

Los Angeles Regional Water Quality Control Board

January 20, 2017

Ms. Stephanie Medina, Interim President & Chief Executive Officer  
Heal the Bay  
1444 9<sup>th</sup> Street  
Santa Monica, CA 90401

Ms. Joan Lavine  
Attorney at Law  
123 North Hobart Boulevard  
Los Angeles, CA 90004

**RESPONSE TO COMMENTS – TENTATIVE RESOLUTION AND TENTATIVE REVISED MEMORANDUM OF UNDERSTANDING WITH CITY OF MALIBU ON THE MALIBU CIVIC CENTER AREA PROHIBITION, MALIBU, CALIFORNIA**

Dear Ms. Medina and Ms. Lavine:

On December 20, 2016, a tentative Resolution authorizing the Executive Officer to sign the revised Memorandum of Understanding (MOU) for the implementation of the Malibu Onsite Wastewater Disposal System (OWDS) Prohibition, and the tentative Revised MOU were released for public comment. The comment period ended on January 9, 2017. Comments were received from the Heal the Bay and Ms. Joan Lavine by the deadline. Regional Board staff has considered all comments submitted and prepared the Response to Comments.

Enclosed please find the Response to Comments.

In accordance with administrative procedures, the Regional Board will consider the enclosed comments thereon, at a public hearing to be held at 9:00 AM on February 2, 2017, at Metropolitan Water District of Southern California, 700 North Alameda Street, Los Angeles, California. The Regional Board will hear any testimony pertinent to this Response to Comments.

If you have any questions concerning this letter, please contact Dr. Don Tsai at (213) 620-2264 (or [Don.Tsai@waterboards.ca.gov](mailto:Don.Tsai@waterboards.ca.gov)) or me at (213) 576-6683 (or [Eric.Wu@waterboards.ca.gov](mailto:Eric.Wu@waterboards.ca.gov)).

Sincerely,



Eric Wu, Ph.D., P.E.  
Chief of Groundwater Permitting Unit

Enclosure: Response to Comments

CC: Ms. Reva Feldman, City of Malibu  
Mr. Steven Johnson, Heal the Bay  
Green Acres  
Serra Retreat Property Owner Association  
Michael Novotny, Prudential Malibu Realty  
Malibu Colony Plaza/Colony LLC  
Joshua Callahan, Cross Creek Plaza / Malibu Creek Preservation  
Bruce Bernard, Malibu Pier State Park  
Stephen McNelis, Malibu Country Marts I, II, and III  
Kenneth Foreman, Surfrider Beach  
Morton Gerson  
Ron Bleier, County of L.A. – Fire Station No. 88  
Alessandro Zampedri, Malibu Shores Motel  
Brent Thorell, HRL Labs, Inc  
Patricia Gartland, Mira Mar Properties – Office Bldg.  
Jeff Bouse, Malibu Water Pollution Control Plans  
Peggy Thomas, Our Lady of Malibu Catholic Church

## Response to Comments

MOU between City of Malibu, Los Angeles Regional Water Quality Control Board and State Water Resources Control Board  
Tentative Resolution No. R17-XXX

Comment Letters	Commented by	Date
1	Heal the Bay	January 5, 2017
2	Joan Lavine	January 9, 2017

#	Comments	Response to Comments
1-1	<p>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.</p> <p>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.</p>	<p>Comment noted. Consistent with the 2014 MOU, the City of Malibu has made substantial progress in meeting milestones identified in the 2014 MOU. Regional Board staff will continue to coordinate with City staff to meet the deadlines specified in the revised MOU.</p>
2-1	<p>Joan Lavine remains 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 wastewater management systems in the Malibu Civic Center, and to any part of it.</p>	<p>On November 5, 2009, the Regional Board adopted the Basin Plan Amendment establishing a prohibition on the use of onsite wastewater disposal systems in the Malibu Civic Center Area (Basin Plan Amendment), which became effective on December 23, 2010. On October 21, 2010, you filed a petition for writ of mandate challenging the Basin Plan Amendment. On April 12, 2015, the Los Angeles County Superior Court denied your claims with prejudice, meaning that you can no longer challenge the Basin Plan Amendment. Thus, your comments objecting to the Basin Plan Amendment have already been addressed through litigation initiated by you. Further, the Tentative Revised MOU which is the subject of the pending proceeding</p>



