

Response to Comments

Reconsideration of Table 4-zz of Resolution No. R4-2009-007
 Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties
 Prohibiting On-site Wastewater Disposal Systems in the Malibu Civic Center Area
 Tentative Resolution No. R4-2014-XXXX

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Joan Lavine December 30, 2013 Cover Letter – Comments Regarding Tentative Resolution dated February 6, 2014		
1	<p>The purpose of the letter is to comment on and to object to the proposed amendment(s) to the Table 4-zz of the California Regional Water Quality Control Board, Los Angeles Region/Region 4 Resolution, R4-2009-007, adopted and ratified by the State Water Resources Control Board in Resolution No. 2010-0045. Those resolutions outright ban all use of on-site wastewater management systems in the Malibu Civic Center, but contain exemptions for several commercial ventures in a list in Table 4-zz.</p>	<p>The comment mischaracterizes Resolution No. R4-2009-007, Amendment to the <i>Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties</i> to Prohibit On-site Wastewater Disposal Systems (OWDSs) in the Malibu Civic Center Area (Malibu Prohibition or Basin Plan Amendment), adopted by this Regional Board on November 5, 2009, and approved by the State Water Resources Control Board (State Water Board) in Resolution 2010-0045. The Basin Plan Amendment prohibits all <i>new</i> OWDSs in the Malibu Civic Center Area, with the exception of a list of properties on Table 4-zz that had progressed through the entitlement process as of the date of the Los Angeles Regional Board’s adoption of the Basin Plan Amendment. Properties are allowed to continue to use their <i>existing</i> OWDSs until certain specified dates in the Basin Plan Amendment. Residential properties with existing systems may operate them for four years longer than commercial properties. Table 4-zz, which consists of the list of properties that are temporarily exempt from the prohibition on <i>new</i> OWDSs, contains seven commercial properties and forty-three residential properties. All properties in Table 4-zz as well as other properties in the Malibu Civic Center area are required to cease the discharge from OWDSs by the deadlines specified in the Basin Plan Amendment.</p>
2	<p>The pending proposed resolution that is the subject of the pending proceeding and this comment proposes to amend that Table 4-zz exempting a page-long list of commercial ventures, by adding several more commercial projects in the septic ban zone in the Malibu Civic Center.</p>	<p>The comment mischaracterizes the proposed resolution. The resolution does not propose to add additional commercial projects. Table 4-zz, as noted above, already includes seven commercial properties. The public notice provided the opportunity for persons to document that their project had “progressed through the entitlement process” as of November 5, 2009 and be added to Table 4-zz. The Regional Board received one request from Green Acres, LLC. The Regional Board will consider that request during the hearing on this matter. The Regional Board has the responsibility and authority to regulate discharges of waste that could impact the quality of the waters of the state. It does not approve development. It is up to land use planning agencies</p>

