

**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**

Staff Technical Report

November 15, 2013

**California Regional Water Quality Control Board
Los Angeles Region
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Los Angeles, California**

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1. Introduction

On November 5, 2009, the Regional Water Quality Control Board, Los Angeles Region (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). [Attachment 1.] On September 21, 2010, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2010-0045 approving the 2009 Basin Plan Amendment. [Attachment 2.] On December 23, 2010, the Office of Administrative Law (OAL) approved the regulatory provisions of the 2009 BPA. [Attachment 3.] The 2009 Basin Plan Amendment became effective on December 23, 2010.

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, or 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.

This Staff Report describes the process resulting in adoption of Table 4-zz, explains the purpose of the proposed reconsideration of Table 4-zz, provides the proposed modifications to Table 4-zz, discusses compliance with the California Environmental Quality Act, and describes the public participation process for this Regional Board action. As explained below, this Regional Board action consists of consideration of adoption of a resolution: (a) clarifying the Regional Board’s intent regarding the criteria for including properties identified on Table 4-zz, (b) ratifying Table 4-zz as modified by Regional Board staff following adoption of the 2009 BPA by the Regional Board and subsequently approved by the State Water Board and OAL, (c) modifying Table 4-zz by deleting four duplicate listings with incorrect assessor parcel numbers (APNs); and (d) considering adding to Table 4-zz any additional properties where there is sufficient evidence that the project has progressed through the appropriate agency’s entitlement process as of November 5, 2009.

The scope of the Regional Board’s action is limited to reconsideration of Table 4-zz. The Regional Board will not be considering any modifications to other portions of the 2009 Basin Plan Amendment.

1.1 Background Regarding Table 4-zz

Table 4-zz was incorporated into the 2009 Basin Plan Amendment as a logical outgrowth of comments received. Prior to adoption of the 2009 BPA, 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 explaining that numerous individual commercial and residential properties within the Malibu Civic Center Area had been in the process of seeking permits from the City or the County and, in some cases, from the Regional Board, to install new or upgraded and expanded OWDSs prior to adoption of the 2009 BPA. The City provided information that many properties had progressed through the “entitlement process”, often referred to as “in the pipeline” projects, and had expended significant funds in the process of seeking permits, but had not yet received the final permits or had not yet started construction at the time of the Regional Board’s adoption of the 2009 BPA. The County also provided information regarding essential public facilities owned and operated by the County that required upgrades involving expansion to existing OWDSs. Several individual property owners within the City or the County provided information demonstrating that they had progressed through the entitlement process and testified about the hardship the immediate prohibition would create. There were also two commercial properties that had submitted a report of waste discharge to the Regional Board prior to the Regional Board’s adoption of the 2009 BPA.

Table 4-zz was created based on recommendations from the City and County and public testimony. The City compiled a list of commercial and residential properties that had progressed through its entitlement process. The City’s list 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 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. The City’s list primarily included residential properties, but also included some commercial properties that had progressed through the City’s entitlement process and, in some cases, had also submitted a report of waste discharge to the Regional Board. The County’s list of recommended properties included five residential properties and two County public facilities.

During the Regional Board hearing at which the 2009 Basin Plan Amendment was adopted, the Regional Board’s Executive Officer recommended that the Regional Board incorporate Table 4-zz as part of the 2009 BPA. As a result of oral testimony at the hearing, the Executive Officer read into the record a list of properties to be included on Table 4-zz. As adopted by the Regional Board, Table 4-zz consisted of those parcels read into the record by the Executive Officer, including residential and commercial properties that had progressed through the City and County’s entitlement process.

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 appropriate agency'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 BPA, including Table 4-zz, as submitted by the Regional Board. Subsequently, OAL approved the 2009 BPA.

Regional Board staff recognizes that there may be additional properties within the Malibu Civic Center Area that had progressed through the appropriate agency's entitlement process as of November 5, 2009, but were inadvertently not included on Table 4-zz.

It should be noted that the properties listed in Table 4-zz, although exempt from the immediate prohibition of OWDS discharges that went into effect when the 2009 Basin Plan Amendment became effective, are deemed to be existing OWDSs and therefore are subject to the prohibition contained in the 2009 BPA, which requires existing OWDS discharges in commercial areas to cease by November 5, 2015, and existing OWDS discharges in residential areas to cease by November 5, 2019.

