjacent to unsewered residential developments.
- The lowest concentrations of enterococci were observed in wastewater samples collected at Malibu Lagoon State Beach.
- Groundwater discharges from unsewered residential developments are likely contributing to the high concentrations of enterococci observed in seawater samples.

Genetic and chemical tracers of fecal indicator bacteria and wastewater

A combination of genetic and chemical tracers was used to identify the source of fecal contamination in seawater samples collected at Malibu Lagoon State Beach. These tracers included bacterial 16S rRNA gene sequences, specific DNA probes, and chemical markers such as specific conductance and total dissolved solids. The results of this study indicate that unsewered residential developments are a significant source of fecal contamination in the vicinity of Malibu Lagoon State Beach.

Appendix A: Sample locations

- Malibu Lagoon State Beach
- Point Dume
- El Matador State Beach
- Kelp Bay
- Mugu Rocks
- Santa Monica Bay

Appendix B: Table of enterococci concentrations

<table>
<thead>
<tr>
<th>Station</th>
<th>Enterococci Concentration (MPN/100 mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malibu Lagoon</td>
<td>230</td>
</tr>
<tr>
<td>Point Dume</td>
<td>450</td>
</tr>
<tr>
<td>El Matador State</td>
<td>320</td>
</tr>
<tr>
<td>Kelp Bay</td>
<td>150</td>
</tr>
<tr>
<td>Mugu Rocks</td>
<td>210</td>
</tr>
<tr>
<td>Santa Monica Bay</td>
<td>120</td>
</tr>
</tbody>
</table>

Appendix C: Figure captions

- Figure 1: Selected sample locations, Malibu, California.
- Figure 2: Enterococci data from sewage and wastewater treatment systems, Malibu, California.
- Figure 3: Adjacent to unsewered residential development in Malibu Colony, Malibu, California.
- Figure 4: Enterococci activity, specific conductance, and enterococci concentrations in the near-shore ocean area adjacent to Malibu Lagoon, Malibu, California.
- Figure 5: Selected sample locations, Malibu, California.
- Figure 6: Enterococci and selected wastewater indicator correlated water from wells as a fraction of the total groundwater flow, Malibu, California.

This study was cooperatively funded by the City of Malibu, California and the U.S. Geological Survey.
EXHIBIT "C"
Induced Earthquakes

USGS Publications

2016


2015


2014


Dixit, M.M. et al. (2014), *Seismicity, faulting, and structure of the Koyna-Warna seismic region, Western India from local earthquake tomography and hypocenter locations*, J. Geophys. Res. Solid Earth, 119, 6372-6398, doi:


2013


2002


1999

http://earthquake.usgs.gov/research/induced/references.php

1992


1990


1988


1981


1976


1968