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		to approve development.
3	However, Table 4-zz list does not exempt already permitted residential properties and does not propose to exempt them in the future.	The Basin Plan Prohibition allows existing permitted residential properties to continue to operate their OWDSs until November 5, 2019. The comment is correct that the Regional Board does not propose future exemptions.
4	I object that septic ban regulations fail to exempt any fully permitted residential property within the ban zone or to grandfather them in in order to continue to be used as lawfully permitted.	The Basin Plan Amendment allows the existing and permitted OWDSs to continue to discharge until the deadlines set forth in the Basin Plan Amendment. The properties containing existing permitted OWDSs are not required to be listed on Table 4-zz to be allowed to continue to operate
5	I object that they also fail to provide any procedural mechanism to allow property owners to petition for exemption for good cause.	The comment misstates the proposed resolution. The public notice regarding Table 4-zz provided an opportunity for property owners to request that their property be included on Table 4-zz to be granted a temporary exemption from the prohibition on <i>new</i> OWDSs. They were required to submit supporting documents to demonstrate that their proposed new or upgraded OWDS had progressed through appropriate entitlement process by November 5, 2009, to be allowed to build a new system or enlarge an existing system. It is not necessary to be on Table 4-zz to be able to continue to operate an existing permitted OWDSs. The Regional Board is not proposing to make any other changes in the Malibu Prohibition.
6	This proposal operates under incorrect assumptions of California property and constitutional law. The proposed exemptions conflict with settled state law on the constitutional right to exemptions and the grandfathering in and allowance of continued permitted property uses. I object that California state law exempts permitted construction that has been commenced and/or completed and permitted use. It does not grant exemptions to construction projects which have not been granted permits and/or have not commenced substantial construction and/or permitted use. I object the proposed exemptions lack either legal or a factual basis.	The comment mischaracterizes the proposed resolution. The proposed resolution does not affect existing permitted OWDSs, therefore the comment is outside the scope of the proposed action. Existing OWDSs may continue to operate until the deadlines specified in the Malibu Prohibition.
7	I object that the City of Malibu and surrounding unincorporated Los Angeles County areas lack the infrastructure necessary to support any one or more of the properties proposed for exemption. The City of Malibu lacks waste disposal systems to accommodate any of the projects proposed for exemption. It is unlikely that infrastructure prerequisites required for these ventures supplying water, electricity or natural gas will become available.	The comment is outside the scope of proposed resolution. The purpose of the proposed resolution is to ratify and clarify the list of temporary exemptions to the Malibu Prohibition. All properties, including those listed on Table 4-zz, must discontinue operating their OWDSs on the dates specified in the Basin Plan Amendment. The City of Malibu is currently in the planning stage for a centralized wastewater treatment plant to treat wastewater produced from commercial and residential properties in the Malibu Civic Center Area.
8	I object that this proposal is invidiously discriminatory against residential property owners. Each property and proposed project on it have the	The comment mischaracterizes the proposed resolution to ratify and clarify Table 4-zz, the list of properties that are temporarily exempt from the Malibu

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	effect of advancing an agenda or set of agendas that will likely destroy or substantially reduce the residential community. It has the substantial adverse effect of displacing and/or making homeless and destitute, several hundred residents, many of whom are seniors without resources to relocate. Replacement housing for up to 1500 residents will likely be required. No provisions are made to mitigate this housing loss and residents' dislocation.	Prohibition. It does not affect any existing permitted OWDSs or residential property. The Regional Board responsibility is to regulate discharges of waste that could impact the waters of the State. The Regional Board is not a land use planning agency and its actions to address water quality do not constitute approval of any development. It is the responsibility of the land use agency, e.g., the City of Malibu, to evaluate impacts of land development.
9	I object that the cumulative effect of the multiple large-scale commercial projects proposed to be exempted has significant adverse effects on the Malibu Civic Center Area, which is dedicated to residential and recreational use. Altogether, these several commercial ventures would make the Malibu Civic Center into a “downtown” commercial zone. This is entirely contrary to and overwhelmingly conflicts with the City of Malibu General Plan.	The comment is not relevant to the proposed resolution to ratify and clarify Table 4-zz. The proposed resolution does not change or modify any Malibu General Plan, Malibu Local Land Use Plan, or the Malibu Coastal Land Use Plan. The Regional Board does not have authority or jurisdiction to make land use decisions for the City of Malibu. It is up to the City of Malibu to evaluate commercial projects and their impact on the City of Malibu.
10	The City of Malibu Land Use Plan provides for protection of recreational and residential uses, facilities, activities and environment. I object that this proposal therefore undermine, conflicts with, runs counter to and violates the City of Malibu Local Land Use Plan and Coastal Land Use Plan.	See Response to Comments Nos. 7, 8 and 9.
11	The City of Malibu General Plan established Malibu as a rural-style residential community and requires that any commercial uses be local neighborhood-servicing and/or visitor/recreational serving. See City of Malibu General Plan, §§ 1.0, et seq.	See Response to Comments Nos. 7, 8 and 9.
12	City of Malibu General Plan, § 1.1 provides in pertinent part: Malibu has remained a <u>primarily residential community</u> . Commercial areas are limited to small neighborhood serving and visitor serving uses interspersed throughout the City, but located primarily in the Civic Center area and the Point Dume area. (Emphasis added.)	See Response to Comments Nos. 7, 8 and 9.
13	City of Malibu General Plan, § 1.1.2 provides in pertinent part: The Malibu Land Use Element is designed to provide maximum social, economic and environmental <u>benefits for City residents</u> through planned distribution, location and intensity of land use. (Emphasis added.)	See Response to Comments Nos. 7, 8 and 9.
14	City of Malibu General Plan, § 1.5.5 provides in pertinent part: The CC (Community Commercial) designation is <u>intended to</u>	See Response to Comments Nos. 7, 8 and 9.

