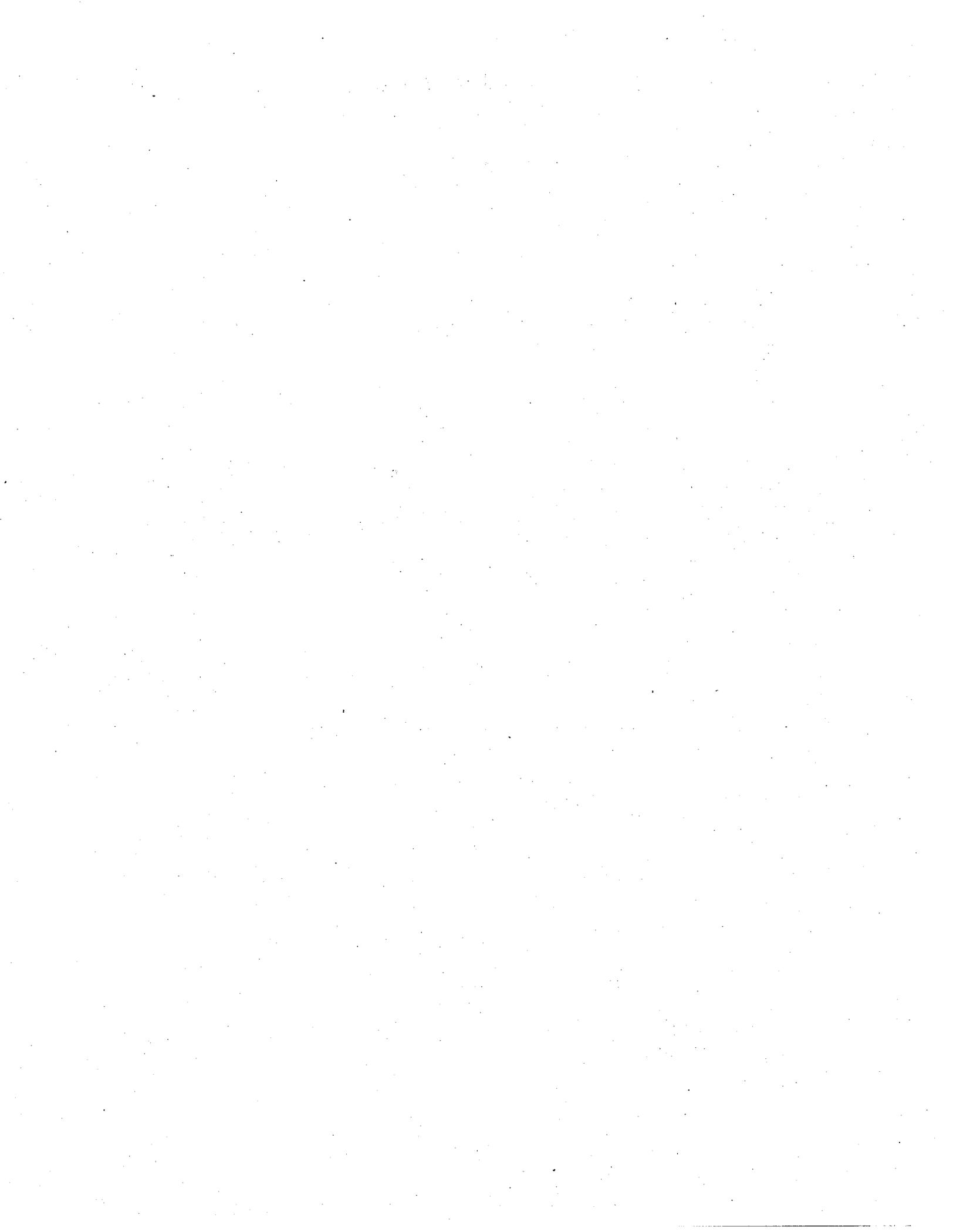


**Item 18.6**

**Comments  
and  
Response to Comments**



Item 18  
 Consideration of Malibu Lumber LLC and City of Malibu's Malibu Lumber Yard  
 Response to Written Comments

Author	Date	Comment Summary	Response
Heal the Bay	Nov.19, 2008	<p>1. Findings not consistent with decision to issue WDRs and recommendation at recent Board hearings.</p> <p>2. Any new discharge to the Civic Center is inappropriate</p> <p>3. Zero discharge is not possible to reasonably attain</p>	<p>(For full text of comment, please see comment letter)</p> <p>1. Staff has placed limits in the permit to ensure that discharge will not be allowed if subsurface discharge occurs when effluent limits are not met. If subsurface discharge does not occur, especially at low flows or high flows where the system is not expected to operate, sewage will be stored in the trash trap and equalization tank until removal by pumper truck, and the project will not impact the water quality because the effluent will be removed from site. The conditions of this permit are consistent with staff's recommendation at the previous Board hearing on the City of Malibu's MOU.</p> <p>2. The goal of the WDR is to ensure that discharge, if it does happen, does not deleteriously affect water quality and beneficial uses. Staff does not agree that all discharges will have an impact, but does agree that under some conditions and at some locations additional subsurface discharge will cause increased impairments.</p> <p>3. Zero discharge is required as a condition of the WDR for periods when additional subsurface flows could impact water quality or beneficial uses. This can be attained through mechanisms identified by staff in the WDR and the Dischargers in their comments on the Draft Tentative. The WDR states that the new permit to discharge is not to be interpreted as the right to discharge at all times, especially when water quality impairments are predicted to result. In this case, discharge is only allowed when specific groundwater conditions are present. The Discharger describes conservation efforts in the attached comments which can be implemented to reduce the discharge when groundwater levels rise and immediately reduce the underlying elevated mound of groundwater. Another Malibu discharger reduced effluent flows by 60% through changed kitchen practices alone. The Discharger may choose to develop reclaimed/recycled water disposal through which waste could be consumed and not discharged. Staff presented the option to close the restaurants during winter periods of high groundwater level, and decreased customer demand, during a meeting with the Discharger in April 2008. An adjacent project proposes storage of water onsite for later irrigation disposal or sale.</p>
		<p>4. Draft WDRs state unresolved concerns about a water imbalance, and critical effects,</p> <p>5. A moratorium on new septic systems</p>	<p>4. See response #1</p> <p>5. The Regional Board has directed staff to work with due diligence in the renegotiation of the MOU and evaluation of a septic system prohibition. Further, the Board's concern about the continued use of septic systems was clearly stated for the City, future dischargers and the public. The City has stated its plans to build a centralized treatment system. See further</p>

		<p>should be in place until the City makes a legal commitment to a centralized treatment plant.</p> <p>6. A review of the WDR is not appropriate at this time. Insufficient information is presented or available for public review.</p> <p>7. Effluent limits are inappropriate and all should be revised to zero.</p> <p>8. Monitoring frequencies should be increased.</p>	<p>comments on staff actions to expedite the evaluation of the septic system prohibition as described in the attachment.</p> <p>6. Board staff has brought forward the material which is available as of this date and asked for additional materials from the Discharger. Staff has sought to balance many aspects of public benefit in bringing forward the WDR to the Board at this time. See comment #1 above.</p> <p>7. The WDR effluent limits are expected to improve the groundwater in the Civic Center Basin, if subsurface discharge occurs. Some of the limits are for constituents for which there is no impairment.</p> <p>8. Staff agrees. Staff will recommend that effluent monitoring frequencies will be increased to daily during the first 6 months of the permit and weekly thereafter until revised by the Executive Officer. The ground water sampling will be weekly when effluent enters the leachfields during the first 6 months.</p>
Santa Monica Bay keeper	Nov. 20, 2008	<p>1. Findings not consistent with recommendation and information presented at recent Board hearings</p> <p>2. Insufficient information is provided to properly address the WDR. Technical information is not provided. The Board recently directed staff to develop a prohibition, a situation which makes it difficult for decision makers to evaluate the true impacts of the project.</p> <p>3. Fix the existing problems before allowing new discharge. Zero discharge does not exist. The water quality impairments are too extensive to add any discharge.</p>	<p>(For full text of comment, please see comment letter)</p> <p>1. See comment 1 for Heal the Bay.</p> <p>2. See comment 2 for Heal the Bay.</p> <p>See additional information provided in the attachment concerning upcoming staff actions. See comment 5 for Heal the Bay.</p> <p>3. Staff is working with the City to remedy existing problems. Staff agrees that irrigation does not prevent discharge because it is impossible to ensure the plant needs for nutrients and water exactly balance effluent supplied. However, subsurface piezometers or groundwater monitoring wells can quantify impacts to the water table and, where continuous monitoring is required, rapidly identify when irrigation changes are necessary. With sufficient oversight, impacts to water quality can be minimized and assessed. Staff agrees that the management responsibilities borne by the Dischargers, City and State are dramatically larger than would be required for a centralized system. Further, the public benefits of a centralized system are much easier to quantify and reliance on a structural remedy, instead of a management remedy, has a greater chance of success as agency priorities change.</p> <p>Staff agrees that numerous studies demonstrate the link between septic systems and water quality impairments, including those listed in the comment; 1999 URS Greiner study, RWQCB and EPA TMDL technical analyses, 2004 Questa Engineering study, and the 2005 Stone Environmental Engineering Study. Further, staff agrees that Even if groundwater conditions are improved by discharge of high quality effluent, the groundwater volume and flow are also related to the movement of pollutants into surface water bodies. However, staff believes that the addition of discharge under certain conditions and in certain locations can be</p>

			accomplished without increasing water quality impairments.
		<p>4. The system proposed is seriously undersized. Expectations for irrigation effluent consumption are optimistic. Zero discharge is not possible.</p>	<p>4. The Discharger's comments contain an analysis of predicted discharge as a function of restaurant seating, but the source of the new reference datum was not provided so its accuracy cannot be confirmed. However, the WDR requires an influent meter and only allows 17,110 gpd to flow into the treatment system.</p> <p>Staff agrees that construction of winter storage would prevent discharges during periods of high groundwater and allow business operation during a wider range of conditions, without pumping of the effluent. However, the WDR only provides limits on the treatment system proposed by the Discharger and does not dictate the method of treatment. At small flows and high flows, this treatment system may function only as a holding tank for sewage which is periodically removed by pumper trucks. Staff believes that this solution requires greater agency oversight and may have a greater risk to public health resulting from local releases of sewage not treated or disposed through mechanical means.</p> <p>The consumption of effluent by irrigation will be evaluated during the completion of a Final Title 22 Engineering Report.</p> <p>See comment 3 above.</p>
		<p>5. The Board should require effluent storage between first rain and April 30.</p> <p>6. Adopt a moratorium until a centralized system is built.</p> <p>7. The proposed effluent limits are not appropriate</p> <p>8. The monitoring frequencies should be increased.</p>	<p>5. Staff agrees that the prohibition of winter septic discharge is likely to allow additional development in the Civic Center and utilize remaining summer assimilative capacity, with minimal effects predicted on water quality. This method of system operation and management has not been proposed by the Discharger</p> <p>6. See comment 6 for Heal the Bay.</p> <p>7. See comment 8 for Heal the Bay</p> <p>8. See comment 7 for Heal the Bay</p>
Latham & Watkins	Nov. 20, 2008	<p>A water imbalance and groundwater mounding may limit other Civic Center facilities, but not the Lumber Yard</p> <p>1. Malibu's specific build-out plan has not been implemented since 1991 and so future developments should not influence this WDR,</p> <p>2. The pending City groundwater study will answer questions about critical or cumulative effects, and ensure future</p>	<p>(For full text of comments, please see comment letter)</p> <p>1-3. Mounding is a local effect which occurs beneath every leachfield and is not precluded in this case, nor sufficiently modeled by the application materials. The City of Malibu has a public planning document allowing further development, the execution of which may preclude the successful operation of Malibu Lumber or existing businesses.</p>

		projects do not cause a problem, so this request need not be met for this WDR.	
		3. The WDR language should be changed to reflect that RWQCB understood on November 30, 2007, that this WDR would not adversely affect water quality	4. Regional Board letters to the City of Malibu on the EIR for Malibu Lumber during 2007 clearly state staff's concern about water quality impacts due to cumulative and critical effects related to the WDR. The groundwater modeling was proposed to quantify the problems, and as discussed at the meeting in question, was assumed to reach completion before Malibu Lumber yard opened.
		5. The WDR language should be changed to reflect that RWQCB agreed that no hydrogeological or geological evidence was required if the City stated that the WDR coexisted with Legacy Park.	5. The Engineering material presented in support of the WDR contains little information concerning the manner of integrating the WDR with Legacy Park. Staff would prefer more complete supporting hydrogeological and geological evidence, especially concerning variations in water table and subsurface materials, and does not agree that a future study will suffice. However, the material presented is sufficient for Board review.
		6. The geology report submitted by the Discharger sufficiently addresses concerns about the separation between the groundwater and leachfield base. Further, additional studies are being completed by the City and RWQCB staff knew they would not be completed in time for the opening of the Lumber yard.	6. See response to comment 4 above.  Staff's WDR/WRR requirements are based on more evidence than included in the document cited, especially the Discharger's original geologic report submitted for this WDR by Van Beveren and Butelo, Sept, 26, 2007, showing that 6.5 feet of separation was present between the surface and the water table under the leach field in 1992.  The report included a description of borings LB-3, CPT-13,14,15, PCPT-16, CPT 19, 20 and PCPT 21, drilled in 1992, which show 6.5 to 7 feet of separation. The 1992 wells predict the groundwater would lie at 5 feet below the base of leachfield with a base at 1.5 feet.
		7. Regional Board staff knew that the groundwater study would not be completed before the opening of the facility. Concerns about shallow groundwater are true of other facilities, but not for the WDR.	7. See response to comment 4 above.  Board staff advised the Dischargers to design a system to prevent future violations based on existing data.
		8. The Discharger prepared water conservation plans, ensured operator certification, included a groundwater level monitoring plan, committed to connect to a future sewer and will treat wastewater	8. The Discharger did provide a letter committing to make these engineering enhancements on May 6 and 7, 2008. The final WDR does not include several of these enhancements which were not developed by the Discharger.  The Discharger's final engineering plan provides no explanation of how Title 22 disinfected waste will be achieved at flows which are too small to meet the minimum process flows for the plant. The Engineering documents show that low flows will not be treated by the system, but will enter the trash

