

State of California
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R4-2014-XXXX
February 6, 2014

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*

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), finds that:

1. On November 5, 2009, the Regional Board adopted, by Resolution No. R4-2009-007, an amendment to Chapter 4 of the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (Basin Plan) prohibiting on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area (2009 Basin Plan Amendment or 2009 BPA). The 2009 BPA was subsequently approved by the State Water Resources Control Board (State Water Board) on September 21, 2010 by Resolution No. 2010-0045, and the Office of Administrative Law (OAL) on December 23, 2010. The 2009 BPA became effective on December 23, 2010.
2. Upon the effective date, the 2009 Basin Plan Amendment immediately prohibited all new discharges from OWDSs in the Malibu Civic Center Area, with the exception of certain specific projects identified in Table 4-zz, which were deemed by the Regional Board to be existing OWDSs. The 2009 BPA prohibits all discharges from existing OWDSs, including those projects identified on Table 4-zz, in accordance with a phased schedule. Phase One (commercial areas) existing OWDSs must cease discharges by November 5, 2015 and Phase Two (residential areas) existing OWDSs must cease discharges by November 5, 2019. The 2009 BPA does not prevent repairs, maintenance, and upgrades to existing OWDSs prior to November 5, 2019, provided that such repairs, maintenance, and upgrades do not expand the capacity of the OWDSs or increase flows of wastewaters.
3. Prior to adoption of the 2009 Basin Plan Amendment, the Regional Board received written comments and evidence, as well as oral testimony, from the City of Malibu (City), the County of Los Angeles (County), and affected property owners regarding the hardship the immediate prohibition of new OWDSs discharges would impose on property owners who had expended considerable funds to apply for City or County permits and had, as of the date of adoption of the 2009 BPA, progressed through the City's or County's entitlement process. The Executive Officer of the Regional Board, therefore, recommended that the tentative 2009 Basin Plan Amendment be revised to include certain specific projects identified on Table 4-zz.
4. The specific properties identified on Table 4-zz, adopted by the Regional Board as part of the 2009 Basin Plan Amendment, were included based on the following criteria:

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- a. The project had, as of November 5, 2009, progressed through the City's entitlement process because: (1) the project proponent had submitted, at a minimum, a complete application (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 approved by the City Planning Commission, but not yet constructed;
 - b. The project was a commercial property that had submitted a complete report of waste discharge to the Regional Board;
 - c. The project consisted of public service facilities; or
 - d. The project was located on property outside the City's jurisdiction but had, as of November 5, 2009, progressed through the County's entitlement process.
5. Immediately following the Regional Board's action to adopt the 2009 Basin Plan Amendment, Regional Board staff was notified that ten residential properties and three commercial properties that had applied for new or upgraded OWDSs and had progressed through the City's or County's entitlement process were inadvertently not included on Table 4-zz. Thereafter, consistent with the Regional Board's intentions and criteria for inclusion on Table 4-zz, Regional Board staff added those thirteen properties to Table 4-zz. The version of Table 4-zz with the newly added thirteen properties was provided to the State Water Board for consideration in its approval of the 2009 Basin Plan Amendment. The State Water Board approved the 2009 Basin Plan Amendment, including Table 4-zz, as submitted by the Regional Board. Subsequently, the Office of Administrative Law approved the 2009 Basin Plan Amendment.
 6. Seven commercial properties were included in Table 4-zz. Of those seven commercial properties, four concerned emergency repairs or upgrades to improve the OWDSs to prevent spills, two were new projects, and one had submitted a report of waste discharge to obtain waste discharge requirements/water recycling requirements from the Regional Board prior to adoption of the 2009 BPA.
 7. This Regional Board action is not a general reconsideration of the 2009 Basin Plan Amendment. Rather, in order to address perceived concerns related to the projects identified on Table 4-zz, the purpose of this action is to: (a) 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; (b) to modify Table 4-zz by deleting four duplicate listings with incorrect assessor parcel numbers (APNs); (c) to 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 (d) to consider adding to Table 4-zz any additional properties where there is sufficient evidence that the project had progressed through the appropriate agency's entitlement process as of November 5, 2009.
 8. The Regional Board provided notice of its intention to reconsider Table 4-zz and provided an opportunity for properties within the Malibu Civic Center Area to request inclusion on

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Table 4-zz if they provide sufficient evidence that the project had progressed through the appropriate agency's entitlement process as of November 5, 2009.