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	<p><u>provide for the resident serving needs of the community</u> similar to the CN designation, but on parcels of land more suitable for concentrated commercial activity. The community commercial category plans for centers that offer a greater depth and range of merchandise in shopping and specialty goods than the neighborhood center although this category may include some of the uses also found in a neighborhood center.</p>	
15	<p>I object that this proposal fails to support, fails to advance, and fails to implement resident-serving uses or needs.</p>	<p>As noted in Response to Comments Nos. 8 and 9, the Regional Board is responsible for addressing discharges of waste and is not a land use planning agency. It is up to the land use planning agencies to implement the Malibu General Plan, Malibu Local Land Use Plan, and Malibu Coastal Land Use Plan.</p>
16	<p>I object to the proposal granting exemptions as proposed to several massive commercial ventures whose construction is not permitted.</p>	<p>The proposed resolution does not grant exemptions to several massive commercial ventures. The Basin Plan Amendment provides for a temporary exemption from the Malibu Prohibition on <i>new</i> OWDSs. It is up to the land use planning agencies to approve any new development in the City of Malibu. See “Response to Comments” Nos. 1 and 2.</p>
17	<p>The substantial adverse effect is of advancing and implementing a strategy of commercial property owners and commercial developers to cost-shift to residents and residential property owners the installation of infrastructure to commercialize the Malibu Civic Center and Malibu in general. The cumulative adverse effects are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.</p>	<p>The comment is beyond the scope of proposed action. It is the responsibility of land use planning agencies to address the impacts of commercial development.</p>
18	<p>The proposal has the potential to degrade the quality of the environmental by creating substantial amounts of pollution.</p>	<p>The purpose of the Malibu Prohibition is to address the significant impacts to the environment and water quality caused by the use of OWDSs that have discharged human waste into the groundwater and nearby surface waters of the Malibu Civic Center Area. As required and consistent with the California Environmental Quality Act, the Regional Board prepared and approved environmental documentation to support the initial Malibu Prohibition. The proposed action does not have any new environmental impacts not already discussed in the previous environmental documents. The Malibu Prohibition does not constitute an approval of any development. It is up to the land use planning agencies to address environmental impacts associated with development and to approve such developments. See “Response to Comments” Nos. 8 and 9.</p>
19	<p>I object that the significant adverse effects of the massive traffic</p>	<p>The comment is outside the scope of this proposed action. Neither the Malibu</p>

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	increases would make the area generally inaccessible for residents and recreational day users of the parks and public beaches.	Prohibition, nor this ratification and clarification of Table 4-zz constitute an approval of any development within the Malibu Civic Center Area. As noted in Response to Comments No. 18, it is up to land use planning agencies to evaluate and address the environmental impacts of development within the Malibu Civic Center Area.
20	What mitigation measures are proposed? I object that there is a lack of plans to mitigate the extensive harm from and due to the intense cumulative effects of the proposals to allow several commercial ventures into the Malibu Civic Center.	See Response to Comments No. 19.
21	Has a CEQA review and proceeding been conducted for the septic ban? If not, why not? Isn't this agency sufficiently committed to the septic ban, cost-shifting infrastructure to the residential and non-commercial property owners and destruction of the residential and recreational uses of the area that CEQA environmental proceedings and review are required?	See Response to Comments No. 19.
22	I object that State of California and its agencies have failed to fund the installation, operation and other costs of a sewer system, as required by California Constitution, Art. 13B, Sec. 6, and Water Code, § 13291.5 the alternative it seeks to impose, a sewer system.	The comment is outside the scope of the proposed resolution to clarify and ratify Table 4-zz. As noted in Response to Comments No. 7, the City of Malibu is currently in the planning stage for a centralized wastewater treatment plant to treat wastewater produced from commercial and residential properties in the Malibu Civic Center Area. The City may seek additional funding from the State. See Court's Ruling on Petition for Writ of Mandate Heard on April 30, 2012, which denied plaintiff's writ of mandate, including the challenge based on Water Code section 13291.5.
23	I object that the pending resolution lacks either factual or legal bases and are null and void.	The comment is unclear. The proposed resolution does not constitute a general reconsideration of the Basin Plan Amendment establishing the Malibu Prohibition. Rather, the purpose of this action is to: <ol style="list-style-type: none"> 1. Clarify the Regional Board's intent regarding the criteria for including properties identified on Table 4-zz by specifying the meaning of the phrase "progressed through the entitlement process" as set forth in Resolve 1 of Resolution No. R4-2009-007; 2. Modify Table 4-zz by deleting four duplicate listings with incorrect assessor parcel numbers (APNs); 3. Ratify Table 4-zz as modified by Regional Board staff following adoption of the 2009 Basin Plan Amendment by the Regional Board and subsequently approved by the State Water Board and OAL; and, 4. Consider adding to Table 4-zz any additional properties where there is sufficient evidence that the project had progressed through the appropriate