		<p>to tertiary standards, as requested by Board staff. Each of these requests has been met.</p>	<p>trap and equalization tank, which act as holding tanks, for frequent removal by pump truck. As a minimum, staff estimates that 2000 gpd discharge will require pumping twice a month, increasing to every few days at higher flows. The Discharger's proposed water conservation plans are equivalent to those already created by the City and was not enhanced for this WDR.</p>
		<p>9. Concerns about assimilative capacity, existing businesses, and future disposal in the Civic Center are not of a concern for this WDR. The mounding study will address future problems and state-of-the-art system will ensure protection water quality.</p>	<p>9. See response #4 and # 8.</p> <p>Clear scientific evidence has been developed that links septic discharges and to the impairment of adjacent water bodies in Malibu. The volume and flow rate of groundwater transporting that discharge to adjacent water bodies is directly proportional to the pollutants which enter the surface water body. Additional discharge of water at any location in the Civic Center area has the potential to exacerbate existing problems.</p> <p>A partial list of the scientific studies quantifying the relationship between septic discharge and groundwater flows in the Civic Center areas with impairments in adjacent waterbodies would include the following.</p> <p>The <b>1992</b> Warshall Report highlighted deficiencies of commercial and multi-family residential septic systems throughout the City. The report further recommended the establishment of a wastewater assessment district, creation and the use of package plants that utilize evapotranspiration and advanced onsite treatment with denitrification and disinfection technology to address Malibu's septic problems. These recommendations were specifically made in regards to the Civic Center Area and in other areas of commercial, residential, and multifamily development throughout the City.</p> <p>A <b>1996</b> epidemiological study found that Malibu Surfrider Beach was consistently polluted with fecal microorganisms and that swimming in polluted water dramatically increased the risk of getting sick. It also named nearby septic systems as a likely source.</p> <p>The <b>1999</b> URS Greiner Study established a hydrologic connection between wells in the commercial facilities in the Civic Center where there are septic leach fields and Malibu Creek and Lagoon. Additionally, unnaturally high enterococcus, fecal bacteria, nitrates and phosphate concentrations were found in groundwater well samples near the Colony and the Civic Center.</p> <p>In <b>2000</b> RWQCB began an investigation of the groundwater in Malibu, including elevation data which shows that groundwater in the study area is in hydraulic connection with, and flows into, Malibu Creek, Malibu Lagoon, and the near shore zone, such as Surfrider Beach. Sample analysis shows that the constituents typical of sewage were present in the groundwater adjacent to septic system leachfields, Malibu Creek, Malibu Lagoon, and the near shore zone. In the bacteria and nutrient Total Maximum Daily Loads (TMDLs) for Santa Monica Beach and Malibu Creek and Lagoon, adopted by the Regional Board and approved by the USEPA, the septic systems in the Malibu Study area were found to contribute to the pollution of groundwater, Malibu Creek, Malibu Lagoon, and the near shore zone.</p>

			<p>In <b>2004</b> Malibu and the RWQCB entered into an MOU allowing Malibu to permit septic systems producing less than 20,000 gpd of waste or that discharge waste from non-food related commercial facilities that generate 2000 gallons per day or less, and from single family residences. A key objective was to update septic discharges to allow the City to meet the load allocations in the TMDLs.</p> <p>The City of Malibu completed the <b>2005</b> Risk Assessment Study and 2005 Questa Engineering Wastewater Management Feasibility Study which recommend once again that advanced treatment with denitrification and disinfection is necessary for the Civic Center area, Malibu Colony, the commercial and multifamily area east of the lagoon and in Serra Retreat. They also calculated that 42% of the existing groundwater in the study area is composed of OWTS flows. Numerous groundwater wells that were sampled had higher than allowable bacteria and nutrient concentrations.</p> <p>Malibu is currently alleged to be in violation of bacterial water quality standards due to septic discharge as documented in our <b>2008</b> Notice of Violation to the City for failure to comply with their MS-4 storm water permit.</p>
		10. Dischargers have the option to identify a 100% replacement area for the leachfield within the proposed leachfield with mechanical changes.	10. The Discharger's engineering design does not meet the 100% replacement requirement for the leachfield. If water quality evidence from groundwater monitoring wells shows that the existing leach field is failing, discharge will not be permitted.
		11. The assimilative capacity of the Civic Center is 160,000 gpd.	The document referenced by the Discharger also states that this is the assimilative capacity for summer discharge and the year-round discharge is less (page 6-1).
		12. The Discharger states that equalization tank pumping should be allowed with written notification to the RWQCB EO, as opposed to EO approval. Further, no limits should be applied to the system influent. The Discharger states that reducing restaurant use is not feasible.	Agreed. The modification has been made.
		13. Nutrient limits should be 3 mg/L when the average groundwater separation is 5 feet. A minimum of 6 feet is necessary to meet TMDL surface water limits and will be present at all times.	The end of pipe limit is 3 mg/L when the additional subsurface treatment of nitrogen is present to meet the EPA TMDL numeric target of 1 mg/L. No discharge, and no end-of-pipe discharge should be taking place when there is less than 5 feet of separation, so the 1 mg/L limit can be left in place should other treatment processes be added or low nitrogen waste be produced.
		14. Existing groundwater may	14. None of the water quality samples submitted exceed the WDR limits, except for pathogens, and the highly treated

		exceed limits and Discharger should not be required to meet the limits under such conditions.	effluent should improve groundwater conditions. Influent sampling will ensure that an accurate representation of WDR performance is available to staff and the public
		15. Recycled and reclaimed water limits should include nitrogen limits of 3 mg/L	Agreed. The modification has been made.
		16. Deed restriction findings should be made by the City	Agreed. It is the City's responsibility to interpret the Deed, so the change has been made.
		17. Groundwater monitoring wells should not be required around Legacy Park	The WRR allows future disposal in Legacy Park, the future area must be surrounded by groundwater monitoring wells.
		18 100% leachfield replacement will be met through operations	18. See Response # 10.
		19. The Discharger should not be required to meet future TMDL requirements	19. All WDRs must comply with changes in regulations.
		20. Financial harm may come from RWQB termination of a permit.	20. Comment noted.
		21. The original Lumber leachfield was in failure when the facility was closed.	21. RWQCB has no evidence to support this assertion and none is provided by the commenter.
		22. Various administrative/language changes	22. Agreed. The modification has been made.
		23. The existing technical information is sufficient and failing systems are a concern.	23. The technical information is not sufficient to define impacts from the WDR. Failing systems can contribute to water quality problems. The WDR language will not be changed.
		24. No groundwater monitoring wells are necessary on Legacy Park	24. See comment #17.
		25. Caffeine should not be used to track effluent discharges.	25. Caffeine is characteristic of domestic waste water and is a good indicator of water source.
		26. Remove lease provisions as options for tenant education.	26. Agreed, the modification has been made.
		27. Average daily use should be provided in monthly water bills.	27. Agreed, note that an influent meter is required by the WDR.
		28. No groundwater wells at Legacy Park	28. See comment #17
		29. There shall be no change in restaurant	29. Discharge is prohibited when the groundwater separation from the base of the leachfield is less than five feet. There are

		operation based on groundwater levels.	no operations which are allowed if they result in discharge when sufficient groundwater separation is not present.
		30. Reclaimed water requirements should apply only if the Discharger chooses to proceed with its use.	30., Agreed. The modification has been made.
		31. No groundwater monitoring is necessary at the edges of Legacy Park.	31. See comment #17.

**Attachment:**

**Preliminary Regional Board Schedule for MOU re-negotiation and consideration of a septic prohibition through a Basin Plan amendment within one year**

Date	Action	
Nov. 20 2008	Board directs re-negotiation of MOU and septic prohibition with milestones (MSPM)	Begin preparation of septic prohibition with milestones (SPM) and re-negotiation of MOU to include identification of a water management plan in the Civic Center area including Malibu Colony. This timeline is for a WWTP as a reference
Nov. 2008	RWQCB creates staff team	Begin assessment of enforcement problems in the Civic Center. Identify staff experts and begin compilation of existing septic prohibitions and review requirements. Begin solicitation of stakeholder recommendations for requirements for MOU re-negotiation and septic tank prohibition requirements.
Dec. 2008	Stakeholders input sought on MSPM for use in public meetings	Stakeholders input gathered. 1 week needed to prepare CEQA notice. RB staff begins preparation of SPM and negotiation of MOU with City of Malibu.
Dec. 11, 2008	Regional Board hearing on Malibu Lumber	
Dec. 19 2008	Notice CEQA Scoping meeting	1 month notice required

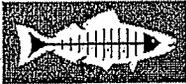
	for MSPM	
Jan. 19 2009	CEQA scoping meeting	
Jan. 26 2009	Tentative MSPM drafted	
Feb. 26 2009	Public Notice of MSPM	
April 12, 2006	Preliminary results from City Groundwater Study	
Apr. 13 2009	Close of Public Comments	After 46 days
Apr. 25 2009	Mail Board package	After 12 days for response to comments and 12 days before the meeting
May 7 2009	Board considers adoption of re-negotiated MOU and Septic Prohibition with Milestones	
June 1 2009	If adopted by RB, mail State Board Basin Plan amendment package for consideration by State Board of septic system prohibition.	After 1 month to prepare administrative record
August 2009	Regional Board hearing on Malibu La Paz	
Nov 2009	SWRCB adoption	After 5 months to notice and hear
Dec. 2009	OAL approval	After 30 days and holidays to approve

Draft Tentative Milestones will be developed during December 2008 in consultation with stakeholders. Possible Milestones are listed below,

Dec. 31. 2009	Prohibition in effect unless these milestones met	(a) Long-term solution identified (b) RFP issued by City and design engineer hired (c) Legacy Park construction completed
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		(d) Satisfactory progress on MOU permitting of residential systems
Begin first year of MSMP on Dec. 31 2009		
Year 1 task	Complete WWTP design	(end 6 months-June 30, 2010)
Year 1 task	Complete WWTP financial plan	(end 8 months=September 30, 2010)
Year 1 Task	Purchase or allocate property	(end 1 year-December 31, 2010)
Dec. 31. 2010	Prohibition in effect unless these milestones met	(e) Design 100 % complete (f) Financial plan 100% complete (g) Property acquired (h) Satisfactory progress on MOU permitting of residential systems
Year 2 Task	WWTP CEQA review	(end 6 months=June 30, 2011)
Year 2 Task	WWTP Coastal Commission	(end 6 months-June 30, 2011)
Year 2 Task	Public Meetings on grinder pumps and public use of leach fields	(end 1 year-December 31, 2011)
Year 2 Task	Establish WWTP sewer districts	(end 1 year-December 31, 2011)
Dec. 31. 2011	Prohibition in effect unless these milestones met	(i) CEQA finalized (j) Coastal Commission approval (k) Sewer Districts established and begin funding (l) Satisfactory progress on MOU permitting of residential systems
Jan. 23 2012	Santa Monica Bay Bacteria Load Allocations must be met	

Year 3 Task	Notice to Proceed on Construction	(end 6 months preparation of civil, architectural, structural, mechanical, process engineering documents- June 30, 2012)
Year 3 Task	Submit ROWD for WDR/WRR	Jan. 23, 2012.
Year 3 Task	Permitting	(end 8 months for City, County construction permitting-September 30, 2011)
Year 3 Task	Authority to Construct	(Begin 18 months construction including excavation, dewatering, tank construction, mechanical, electrical and building construction on September 30, 2011 and end construction on March 31, 2013.
Dec. 31. 2012	Prohibition in effect unless these milestones met	(m) Plant 25% complete (excavations and tanks) (n) Collection system 25% complete (all commercial and residential grinder pumps installed) (o) Disposal system 25% complete (all commercial connected)
Year 4 Task	Continue construction	
Dec. 31. 2013	Prohibition in effect unless these milestones met	(p) Plant 100% complete (excavations and tanks) (q) Collection system 100% complete (r) Disposal system 100% complete
Year 5 Task	WWTP Commissioning	(End 5 months-July 1, 2013)
Year 5 Task	WWTP Startup	(End 4 months- December 31, 2013)
Dec. 31. 2013	Prohibition in effect unless these milestones met	(s) WWTP operational, meeting NPDES or WRP permitting requirements.



Heal the Bay

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November 19, 2008

Ms. Tracy Egoscue  
Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

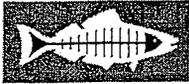
**Re: Waste Discharge Requirements and Water Reclamation Requirements for  
Malibu Lumber LLC - City of Malibu's Malibu Lumber at the City of  
Malibu's Legacy Park (File No. 02-058)**

Dear Ms. Egoscue:

On behalf of Heal the Bay, we submit the following comments on the *Tentative Waste Discharge Requirements, Water Reclamation Requirements and Monitoring and Reporting Program for the Malibu Lumber LLC and the City of Malibu's Malibu Lumber* ("Draft WDR"). We appreciate the opportunity to provide these comments.

For nearly 20 years, Heal the Bay has been actively involved in water quality and habitat restoration issues within the Malibu Creek Watershed including sitting on the City's ERB for a decade. The City of Malibu faces many water quality challenges. As stated in the Draft WDRs, Malibu Creek and Lagoon are listed on the State's 2006 303(d) List as impaired by numerous pollutants and TMDLs have already been adopted for bacteria and nutrients.

After reviewing the Draft WDRs, we have two major overarching concerns. First and foremost, the Findings provided in Draft WDRs do not logically lead to staff's decision to issue WDRs. In other words, the Regional Board provides only reasons as to why this project should not proceed. In addition it is unclear why the Draft WDRs are being brought to a Regional Board hearing in such a hasty manner, as there are many missing pieces of information that have not yet been provided to the Regional Board or the public. Further, the Regional Board hearing that is scheduled for the same day that comments are due (November 20, 2008) includes a staff recommendation to explore a moratorium on all new discharges to the Civic Center area. If this is what staff sees as prudent to protect water quality, then why is staff going the other direction with these Draft WDRs and recommending that waste discharge requirements be issued? This is illogical. Thus, we urge the Regional Board to not approve waste discharge requirements, and at a minimum, postpone the hearing of this item until all of the information is available for Regional Board and public review. These issues and others are discussed in further detail below.



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**Any New Discharge to the Civic Center Area is Inappropriate.**

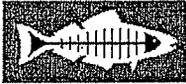
The Draft WDRs state that "The purpose of this Waste Discharge Requirements/Water Reclamation Requirements is to ensure that a proposed redevelopment at Malibu Lumber does not further impair beneficial uses, and that it supports appropriate reductions in emissions of pathogens and nutrients." (Draft WDR at 1). However, the proposed Draft WDRs in no way ensure that this goal will be met.

It has long been assumed and recently established that onsite wastewater treatment systems (OWTS) in the Civic Center area are a major source of nutrients and pathogens to the Creek and Lagoon. The WDRs allow for a new discharge of 17,000 gpd which will greatly impact water quality in the Civic Center area. Of note, the WDRs state that peak flows could be closer to 22,620 gpd. The addition of discharge to the already over-taxed system will lead to further water quality degradation and contribute to continued bacteria and nutrient impairments. New sources will absolutely cause or contribute further violations of water quality standards and TMDL requirements at a time when the City is legally obligated to reduce its nutrient and fecal bacteria contributions. The Draft WDRs state that zero discharge into the leachfield or irrigation system would be required if the water table rises to within 5 feet of the base of the leach field in any well. (Draft WDR at 13). "Zero discharge" is a seemingly impossible task for a development with restaurants and stores. Would business owners be expected to close shop? If not, how would 17,000 gpd be handled? These plans are not clearly described in the Draft WDRs. Regardless, any addition of water could push the current groundwater pollutants into the impaired surface waters.