1.2 Commercial Properties

Seven commercial properties were included on Table 4-zz as approved by the State Water Board. Of those seven properties, four needed either emergency repairs or upgrades to improve the OWDSs to prevent spills.¹ Two of the commercial properties consisted of new projects.² One of the commercial properties had submitted a report of waste discharge seeking waste discharge requirements/water reclamation requirements from the Regional Board prior to adoption of the 2009 BPA.³

The following commercial properties were read into the record by the Executive Officer and included on Table 4-zz as adopted by the Regional Board on November 5, 2009:

- 22959 Pacific Coast Highway – a vacant lot intended for commercial development
- 22941 Pacific Coast Highway - three adjacent parcels (22931, 22935 and 22941 Pacific Coast Highway) that had existing OWDSs needing emergency repairs to address ongoing leak and spill issues.

¹ County Surfrider Beach facility at 23060.5 PCH, County Fire Station at 23720 Malibu Road, Chabad House at 22941 PCH and Malibu Country Mart II at 23410 Civic Center Way.

² Proposed Surfrider Plaza at 22959 PCH and proposed Whole Food Market at 23401 Civic Center Way.

³ Malibu La Paz at 3700 La Paz Lane.

- 23060.5 Pacific Coast Highway and 23720 Malibu Road - Los Angeles County facilities that have existing OWDSs needing upgrades.

Consistent with the Regional Board’s intentions and criteria for inclusion on Table 4-zz, the following three commercial properties that had progressed through the City or County’s entitlement process were added to Table 4-zz after adoption by the Regional Board, but before submittal to the State Water Board for approval.

- 23410 Civic Center Way - has an existing OWDS and needed an upgrade.⁴
- 23401 Civic Center Way - a vacant commercial parcel.⁵
- 3700 La Paz Road - a commercial parcel with no existing OWDS that had submitted a report of waste discharge to the Regional Board at the time of adoption of the Basin Plan Amendment.⁶

1.3 Residential Properties

The residential properties added to Table 4-zz by Regional Board staff after adoption of the 2009 BPA included the Crummer Project⁷, which consisted of five properties within the City limits (24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway) that had been referenced at the Regional Board hearing and had progressed through the City’s entitlement process and five properties within the County (3215, 3217, 3219, and 3221 Serra Road, and 3240 Cross Creek Road) that had been referenced at the Regional Board hearing and had progressed through the County’s entitlement process.

The following four residential properties were listed twice on Table 4-zz (with incorrect APNs) on the date of adoption by the Regional Board and were read into the record by the Executive Officer:

<u>Address</u>	<u>APN</u>
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068

⁴ The property owner has not constructed the upgrade but has indicated its intent to connect to the community wastewater treatment system being planned by the City.

⁵ The property owner has not constructed the facility, but has indicated the intent to connect to the community wastewater treatment system being planned by the City.

⁶ Subsequent to the November 5, 2009 adoption of the Basin Plan Amendment, the Regional Board adopted Waste Discharge Requirements Order No. R4-2010-0107 for the Malibu La Paz project at 3700 La Paz Road, that included conditions requiring the property to connect to a community wastewater treatment system when constructed for discharge of effluent from system upset which cannot be stored or used for irrigation.

⁷ The Crummer Project, consisting of 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, has actively participated in forming the Community Facility District (CFD) and is anticipated to be connected with the centralized wastewater treatment plant, when available, in Phase I as set forth at MOU (see footnote no. 10).

23921 Malibu Road	0000000069
23923 Malibu Road	0000000070

The proper APN numbers are specified below:

<u>Address</u>	<u>APN</u>
23917 Malibu Road	4458018004
23919 Malibu Road	4458018004
23921 Malibu Road	4458018004
23923 Malibu Road	4458018004

The first four duplicate listings with incorrect APNs should be deleted from Table 4-zz.

2. Proposed Action Regarding Table 4-zz

This Regional Board action is not a general reconsideration of the 2009 Basin Plan Amendment. Rather, in order to address perceived concerns related to approval of the projects identified on Table 4-zz, the purpose of this action is:

1. To 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 Resolved 1 of Resolution No. R4-2009-007;
2. To modify Table 4-zz by deleting four duplicate listings with incorrect APNs;
3. To officially ratify Table 4-zz as modified by Regional Board staff following adoption of the 2009 Basin Plan Amendment; and
4. To consider adding to Table 4-zz any additional properties where there is sufficient evidence that the project has progressed through the appropriate agency's entitlement process as of November 5, 2009.

The Regional Board is providing an opportunity for interested persons to comment and submit evidence only on Table 4-zz. Interested persons may request inclusion on Table 4-zz if they provide sufficient evidence that their project had progressed through the appropriate agency's entitlement process as of November 5, 2009. Any comments related to other portions of the 2009 Basin Plan Amendment will not be accepted into the Administrative Record for this matter nor responded to.