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		constitutes an agreement between the parties to address the need for the centralized wastewater treatment facility and the revision to construction deadlines. The pending action does not revise the Basin Plan Amendment so comments regarding the Basin Plan Amendment itself are not relevant.
2-2	<p>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.</p> <p>The SWRCB's own mapping refutes the claim that residential on-site waste disposal 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.</p> <p>The USGS found, based on the DNA testing, that bacteria the Boards' staff claimed came from septic systems was in fact from plants and animals, and was not human-sourced wastewater.</p>	<p>See Response to Comment 2-1. Your comment appears to address the Basin Plan Amendment establishing the prohibition, and is not relevant to the pending proceeding to consider the Tentative Revised MOU.</p> <p>The Basin Plan Amendment was adopted based on scientific peer-reviewed studies and after extensive opportunity for public comment. The Tentative Revised MOU does not amend the Basin Plan Amendment.</p> <p>The Regional Board has the authority to enter into the MOU based on California Water Code section 13225(a), (b), and (j).</p>
2-3	<p>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.</p>	<p>Your comment was already addressed in litigation you filed in 2010. See Response to Comment 2-1. Further, the actions to implement the MOU are being taken by the City of Malibu according to the City's own authority.</p>
2-4	<p>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.</p>	<p>The comment is not relevant to the pending action, which constitutes an agreement between the parties, not an approval of the treatment plant. Based on the Technical Memo prepared during the Basin Plan Amendment in 2009, the groundwater at the Malibu Civic Center area has been significantly impacted by the discharge from Onsite Wastewater Treatment Disposal Systems. The proposed centralized</p>

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		wastewater treatment facility will have tertiary treatment which will have better water quality upon discharge. In addition, the risk of line failure has been analyzed in the Environmental Impact Report approved by the City and includes mitigation measures.
2-5	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: <a href="http://earthquake.usgs.gov/research/induced/references.php">http://earthquake.usgs.gov/research/induced/references.php</a>	The comment is not relevant to the pending action because it concerns the operation of the treatment plant, not the terms of the MOU. The City of Malibu prepared an environmental impact report evaluating the environmental impacts of the discharge from the treatment plant through injection wells. The references provided in the link do not specifically address the Malibu Civic Center Wastewater Treatment Facility project and are not relevant because they do not address the terms of the MOU.
2-6	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.	The article of the California Constitution cited is not applicable to the pending proceeding. The MOU constitutes an agreement between the parties in which each agrees to take actions; the MOU does not include a mandate by the State. Further, the State Water Resources Control Board has provided \$8.9 million dollars of Recycled Water Grant funds, and over \$50 million dollars of low-interest State Revolving Fund loans for the construction of Civic Center Wastewater Treatment Facility.
2-7	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.	See Response to Comment 2-1. This issue was addressed in your petition for writ of mandate. The comment does not cite to a particular federal law, but even if so, the MOU does not trigger compliance with federal laws regarding housing.
2-8	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.	The Regional Board does not have authority with respect to the City's land use planning decisions.
2-9	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	The comment is not relevant to the pending proceeding. Any concerns regarding the City of Malibu's actions should be addressed to the City, not the Regional Board. The Malibu City Council heard and considered the revised MOU on January 11, 2017, and has unanimously approved



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	<p>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.</p>	<p>the revised MOU, and authorized the Mayor of the City of the Malibu to sign the MOU on behalf of the City.</p>
2-10	<p>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 official. 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.</p>	<p>The Regional Board disagrees with the comment. The members of the State and Regional Boards are duly appointed members of state agencies with duties set forth in the California Water Code and other laws. The MOU is a valid agreement between the parties authorized by state and local laws. Any concern regarding the actions of the City of Malibu may be addressed to the City. It is the Regional Board's understanding that the City has provided substantial opportunities for public comment regarding the project and the MOU.</p>
2-11	<p>10. The septic ban is effectively a form of unconstitutional spot zoning in violation of Due Process of Law.</p>	<p>See Response to Comment 2-1. The pending proceeding is not subject to the constitutional provisions cited.</p>
2-12	<p>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.</p>	<p>The Regional Board does not have authority with respect to the City's land use planning decisions.</p>
2-13	<p>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".</p>	<p>See Response to Comment 2-1. Your comment appears to address the Basin Plan Amendment establishing the prohibition which became final in 2010, and is not relevant to the pending proceeding to consider the Tentative Revised MOU.</p>

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2-14	<p>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.</p>	<p>See Response to Comment 2-1. The Tentative Revised MOU which is the subject of the pending proceeding constitutes an agreement between the parties to address the need for the centralized wastewater treatment facility and the revision to construction deadlines. Your comments address the Basin Plan Amendment itself, which became final in 2010 and is not the subject of the pending proceeding.</p>
2-15	<p>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.</p>	<p>The 2014 MOU will continue to remain effective if the proposed revision is rejected. When the City is not in compliance with the deadlines specified in the 2014 MOU, the Regional Board may choose to enforce the Malibu Prohibition which requires all commercial property owners to cease their discharge by November 5, 2015, and all residential property owners to cease discharge by November 5, 2019.</p>