9. Regional Board staff has prepared a technical document that analyzes and describes the specific necessity and rationale for the development of this amendment to the Basin Plan. The technical document entitled "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*" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.
- 10.** Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Board previously prepared "substitute environmental documents" for the 2009 Basin Plan Amendment, adopted by Resolution No. R4-2009-007, which was filed with the Resources Agency on January 18, 2011. Those documents are available on the Regional Board's website under the section: "Prohibition – On-site Wastewater Disposal Systems in the Malibu Civic Center Areas" at http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/. The substitute environmental documents contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777) to evaluate the potential environmental impacts of the adoption of the 2009 Basin Plan Amendment. The project itself was the adoption of a prohibition on OWDSs in the Malibu Civic Center Area. In preparing the previous substitute environmental documents, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review. The previous substitute environmental documents contained significant environmental analysis and numerous findings related to the reasonably foreseeable methods of compliance, the impacts of the methods of compliance, feasible mitigation measures, and alternative means of compliance.
- 10.11.** On December 27, 2013, Green Acres, LLC, submitted comments on the draft resolution and requested that the property at 4000 Malibu Canyon Road be added to Table 4-zz and provided documents demonstrating that it had "progressed through the entitlement process" prior to November 5, 2009, as described in this Resolution, including documents demonstrating that on January 7, 1986, the California Coastal Commission approved a coastal development permit for the Rancho Malibu Hotel that continues in effect today (Permit No. 5-85-418) and 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. On August 3, 2011, the City of Malibu submitted a letter to the Regional Board explaining that the Rancho Malibu Hotel project had been "inadvertently overlooked" and was "actually much farther along than other pipeline projects" that were

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included on Table 4-zz. The Regional Board finds that, based on the information provided, that the property at 4000 Malibu Canyon Road, Malibu, should be included on Table 4-zz.

11.12. This Regional Board action consists of a ~~reconsideration-ratification~~ of Table 4-zz of the 2009 Basin Plan Amendment and the addition of 4000 Malibu Canyon Road to Table 4-zz. This action and does not result in any new environmental effects not previously analyzed. This action does not alter the environmental analysis that was previously prepared for the adoption of a prohibition on OWDSs in the Malibu Civic Center Area because the revisions to Table 4-zz will not result in different implementation actions than those previously analyzed for the 2009 Basin Plan Amendment, or different effects upon the environment. Moreover, no additional reasonably foreseeable methods of compliance warrant environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187. As such, this amendment to the Basin Plan is consistent with the prior CEQA documentation and no additional environmental analysis is required. The proposed development at 4000 Malibu Canyon Road is already subject to CEQA review by the City of Malibu, which has certified an EIR in 1998 and is in the process of completing a new EIR for the project, which evaluates the environmental effects of the development and associated wastewater disposal options.

12.13. Further, consistent with California Code of Regulations, title 14, section 15162, the Regional Board has determined that no subsequent environmental documents shall be prepared because this Regional Board action does not involve new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or mitigation measures or alternatives that are considerably different from those analyzed in the previous substitute environmental documentation.

13.14. On February 6, 2014, prior to the Regional Board's action on this resolution, a public hearing was conducted on the reconsideration of Table 4-zz. Notice of the hearing for this Regional Board action was published in accordance with the requirements of California Water Code section 13244. This notice was published in the Los Angeles Times on November 15, 2013. A draft of this resolution, the staff technical document, and the notice of hearing were also made available on the Regional Board's website.

14.15. The public has had a reasonable opportunity to participate in the review of this amendment to the Basin Plan. A draft of this resolution and Table 4-zz and the staff technical report was released for public review and comment on November 15, 2013; a Notice of Hearing was published and circulated 45 days preceding Regional Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on February 6, 2014 to consider adoption of this resolution.

15.16. This amendment is consistent with the State Antidegradation Policy (State Water Board Resolution No. 68-16) in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.

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16.17. This amendment to the Basin Plan modifying Table 4-zz must be submitted for review and approval by the State Water Board and the Office of Administrative Law (OAL). This amendment will become effective upon approval by OAL.

17.18. If, during the approval process, Regional Board staff, the State Water Board, or the OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this amendment, and should inform the Regional Board of any such changes.