2.1 Description of Action

As set forth in the administrative record to the 2009 Basin Plan Amendment, Table 4-zz was based on the following information provided in comments to the Regional Board. Most of the properties identified on Table 4-zz were contained in a list of residential and commercial properties provided by the City to the Regional Board that had progressed through the City's entitlement process. As described by the City, properties were included on its list if, by November 5, 2009, the: (1) project proponent had submitted a complete application (e.g., site plan, geology and biology reports, and grading and drainage information) for a new construction or remodel project, or (2) the ODWS project had been deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed. In addition, two of the commercial properties on Table 4-zz had submitted a report of waste discharge to the Regional Board prior to adoption of the Basin Plan Amendment⁸ and three adjacent commercial properties relied on an OWDS that needed emergency repairs to prevent further leaks and/or spills.⁹ The other parcels on Table 4-zz consisted of County parcels, including 5

⁸ La Paz, and Chabad House

⁹ Chabad House

residential parcels that had progressed through the County's entitlement process and two County public service facilities.

It was the Regional Board's intent at the time of adoption of the 2009 Basin Plan Amendment that the phrase "progressed through the entitlement process" in Resolved 1 of Resolution No. R4-2009-007 referred to projects where, as of November 5, 2009,: (1) 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 new construction or remodel projects, and/or (2) the OWDS project has been deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed. In addition, while not expressly stated, the Regional Board was provided information indicating that commercial and residential properties that had submitted a report of waste discharge to the Regional Board prior to November 5, 2009 should be included on Table 4-zz.

The tentative resolution for consideration by the Regional Board clarifies 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 Resolved 1 of Resolution No. R4-2009-007.

The Regional Board also proposes to modify Table 4-zz by deleting the four duplicate listings with incorrect APNs and adding additional projects where sufficient evidence is provided during the public comment period that those properties had progressed through the appropriate agency's entitlement process as of November 5, 2009. The Regional Board also proposes to ratify the modifications to Table 4-zz made by Regional Board staff following the Regional Board's adoption of Resolution No. R4-2009-007 on November 5, 2009. Consistent with the administrative record for the adoption of the 2009 Basin Plan Amendment, those parcels had progressed through the entitlement process at the time of adoption of the 2009 Basin Plan Amendment; and some had also submitted a report of waste discharge to the Regional Board.

This action does not propose to alter the 2009 Basin Plan Amendment in any other way.¹⁰

¹⁰ Note that, subsequent to the effective date of the 2009 Basin Plan Amendment, the Regional Board, the State Water Board, and the City of Malibu, entered into a Memorandum of Understanding (MOU) dated August 19, 2011, in which the City of Malibu agreed to construct a centralized wastewater treatment plant according to a specified schedule and the Regional Board agreed not to enforce the prohibition against individual property owners so long as the City implements the MOU as agreed. The MOU may be revised to take into account any changed circumstances or may be terminated by any of the parties. Today's action does not affect the MOU and no comments regarding the MOU will be accepted.

2.2 Final Proposed Table 4-zz with Strikeouts

The following is the version of Table 4-zz submitted to and approved by both the State Water Board and OAL, with strikeouts indicating duplicative entries.

Malibu Civic Center Area OWDS Prohibition, Table 4-zz

Address	APN
24001 Malibu Road	4458018005
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
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068
23921 Malibu Road	0000000069
23923 Malibu Road	0000000070
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

Malibu Civic Center Area OWDS Prohibition, Table 4-zz (continued)

Address	APN
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

3. California Environmental Quality Act

Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional 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.

This Regional Board action consists of a reconsideration of Table 4-zz of the 2009 Basin Plan Amendment 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.

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.

4. Public Participation

The public has had a reasonable opportunity to participate in the review of this amendment to the Basin Plan. In accordance with the requirements of California Water Code section 13244, notice of the hearing for this Regional Board action was published on November 15, 2013 in the Los Angeles Times. In addition, a draft of the proposed resolution and Table 4-zz and the staff technical report was released for public review and comment on November 15, 2013, and a Notice of Hearing was published and circulated 45 days preceding Regional Board action in order to give interested persons time to review and comment on the proposed action regarding Table 4-zz. The Regional Board provided an opportunity for properties within the Malibu Civic Center Area to request inclusion on Table 4-zz if they provide sufficient evidence that the project had progressed through the City or County's entitlement process as of November 5, 2009. Persons who had indicated an interest in the 2009 Basin Plan Amendment were provided individual notice.