The Draft WDR findings even acknowledge that the proposed project may further impact the Civic Center area by commenting that "[a]dditional discharge of water or effluent may exacerbate this existing [water imbalance] condition." (Draft WDR at 2). Further, the Regional Board submitted comments to the Dischargers that described "concerns about critical impacts of elevated groundwater, reduced evapotranspiration and increased infiltration and runoff and the cumulative effects from new discharges which may flood existing leachfields." (Draft WDR at 3). It is unclear from the Finding if these concerns were ever remedied. For these many reasons, the issuance of WDRs for this project is inappropriate.

**An OWTS Moratorium should be Adopted until a Formal Centralized Wastewater Treatment Plan is in Place.**

Heal the Bay has long maintained that the city can comprehensively address the bacteria and nutrient problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant. While a wastewater component was initially included in the Legacy Park project, the current draft EIR puts off this essential element to a later phase.



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We urge the Regional Board to place a moratorium on all new OWTS for new development in the subwatershed. We believe that no new sources of nutrients and bacteria are allowed because of continued TMDL violations. This moratorium should remain active until Malibu has a legally binding commitment to construct a treatment plant by a date certain (2011 preferably), and all new facilities and facilities with WDR renewals must have binding commitments to hook up to the centralized plant. A Regional Board-approved moratorium a year from now, after numerous civic center developments get approved in the interim (e.g. La Paz and Malibu Lumber) does not protect water quality. Thus an immediate moratorium is necessary.

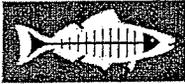
**Bringing these Draft WDRs before the Regional Board at this Time is Inappropriate.**

The Regional Board and the public have insufficient information to fully evaluate the proposed project. As stated in the Regional Board's cover letter for the Draft WDRs, "[the Dischargers] still have not provided some technical documents that are normally required before a tentative DER/WRR is issued for public review, and which we [Regional Board staff] requested beginning in May 2008." Further, "[t]he existing technical information is not sufficient to ensure that this WDR/WRR will not result in further impairment of groundwater and surface water quality. In addition, cumulative effects may cause the failure of existing permitted facilities or preclude the operation of planned projects designed to remedy regional water quality problems." (Draft WDR at 7). For instance, the complete revised engineering design had not been received by the Regional Board as of the date of the Draft WDRs. Also, the technical Figures in the Draft WDR are currently only placeholders. Some of the necessary information such as the modeling study is not expected to be completed until October 2009, nearly a year from now. (Draft WDR at 4). Due to all of these missing pieces, it is hard to understand why Regional Board staff is bringing this item before the Regional Board at this time. Especially given the impaired water quality in the area, the Regional Board should not be approving and WDRs without all information in hand.

**Effluent Limits are Inappropriate**

The Draft WDRs provide effluent limits for a handful of pollutants including total nitrogen, total coliform, fecal coliform, e. Coli coliform and Enterococcus. Any effluent limits for these constituents other than "zero" is inappropriate, as the effluent could cause or contribute to an exceedance of the TMDLs. Thus, the Draft WDRs should be modified accordingly.

**Monitoring Frequencies are Inappropriate**



Heal the Bay

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The Draft Malibu Lumber Monitoring and Reporting Program calls for weekly effluent monitoring and monthly groundwater monitoring for pollutants for which a TMDL exists in the Malibu Creek and Lagoon (Total and Fecal Coliform, Enterococcus, and Nitrogen species). Considering that this project has the potential to further impact the already impaired Malibu Creek and Lagoon, this limited monitoring is inadequate. Effluent monitoring should occur on a daily basis, and the groundwater monitoring frequency for these constituents should be increased to weekly monitoring. Without this increased monitoring, the potential negative impacts from this discharger will not be completely understood and appropriately remedied.

8

Heal the Bay empathizes with the City of Malibu's immediate need to generate revenue for the completion of Legacy Park, but expedited approval of a project that violates the TMDL, adds new pollution to the lagoon, and has incomplete information is not the sort of tradeoff that should be made.

Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500:

Sincerely,

Kirsten James  
Water Quality Director

Mark Gold, D. Env.  
President



November 20, 2008  
Ms. Tracy Egoscue  
Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, Ca 90013

**Re: Waste Discharge Requirements and Water Reclamation Requirements for Malibu Lumber LLC - City of Malibu's Malibu Lumber at the City of Malibu's Legacy Park (File No. 02-058)**

Dear Ms. Egoscue,

Since 1993 Santa Monica Baykeeper has been actively involved in water quality issues within the Malibu Creek Watershed. The City of Malibu has a long and storied history of causing or contributing to water quality violations in Malibu Creek, Lagoon and Surfrider Beach. This year from April 1- October 31 Surfrider Beach has not met the bacteriological water quality objectives on 74 days and is in violation of the Santa Monica Beaches Bacteria TMDL as incorporated into the MS-4 permit. The Civic Center area in Malibu has long been identified as a source of bacteria entering the Creek, Lagoon and Surfrider Beach. This fact was established by the LARWQCB in the 2000 Malibu Groundwater Investigation. Santa Monica Baykeeper has reviewed the Malibu Lumber Yard Tentative WDR and provides the following comments and recommendations.

#### **Staff findings are inconsistent with the recommendation**

The findings of the RWQCB staff provide ample reasons as to why the Malibu Lumber Yard project should not proceed. No adequate support is thus provided for granting a WDR permit for this development. Santa Monica Baykeeper agrees with the staff findings that "[a]dditional discharge of water or effluent may exacerbate this existing [water imbalance] condition." (Draft WDR at 2). Further, the Regional Board submitted comments to the Dischargers that described "concerns about critical impacts of elevated groundwater, reduced evapotranspiration and increased infiltration and runoff and the cumulative effects from new discharges which may flood existing leachfields." (Draft WDR at 3). Finally, at the LARWQCB hearing on 11-20-2008 the board approved the resolution to renegotiate the MOU with the City of Malibu and to have staff draft a prohibition on future onsite wastewater treatment systems in Civic Center area due to the serious concerns with persistent water quality problems caused by development in the Civic Center area.

#### **Insufficient information**

The Draft WDRs are missing large pieces of information that have not yet been provided to the Regional Board or the public. Not the least of which is the groundwater mounding study currently being conducted by the City. The Regional Board's cover letter for the Draft WDRs state, "[the Dischargers] still have not provided some technical documents that are normally required before a tentative DER/WRR is issued for public review, and which we [Regional Board staff] requested beginning in May 2008." Further, "[t]he existing technical information is not sufficient to ensure that this WDR/WRR will not result in further impairment of groundwater and surface water quality. In addition, cumulative effects may cause the failure of existing permitted facilities or preclude the operation of planned projects designed to remedy regional water quality problems." (Draft WDR at 7). For

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**SANTA MONICA  
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instance, the complete revised engineering design had not been received by the Regional Board as of the date of the Draft WDRs. Also, the technical Figures in the Draft WDR are currently only placeholders. The applicant does not have a comprehensive plan on how to address their existing wastewater issues and has no idea of the space that will be required to dispose of the wastewater from the Lumberyard and other future developments in this area without increasing groundwater levels or pollution concentrations. We are confused as to why the Regional Board hearing scheduled for the same day that comments are due (November 20, 2008) includes a staff recommendation to explore a moratorium on all new discharges to the Civic Center area, which we agree and RWQCB staff also recommends approving these Draft WDRs? Without this information it is impossible for the Regional Board staff or any decision maker to evaluate the true impacts of this project and what repercussions it will have on water quality in this area. The RWQCB and the environmental community have worked long and hard to fix the water quality problems in Malibu. Given the impaired water quality known to emanate for this area, the Regional Board should not be approving any WDRs without all information in hand. 2

We urge the Regional Board to not approve waste discharge requirements, and at a minimum, postpone the hearing of this item until all of the information including the groundwater mounding study and a comprehensive plan that addresses existing and future developments are available for Regional Board and public review.

#### **Fix the Existing Problems before adding New Discharges**

The Draft WDR state that "The purpose of this Waste Discharge Requirements/Water Reclamation Requirements is to ensure that a proposed redevelopment at Malibu Lumber does not further impair beneficial uses, and that it supports appropriate reductions in emissions of pathogens and nutrients." (Draft WDR at 1).

There is no such thing as a zero discharge system. The proposed OWTS will discharge water via irrigation and to subsurface leach fields. To apply only enough nutrient laden water onto the landscape such that all the water and nutrients are completely used up by the plants is pure fantasy. It is well known and established that onsite wastewater treatment systems (OWTS) in the Civic Center area are a major source of both nutrients and bacteria to Malibu Creek, Lagoon, and Surfrider Beach (See 1999 URS Greiner study, 2000 RWQCB Malibu Groundwater Study, 2004 Questa Engineering Risk Assessment Study). This WDR will permit an additional 17,000 gpd in the Civic Center closest to Malibu Lagoon and Surfrider Beach. This system will increase groundwater levels potentially impacting other problem septic systems in the Civic Center area and will certainly exacerbate an already untenable situation. According to the 2004 Questa Engineering Risk Assessment study 42% of the groundwater in the existing study area is from the existing on-site wastewater treatment systems. The addition of discharge to the already over-taxed system will lead to further water quality degradation and contribute to continued bacteria and nutrient impairments. New sources of water and pollutants will absolutely cause or contribute further violations of water quality standards and TMDL requirements at a time when the City is legally obligated to reduce its nutrient and fecal bacteria contributions. 3

#### **The system as proposed is seriously undersized**

The WDRs state that peak flows will be closer to 22,620 gpd and the system as designed can only handle 17,000 gpd. Additionally, the system should be sized for significant winter time storage to prevent discharges of treated effluent during the winter months, when it is least likely that water and nutrients will be used by the plants, and when groundwater elevations are the highest. The treated effluent is to be used to irrigate "Legacy Park" however 4

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the native landscaping does not require any irrigation in the winter and likely not in the summer. Santa Monica Baykeeper helped manage the new LID natively vegetated parking lot (funded by the State Board) at Malibu Lagoon. After the native vegetation is established the first year we will be removing the temporary irrigation system and the native vegetation installed at the Lagoon parking lot requires significantly more water than the vegetation proposed for Legacy Park. Where will the City dispose of wastewater after the Legacy Park plants have been established? It is not adequate to say that zero discharge into the leachfield or irrigation system would be required if the water table rises to within 5 feet of the base of the leach field in any well. (DWDR at 13). "Zero discharge" is impossible for a development with restaurants, offices, and stores. These elements are difficult to monitor and the aforementioned groundwater studies have documented hydraulic connectivity and polluted groundwater samples at elevations greater than 5 feet. Any addition of water, particularly in this over taxed area, could push existing and historical groundwater pollutants into the already impaired surface waters.

We urge the Regional Board to be prudent on this issue by requiring that the applicant store waste water effluent from the first rain event through April 30 every year. This will severely minimize the potential that nutrient laden septic effluent will elevate groundwater levels and /or connect to already impaired surface waters. The RWQCB staff submitted comments to the Dischargers that described "concerns about critical impacts of elevated groundwater, reduced evapotranspiration and increased infiltration and runoff and the cumulative effects from new discharges which may flood existing leachfields." (Draft WDR at 3). We agree with the RWQCB staff and strongly suggest that the Board prohibit any winter discharge.

#### **Adopt OWTS Moratorium until a Centralized Wastewater Treatment Plan is built**

The City must comprehensively address the bacteria and nutrient problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant for the Civic Center, Serra Retreat, Malibu Colony and the commercial/multi-family developments east of Malibu Lagoon on Pacific Coast Highway. These areas were all identified as high risk of contributing nutrient and/or bacteriological pollution to Malibu Creek, Lagoon and Surfrider Beach in the 2004 Questa Engineering Risk Assessment study prepared for Malibu. While a wastewater component was initially included in the Legacy Park project, the current draft EIR puts off this essential element to a later phase.

We urge the Regional Board to place a moratorium on all new OWTS in these areas. New sources that will likely cause or contribute to rises in the groundwater elevation, nutrient and/or bacteria loading will further degrade water quality in this already impaired area. The moratorium will give Malibu the necessary time to create a comprehensive plan for addressing their current and future wastewater issues. Malibu has the opportunity to fix these ongoing persistent problems only if they create a comprehensive wastewater plan that realistically evaluates how much space they need for irrigation to ensure that no discharge causes increased groundwater elevations or pollutant loads. Thus an immediate moratorium is necessary.

#### **The Proposed Effluent Limits are Inappropriate**

The Draft WDRs provide effluent limits for a handful of pollutants including total nitrogen, total coliform, fecal coliform, e. Coli and Enterococcus. Any effluent limits for these constituents other than "zero" is inappropriate, as the effluent could cause or contribute to an exceedance of the TMDLs. Thus, the Draft WDRs should be modified accordingly.

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### **The Proposed Monitoring Frequencies are Inadequate**

The Draft Malibu Lumber Monitoring and Reporting Program calls for weekly effluent monitoring and monthly groundwater monitoring for pollutants for which a TMDL exists in the Malibu Creek and Lagoon (Total and Fecal Coliform, Enterococcus, and Nitrogen species). Considering that this project has the potential to further impact the already impaired Malibu Creek and Lagoon, this limited monitoring is inadequate. Effluent monitoring should occur on a daily basis, groundwater quality monitoring should be done weekly, and the groundwater elevation monitoring should be conducted continually to establish any changes in groundwater elevations. It is critical that sufficient numbers of wells are installed and that the monitoring program is robust enough to quickly identify any problems that need to be addressed.

In conclusion Santa Monica Baykeeper urges the Regional Board to require the City of Malibu to address their ongoing and persistent wastewater issues by requiring a comprehensive wastewater plan, and the installation of a wastewater treatment plant for the Civic Center, Serra Retreat, Malibu Colony and the commercial/multi-family developments east of the Lagoon on Pacific Coast Highway before permitting new septic systems in this area. The wastewater plan must ensure adequate irrigation space so that the plants only receive the exact amount of water and nutrients they require to prevent any rise in groundwater elevation or any additional pollutant loads. We ask that RWQCB prohibit winter discharges from any new OWTS or treatment plant to minimize risks. It is imperative that the LARWQCB has all the necessary information before permitting discharges in this highly sensitive and overburdened area.

Sincerely,

Mark Abramson  
Director of Watershed Programs  
Santa Monica Baykeeper

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November 20, 2008

CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

Tracy Egoscue  
Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 4th Street, Suite 200  
Los Angeles, California 90013

VIA HAND AND EMAIL DELIVERY

Re: Submittal of Comments to Tentative Waste Discharge Requirements and Water Reclamation Requirements for Malibu Lumber LLC - Malibu Lumber Yard Project at City of Malibu's Legacy Park (File No. 02-058)

Dear Ms. Egoscue:

On behalf of our client, Malibu Lumber LLC, we are writing to provide comments and make suggestions regarding the Tentative Waste Discharge Requirements/Waste Reclamation Requirements for Malibu Lumber LLC – City of Malibu's Malibu Lumber at the City of Malibu's Legacy Park File No. 02-058 (Tentative WDR/WRR). We think certain changes are needed to clarify details of the requirements and correct potential misunderstandings that might arise from the current text.