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		<p>agency's entitlement process as of November 5, 2009.</p> <p>The Regional Board has authority pursuant to Water Code section 13240 to adopt Basin Plan Amendments and in Water Code section 13243 to adopt prohibitions on the discharge of waste. The Malibu Prohibition was adopted as a Basin Plan Amendment in compliance with Water Code section 13240 and 13243.</p>
24	<p>I object to the scheduling and timing of this comment period over the religious, national and family holiday season between late November, 2013, and early January, 2014. I object that interested and adversely affected persons are forced to make choices between religious and family commitments. I object that potential commenters may lack adequate staffing and resources during this period when professionals such as attorneys, engineers, agents, are not available, and that governmental and research facilities such as law libraries are closed. I object that the comment period has been scheduled simultaneously with or overlapping with at least FIVE (5) other proceedings that each has extensive paperwork and documentation to review. I object to the costs and time input of having to address FIVE (5) proceedings simultaneously and/or on an overlapping basis.</p>	<p>Comment noted. The documents were released for public review on November 15, 2013, and the public was provided 45 days to submit comments by December 30, 2013. The comment period is in compliance with applicable public notice requirements.</p>
25	<p>Whether it is profitable for more commercial ventures to be operated in Malibu Civic Center requires extensive economic analysis. Three large shopping venues are already in operation within the Malibu Civic Center commercial area. Two of them have commercial space vacancies. I believe further commercial construction would be white elephants and unsuccessful.</p>	<p>The comment is not relevant to the proposed action.</p>
26	<p>How do these financial ventures intend to fund, permit and install infrastructure that is necessary but not present?</p>	<p>The comment is not relevant to the proposed action.</p>
27	<p>Access to the Malibu Civic Center is limited by just one major coast highway, the Pacific Coast Highway, and one mountain pass, over two-lane Malibu Canyon Road.</p>	<p>Comment noted. The impact to the City of Malibu was considered and analyzed in the environmental documents regarding the Basin Plan Amendment.</p>
28	<p>I object that my request for a current list properties covered by and in the Malibu Civic Center septic ban zone has not been sent to me. This impairs my ability to provide a complete comment based on the nature and extent of the proposal, the proposed objects, and the proposed resolution. It is essential that this agency identify exactly which</p>	<p>The information is readily available on the Regional Board's website at http://www.waterboards.ca.gov/losangeles/press_room/announcements/Public-Hearing-Malibu/Malibu_Final_Resolution_Docs/10.%20TM4.pdf and was also contained in the documents provided for public review. In addition, the Regional Board staff provided the requested information in a letter dated</p>