Regional Board staff will provide responses to written and oral comments received from interested persons. The Regional Board will hold a public hearing on February 6, 2014 to consider the proposed resolution and adoption of the modified Table 4-zz. The Regional Board will only accept oral and written comments that pertain to the proposed action. The Regional Board will not accept any oral and written comments regarding any other portion of the 2009 Basin Plan Amendment or the Memorandum of Understanding between the City of Malibu, the Regional Board, and the State Water Board.

Attachment 1

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

Resolution No. R4-2009-007

Amendment to the
*Water Quality Control Plan for the Coastal Watersheds
of Ventura and Los Angeles Counties*
to Prohibit On-site Wastewater Disposal Systems
in the Malibu Civic Center Area

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

1. In the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereafter *Basin Plan*), the Regional Board designated beneficial uses and established water quality objectives for the following water resources in the Civic Center area of the City of Malibu:

Groundwater: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

Malibu Lagoon: Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Creek: Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

2. In the 2006 Clean Water Act Section 303(d) list, approved by the United States Environmental Protection Agency (US EPA) on June 28, 2007, impairments to beneficial uses were formally identified for the following water resources:

Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.

Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).

Malibu Beach: impaired by Indicator Bacteria.

Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.

Carbon Beach: impaired by Indicator Bacteria.

3. To restore water quality and impaired beneficial uses, the US EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs):
 - i. **Malibu Creek Watershed Nutrient TMDL:** The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April 15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential land use activities. The TMDL specifies a load allocation for on-site wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.
 - ii. **Malibu Creek and Lagoon Bacteria TMDL:** The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, on-site wastewater disposal systems, and animal wastes. The TMDL specifies load allocations for on-site wastewater disposal systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.
 - iii. **Santa Monica Bay Beaches Wet and Dry Bacteria TMDL:** For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as a major source. The TMDLs did not provide load allocations for on-site wastewater disposal systems, meaning that no exceedances of the numeric targets are permissible as a result of discharges from non-point sources, including on-site wastewater disposal systems. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.
4. Pursuant to California Water Code section 13243, the Regional Board may, in its *Basin Plan*, specify certain conditions or areas where the discharge of waste, or certain types of

waste, will not be permitted. During a public meeting on December 14, 1998, the Regional Board directed the Executive Officer to prepare a prohibition of on-site wastewater disposal systems (OWDS) for consideration by the Regional Board. During a public meeting on November 13, 2008, the Regional Board discussed the need for a firm time schedule to address water quality problems in the Malibu Civic Center area and again directed staff to prepare a prohibition of on-site wastewater disposal systems for Board consideration.

5. For the purposes of this *Basin Plan* amendment, the “Malibu Civic Center area” is defined as the area within the lower Winter Canyon watershed, Malibu Valley watershed and adjacent coastal strips between and including Amarillo Beach and Surfrider Beach. A map depicting the boundaries of the Malibu Civic Center area is attached hereto as Exhibit 1.
6. In accordance with the California Water Code, sections 13280, 13281 and 13283, Regional Board staff presented technical evidence in a public hearing on November 5, 2009, demonstrating that discharges of wastewater from OWDSs in the Civic Center area fail to meet water quality objectives established in the *Basin Plan*, contribute to impairments of present or future beneficial uses of water resources, and cause pollution, nuisance or contamination. Section 13280 states that a determination that discharges from OWDSs should not be permitted shall be supported by substantial evidence. The evidence, as summarized in the Technical Staff Report, leads to the following conclusions:
 - i. Dischargers in the Civic Center area subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance.
 - ii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water.
 - iii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater that are in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation.
 - iv. Discharges of wastewaters released from OWDSs in the Civic Center Area to groundwater that are in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the nutrient TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication.
 - v. Wastewater flows from OWDSs in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and

many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities.

7. Peer reviews of the scientific portions of the technical staff report were conducted pursuant to California Health and Safety Code section 57004. The peer reviewers confirmed that the technical staff report was based upon sound scientific knowledge, methods and practices.
8. No authorized public agency has offered satisfactory assurance that discharge systems are appropriately designed, located, sized, spaced, constructed, and maintained, such that they are adequate to protect the quality of water for beneficial uses in the Malibu Civic Center area, pursuant to the California Water Code section 13282.
9. Pursuant to the California Water Code section 13283, the State Water Resources Control Board (State Board) is required to include a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and convention treatment systems. The Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report.
10. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act (CEQA), including preparation of an initial study, negative declaration, and environmental impact report (California Code of Regulations, title 14, section 15251(g)). As this amendment is part of the basin planning process, staff has prepared an Environmental Staff Report, which is considered a substitute to an initial study, negative declaration, and/or environmental impact report. This Environmental Staff Report satisfies the substantive requirements of the California Code of Regulations, title 23, section 3777(a), and includes a project description, environmental checklist, reasonable alternatives, alternative methods of compliance with the Basin Plan amendment, and mitigation measures. The Environmental Staff Report, together with this resolution and the responses to comments constitute the Substitute Environmental Documents, as specified in California Code of Regulations, title 23, section 15252. The Regional Board hereby determines that depending upon the compliance project selected, there could be significant adverse impacts, as specified in the Substitute Environmental Documents. However, there are also impacts that can be mitigated and be less than significant. The potential mitigation measures are set forth in the Environmental Staff Report and checklist incorporated therein.