Our comments on the Tentative WDR/WRR, which are attached, are organized in two sections. The first section provides detailed responses to certain key findings and/or Order paragraphs that we feel are contrary to, and not supported, by the most recent available evidence or require additional detail to be made accurate. In these comments, although we identify the issue, we did not usually provide alternate language.

The second section sets forth a set of minor changes to the draft findings and/or Order paragraphs to correct facts or add detail. The proposed minor change in each finding or Order paragraph is self-explanatory and shown in redline. Deletions are shown in ~~strike-through-text~~ format, and additions are shown in **bold underlined** text format. To facilitate your review, we have also included a full redlined WDR/WRR showing the proposed minor changes. We are also providing separately by email an electronic copy of the redlined document for your use.

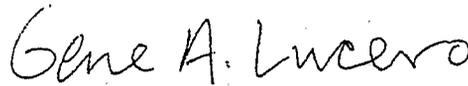
Also included with these comments are a set of final engineering drawings and the final engineering report, which we mentioned in our meeting on November 19, 2008.

LATHAM & WATKINS LLP

Our client's proposed wastewater treatment system will be a state-of-the-art system that will treat wastewater to a higher quality standard than any system permitted in the City of Malibu – or anywhere else in California, to our knowledge, and we look forward to working with you on finalizing a WDR/WRR that will be achievable for our client and at the same time acceptable to the Regional Board.

If you have any questions or wish to discuss these comments, please feel free to contact myself or Brett Thornton, the project manager for the Malibu Lumber Yard project.

Best regards,



Gene A. Lucero  
Of Latham & Watkins

cc: Ericka Erickson

**Malibu Lumber LLC Comments on Tentative Waste Discharge Requirements and Water Reclamation Requirements for Malibu Lumber LLC - Malibu Lumber Yard Project at City of Malibu's Legacy Park (File No. 02-058)**

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CALIFORNIA REGIONAL BOARD  
QUALITY CONTROL DIVISION  
LOS ANGELES REGIONAL

**Response to Key Findings And/Or Order Paragraphs:**

a. Finding 4, page 2:

A water imbalance in Malibu Valley has resulted from more water imports, uses and discharge at rates that exceed what can be percolated, evaporated or moved into surface water bodies, under some conditions. Additional discharge of water or effluent may exacerbate this existing condition.

b. Finding 5, page 2:

During wet conditions, Regional Board staff finds that waste discharge systems which operate successfully under dry conditions, may fail, resulting in discharge to the surface. The absence of sufficient dry soil beneath leachfields is known to limit or prevent pollutant removal and treatment. Additional discharge of water may exacerbate these conditions.

**Response:** While these observations may be true of other facilities or other areas within the Civic Center area, they are not accurate descriptions of the conditions at the Malibu Lumber Yard.

According to an October 13, 2008 comment letter to the City of Malibu from Van Beveren and Butelo, the seasonal high groundwater at the leachfield will not be less than 10 feet from the surface. According to Van Beveren & Butelo's February 20, 2008 study, static groundwater levels at the leachfield site range from 14-16 feet below the existing grade. Van Beveren & Butelo's February 20, 2008 study also states that the published historic-high groundwater in the site vicinity is at a depth of 5 feet below grade, but that because fill has been placed at the leachfield site, it is possible that the actual historic-high is deeper than 5 feet in portions of the leachfield site with a higher ground surface (perhaps on the order of 3 to 5 feet deeper) in these areas. However, the historic groundwater elevations aren't critical in this project because Malibu Lumber Yard's wastewater treatment system is designed to manage discharge with real-time monitoring of a series of groundwater monitoring wells to assure that in the unlikely event of groundwater separation reaching a level of less than 5 feet below the leachfield, operational changes will automatically be triggered to eliminate any discharge. Furthermore, based on testimony given by Dr. Richard Layton at the November 20, 2008 Regional Board public hearing, the nature of the soils beneath Malibu Lumber Yard's leachfield, allow for horizontal and lateral movement of the groundwater, which prevents mounding.

As stated in the City of Malibu's comment letter dated October 26, 2008 to the Regional Board dated October 26, 2008, regarding termination of the MOU, "The City has adopted provisions in the Malibu Plumbing Code to require the use of low-flow fixtures when plumbing fixtures are newly installed or replaced. The City, through the Public Works Department, is also implementing conservation programs for the reduction of water consumption. The City also works with the West Basin Municipal Water District to ensure that Malibu commercial properties are taking advantage of rebates to replace high water fixtures. Since 2005, the Civic Center commercial area reduced water use by nearly 2,000,000 gallons per year, reducing inputs to the groundwater table...."

c. Finding 7, page 2:

~~The addition of subsurface discharge from current and future developments in Malibu Valley, as documented in the City's May 1996 report titled *Malibu Civic Center Specific Plan Background Information Existing Conditions*, is estimated to double the current discharge from septic systems and onsite waste water treatment plants in the Civic Center area.~~

**Response:** This finding is based on an outdated study, which is over 12 years old. In addition, no new development has occurred in the Civic Center area since the City was incorporated in 1991.

d. Finding 10, page 3:

The City did not complete a cumulative analysis of environmental impacts from the proposed discharge at Malibu Lumber. As a responsible agency under the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), the Regional Board submitted comments to the Dischargers describing concerns about critical impacts of elevated groundwater, reduced evapotranspiration and increased infiltration and runoff and the cumulative effects from new discharges which may flood existing leachfields.

**Response:** Although we're not requesting that this finding be modified, we would like to make the point that The Regional Board staff's complaint assumes that future projects may affect the situation in the Malibu Valley, which is not a consideration relevant to whether the impacts from the Malibu Lumber Yard Project are acceptable. The City of Malibu's Groundwater Mounding Study is currently being prepared to evaluate the groundwater situation in the Civic Center area and if there are any cumulative impacts, they will be known upon completion of this study. In addition, Malibu Lumber LLC agreed to install groundwater monitoring wells to ensure Malibu Lumber Yard's discharge doesn't result in a cumulative impact to the Civic Center area.

e. Finding 11, page 3:

~~On November 30, 2007, the Dischargers met with Regional Board staff to modify the ROWD submitted in May 2007. The Dischargers and Regional Board staff agreed that discharges from Malibu Lumber could be made subject to the successful operation of Legacy Park and the results of a groundwater study under preparation by the City of~~

Malibu the City would prepare an RFP and hire a team of experts to model the groundwater for the entire Civic Center area. The Regional Board staff agreed that knowing that this study was underway for Civic Center-wide issues, they would support the project construction as scheduled and agreed that they would support a WDR authorizing dispersal of the Malibu Lumber Yard effluent prior to the study being completed. It was also understood from available evidence and information that opening of the Malibu Lumber Yard would not adversely affect water quality. Furthermore, the historic groundwater elevations aren't critical in this project because Malibu Lumber Yard's wastewater treatment system is designed to manage discharge with real-time monitoring of a series of groundwater monitoring wells to assure that in the unlikely event of groundwater separation reaching a level of less than 5 feet below the leachfield, operational changes will be automatically be triggered to eliminate any discharge. The Malibu City Council allocated about \$300,000 for modeling in January 2008.

**Response:** Our client requests that the additional information above be included in this finding to reflect what they believe took place at the November 30, 2007 meeting between the Dischargers and the Regional Board staff.

f. Finding 12, page 3:

On February 8, 2008, the Dischargers were notified that their ROWD must contain hydrogeological and engineering evidence that the discharge could coexist with the discharge from the City's adjacent proposed Legacy Park stormwater disposal system. However, as a result of an October 23, 2008 meeting between the Dischargers and the Regional Board's Executive Officer, it was agreed upon that the in lieu of this requirement, it would be sufficient and more appropriate (since the Legacy Park project is still being designed) for the City to provide evidence, in the form of a letter to the Regional Board, stating that the discharge from the City's proposed Legacy Park stormwater disposal system will be designed to coexist with the discharge from Malibu Lumber Yard.

The City's plans for Legacy Park and the stormwater disposal system cannot be fulfilled unless Malibu Lumber Yard is completed because the income generated from Malibu Lumber Yard will provide the critical funds the City needs to create Legacy Park and the new stormwater disposal system.

**Response:** Our client requests that this finding be updated to reflect the agreement which was made between the Dischargers and the Regional Board's Executive Officer at their October 23, 2008 meeting.

g. Finding 13, pages 3 & 4:

On March 22, 2008, Regional Board staff sent a letter to the Dischargers stating that the ROWD was still incomplete and that predicted separation between the water table and the bottom of the leachfield in the engineering report was based on an historically-low (2004)

and not a critical condition (1992) groundwater level as reported in a 2007 by Van Beveren and Butelo. However, as reported in a February 20, 2008 report by Van Beveren and Butelo, which the Dischargers submitted to Regional Board staff on November 19, 2008, published historic-high groundwater in the site vicinity is at a depth of 5 feet below grade, but that because fill has been placed at the leachfield site, it is possible that the actual historic-high is deeper than 5 feet in portions of the leachfield site with a higher ground surface (perhaps on the order of 3 to 5 feet deeper) in these areas. Malibu Lumber Yard has features built into its wastewater treatment system such as real time monitoring wells so that discharge through its leachfield does not occur in the unlikely event that the water table rises to within 5 feet of the base of the leachfield.

The City was directed to provide a short-term groundwater modeling result to evaluate the mounding impact resulting from the proposed Malibu Lumber discharge and from existing adjacent and future discharges in and around the Malibu Lumber site and Legacy Park area. A modeling project was initiated in April 2008, but the work contracted as of October 20, 2008 will extend existing modeling and will not assess high groundwater, low evapotranspiration and high infiltration and runoff (critical) conditions. In August 2008, the City agreed to complete the study by October 2009. The Regional Board staff knew that the study was never anticipated to be completed before the opening of Malibu Lumber Yard.

**Response:** While these observations may be true of other facilities or other areas within the Civic Center area, they are not accurate descriptions of the conditions at the Malibu Lumber Yard. Our client requests that this finding be updated to include the evidence detailed in the February 2008 Van Beveren & Butelo report and comment letters dated June 27, 2008, August 11, 2008, and October 13, 2008, all of which were submitted to the Regional Board's Executive Officer on November 19, 2008.

h. Finding 14, page 4:

In the absence of an additional definitive modeling study, the Dischargers, at a meeting on April 29, 2008, agreed were directed to develop additional disposal options and changes in system operation for periods when the water table rises, including recycling water and limiting use. In letters dated May 6, 2008 and May 7, 2008, the Dischargers notified the Regional Board staff that they will: 1) prepare a water conservation plan that will review conservation measures to be implemented at Malibu Lumber Yard and water usage by Malibu Lumber Yard tenants will be monitored, 2) the Engineering Report will be amended to include a statement identifying the appropriate level of operator certification, 3) a groundwater level monitoring plan will be prepared that provides locations of groundwater monitoring wells, monitoring protocol and contingency plans in the event there is a groundwater rise, and treatment system operation will include scheduled monitoring of the groundwater levels in the wells, 4) commitment to connect to the future Civic Center sewer district system and terminate use of the onsite treatment

plant when the sewer district system is operational, and 5) the treated wastewater will meet tertiary recycled water standards.

On May 15, 2008, the Dischargers agreed were directed to modify the ROWD to limit waste effluent flows when the water table was elevated because there was insufficient documentation to show that the project and the stormwater disposal system could be operated simultaneously without effluent surfacing. No Re-use of effluent will occur within the Malibu Lumber Yard facility and irrigation disposal were also proposed for the engineering design. However, as part of the Malibu Lumber Yard project, piping will be installed for connection by the City for their future Legacy Park project for re-use of the Malibu Lumber Yard effluent through spray irrigation.

The City will provide evidence, in the form of a letter to the Regional Board, stating that the discharge from the City's proposed Legacy Park stormwater disposal system will be designed to coexist with the discharge from Malibu Lumber Yard.

The complete revised engineering design has not been received as of October 20 was submitted to the Regional Board on November 20, 2008.

**Response:** Our client requests that this finding be updated to reflect the April 29, 2008 meeting between the Discharges and Regional Board staff, the May 15, 2008 direction given to the Dischargers by the Regional Board staff, and the letters submitted to the Regional Board staff on May 6, 2008 and May 7, 2008, which detail additional disposal options and changes in the system operation for periods when the water table rises, including recycling water and limiting effluent.

i. Finding 15, page 4:

The Civic Center area of the Malibu Valley currently has more subsurface discharge than can be assimilated while maintaining 5 feet of separation between the water table and the bottom of a leachfield under some conditions. New use and disposal in the Civic Center area, even with high levels of treatment, is predicted to cause the failure of the existing older septic systems and increased bacteria discharge from flooded leachfields. At present, the four largest businesses in the Civic Center area remove 10-12% of their effluent by pumper truck to prevent spills, are not meeting the water quality limits in their WDR/WRR, and are not maintaining the minimum 5 feet of separation between the base of the leachfield and the water table.

Because the City has made no legal commitment to construct a centralized wastewater treatment system or other long-term solution to replace leachfields in the Civic Center area, the Civic Center businesses are expected to continue to rely on leachfield disposal systems. Therefore, the prevention of increased groundwater levels becomes necessary to meet the TMDL targets and allow compliance with water quality objectives. The addition of new or increased discharges, like that proposed for Malibu Lumber, should be allowed only when coupled with other measures to reduce total subsurface discharge and bacteria and nutrient loading to Malibu Creek and Lagoon, which are impaired for these constituents. Further, more extensive monitoring of groundwater conditions is necessary

to ensure new projects improve groundwater conditions and do not result in the elevation of groundwater to within 5 feet of the base of leachfield systems.

**Response:** While these observations may be true of other facilities or other areas within the Civic Center area, they are not accurate descriptions of the conditions at the Malibu Lumber Yard.

According to an October 13, 2008 comment letter to the City of Malibu from Van Beveren and Butelo, the leachfield will be at approximately elevation +19 to +22 feet, and the dispersal system will be established at 1 foot below final grade, thus the corresponding depths to seasonal high groundwater will not be less than 10 feet.

According to Van Beveren & Butelo's February 20, 2008 study, static groundwater levels at the leachfield site range from 14-16 feet below the existing grade. Van Beveren & Butelo's February 20, 2008 study also states that the published historic-high groundwater in the site vicinity is at a depth of 5 feet below grade, but that because fill has been placed at the leachfield site, it is possible that the actual historic-high is deeper than 5 feet in portions of the leachfield site with a higher ground surface (perhaps on the order of 3 to 5 feet deeper) in these areas.

Malibu Lumber Yard's wastewater treatment system is the most state-of-the-art AOWTS in the history of Malibu and has been designed to reduce bacteria and nutrient effluent discharges, which will meet the disinfection requirements set out in Order paragraph C.7.