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	properties are subject to the septic ban. The vague mapping and ambiguous, changing lists of “exemptions” cause a prejudicial lack of fair, reasonable and actual notice of the nature and extent of the ban/prohibition.	January 17, 2014. The proposed action does not change the boundaries of the Malibu Prohibition nor propose to add new properties.
29	On December 2, 2013, by email, and on December 5, 2013, by hand-delivery to the Regional Water Quality Control Board, Los Angeles Region/Region 4 (LARWQCB), at 340 West Fourth Street, Suite 200, Los Angeles, California 90013, I sent a letter to that agency asking for a complete list of the properties within the septic ban zone, and asked that they each be identified by street address and Los Angeles County Assessor identification numbers. I have not received such a list from the LARWQCB. My inquiry as to whether the property list dated August 31, 2009, correct, has not been responded to or my question answered. See attached.	See Response to Comments No. 28.
30	I object that the regulations adopted and enacted in SWRCB Resolution No. 2010-0045 and LARWQCB R4-2009-007, lack either factual or legal bases and are null and void. It is overbroad, confiscatory, is discriminatory and not even-handed.	The comment is not relevant to the proposed action.
31	The proposed resolution should be rejected in its present resolution form. The proposed resolution should be amended to include all permitted residential properties in the septic ban exemptions and that those septic ban exemptions be permanent.	See Response to Comments Nos. 1, 2 3, and 6.

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32	On behalf of Green Acres, LLC, I hereby request that the Regional Board add 4000 Malibu Canyon Road (APNs 4458-028-015, 4458-028-019 and 4458-030-007) to the list of “pipeline projects” sites set forth in Table 4-zz of the <i>Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties</i> (“Basin Plan”).	The Regional Board will evaluate the information provided and make a decision during the hearing for this matter whether to include 4000 Malibu Canyon Road on Table 4-zz.
33	During the process for development of the draft amendment to the Basin	The comment correctly points out that developers of new OWDSs were

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	<p>Plan to prohibit use of new OWDSs and to phase out use of existing OWDSs, many developers contended that their good faith investment in the entitlement process should be given equal footing with the good faith investment that property owners had in their existing OWDSs. They pointed out that their proposed new OWDSs would be state-of-the-art and far more effective at operating efficiently to protect Malibu Civic Center water quality than were some of the faulty, older existing OWDSs, and that, in some cases, the proposed new OWDSs (like Green Acres') would even be "zero discharge" systems. These "pipeline projects" would be treated as existing OWDS projects.</p>	<p>concerned with being treated the same as those persons with existing OWDSs and that the list of exempt projects, Table 4-zz, provides a temporary exemption to the prohibition on OWDSs in the Malibu Civic Center Area. It is important to note that the term of "zero discharge" systems is not defined in the Water Code and is not a term of art. The term has been used as a short-hand way of describing a system that does not leach wastewater to groundwater when recycled water is irrigated at an agronomic rate, such as the system addressed in Regional Board Order No. R4-2010-0107 for the Malibu La Paz LLC waste discharge requirements. As noted, the system as described, however, would discharge wastewater to land containing waste constituents such as nitrate and not all wastewater could be applied without causing some infiltration to groundwater. Moreover, the waste constituents retained in soil may leach to groundwater during storm events. Any discharge authorized by the Regional Board must be consistent with the Basin Plan, including the prohibition. To be consistent with the Basin Plan, no discharge can cause degradation of groundwater and no wastewater can runoff to surface waters. The Malibu La Paz waste discharge requirements, for example, require that the discharge cannot cause the degradation of groundwater and the effluent from system upset must be discharged to the community wastewater treatment system when constructed.</p>
34	<p>Behind the scenes, however, the Regional Board staff began working with the City of Malibu and the County of Los Angeles to discuss a temporary "pipeline projects" exemption.</p>	<p>During the development of the Malibu Prohibition in 2009, Regional Board staff did have discussions with representatives of the City of Malibu regarding "pipeline" projects. Such communications are legally appropriate. The Regional Board itself considered the inclusion of "pipeline" projects in the public hearing based on some of the project developers, and did, in fact, provide for a temporary exemption from the prohibition by including Table 4-zz.</p>
35	<p>At the beginning of the November 5, 2009 hearing, the Regional Board staff stated that they were still not recommending any temporary "pipeline projects" exemption, but that they had engaged in some private discussions with the City and County staff about such an exemption. AR 1-435, 2-616. After the public hearing was completed, the Regional Board staff for the first time, announce that they would recommend such a temporary exemption after all. AR 1-501-02. The Regional Board's Executive Officer thereupon "read into the record" the one County designated project and 37 of the City designated projects, which she recommended for the "pipeline projects" exemption. <i>Id.</i> When one Board member inquired whether any</p>	<p>The comment is correct that some commercial properties were included on Table 4-zz as approved by the Regional Board and the State Water Board.</p>