THEREFORE, be it resolved that:

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record including oral testimony at the hearing, finds the evidentiary requirements specified in section 13280 et seq. have been satisfied and that discharges from septic systems in the Malibu Civic Center area fail to meet water quality objectives and impair both existing and potential beneficial uses of water, as documented in the Final Technical Staff Report, dated November 5, 2009. Pursuant to section 13240 of the California Water Code, the Regional Board hereby adopts and amends the *Basin Plan* to include a prohibition on discharges from on-site wastewater disposal systems in the Civic Center area. This amendment, as set forth in Exhibit 2, will:
 - Prohibit all new discharges, except certain specific projects which have already progressed through the entitlement process, and are identified on table 4-zz of the Basin Plan Amendment.
 - Prohibit discharges from existing systems within six years in commercial areas and within ten years in residential areas from the date of adoption by the Regional Board of this *Basin Plan* amendment as specified in figure 4-yy of the Basin Plan Amendment.

This prohibition does not preclude a publicly owned, community-based, solution that includes specific wastewater disposal sites subject to waste discharge requirements to be prescribed by the Regional Board.

2. The Regional Board has reviewed and considered the information contained in the Substitute Environmental Documents, as described in Finding 10, above, and hereby adopts and certifies them.
3. Pursuant to California Code of Regulations, tit.14 section 15091(a)(2), the Regional Board hereby finds, as more fully set forth in the Substitute Environmental Documents, that there are potentially significant impacts from implementation projects to comply with the proposed prohibition on OWDSs, but notes that there are mitigation measures available (as more fully described in the Substitute Environmental Documents specified in paragraph 10 below) to reduce potentially significant environmental impacts to less than significant levels. However, implementation of these mitigation measures are not under the control or discretion of the Regional Board, but are within the responsibility and jurisdiction of other (responsible) agencies, which will be required to comply with or assist affected citizens in complying with the provisions of this prohibition (e.g., the City of Malibu). These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the prohibition. (See Pub. Res. C. § 21159.2.) This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2).

4. Pursuant to California Code of Regulations, tit.14, section 15093, the Regional Board hereby finds that the project's benefits override and outweigh its potential unavoidable significant adverse impacts, for the reasons more fully set forth in the Substitute Environmental Documents. Specific economic, social, and environmental benefits justify the adoption of this project despite the project's potential significant adverse environmental impacts. These benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every unavoidable impact. Upon review of the environmental information generated for this prohibition and in view of the entire record supporting the need for a prohibition, staff has determined that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances. This determination is based upon the fact that most of the identified significant adverse impacts from the reasonably foreseeable means of compliance are temporary nuisance impacts associated with abatement of the use of OWDSs, and/or the construction of compliance projects. The foreseeable means of compliance are generally accepted beneficial infrastructure amenities in most municipal jurisdictions, and typically installed for the benefit of the community irrespective of their potential growth inducing and other impacts associated with their construction and operation. Furthermore, the reasonably foreseeable means of compliance with the prohibition are expected to result, over the long term, in positive environmental improvements to the environment, including water quality and restoration of beneficial uses of water resources (including decreased instances of associated illness), and economic benefits associated with increased use from their restoration. This is particularly important at the Malibu beaches which are generally considered to be some of best beach environments in the State of California. Enhancement of recreational uses of beaches, aquatic habitat in Malibu Lagoon, and drinking water potential in groundwater will have positive social and economic effects.
5. In making the determination in paragraph 1 above, the Regional Board has considered all of the factors set forth in California Water Code section 13281, including but not limited to, the factors set forth in section 13241.
6. The Executive Officer is directed to forward this *Basin Plan* amendment to the State Board in accordance with the requirements of sections 13245 of the California Water Code.
7. If, during the approval process, the State Board or Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

8. The Regional Board requests that the State Board approve the *Basin Plan* amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law.
9. This prohibition is not intended to prevent repairs and maintenance to existing septic/disposal systems, provided that repairs and maintenance do not expand the capacity of the systems and increase flows of wastewaters.
10. Pursuant to Water Code section 13225 (or such other authority as may be appropriate), the Executive Officer is directed to require the City to submit quarterly written reports to the Executive Officer, summarizing the strategy and progress toward meeting the 2015 prohibition deadline. In the quarterly progress reports, the City shall document progress, to the satisfaction of the Executive Officer, toward the following interim and final deadlines:

May 1, 2010: Completion of 25% of a master facilities plan for possible projects to comply with the prohibition, including initiation of a strong public participation program.