The City of Malibu is currently preparing a Groundwater Mounding Study to evaluate the groundwater situation in the Civic Center area. At a November 30, 2007 meeting, the Regional Board staff agreed that knowing that this study was underway, they would support the WDR authorizing discharge at Malibu Lumber Yard prior to the study being completed. However, as stated previously, the historic groundwater elevations aren't critical in this project because Malibu Lumber Yard's wastewater treatment system is designed to manage discharge with real-time monitoring of a series of groundwater monitoring wells to assure that in the unlikely event of groundwater separation reaching a level of less than 5 feet below the leachfield, operational changes will be automatically be triggered to eliminate any discharge.

j. Finding 19, page 5:

A 100% replacement area for the Malibu Lumber leachfield shall be identified before discharge unless the addition of soil to increase the separation between the bottom of the leachfield and the groundwater. **The Dischargers have the option to identify this 100% replacement area within the proposed leachfield through mechanical changes.**

**Response:** The Dischargers have the ability to provide 100% replacement within the proposed leachfield due to the method of installation which allows for this option.

k. Finding 30, page 7:

~~Because the existing and planned waste disposal flows, estimated at the time of the preparation of this WDR/WRR, exceed the assimilative capacity of 35,000 gpd quantified by the City for the Civic Center area in its April 28, 2005, Final Integrated Water Quality Management Feasibility Study, new subsurface disposal in Malibu Valley beyond this WDR/WRR may not be permitted before additional disposal capacity is documented.~~

**Response:** Our client request that this finding be struck because based on our review of the April 28, 2005 Final Integrated Water Quality Management Feasibility Study, specifically paragraph 6.1.3, total assimilative capacity of potential reuse/dispersal sites is approximately 160,000 gpd based on the sites listed on Table 6.1 and shown on figure 6-1 of the aforementioned study. Therefore, the assimilative capacity of the Civic Center area is not in jeopardy of being exceeded as a result of the Malibu Lumber Yard project.

1. Order Paragraph B.3., page 13:

Zero Discharge: The influent flow to the treatment system will be reduced through operational changes at Malibu Lumber or Legacy Park, such as increased water recycling, irrigation, water conservation or off-site discharge, when the water table is equal to or less than 5 feet below the base of the leach field. Should the water table rise to within 5 feet of the base of the leach field in any well, waste discharge through the Malibu Lumber leachfield or irrigation system cannot continue and additional operational measures shall be implemented. These measures include ~~reduced restaurant use, water conservation, and equalization tank pumping on an emergency basis with written~~ **notification to the** Regional Board Executive Officer approval. ~~The influent and effluent flow limits are as follows:~~

TABLE 1: INFLUENT AND EFFLUENT FLOW LIMITS

Daily Water Table Separation From the Base Of the Leach Field In Wells	System Influent (gpd)	System Effluent (gpd)
More than 10 feet	max daily 17,000	max daily 17,000
Less than 10 feet	max daily 10,000	max daily 17,000
Less than 5 feet	less than Recycle and Storage Capacities	No discharge

**Response:** Our client requests that this Order Paragraph be modified because reducing restaurant uses is not feasible. In addition, it's not appropriate to regulate the influent flows for this treatment process because the influent limits don't take into account the capacity or the function of the equalization tanks. Furthermore, effluent limits, not influent limits, more accurately reflect potential impacts to the groundwater. Finally, as stated previously, the historic groundwater elevations aren't critical in this project because Malibu Lumber Yard's wastewater treatment system is designed to manage discharge with real-time monitoring of a series of groundwater monitoring wells to assure

that in the unlikely event of groundwater separation reaching a level of less than 5 feet below the leachfield, operational changes will be automatically triggered to eliminate any discharge and thus any impacts to the groundwater.

12

m. Order Paragraph C.8., page 16:

Nutrient Limits: The nutrient in the wastewater discharged to the disposal system must not contain constituents which would exceed the load allocations in EPA's Nutrient TMDL for surface water in Malibu Creek Watershed which calls for a 93% reduction in total nitrogen discharge. Typical discharge concentrations from standard commercial septic discharges with a denitrification process are 10 mg/L or below. While 20% additional nitrogen loss, from 17,000 gpd at 10 mg/L, might be expected during nitrification within an elevated leachfield where soil addition has provided an expanded unsaturated zone beneath the leachfield, the 93% reduction must otherwise be met at the effluent monitoring point.

Constituent	Monthly Average (mg/L)
Total Nitrogen	1 (applies if the leachfield is constructed without soil addition and less than 10 feet of separation is maintained between the bottom of the leachfield and the highest historical groundwater)
Total Nitrogen	3 (applies if the leachfield is constructed with soil addition and/or more than 10 feet of separation is maintained between the bottom of the leachfield and the highest historical <u>average level of groundwater</u> )

13

**Response:** The separation between the historic high groundwater level and the bottom of the leachfield is approximately 6 feet, but we will have 11-14 feet of separation between the average groundwater level and the bottom of the leachfield as reflected in the Van Beveren & Butelo studies. So there will always be a minimum of 6 feet of separation even in the rare event that groundwater reaches its historic high level. We believe that this minimum of 6 feet of separation will provide the additional denitrification as necessary to meet the TMDLs for surface water in the Malibu Creek Watershed. Furthermore Malibu Lumber Yard's effluent will always meet the disinfection requirements set out in Order Paragraph C.7.

n. Order Paragraph D.3., page 17:

Groundwater Limits: The groundwater sampled at the wells shall not contain constituents in excess of the following limits based on Basin Plan and Ocean Plan requirements and in conformance with the TMDLs quoted above:

14

<u>Constituent</u>	<u>Units</u>	<u>Maximum</u>
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Total Dissolved Solids	mg/L	2,000
Nitrogen	mg/L	1 or 3
Sulfate	mg/L	500
Chloride	mg/L	500
Boron	mg/L	2
Fecal coliform	MPN/100mL	200

**Response:** Although our client isn't requesting that this Order paragraph be changed at this time, we request that you please review the analysis of the existing groundwater from Associated Laboratories emailed to Regional Board staff on behalf of our client on November 20, 2008 to make sure that the Dischargers are not being required to meet constituent limits lower than already contained in the groundwater at this time.

o. Order Paragraph E.4., page 19:

**Numeric Limits:** The recycled/reclaimed water shall not contain constituents with concentrations in excess of the following limits (Table 2)

TABLE 2: RECYCLED/RECLAIMED WATER LIMITS

Constituent	Units	Monthly Average	Daily Maximum
Oil and grease	mg/L	10	15
Total dissolved solids	mg/L	--	2000
Chloride	mg/L	--	500
Sulfate	mg/L	--	500
Boron	mg/L	--	2
Total nitrogen	mg/L	--	1 or 3

**Response:** Our client requests that the table above be modified as depicted because the effluent prior to filtration through the soil in the leachfield will contain nitrogen at a limit of 3 mg/L. Therefore, any recycled or reclaimed water discharged from the Malibu Lumber Yard will always contain 3 mg/L of total nitrogen.

p. Order Paragraph G.1., page 27:

**Deed Restriction:** Before discharge, the Dischargers the City shall file with the Regional Board a letter from ~~their~~ its attorneys stating that the deed restrictions on the Malibu Legacy Property do not conflict with their obligations under the state and non-profit grants which provided funds for the purchase, nor with their obligations to the residents of the City of Malibu and especially those of Malibu Colony.

**Response:** The City of Malibu owns the property on which the Malibu Lumber Yard and it's leachfield are located. Therefore, only the City of Malibu and not Malibu Lumber LLC should be responsible for filing such a letter.

q. Order Paragraph G.3, page 27:

Groundwater Monitoring: A monitoring program for groundwater shall be submitted and approved by Regional Board Executive Officer 30 days after approval of this Order so that the groundwater can be measured, sampled, and analyzed, and to determine if discharges from the disposal system have impacted, or are impacting, water quality or water levels. The wells included in the monitoring program will include, as a minimum, groundwater monitoring wells within 5 feet of the edge of the Malibu Lumber leachfield and at the center and with adequate frequency around the edge of Legacy Park.

**Response:** Our client is committed to maintaining a minimum of 5 feet of separation between the groundwater and the bottom of the leachfield within the boundaries of the leachfield.

r. Order Paragraph G.6., page 28:

Leachfield Replacement: A 100% replacement area for the leachfield shall be identified on a map and submitted before discharge begins, unless the Dischargers increase the elevation of the leach field through soil addition, allowing the replacement of the added material when percolation rates drop. The Dischargers have the option to identify this 100% replacement area within the proposed leachfield through mechanical changes.

**Response:** The Dischargers have the ability to provide 100% replacement within the proposed leachfield due to the method of installation which allows for this option.

s. Order Paragraph G.10., page 28:

TMDL Compliance: The Regional Board has placed a Total Maximum Daily Load (TMDL) for bacteria in the Malibu Creek and Lagoon in the Basin Plan. USEPA has completed a TMDL for nutrients in Malibu Creek and Lagoon. The Dischargers shall comply with waste load allocations developed and approved pursuant to the TMDL for the area. ~~The Regional Board may require that the Dischargers meet pathogen or nutrient limits stricter than those imposed in this Order.~~

**Response:** If the Regional Board were to require stricter nutrient limits, the Dischargers should be made aware of what those nutrient limits are at this time.

t. Order Paragraph G.24, page 31:

Termination or Modification: After notice and opportunity for a hearing, this Order may be terminated or modified for causes including, but not limited, to:

- a. Violation of any term or condition contained in this Order;
  - b. Obtaining this Order by misrepresentation, or failure to disclose all relevant facts;
- OR

- c. A change in any condition, or the discovery of any information, that requires either a temporary or permanent reduction or elimination of the authorized discharge.

**Response:** Although our client isn't requesting that this item be removed, they have concerns that serious financial harm could be caused to them if this WDR/WRR permit were to be terminated or materially modified.

**Malibu Lumber LLC requests modifications to the following findings and/or Order paragraphs:**

- u. Finding 1, page 1:

Malibu Lumber and Hardware operated a lumber store on ~~less than an~~ approximately 1.8 acres of land located at ~~23419 West Pacific Coast Highway~~ 3939 Cross Creek Road in the City of Malibu. Until February 2005, when the owner shut down the store, the business generated 2500 gallons per day of wastewater from a restrooms for customers and employees. The septic system discharge was enrolled under State Water Resources Control Board Water Quality Order No. 97-10-DWQ, a General Waste Discharge Requirement. The Monitoring and Reporting Program (MRP) CI-8695 did not include a groundwater monitoring. When the owner shut down the store, the septic system was in failure.

- v. Finding 2, page 1:

To redevelop the site, the City of Malibu (City) purchased the land at ~~23419 West Pacific Coast Highway (PCH)~~ 3939 Cross Creek Road and the adjacent parcel at 23500 Civic Center Way, bounded by PCH, Civic Center Way and ~~Stuart Ranch Road~~ Webb Way, which is currently being developed designed as the Legacy Park Stormwater Control Project. The City ~~sold~~ leased the Malibu Lumber and Hardware building and leased the underlying ~~23419 PCH~~ 3939 Cross Creek Road parcel to Malibu Lumber LLC, where the structure is being expanded to include a 30,316 square foot redevelopment of retail stores, hair salons, two restaurants and a public restrooms. Malibu Lumber LLC and the City are hereinafter referred to as Dischargers under these WDR/WRRs.

- w. Finding 3, pages 1 & 2:

Malibu Lumber LLC filed a Report of Waste Discharge (ROWD) for discharge of a maximum of 17,00110 gallons per day (gpd) of domestic and commercial wastewater, which will be treated by an advanced wastewater treatment system located on the site and discharged to an irrigation system and/or a disposal field covering more than 80,000 square feet on the adjacent land currently designated for the future Legacy Park Stormwater Control Project, also owned by the City (Figure 1 yet to be supplied by the Discharger).

x. Finding 6, page 2:

The Malibu Lumber Yard buildings, treatment plant and disposal system is in the City's Civic Center area, which is located 2,000 feet west of Malibu Creek, 1,200 feet inland of the Pacific Ocean and one half mile east of the coastal area designated by the State Water Resource Control Board (SWRCB) as Mugu Lagoon to Latigo Point Area of Special Biological Interest Number 24. Furthermore, the site is located near Malibu Lagoon, and the popular Surfrider Beach. The SWRCB and the Regional Water Quality Control Board (Regional Board) designated Malibu Creek, Malibu Lagoon and Malibu Lagoon (Surfrider's) Beach as impaired for coliform, nutrients (algae), scum/foam-unnatural; viruses, eutrophication, coliforms and swimming restrictions; and beach closures and coliforms, respectively, on the 2002 303d list. The 2006 303(d) list included the same impairments, except that Malibu Creek, Malibu Lagoon and Surfrider's Beach were placed on the List of Water Quality Limited Segments Being Addressed by USEPA Approved TMDLs. On January 24, 2002 and on December 12, 2002, the Regional Board adopted a Total Maximum Daily Load (TMDL) for bacteria during dry and wet weather, respectively, into Santa Monica Bay which was amended to the Basin Plan. On December 13, 2004, the Regional Board also adopted a TMDL for bacteria in Malibu Creek and Lagoon which was included in the Basin Plan. On March 21, 2003, the United States Environmental Protection Agency (USEPA) promulgated a nutrient TMDL for Malibu Creek Watershed. This WDR/WRR considers the existing impairment of beneficial uses in these waterbodies adjacent to the site. This WDR/WRR considers the existing impairment of beneficial uses in these waterbodies adjacent to the site.

y. Finding 8, page 3:

The operation of the Malibu Lumber Yard and other developments will require that additional potable water be imported into the Malibu Valley groundwater basin. The Los Angeles Waterworks District Number 29 intends to serve potable water imported by Metropolitan Water District of Southern California and distributed through the West Basin Municipal Water District to the City of Malibu consumers.

z. Finding 16, pages 4 & 5:

The discharge from the land use activities at the Malibu Lumber redevelopment, which will be generated from liquid waste streams from restaurants, hair salons, retail businesses and a public restrooms, will be of a higher-toxicity and more complex nature than a residential waste stream. A portion of the discharge may be directly recycled/reclaimed for irrigation and other uses, and if recycling/reclamation occurs, the Dischargers will need to meet rigorous water recycling criteria, established by the State Department of Public Health, in the California Code of Regulations, title 22.

aa. Finding 17, page 5:

The land area at the Malibu Lumber redevelopment is not large enough for disposal of wastewaters through a conventional septic system. Furthermore, the elevation of the

water table is too high to allow for attenuation of contaminants that would occur through unsaturated flow from a conventional septic system. Accordingly, the Dischargers propose to (a) treat their influent through an advanced on-site wastewater treatment system located on the site, (b) discharge treated effluent from the advanced on-site wastewater treatment equipment through a leachfield in Legacy Park, (c) construct pipelines and pumping systems for recycle/reclamation of treated effluent for irrigation in Legacy Park and to recycled/reclaimed water users who have yet to be identified, and (d) divert a portion of the influent to ~~holding tanks~~ for emergency discharge to tankers that will truck the influent to a sanitary sewer with written notice to the Executive Officer.