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	<p>commercial projects were on the list, she replied that the City had listed some commercial projects but she had not read them into the record. AR 1-512. This was factually incorrect, because, in fact, at least two of the projects she had spontaneously “read into the record” were commercial projects.</p>	
36	<p>Immediately following the conclusion of the November 5, 2009 Board meeting, the proponent of one proposed OWDS site (the "Crummer project") confronted the Regional Board's Executive Officer and contended that his multiple lot residential/recreational development project had been included on the City's list and should have been “read into the record.” SAR GA00132-35. The Regional Board Executive Officer informed him that he should request an “administrative modification” to be added to the list. <i>Id.</i> Four days later on November 9, 2009, by email, the Crummer project developer requested an “administrative modification” and three hours later, by email, the Regional Board Executive Officer informed him that she had approved it.</p>	<p>As noted in the Staff Report for this action, certain properties were inadvertently omitted from Table 4-zz as adopted by the Regional Board and were added prior to submittal to the State Water Board when the Regional Board staff was provided information regarding those properties immediately following the November 5, 2009 hearing. Despite the widespread public notice regarding this action, neither Green Acres, nor its predecessor, commented at the public hearing before the Regional Board, nor participated in the State Water Board’s action.</p>
37	<p>Green Acres’ Rancho Malibu Hotel (4000 Malibu Canyon Road) is entitled to be listed on Table 4-zz. At the time of the 2009 Basin Plan Amendment, Green Acres and its predecessors-in-interest had not only applied for, but had actually obtained, several significant entitlements for the Rancho Malibu Hotel at 4000 Malibu Canyon Road. In particular, on January 7, 1986, the Coastal Commission approved a coastal development permit for the Rancho Malibu Hotel. Permit No. 5-85-418. Furthermore, on March 23, 1998, the City of Malibu approved a conditional use permit, variance, and site plan review, and certified an environmental impact report (“EIR”) for the proposed project.</p>	<p>Water Code section 13243 authorizes the Regional Board to specify in a water quality control plan (Basin Plan), “conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.” On November 5, 2009, the Regional Board adopted such conditions in the Malibu Prohibition to address significant adverse water quality impacts caused by discharges of human wastewater into ground and surface waters within the Malibu Civic Center Area. The Malibu Prohibition included as a condition a temporary exemption from the prohibition for those properties that had progressed through the entitlement process for a new or upgraded OWDS. The Malibu Prohibition included the condition that all existing commercial, including those with temporary exemptions in Table 4-zz, are subject to a final prohibition on the use of OWDSs as of November 5, 2015, and all existing residential, including those with temporary exemptions in Table 4-zz, are subject to the final prohibition on the use of OWDSs as of November 5, 2019. The Regional Board is not obligated to include any particular parcels on Table 4-zz as it has the authority under Water Code section 13243 to establish conditions on and/or prohibit discharges of waste. Therefore, Green Acres’ project is not “entitled” to be listed on Table 4-zz. In addition, the Regional Board has the authority to issue waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The existence of Table 4-zz does not entitle any person on that Table to obtain</p>