November 1, 2010: Completion of 50% of a master facilities plan and initiation of environmental review, with strong, on-going public participation. Concurrently, initiation of preliminary engineering and a feasibility study for possible projects to comply with the prohibition.

May 1, 2011: Substantial completion of a master facilities plan, preliminary engineering and a feasibility study, and engagement of the public in selection of a project to comply with the prohibition.

November 1, 2011: Completion of a master facilities plan, preliminary engineering and a feasibility study, and selection of a project to comply with the prohibition.

November 1, 2012: Completion of final design for selected project.

November 1, 2014: Completion of 50% of construction of selected project.

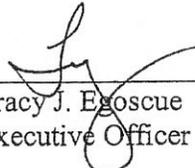
November 5, 2015: Completion of project to comply with prohibition, including successful startup of facilities, and commercial connections to the project facilities, and cease discharge from OWDSs.

November 5, 2019: Completion of project to include residential connections to the project facilities, and cease discharge from OWDSs.

The first progress report is due March 31, 2010, and subsequent quarterly progress reports are due on March 31st, June 30th, September 30th, and December 31st until such time that the Regional Board determines that compliance with the prohibition has been achieved.

The City may, upon approval from the Executive Officer, transfer this responsibility to another public agency.

I, Tracy J. Egoscue, 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 November 5, 2009.