bb. Finding 21, page 6:

Groundwater at the Malibu Lumber leachfield was found at 14 feet below ground surface (bgs) in 2004 and at 7 feet bgs in 1992. Ten feet of separation between the groundwater and the bottom of the disposal system is considered desirable. Five feet of separation is mandatory. Because the bottom of the proposed leachfield is 1.5 feet below the surface and water table variations of 2 to 8 feet have been recorded at the nearby Cross Creek, this separation may not always be maintained. ~~When~~ If the daily separation between the water table and the bottom of the leach field is less than 5 feet, operational changes at Malibu Lumber and at Legacy Park are required to eliminate effluent discharge until the water table is found to be more than five feet below the base of the leach field.

cc. Finding 24, page 6:

The waste flows at the Malibu Lumber redevelopment ~~are likely to~~ could potentially exceed the Malibu Plumbing Code requirement of 50 gallons per restaurant seating per day on the weekends and on holidays and especially in the summer. As an example, an equivalent use measured at Duke's Malibu for Memorial Day weekend on May 27, 2007 was found to be 71.5 gallons per day per seat. At this rate, the system maximum discharge would be 22,620 gallons per day, an increase of 5,620 gpd over the proposed maximum 17,000 gpd. Sufficient storage capacity shall be maintained to contain flows to within the maximum daily effluent limit defined under the Influent Limitation section. If the storage capacity becomes compromised, equalization tank pumping on an emergency basis with written notification to the Regional Board Executive Officer will be allowed.

dd. Finding 26, page 7:

The facility is located in Section 32, Township 1S, Range 17W (USGS Malibu Beach 7' Quadrangle). It has a latitude is of 34° 02' 4.20" and a longitude of 118° 41' 4.92".

ee. Finding 27, page 7:

Water conservation practices must be implemented. ~~because the water table is less than ten feet from the surface.~~ This project requires disposal of additional potable water, imported into the Malibu Valley Groundwater Basin, which already has groundwater

levels that preclude the operation of septic systems under some conditions (e.g. high groundwater, low evapotranspiration, and rainfall or stormwater flows). As a result, the Dischargers are required to have tenants fully implement water conservation at the facility.

22

ff. Finding 28, page 7:

The capacity of unsaturated soils to remove pollutants during disposal into the groundwater of the Malibu Valley Groundwater Basin is a finite value defined by technical means and is known to vary with the elevation of the water table, the travel time of groundwater to surface discharge points, and the regional groundwater and surface water quality objectives. The existing technical information is not sufficient to ensure that this WDR/WRR will not result in further impairment of groundwater and surface water quality. In addition, ~~cumulative effects~~ **failing systems** may cause the failure of existing permitted facilities or preclude the operation of planned projects designed to remedy regional water quality problems.

23

gg. Finding 29, page 7:

It may be necessary to modify the daily operation of Malibu Lumber and Legacy Park to maintain sufficient separation between the water table and the base of the leachfield. To ensure simultaneous operation does not impact existing facilities, groundwater monitoring wells shall be constructed at the Malibu Lumber leachfield ~~and surrounding Legacy Park~~. The wells will provide daily water table levels used to indicate when operational changes at both facilities are required to prevent unacceptable rises in groundwater. Should the water table rise to within 5 feet of the base of the leachfield, waste discharge through the leachfield cannot continue and additional operational measures are required including ~~reduced restaurant use~~, additional water conservation, and equalization tank pumping on an emergency basis with written notification to the Regional Board Executive Officer.

24

hh. Finding 41, page 10:

The Dischargers are not able to quantify all potential impacts, if any, that may result from the discharge to groundwater or to nearby surface waters. The Dischargers are required to monitor for ~~caffeine~~, MBAS, total coliform, fecal coliform and enterococcus bacteria, nitrate, nitrite, ammonia and organic nitrogen in groundwater in accordance with Monitoring and Reporting Program (MRP) No. CI XXXX. Ongoing groundwater studies in the Civic Center area may cause the Executive Officer to modify the requirements of the MRP.

25

ii. Order Paragraph A.1.e., page 12:

Documentation of the pretreatment educational materials ~~and lease provisions~~ shall be included in a report on water conservation and recycling/reclamation to be provided within 30 days of adoption of this Order.

26

jj. Order Paragraph B.4., page 14:

Continuous Flow Measurement: Influent daily flows will be measured mechanically with an in-stream flow meter. The flow measurements will be confirmed with the submission of average daily use in monthly potable water bills.

27

kk. Order Paragraph C.2., page 14:

Zero Discharge: Discharge can be allowed to leachfields only when the groundwater table is 5 feet or below the bottom of the leachfield as measured in groundwater monitoring wells around a perimeter 5 feet from the edges of the leachfield and at the edges of Legacy Park and as described in Table 1.

28

ll. Order Paragraph D.2., page 17:

Monitoring Network: The groundwater quality and elevation limits shall apply to groundwater monitoring wells placed at Malibu Lumber and Legacy Park. The separation between the base of the Malibu Lumber leachfield and the water table and the water quality shall be measured within 5 feet of the edge and center of the leachfield. ~~The separation shall also be measured at wells around the perimeter of the Legacy Park property.~~ The wells shall also serve as the compliance points for groundwater quality monitoring because the treated effluent is expected to improve the groundwater quality in the vicinity of the discharge. This effect can be best quantified by contrasting groundwater quality in wells immediately up and downgradient of the leachfield system and irrigated areas.

mm. Order Paragraph E.3., page 18:

Title 22 Approval: There shall be no direct or indirect discharge of wastes to a recycle waste system until the California Department of Public Health has approved a complete title 22 Engineering Report. At the time of the approval of the complete recycling plan, the Dischargers will provide quantification of temporary conservation measures such as changes in ~~restaurant operation and~~ water consumption in the water recycling system and irrigation system ('recycle capacity') for approval by the Executive Officer. Storage of the flows before or within the treatment system which does not limit system performance will also be quantified ('storage capacity.')

29

nn. Order Paragraph E.33., page 24:

Dual Plumbing Requirements: ~~If~~ If the Dischargers choose to proceed with dual plumbing they shall submit to the CADPH pursuant to section 13522.5 of the Water Code shall contain the following information for dual plumbed systems, in addition to the information required by section 60323 of title 22 of the California Code of Regulations:

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a. A detailed description of the intended use site identifying the following:

- 1) The number, location, and type of facilities within the use area proposing to use dual plumbed systems;
- 2) The average number of persons estimated to be served by each facility on a daily basis;
- 3) The specific boundaries of the proposed use site including a map showing the location of each facility to be served;
- 4) The person or persons responsible for operation of the dual plumbed system at each facility; and
- 5) The specific use to be made of the recycled/reclaimed water at each facility.

b. Plans and specifications describing the following:

- 6) Proposed piping system to be used;
- 7) Pipe locations of both recycled/reclaimed and potable systems;
- 8) Type and location of the outlets and plumbing fixtures that will be accessible to the public; and
- 9) The methods and devices to be used to prevent backflow of recycled/reclaimed water into the public water system.
- 10) The methods to be used by the Dischargers to assure that the installation and operation of the dual plumbed system will not result in cross connections between the recycled/reclaimed water piping system and the potable water piping system. These shall include a description of pressure, dye or other test methods to be used to test the system every four years.

c. Prior to the initial operation of the dual-plumbed recycled/reclaimed water system and annually thereafter, the dual plumbed system within each facility and use site shall be inspected for possible cross connections with the potable water system. The recycled/reclaimed water system shall also be tested for possible cross connections at least once every four years. The testing shall be conducted in accordance with the methods described herein. The inspections and the testing shall be performed by a cross connection control specialist certified by the California-Nevada section of the American Water Works Association or an organization with equivalent certification requirements. A written report documenting the result of the inspection and testing for the prior year shall be submitted to the CADPH within 30 days following completion of the inspection or testing.

- d. The Dischargers shall notify the CADPH of any incidence of backflow from the dual-plumbed recycled/reclaimed water system into the potable water system within 24 hours of discovery the incident.
- e. Any backflow prevention device installed to protect the public water system serving the dual-plumbed recycled/reclaimed water system shall be inspected and maintained in accordance with section 7605 of title 17, California Code of Regulations

oo. Order Paragraph G.3., page 27:

Groundwater Monitoring: A monitoring program for groundwater shall be submitted and approved by Regional Board Executive Officer 30 days after approval of this Order so that the groundwater can be measured, sampled, and analyzed, and to determine if discharges from the disposal system have impacted, or are impacting, water quality or water levels. The wells included in the monitoring program will include, as a minimum, groundwater monitoring wells within 5 feet of the edge of the Malibu Lumber leachfield and at the center and with adequate frequency around the edge of Legacy Park.

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STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

ORDER NO. R4-04-XXXX  
WASTE DISCHARGE REQUIREMENTS and  
WATER RECLAMATION REQUIREMENTS  
FOR

MALIBU LUMBER LLC - CITY OF MALIBU'S  
MALIBU LUMBER AT THE CITY OF MALIBU'S LEGACY PARK

(File No. 02-058)

RECEIVED  
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CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds:

**PURPOSE**

Beneficial uses of recreation, habitat, migration and spawning in the vicinity of the Malibu Civic Center, including swimming at Surfrider Beach and swimming and eutrophication in Malibu Creek and Lagoon, are impaired and are therefore subject to Total Maximum Daily Loads (TMDLS), adopted by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). The purpose of this Waste Discharge Requirements/Water Reclamation Requirements (WDR/WRR) is to ensure that a proposed redevelopment at Malibu Lumber does not further impair beneficial uses, and that it supports appropriate reductions in emissions of pathogens and nutrients.

**BACKGROUND**

1. Malibu Lumber and Hardware operated a lumber store on ~~less than an~~ approximately 1.8 acres of land located at ~~23419 West Pacific Coast Highway~~ 3939 Cross Creek Road in the City of Malibu. Until February 2005, when the owner shut down the store, the business generated ~~2500~~ gallons per day of wastewater from a restroom for customers and employees. The septic system discharge was enrolled under State Water Resources Control Board Water Quality Order No. 97-10-DWQ, a General Waste Discharge Requirement. The Monitoring and Reporting Program (MRP) CI-8695 did not include a groundwater monitoring. When the owner shut down the store, the septic system was in failure.
2. To redevelop the site, the City of Malibu (City) purchased the land at ~~23419 West Pacific Coast Highway (PCH)~~ 3939 Cross Creek Road and the adjacent parcel at 23500 Civic Center Way, bounded by PCH, Civic Center Way and ~~Stuart Ranch Road~~ Webb Way, which is currently being developed designed as the Legacy Park Stormwater Control Project. The City ~~sold~~ leased the Malibu Lumber and Hardware building and leased the underlying ~~23419 PCH~~ 3939 Cross Creek Road parcel to Malibu Lumber LLC, where the structure is being expanded to include a 30,316 square foot redevelopment of retail stores, hair salons, two

October 20, 2008

restaurants and a public restrooms. Malibu Lumber LLC and the City are hereinafter referred to as Dischargers under these WDR/WRRs.

3. Malibu Lumber LLC filed a Report of Waste Discharge (ROWD) for discharge of a maximum of 17,00110 gallons per day (gpd) of domestic and commercial wastewater, which will be treated by an advanced wastewater treatment system located on the site and discharged to an irrigation system and/or a disposal field covering more than 80,000 square feet on the adjacent **land currently designated for the future Legacy Park Stormwater Control Project**, also owned by the City (Figure 1 yet to be supplied by the Discharger).

### HYDROLOGY

4. A water imbalance in Malibu Valley has resulted from more water imports, uses, and discharge at rates that exceed what can be percolated, evaporated or moved into surface water bodies, under some conditions. Additional discharge of water or effluent may exacerbate this existing condition.
5. During wet conditions, Regional Board staff finds that waste discharge systems which operate successfully under dry conditions, may fail, resulting in discharge to the surface. The absence of sufficient dry soil beneath leachfields is known to limit or prevent pollutant removal and treatment. Additional discharge of water may exacerbate these conditions.
6. The Malibu Lumber **Yard** buildings, treatment plant and disposal system is in the City's Civic Center area, which is located 2,000 feet west of Malibu Creek, 1,200 feet inland of the Pacific Ocean and one half mile east of the coastal area designated by the State Water Resource Control Board (SWRCB) as Mugu Lagoon to Latigo Point Area of Special Biological Interest Number 24. Furthermore, the site is located near Malibu Lagoon, and the popular Surfrider Beach. The SWRCB and the Regional Water Quality Control Board (Regional Board) designated Malibu Creek, Malibu Lagoon and Malibu Lagoon (Surfrider's) Beach as impaired for coliform, nutrients (algae), scum/foam-unnatural; viruses, eutrophication, coliforms and swimming restrictions; and beach closures and coliforms, respectively, on the 2002 303d list. The 2006 303(d) list included the same impairments, except that Malibu Creek, Malibu Lagoon and Surfrider's Beach were placed on the List of Water Quality Limited Segments Being Addressed by USEPA Approved TMDLs. On January 24, 2002 and on December 12, 2002, the Regional Board adopted a Total Maximum Daily Load (TMDL) for bacteria during dry and wet weather, respectively, into Santa Monica Bay which was amended to the Basin Plan. On December 13, 2004, the Regional Board also adopted a TMDL for bacteria in Malibu Creek and Lagoon which was included in the Basin Plan. On March 21, 2003, the United States Environmental Protection Agency (USEPA) promulgated a nutrient TMDL for

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Malibu Creek Watershed. This WDR/WRR considers the existing impairment of beneficial uses in these waterbodies adjacent to the site. This WDR/WRR considers the existing impairment of beneficial uses in these waterbodies adjacent to the site.