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		waste discharge requirements authorizing discharges of waste. Under Water Code section 13263(g): “No discharge of waste, whether or not the discharge is made pursuant to waste discharge requirements, creates a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.” The Regional Board, however, will consider, based on your comments whether to add 4000 Malibu Canyon Road to Table 4-zz, and thereby granting a temporary exemption from the Malibu Prohibition.
38	Green Acres and its predecessors-in-interest have invested substantial time and money processing and obtaining the above entitlements. In its pending Petition for Writ of Mandate, Green Acres estimates that, at the time of the 2009 Basin Plan Amendment, total project development and processing costs approximated \$4 million. Accordingly, consistent with the intent of the "pipeline projects" exemption to protect such good faith investments, the Rancho Malibu Hotel should be added to Table 4-zz.	See Response to Comments No. 32.
39	B. Based on the Regional Board’s Newly Crafted Criteria, the Rancho Malibu Hotel Is Clearly Entitled to Be Listed on Table 4-zz.	There are no newly crafted criteria. The criteria for properties listed in Table 4-zz adopted by this Regional Board on November 5, 2009 and for the current proposed Table 4-zz Amendment are the same – had the property progressed through the entitlement process for a new or upgraded OWDSs. See “Response to Comments” Nos. 2, 19, 33, and 37 for more details.
40	According to the Regional Board's recent staff report in support of its proposed resolution to amend Table 4-zz, the City of Malibu’s list of “pipeline projects” consisted of projects that had, as of November 5, 2009, progressed through the City’s entitlement process because: “(1) the project proponent had submitted, at a minimum, a <i>complete application</i> (e.g., site plan, geology and biology reports, and grading and drainage information) to the City for a new construction or remodel project, or (2) the project was deemed complete, conditioned or <i>approved</i> by the City Planning Commission, but not yet constructed.” Staff Report at 2. While it is unclear how the Regional Board formulated these new criteria, it is obvious that the Rancho Malibu Hotel project satisfies both of the newly specified criteria. Green Acres’ predecessor-in-interest had, in fact, submitted the minimally necessary “complete applications”, including applications to the Coastal Commission to the City of Malibu. The Coastal Commission approved Coastal Development permit on January 7, 1986 and the City of Malibu approved a conditional use permit on March 23, 1998. The Rancho	See Response to Comments Nos. 32 and 39.

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	<p>Malibu Hotel was actually “approved” but not yet constructed, prior to November 5, 2009. Because the Rancho Malibu Hotel had actually been approved by the City of Malibu, it was much further along in the administrative processing pipeline than most of the projects that the City, then the Regional Board, placed on Table 4-zz.</p>	
41	<p>The Regional Board’s recently announced “pipelines project” temporary exemption criteria do not explicitly address the question of how the Board anticipates dealing with modifications to proposed projects as they proceed through the administrative land use process.</p>	<p>The comment is not relevant to Table 4-zz amendment. Regional Board staff cannot foresee the possible modification to existing projects. The Regional Board is not a land use planning agency. The Regional Board’s authority lies in regulating discharges of waste. The Regional Board will continue to regulate OWDSs consistent with State Water Board and Regional Board authority.</p>
42	<p>The proposed action articulates the criteria that a project must merely have filed a “complete application” to establish it has a “pipeline project”, which is a very early stage in the land use decision-making process. The process includes addressing design modifications and compliance with the California Environmental Quality Act. Here, if the Regional Board had expected that a project for which it would receive a WDR request would closely resemble the "pipelines project" previously anticipated in a "completed application" on November 5, 2009, it would have chosen much different criteria than the early "completed application" Table 4-zz criteria described in its recent staff report. Consequently, as long as the project that comes to the Regional Board for WDRs is generally similar in nature and scope to the project proposed in the initial “complete application,” the Table 4-zz “pipelines project” exemption should clearly continue to apply.</p>	<p>The comment is correct that the land use decision-making process is not complete upon submittal of a “complete application” and that the local land use agency – the City of Malibu – conducts detailed review, including compliance with CEQA, after submittal of the complete application. The comment appears to confuse the purpose for Table 4-zz and the issuance of waste discharge requirements. As noted in Response to Comments No. 37, Water Code section 13243 authorizes the Regional Board to specify in a water quality control plan (Basin Plan), “conditions or areas where the discharge of waste, or certain types of waste, will not be permitted,” i.e., the Regional Board can establish a prohibition on types of locations of discharge. The intent of Table 4-zz was to provide a temporary exemption from the Malibu Prohibition for those properties that had progressed through the entitlement process for a new or upgraded OWDS. The Regional Board’s authority to issue waste discharge requirements for the discharge of waste is distinct from the issue of whether a project had progressed through the entitlement process to obtain a local permit for an OWDS. Under Water Code section 13263(g): “No discharge of waste, whether or not the discharge is made pursuant to waste discharge requirements, creates a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.” Whether a project is similar to one already listed on Table 4-zz does not create any right to discharge or to be entitled to be on the list of exemptions. Even those parcels on Table 4-zz must apply for waste discharge requirements.</p>