THEREFORE, BE IT RESOLVED THAT:

1. Pursuant to section 13240 of the California Water Code, the Regional Board, after considering the entire record including oral testimony at the hearing, hereby amends the Basin Plan to modify Table 4-zz by deleting four duplicate listings with incorrect APNs and adding 4000 Malibu Canyon Road, Malibu~~additional projects that had progressed through the appropriate agency's entitlement process as of November 5, 2009~~, as set forth in Attachment A hereto. The Regional Board also ratifies the modifications to Table 4-zz made by Regional Board staff following the Regional Board's adoption of Resolution No. R4-2009-007.
2. The Regional Board hereby clarifies its 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 Resolved 1 of Resolution No. R4-2009-007. The phrase refers to projects where, as of November 5, 2009,: (a) the project proponent had submitted a complete application (e.g., site plan, geology and biology reports, and grading and drainage information) to the appropriate agency for a new construction or remodel project; and/or (b) the OWDS project had been deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed.
3. The Regional Board hereby reiterates that Table 4-zz provides a temporary exemption from the immediate prohibition on OWDSs set forth in Resolution R4-2009-007, but not an exemption from the final prohibition for commercial areas within the Malibu Civic Center Area that goes into effect on November 5, 2015 and for residential areas in the Malibu Civic Center Area that goes into effect on November 5, 2019. All properties listed on Table 4-zz are subject to the prohibition.
- 43.** The Executive Officer is directed to forward this modification of Table 4-zz of the Basin Plan Amendment to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.
- 54.** The Regional Board requests that the State Water Board approve this modification of Table 4-zz in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL for review and approval.
- 65.** If, during the approval process, Regional Board staff, the State Water Board, or OAL determine that minor, non-substantive modifications to the language of the amendment are

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needed for clarity or consistency, the Executive Officer may make such changes consistent with the Regional Board's intent in adopting this amendment, and shall inform the Regional Board of any such changes.

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on February 6, 2014.

Samuel Unger, P.E.
Executive Officer

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ATTACHMENT A

Malibu Civic Center Area OWDS Prohibition, Table 4-zz

Address	APN	
24001 Malibu Road	4458018005	R E V I S E D T E N T A T I V E
3469 Cross Creek Road	4458023003	
3504 Coast View Drive	4458026014	
23038 Pacific Coast Highway	4452005001	
23060.5 Pacific Coast Highway	4452006902	
3516 Sweetwater Mesa Road	4452017006	
2930 Sweetwater Mesa Road	4452025021	
2860 Sweetwater Mesa Road	4452025023	
23460 Malibu Colony Drive	4458004031	
23872 Malibu Road	4458007019	
23812 Malibu Road	4458007028	
24024 Malibu Road	4458009007	
24380 Malibu Road	4458011021	
22959 Pacific Coast Highway	4452019005	
22941 Pacific Coast Highway	4452019009	
24132 Malibu Road	4458010009	
24266 Malibu Road	4458011010	
23618 Malibu Colony Drive	4458005040	
23401 Civic Center Way	4458022001	
23800 Malibu Crest Drive	4458024038	
3700 La Paz Lane	4458022025	
23915 Malibu Road	4458018004	
23410 Civic Center Way	4458020010	
23816 Malibu Crest Drive	4458024023	
3556 Sweetwater Mesa Road	4452017008	
3314 Serra Road	4452026012	
23652 Malibu Colony Drive	4458005030	
23664 Malibu Road	4458001003	
23720 Malibu Road	4458002900	
3535 Coast View Drive	4458027030	
23316 Malibu Colony Drive	4452008016	
23684 Malibu Colony Drive	4458005022	
23872 Malibu Road	4458007019	
24052 Malibu Road	4458009002	
23405 Malibu Colony Drive	4452010010	
23681 Malibu Colony Drive	4458002008	
23917 Malibu Road	4458018004	
23919 Malibu Road	4458018004	
23921 Malibu Road	4458018004	
23923 Malibu Road	4458018004	
24108 Pacific Coast Highway	4458018002	
24120 Pacific Coast Highway	4458018018	
24134 Pacific Coast Highway	4458018019	
24150 Pacific Coast Highway	APN not Available	
24174 Pacific Coast Highway	APN not Available	
3215 Serra Road	4457003023	
3217 Serra Road	4457003021, 4457003022	
3219 Serra Road	4457003019	
3221 Serra Road	4457003020	
3240 Cross Creek Road	4457002038	
<u>4000 Malibu Canyon Road</u>	<u>4458-028-015, 4458-028-019, 4458-030-007</u>	