7. ~~The addition of subsurface discharge from current and future developments in Malibu Valley, as documented in the City's May 1996 report titled *Malibu Civic Center Specific Plan Background Information Existing Conditions*, is estimated to double the current discharge from septic systems and onsite waste water treatment plants in the Civic Center area.~~
8. The operation of **the Malibu Lumber Yard** and other developments will require that additional potable water be imported into the Malibu Valley groundwater basin. The Los Angeles Waterworks District Number 29 intends to serve potable water imported by Metropolitan Water District of Southern California and distributed through the West Basin Municipal Water District to the City of Malibu consumers.
9. Improvement of many individual waste treatment systems at the existing businesses in the Civic Center area is necessary because the City currently does not provide centralized wastewater collection and treatment system. Also, no community services district or other special district has been formed to provide such community services. Residents and businesses in the City rely on on-site subsurface disposal systems for disposal of their wastewaters.
10. The City did not complete a cumulative analysis of environmental impacts from the proposed discharge at Malibu Lumber. As a responsible agency under the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), the Regional Board submitted comments to the Dischargers describing concerns about critical impacts of elevated groundwater, reduced evapotranspiration and increased infiltration and runoff and the cumulative effects from new discharges which may flood existing leachfields.
11. On November 30, 2007, the Dischargers met with Regional Board staff to modify the ROWD submitted in May 2007. The Dischargers and Regional Board staff agreed that discharges from Malibu Lumber could be made subject to the successful operation of Legacy Park and the results of a groundwater study under preparation by the City of Malibu **the City would prepare an RFP and hire a team of experts to model the groundwater for the entire Civic Center area. The Regional Board staff agreed that knowing that this study was underway for Civic Center-wide issues, they would support the project construction as scheduled and agreed that they would support a WDR authorizing dispersal of the Malibu Lumber Yard effluent prior to the study being completed. It was also understood from available evidence and information that opening of the Malibu Lumber Yard would not adversely affect water quality. Furthermore, the historic groundwater elevations aren't critical in this project because Malibu Lumber Yard's wastewater treatment system is**

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designed to manage discharge with real-time monitoring of a series of groundwater monitoring wells to assure that in the unlikely event of groundwater separation reaching a level of less than 5 feet below the leachfield, operational changes will be automatically be triggered to eliminate any discharge. The Malibu City Council allocated about \$300,000 for modeling in January 2008.

12. On February 8, 2008, the Dischargers were notified that their ROWD must contain hydrogeological and engineering evidence that the discharge could coexist with the discharge from the City's adjacent proposed Legacy Park stormwater disposal system. However, as a result of an October 23, 2008 meeting between the Dischargers and the Regional Board's Executive Officer, it was agreed upon that the in lieu of this requirement, it would be sufficient and more appropriate (since the Legacy Park project is still being designed) for the City to provide evidence, in the form of a letter to the Regional Board, stating that the discharge from the City's proposed Legacy Park stormwater disposal system will be designed to coexist with the discharge from Malibu Lumber Yard.

The City's plans for Legacy Park and the stormwater disposal system cannot be fulfilled unless Malibu Lumber Yard is completed because the income generated from Malibu Lumber Yard will provide the critical funds the City needs to create Legacy Park and the new stormwater disposal system.

13. On March 22, 2008, Regional Board staff sent a letter to the Dischargers stating that the ROWD was still incomplete and that predicted separation between the water table and the bottom of the leachfield in the engineering report was based on an historically-low (2004) and not a critical condition (1992) groundwater level as reported in a 2007 by Van Beveren and Butelo. However, as reported in a February 20, 2008 report by Van Beveren and Butelo, which the Dischargers submitted to Regional Board staff on November 19, 2008, published historic-high groundwater in the site vicinity is at a depth of 5 feet below grade, but that because fill has been placed at the leachfield site, it is possible that the actual historic-high is deeper than 5 feet in portions of the leachfield site with a higher ground surface (perhaps on the order of 3 to 5 feet deeper) in these areas. Malibu Lumber Yard has features built into its wastewater treatment system such as real time monitoring wells so that discharge through its leachfield does not occur in the unlikely event that the water table rises to within 5 feet of the base of the leachfield.

The City was directed to provide a short-term groundwater modeling result to evaluate the mounding impact resulting from the proposed Malibu Lumber discharge and from existing adjacent and future discharges in and around the Malibu Lumber site and Legacy Park area. A modeling project was initiated in April 2008, but the work contracted as of October 20, 2008 will extend existing modeling and will not assess high groundwater, low evapotranspiration and high infiltration and runoff (critical) conditions. In August 2008, the City agreed to

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complete the study by October 2009. The Regional Board staff knew that the study was never anticipated to be completed before the opening of Malibu Lumber Yard.

14. In the absence of an additional definitive modeling study, the Dischargers, at a meeting on April 29, 2008, agreed were directed to develop additional disposal options and changes in system operation for periods when the water table rises, including recycling water and limiting use. In letters dated May 6, 2008 and May 7, 2008, the Dischargers notified the Regional Board staff that they will: 1) prepare a water conservation plan that will review conservation measures to be implemented at Malibu Lumber Yard and water usage by Malibu Lumber Yard tenants will be monitored, 2) the Engineering Report will be amended to include a statement identifying the appropriate level of operator certification, 3) a groundwater level monitoring plan will be prepared that provides locations of groundwater monitoring wells, monitoring protocol and contingency plans in the event there is a groundwater rise, and treatment system operation will include scheduled monitoring of the groundwater levels in the wells, 4) commitment to connect to the future Civic Center sewer district system and terminate use of the onsite treatment plant when the sewer district system is operational, and 5) the treated wastewater will meet tertiary recycled water standards.

On May 15, 2008, the Dischargers agreed were directed to modify the ROWD to limit waste effluent flows when the water table was elevated because there was insufficient documentation to show that the project and the stormwater disposal system could be operated simultaneously without effluent surfacing. No Re-use of effluent will occur within the Malibu Lumber Yard facility and irrigation disposal were also proposed for the engineering design. However, as part of the Malibu Lumber Yard project, piping will be installed for connection by the City for their future Legacy Park project for re-use of the Malibu Lumber Yard effluent through spray irrigation.

The City will provide evidence, in the form of a letter to the Regional Board, stating that the discharge from the City's proposed Legacy Park stormwater disposal system will be designed to coexist with the discharge from Malibu Lumber Yard.

The complete revised engineering design has not been received as of October 20 was submitted to the Regional Board on November 20, 2008.

15. The Civic Center area of the Malibu Valley currently has more subsurface discharge than can be assimilated while maintaining 5 feet of separation between the water table and the bottom of a leachfield under some conditions. New use and disposal in the Civic Center area, even with high levels of treatment, is predicted to cause the failure of the existing older septic systems and increased bacteria discharge from flooded leachfields. At present, the four largest businesses in the Civic Center area remove 10-12% of their effluent by pumper

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truck to prevent spills, are not meeting the water quality limits in their WDR/WRR, and are not maintaining the minimum 5 feet of separation between the base of the leachfield and the water table.

Because the City has made no legal commitment to construct a centralized wastewater treatment system or other long-term solution to replace leachfields in the Civic Center area, the Civic Center businesses are expected to continue to rely on leachfield disposal systems. Therefore, the prevention of increased groundwater levels becomes necessary to meet the TMDL targets and allow compliance with water quality objectives. The addition of new or increased discharges, like that proposed for Malibu Lumber, should be allowed only when coupled with other measures to reduce total subsurface discharge and bacteria and nutrient loading to Malibu Creek and Lagoon, which are impaired for these constituents. Further, more extensive monitoring of groundwater conditions is necessary to ensure new projects improve groundwater conditions and do not result in the elevation of groundwater to within 5 feet of the base of leachfield systems.

#### FACILITY AND TREATMENT PROCESS

16. The discharge from the land use activities at the Malibu Lumber redevelopment, which will be generated from liquid waste streams from restaurants, hair salons, retail businesses and a public restrooms, will be of a higher-toxicity and more complex nature than a residential waste stream. A portion of the discharge may be directly recycled/reclaimed for irrigation and other uses, and if recycling/reclamation occurs, the Dischargers will need to meet rigorous water recycling criteria, established by the State Department of Public Health, in the California Code of Regulations, title 22.
17. The land area at the Malibu Lumber redevelopment is not large enough for disposal of wastewaters through a conventional septic system. Furthermore, the elevation of the water table is too high to allow for attenuation of contaminants that would occur through unsaturated flow from a conventional septic system. Accordingly, the Dischargers propose to (a) treat their influent through an advanced on-site wastewater treatment system located on the site, (b) discharge treated effluent from the advanced on-site wastewater treatment equipment through a leachfield in Legacy Park, (c) construct pipelines and pumping systems for recycle/reclamation of treated effluent for irrigation in Legacy Park and to recycled/reclaimed water users who have yet to be identified, and (d) divert a portion of the influent to ~~holding tanks~~ for emergency discharge to tankers that will truck the influent to a sanitary sewer with written notice to the Executive Officer.
18. The Malibu Lumber treatment system consists of a gravity flow collection system with a grease interceptor; a trash trap and primary clarifier, sludge storage tank

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and digester; an equalization tank with anoxic denitrification; a modified plug-flow activated sludge process for aerobic treatment with suspended growth; a hollow-fiber micro-membrane filtration system; and ultra-violet disinfection system and disposal through sub-surface drip dispersal into a leachfield and irrigation system (Figure 2 and 3 yet to be supplied by the Discharger). The effluent may meet California title 22 disinfected tertiary recycled/reclaimed standards in the treatment system before being discharged to the leachfield, but must meet these requirements before it is discharged for recycled/reclaimed use. Anaerobic decomposition of sludge in the bottom of the primary settling tank will release carbon dioxide, methane and hydrogen sulfide which the Dischargers will remove by mechanical carbon filtration of gas discharges from the treatment plant.

19. A 100% replacement area for the Malibu Lumber leachfield shall be identified before discharge unless the addition of soil to increase the separation between the bottom of the leachfield and the groundwater. **The Dischargers have the option to identify this 100% replacement area within the proposed leachfield through mechanical changes.**
20. To protect the existing septic systems in the area, groundwater monitoring wells will be installed per a workplan to be submitted for approved by the Executive Officer within 30 days of adoption of this Order. The wells will be located within 5 feet of the edge of the Malibu Lumber leachfield and in the center and at the perimeter of Legacy Park. Groundwater quality may not be degraded or the level of groundwater allowed to rise to within 5 feet of the base of the leachfield. The wells will be outfitted for manual surface sampling and with a transducer with surface connections capable of providing 24-hour water level measurements. Well completion shall follow California Department of Water Resources Bulletin 74-90 for monitoring well standards (January 1990).
21. Groundwater at the Malibu Lumber leachfield was found at 14 feet below ground surface (bgs) in 2004 and at 7 feet bgs in 1992. Ten feet of separation between the groundwater and the bottom of the disposal system is considered desirable. Five feet of separation is mandatory. Because the bottom of the proposed leachfield is 1-5 feet below the surface and water table variations of 2 to 8 feet have been recorded at the nearby Cross Creek, this separation may not always be maintained. ~~When~~ **If** the daily separation between the water table and the bottom of the leach field is less than 5 feet, operational changes at Malibu Lumber and at Legacy Park are required to eliminate effluent discharge until the water table is found to be more than five feet below the base of the leach field.
22. Because sufficient separation may not always be present to remove nitrogen species, organics such as 1,4-dichlorobenzene and toluene and acetone, metals such as lead, cadmium and copper, and surfactants, effluent limits are required.
23. A recycled/reclaimed water system is proposed by Dischargers to reduce effluent discharge to the subsurface, including landscape irrigation. A Water Reclamation

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Requirement (WRR) for Malibu Lumber is contained within this document, based on conceptual approval by the California Department of Public Health (CADPH), which requires completion and approval of a full title 22 Engineering Report for recycle/reclamation use at Malibu Lumber and Legacy Park. Detail must be added to the conceptual plan already approved by CADPH. Regular reporting of water conservation and recycling/reclamation efforts will ensure ongoing participation by the tenants.

24. The waste flows at the Malibu Lumber redevelopment ~~are likely to~~ **could potentially** exceed the Malibu Plumbing Code requirement of 50 gallons per restaurant seating per day on the weekends and on holidays and especially in the summer. As an example, an equivalent use measured at Duke's Malibu for Memorial Day weekend on May 27, 2007 was found to be 71.5 gallons per day per seat. At this rate, the system maximum discharge would be 22,620 gallons per day, an increase of 5,620 gpd over the proposed maximum 17,000 gpd. Sufficient storage capacity shall be maintained to contain flows to within the maximum daily effluent limit defined under the Influent Limitation section. **If the storage capacity becomes compromised, equalization tank pumping on an emergency basis with written notification to the Regional Board Executive Officer will be allowed.**
25. With regard to the use of groundwater for municipal and domestic supply, the Dischargers have stated there are no public water supply wells downgradient of the leachfield. Potable water consumers in the area receive only imported water, and this is from the Los Angeles County Waterworks District No. 29. District No. 29 has received water from the Metropolitan Water District of Southern California via the West Basin Municipal Water District since 1961.
26. The facility is located in Section 32, Township 1S, Range 17W (USGS Malibu Beach 7' Quadrangle). It has a latitude ~~is~~ **of** 34° 02' 4.20" and a longitude of 118° 41' 4.92".

#### **CONFORMANCE WITH REGIONAL OBJECTIVES**

27. Water conservation practices must be implemented. ~~because the water table is less than ten feet from the surface.~~ This project requires disposal of additional potable water, imported into the Malibu Valley Groundwater Basin, which already has groundwater levels that preclude the operation of septic systems under some conditions (e.g. high groundwater, low evapotranspiration, and rainfall or stormwater flows). As a result, the Dischargers are required to have tenants fully implement water conservation at the facility.
28. The capacity of unsaturated soils to remove pollutants during disposal into the groundwater of the Malibu Valley Groundwater Basin is a finite value defined by technical means and is known to vary with the elevation of the water table, the

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travel time of groundwater to surface discharge points, and the regional groundwater and surface water quality objectives. The existing technical information is not sufficient to ensure that this WDR/WRR will not result in further impairment of groundwater and surface water quality. In addition, ~~cumulative effects~~ **ailing systems** may cause the failure of existing permitted facilities or preclude the operation of planned projects designed to remedy regional water quality problems.

29. It may be necessary to modify the daily operation of Malibu Lumber and Legacy Park to maintain sufficient separation between the water table and the base of the leachfield. To ensure simultaneous operation does not impact existing facilities, groundwater monitoring wells shall be constructed at the Malibu Lumber leachfield and surrounding Legacy Park. The wells will provide daily water table levels used to indicate when operational changes at both facilities are required to prevent unacceptable rises in groundwater. Should the water table rise to within 5 feet of the base of the leachfield, waste discharge through the leachfield cannot continue and additional operational measures are required including ~~reduced restaurant use~~, additional water conservation, and equalization tank pumping on an emergency basis with written notification to the Regional Board Executive Officer.
30. ~~Because the existing and planned waste disposal flows, estimated at the time of the preparation of this WDR/WRR, exceed the assimilative capacity of 35,000 gpd quantified by the City for the Civic Center area in its April 28, 2005, Final Integrated Water Quality Management Feasibility Study, new subsurface disposal in Malibu Valley beyond this WDR/WRR may not be permitted before additional disposal capacity is documented.~~

#### APPLICABLE LAWS, PLANS, POLICIES AND REGULATIONS

31. On June 13, 1994, the Regional Board adopted a revised Water Quality Control Plan for Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) and subsequently amended. The Basin Plan (i) designates beneficial uses for surface and groundwater, (ii) sets narrative and numerical objectives that must be attained or maintained to protect the designated beneficial uses and conform to the State antidegradation policy (Statement of Policy with Respect to Maintaining High Quality Waters in California, State Water Resources Control Board (State Board) Resolution No. 68-16, October 28, 1968), and (iii) describes implementation programs to protect all waters in the Region. In addition, the Basin Plan incorporates by reference applicable State and Regional Board plans and policies and other pertinent water quality policies and regulations. The Regional Board prepared the 1994 update of the Basin Plan to be consistent with previously adopted State and Regional Board plans and policies. The Basin Plan has been updated to include adopted Total Maximum Daily Loads. This Order implements the plans, policies and provisions of the Regional Board's Basin Plan.