Tracy J. Egoscue
Executive Officer

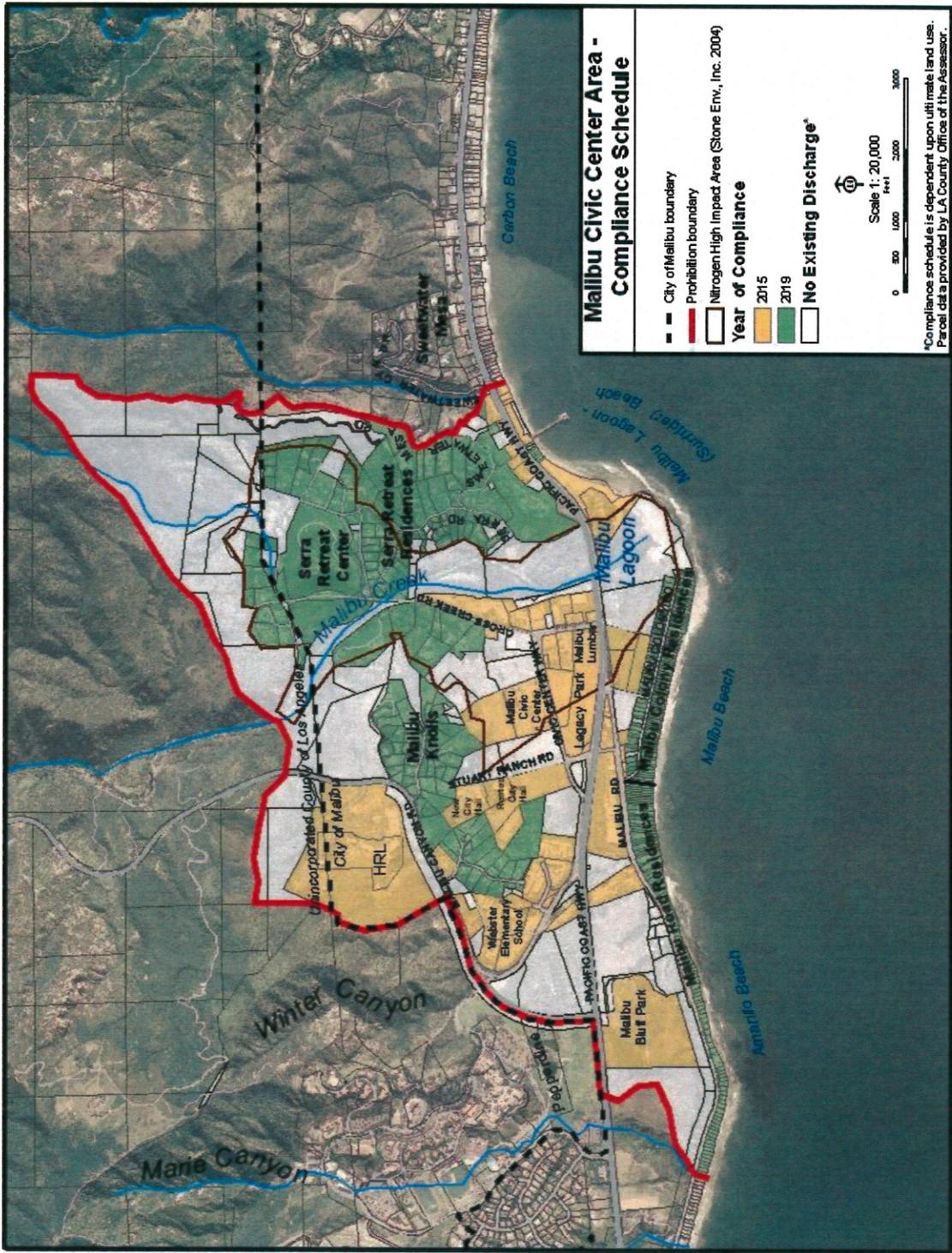


Exhibit 1

JFL 111239

Malibu Civic Center Prohibition, Table 4-zz

Address	APN
24001 Malibu Road	4458018005
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
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068
23921 Malibu Road	0000000069
23923 Malibu Road	0000000070
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
(The Vesting Tract Map has not been recorded therefore APNs have not yet been assigned to the individual lots below.)	
24108 Pacific Coast Highway	4458018002
24120 Pacific Coast Highway	4458018018
24134 Pacific Coast Highway	4458018019
24150 Pacific Coast Highway	
24174 Pacific Coast Highway	
3215 Serra Road	4457003023
3217 Serra Road	4457003021, 4457003022
3219 Serra Road	4457003019
3221 Serra Road	4457003020
3240 Cross Creek Road	4457002038

Resolution No. R4-2009-007

Amendment to the
*Water Quality Control Plan for the Coastal Watersheds of
Ventura and Los Angeles Counties*
to Prohibit On-site Wastewater Disposal Systems
in the Malibu Civic Center Area

Exhibit 2: Language to be revised in the *Basin Plan*

The *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan)* contains a section entitled “Septic Systems” in Chapter 4.¹ This amendment to the *Basin Plan* revises that section, as indicated by italicized, underlined text for additions, and text strikeouts for deletions.

Regulating Septic Systems

The California Water Code, Chapter 4, Article 5, sets forth criteria for prohibiting individual disposal systems (i.e., residential septic tanks). Alternatively, the Regional Board has authority to regulate discharges, including discharges from residential units, multiple-dwelling units, non-domestic septic tank systems, and large developments.

Oxnard Forebay Septic Prohibition

On August 12, 1999, the Regional Board amended the Basin Plan to include a prohibition on septic systems in the Oxnard Forebay (figure 4-xx), pursuant to Section 13280 of the California Water Code. The prohibition applies to both future and existing septic systems in the Oxnard Forebay. As of August 12, 1999, new septic systems in the Oxnard Forebay were prohibited. By January 1, 2008, discharges from existing septic systems must cease. This action was taken in view of:

- The conclusion that discharges of wastewaters from residential and commercial facilities to groundwater underlying the Oxnard Forebay do not meet water quality objectives specified in the Basin Plan, and are impairing the present and future beneficial uses of underlying resources of ground water.
- The need to ensure long-term protection of ground water underlying both the Oxnard Forebay and the Oxnard Plain. Alternatives to replace these supplies of local water, or to treat the water before beneficial use, would be costly and would violate the requirement to protect the water for beneficial uses.

¹ Language to be revised will go into the *Basin Plan*, starting on page 4-17 (in the 1994 version) with the section currently entitled ‘Septic Systems.’

The prohibition is not intended to prevent repairs to existing septic systems in the Oxnard Forebay prior to January 1, 2008, provided that the purpose of such repairs is not to increase capacity.

An exemption to this prohibition or a time extension of the effective date of the prohibition may be granted in the event the Regional Board determines that such an exemption or extension is in the best interest of water quality, in accordance with Water Code Section 13241 and the correction of water quality problems associated with the wastewater discharges from septic systems in the Oxnard Forebay.

Individual disposal systems that dispose of domestic wastewater that are located on lot sizes equal to or greater than five acres are not subject to this prohibition.

Malibu Civic Center Area Prohibition

On November 5, 2009, the Regional Board amended this Basin Plan to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center area (figure 4-yy), pursuant to section 13280 of the California Water Code. Effective [insert effective date of Basin Plan amendment]:

- All new on-site wastewater disposal system discharges are prohibited with the exception of the projects identified in table 4-zz, which shall be deemed existing OWDSs.
- All wastewater discharges in commercial areas from existing on-site wastewater disposal systems are prohibited on November 5, 2015, as specified in figure 4-yy.
- All wastewater discharges in residential areas from existing on-site wastewater disposal systems are prohibited on November 5, 2019, as specified in figure 4-yy.

This prohibition does not preclude a publicly owned, community-based, solution that includes specific waste water disposal sites subject to waste discharge requirements to be prescribed by the Regional Board.

The prohibition is not intended to prevent repairs, maintenance, and upgrades to existing on-site wastewater disposal systems prior to November 5, 2019, provided that repairs, maintenance, and upgrades do not expand the capacity of the systems or increase flows of wastewaters.

Other Areas

In other areas, where ground water constitutes an important source of drinking water, the Regional Board has adopted general WDRs (Order 91-94) for certain private residential subsurface sewage disposal systems. A lot with size less than 1 acre is not eligible for these general WDRs; for those lots between one and less than five acres in size, the General WDRs require either a hydrogeologic study or mitigation measures. WDRs are not required for lot sizes greater than five acres.

Attachment 2

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2010-0045**

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR
THE LOS ANGELES REGION (BASIN PLAN) TO PROHIBIT ON-SITE WASTEWATER
DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

WHEREAS:

1. On November 5, 2009, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted an amendment to the Basin Plan, Resolution No. R4-2009-007, to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area.
2. For the purposes of this Basin Plan amendment, the "Malibu Civic Center area" is defined as the area within the lower Winter Canyon watershed, Malibu Valley watershed, and adjacent coastal strips, which include Amarillo and Surfrider Beaches.
3. The Los Angeles Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) Substitute Environmental Documentation for the proposed Basin Plan amendment, including the CEQA Checklist, the environmental and technical staff reports, and the responses to comments prepared by Los Angeles Water Board staff and Resolution R4-2009-007 adopted by the Los Angeles Water Board complies with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3775 et seq.
4. The State Water Board finds that in amending the Basin Plan, the Los Angeles Water Board complied with the requirements set forth in sections 13240 and 13241, of the California Water Code. The State Water Board also finds that the regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, Subdivision (b).
5. The State Water Board finds that the Basin Plan amendment is in accordance with California Water Code sections 13280, 13281 and 13283. The Los Angeles Water Board staff presented technical evidence in a public hearing on November 5, 2009, demonstrating that discharges of wastewater from OWDSs in the Civic Center area fail to meet water quality objectives established in the *Basin Plan*, contribute to impairments of present or future beneficial uses of water resources, and cause pollution, nuisance or contamination.
6. The Los Angeles Water Board found that adoption of this amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters In California (State Water Board Resolution No. 68-16) and Federal Antidegradation Policy (40 CFR 131.12).
7. The State Water Board finds that peer reviews of the scientific portions of the technical staff report were conducted pursuant to California Health and Safety Code section 57004. The peer reviewers confirmed that the technical staff report was based upon sound scientific knowledge, methods and practices.
8. The regulatory action would immediately prohibit all new OWDS in the Malibu Civic Center area, and establish a phased schedule to cease discharges from Phase One systems by November 5, 2015 and Phase Two systems by November 5, 2019.

9. A Basin Plan amendment does not become effective until approved by the State Water Board and the regulatory provisions are approved by Office of Administrative Law (OAL).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan as adopted under Los Angeles Water Board Resolution No. R4-2009-007.
2. Directs the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board Resolution No. R4-2009-007 to the Office of Administrative Law for approval of the regulatory provisions.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 21, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

Attachment 3

RECEIVED

DEC 28 2010

State of California
Office of Administrative Law

DIVISION OF WATER QUALITY

In re:
State Water Resources Control Board

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11353

Title 23, California Code of Regulations

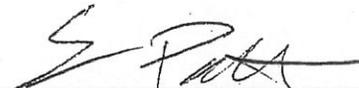
OAL File No. 2010-1117-03 S

Adopt sections: 3939.37
Amend sections:
Repeal sections:

This filing is a Basin Plan Amendment submitted to OAL by the State Water Resources Control Board (SWRCB) and subject to OAL review under Government Code section 11353. The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted a Basin Plan Amendment for the Los Angeles Region Water Quality Control Plan establishing a phased waste discharge prohibition on the use of on-site wastewater disposal systems in the Malibu Civic Center area. After adoption, the Los Angeles Water Board submitted the Basin Plan Amendment to the SWRCB which then approved the amendment and submitted it to OAL.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

Date: 12/23/2010



Eric Partington
Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Thomas Howard
Copy: Nick Martorano