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32. On November 16, 2000, the State Board adopted a revised Water Quality Control Plan for the Ocean Waters of California (Ocean Plan). The State of California Office of Administrative Law and the USEPA approved a revised plan in 2005. The revised plan contains water quality objectives for coastal waters of California. This Order implements receiving water limitations, prohibitions, and provisions that implement the objectives of the Ocean Plan.
33. The State Board designated Malibu Lagoon (Surfrider) Beach, Malibu Lagoon and Malibu Creek as impaired for pathogens on the 2002 303(d) list. They are on the 2006 303(d) list of Water Quality Limited Segments Being Addressed by USEPA TMDLs. On January 24, 2002 and December 12, 2002, the Los Angeles Regional Water Quality Control Board (Regional Board) adopted a Total Maximum Daily Load (TMDL) for bacteria during dry and wet weather, respectively, in Santa Monica Bay which amended to the Basin Plan. On December 13, 2004, the Regional Board also adopted a TMDL for bacteria in Malibu Creek and Lagoon. The Malibu Lumber redevelopment is located 1,500 feet from Santa Monica Bay and 1,000 feet from the tributary, Malibu Creek. On March 21, 2003, the United States Environmental Protection Agency (USEPA) promulgated a nutrient TMDL for Malibu Creek Watershed. This WDR/WRRs must consider the continuing exceedance of Basin Plan standards in these waterbodies adjacent to the site.
34. The City of Malibu submitted their report *Risk Assessment of Decentralized Wastewater Treatment Systems in High Priority Areas in the City of Malibu* on August 30, 2004. The report states that 78,000 to 127,000 cubic feet per day (page 94) of groundwater from the project vicinity discharges into Santa Monica Bay or Malibu Creek. As part of the Memorandum of Understanding between the Regional Board and the City of Malibu, the City committed to reduce the bacteria loads from onsite wastewater treatment systems in the "Malibu Lagoon Contributing Area" where the transit time of groundwater to surface waters is 6 months or less. The Malibu Lumber redevelopment project area lies within the area requiring reduction of bacteria loads.
35. The bacteria numeric targets are defined in the Santa Monica Bay beaches, including Surfrider Beach, and the Malibu Creek and Lagoon TMDLs, all of which lie downgradient from the site. The number of days when fecal coliform can exceed 400 or when enterococcus can exceed 104 per 100 milliliters, as defined in the Regional Board's Santa Monica Bay Beaches TMDL, is zero for dry and wet weather. In the Malibu Creek and Lagoon Bacteria TMDL, the allowable exceedance days for the single sample limits based on daily sampling are three, 17, and zero for winter dry-weather period (November 1 to March 31), wet weather period (November 1 to October 31) and summer dry weather period (April 1 to October 31), respectively.

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36. Nutrient load numeric targets for the EPA's TMDL for Malibu Creek Watershed, which lies downgradient from the site, are as follows:

Malibu Creek:

Total Nitrogen (November 16-April 14)	8.0 milligrams per liter (mg/L)
Total Nitrogen (April 15-November 15)	93% reduction in septic system loading
Phosphorus (April 15-November 15)	90% reduction in septic system loading

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37. The Basin Plan designates beneficial uses and water quality objectives for groundwater is as follows:

Malibu Valley Groundwater Basin:

Existing: agricultural supply.

Potential: municipal and domestic water supply, industrial service supply

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38. TMDLs promulgated by the Regional Board and USEPA, and the 2004 risk assessment completed by the City of Malibu, identify the vicinity of the project as an area of high risk for bacteria and nutrient impairment of surface water and identified a principal cause of that impairment as discharged groundwater. Under such conditions, the groundwater quality must be sufficient to protect the beneficial uses of that surface water, which are follows:

Malibu Creek:

Existing: Recreation 1 and 2, Warm freshwater habitat, Cold freshwater habitat, Wildlife habitat, Rare, threatened or endangered species, Migration of aquatic organisms, Spawning reproduction and/or early development, and Wetland habitat.

Potential: Municipal and domestic water supply.

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Malibu Beach:

Existing: Recreation 1 and 2, Commercial and, sport fishing, Marine habitat, Wildlife habitat, Migration of aquatic organisms, Spawning reproduction and/or early development, and Shellfish harvesting.

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Malibu Lagoon:

Existing: Navigation, Recreation 1 and 2, Estuarine habitat, Marine habitat, Wildlife habitat, Preservation of Biological Habitat, Migration of Aquatic Organisms, Spawning, Reproduction and/or Early Development, and Wetland Habitat.

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39. A recycled/reclaimed water policy is being considered by the State Water Resource Control Board which is expected to redefine the responsibilities of the California Department of Public Health (CDPH) and the Regional Water Boards. Upon adoption of the policy, this WDR/WRR may be modified.

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40. Upon approval of a complete title 22 Engineering Report by the California Department of Public Health with the construction design for the facility, and their incorporation in this document by reference and other modifications as may be necessary, the Regional Board Executive Officer may consider these WDRs to include Wastewater Reclamation Requirements.
41. The Dischargers are not able to quantify all potential impacts, if any, that may result from the discharge to groundwater or to nearby surface waters. The Dischargers are required to monitor for caffeine, MBAS, total coliform, fecal coliform and enterococcus bacteria, nitrate, nitrite, ammonia and organic nitrogen in groundwater in accordance with Monitoring and Reporting Program (MRP) No. CI XXXX. Ongoing groundwater studies in the Civic Center area may cause the Executive Officer to modify the requirements of the MRP.

### CEQA and NOTIFICATION

42. This project involves new facilities and, as such, must meet the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15301. The City, as lead agency, certified a Mitigated Negative Declaration (MND) on August 21, 2007.
43. The Regional Board has notified the Dischargers and interested agencies and persons of the intent to issue Waste Discharge Requirements for this discharge, and has provided them with an opportunity to submit their views and recommendations for the requirements.
44. The Regional Board, in a public meeting, heard and considered all comments pertaining to the discharge and to the tentative requirements.
45. Pursuant to California Water Code section 13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to the State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order.

IT IS HEREBY ORDERED that Malibu Lumber LLC and the City of Malibu shall comply with the following:

#### **A. PRETREATMENT REQUIREMENTS**

1. Pretreatment Education: Dischargers shall provide documentation that they have taken steps to prevent chemicals added to the water by activities at the Malibu Lumber redevelopment (such as plumbing agents, cleaning agents and cosmetic/grooming products) from interfering with biological processes in the

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treatment system. The Dischargers and operator shall control chemical additives in the influent through the education of tenants and customers to minimize the presence of pollutants of concern in the wastewater stream and violation of the effluent limits.

- a. Occupants of the property shall be notified by the Dischargers that they are responsible for eliminating influent waste from garbage disposals, every-flush toilet bowl cleaners, grease, and cleaning products.
  - b. Volatile organic compounds, such as those found in gasoline, solvents, and cosmetic products (including hair, nail and skin -care and treatment products), shall not be discharged into the disposal system.
  - c. Paints, anti-freeze and industrial chemicals shall not be discharged to the treatment plant, but sent to a local recycling or hazardous waste collection program.
  - d. Discharge of chlorine-treated water from pools, water features, and tanks and pharmaceuticals may also cause the system to produce water quality that may not meet effluent limits and shall not be discharged.
  - e. Documentation of the pretreatment educational materials and ~~lease provisions~~ shall be included in a report on water conservation and recycling/reclamation to be provided within 30 days of adoption of this Order.
2. Restaurant Waste Management: The Dischargers shall provide a summary of:
- a. The adequacy of the capacity and design of the Best Management Practices (BMPS) to trap and manage fats, oils, and grease before entering the primary separation tank.
  - b. An operation and maintenance plan for all restaurants and food services establishments, that is capable of preventing fats, oils and grease from entering the treatment system, and also controlling cleaning agents in wastewaters hat enter the treatment system.
3. Water Conservation: Water conservation technology and practices shall be used by tenants and customers throughout the redevelopment to decrease the additional potable water added to Malibu Valley Groundwater Basin and the impact on the water balance. The reduction in water consumption shall be predicted and quantified in the Water Conservation Report, which shall include the number and flow standards of all plumbing fixtures and water usage assumptions, and submitted for approval by the Executive Officer within 30 days of adoption of this Order.

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**B. INFLUENT REQUIREMENTS**

1. **Monitoring Point:** The influent shall be sampled before the waste stream enters the Malibu Lumber treatment system.
2. **Domestic Waste:** Waste discharge shall be limited to domestic-commercial wastewater only. No water softener or garbage disposal discharge is allowed into the collection systems that flow to the treatment unit.
3. **Zero Discharge:** The influent flow to the treatment system will be reduced through operational changes at Malibu Lumber or Legacy Park, such as increased water recycling, irrigation, water conservation or off-site discharge, when the water table is equal to or less than 5 feet below the base of the leach field. Should the water table rise to within 5 feet of the base of the leach field in any well, waste discharge through the Malibu Lumber leachfield or irrigation system cannot continue and additional operational measures shall be implemented. These measures include ~~reduced restaurant use,~~ water conservation, and equalization tank pumping on an emergency basis with written **notification to the** Regional Board Executive Officer approval. ~~The influent and effluent flow limits are as follows:~~

**TABLE 1: INFLUENT AND EFFLUENT FLOW LIMITS**

Daily Water Table Separation From the Base Of the Leach Field In Wells	System Influent (gpd)	System Effluent (gpd)
More than 10 feet	max daily 17,000	max daily 17,000
Less than 10 feet	max daily 10,000	max daily 17,000
Less than 5 feet	<del>less than Recycle and Storage Capacities</del>	No discharge

4. **Continuous Flow Measurement:** Influent daily flows will be measured mechanically with an in-stream flow meter. The flow measurements will be confirmed with the submission of **average** daily use in **monthly** potable water bills.

**C. EFFLUENT REQUIREMENTS**

1. **Monitoring Points:** The effluent shall be sampled and effluent requirements shall apply (a) as effluent leaves the disinfection system at Malibu Lumber and also (b) before discharge to the leachfield or recycled/reclaimed system if the effluent is stored for more than 72 hours.

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2. Zero Discharge: Discharge can be allowed to leachfields only when the groundwater table is 5 feet or below the bottom of the leachfield as measured in groundwater monitoring wells around a perimeter 5 feet from the edges of the leachfield and at the edges of Legacy Park and as described in Table 1.
3. Maximum Flows: The maximum daily flow from the on-site wastewater treatment system shall not exceed the flows listed in the Table 1 above. Effluent daily flows shall be measured mechanically with in-stream flow meter.
4. Title 22: The effluent shall be oxidized and comply with the title 22 Department of Public Health Division of Drinking Water Treatment Technology Report for Recycled/reclaimed Water, January 2007, guidance for disinfected tertiary recycled/reclaimed water, sections 60301.230(a) and (b).
5. pH: The pH of wastes discharged shall at all times be 6.5 to 8.5 pH units.
6. Numerical Limits: The wastewater discharged to the leachfield disposal system shall not contain constituents in excess of the following limits which are based on Basin Plan requirements for groundwater in Malibu Valley Groundwater Basin and title 22 water recycling/reclamation regulations:

Constituent	Units	Monthly Average	Daily Maximum
Total Dissolved Solids	mg/L	--	2000
Biological Oxygen Demand	mg/L	30	--
Oil and Grease	mg/L	10	15
Turbidity	NTU	2	10
Sulfate	mg/L	500	--
Chloride	mg/L	500	--
Boron	mg/L	2	--

7. Pathogen Limits: The wastewater discharged to the disposal system shall not contain constituents in excess of the following limits from the Basin Plan, the Ocean Plan and based on the numeric target in the Santa Monica Bay Beaches and Malibu Creek and Lagoon Bacteria TMDLs for surface discharge during wet and dry weather:

Constituent	30-day Log Mean	Geometric 30-day Mean	7-day Maximum	Maximum
mpn/100mL				
Total coliform	--	--	1.1	230
Fecal coliform	200	200	--	400
E. Coli coliform	126	--	--	235
Enterococcus	--	35	--	104

8. Nutrient Limits: The nutrient in the wastewater discharged to the disposal system must not contain constituents which would exceed the load allocations in EPA's Nutrient TMDL for surface water in Malibu Creek Watershed which calls for a

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93% reduction in total nitrogen discharge. Typical discharge concentrations from standard commercial septic discharges with a denitrification process are 10 mg/L or below. While 20% additional nitrogen loss, from 17,000 gpd at 10 mg/L, might be expected during nitrification within an elevated leachfield where soil addition has provided an expanded unsaturated zone beneath the leachfield, the 93% reduction must otherwise be met at the effluent monitoring point.

Constituent	Monthly Average (mg/L)
Total Nitrogen	<del>1 (applies if the leachfield is constructed without soil addition and less than 10 feet of separation is maintained between the bottom of the leachfield and the highest historical groundwater)</del>
Total Nitrogen	3 (applies if the leachfield is constructed with soil addition and/or more than <u>105</u> feet of separation is maintained between the bottom of the leachfield and the highest historical <u>average level of</u> groundwater)

9. Phosphorus: The phosphorus in the wastewater discharged to the disposal system shall not contain constituents that would exceed the load allocations or numeric targets in EPA's Nutrient TMDL for surface water in Malibu Creek Watershed, which calls for a 90% reduction in phosphorus from septic systems.
10. Priority Pollutants: Priority Pollutants (Appendix A) shall not be discharged in concentrations which exceed the more restrictive of the California Chronic Toxicity Rule, because of documented discharge of effluent to the Ocean from the site, or Federal Maximum Contaminant Limits.
11. Narrative Limits: The wastewater discharged to the disposal system shall not contain salts, metals, nitrogen and phosphorous species, organic chemicals, or priority pollutants at levels that would impact groundwater or surface water that may be in hydraulic connection with groundwater.
12. Noncompliant Waste: Any wastes that do not meet the foregoing requirements shall be held in impervious containers, and discharged at a legal point of disposal.

**D. GROUNDWATER REQUIREMENTS**

1. Groundwater Monitoring Workplan: The Dischargers shall submit a workplan for a groundwater network and monitoring program for approval by the Executive Officer within 30 days from adoption of this Order, with groundwater monitoring to commence within the first quarter.

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2. **Monitoring Network:** The groundwater quality and elevation limits shall apply to groundwater monitoring wells placed at Malibu Lumber and Legacy Park. The separation between the base of the Malibu Lumber leachfield and the water table and the water quality shall be measured within 5 feet of the edge and center of the leachfield. ~~The separation shall also be measured at wells around the perimeter of the Legacy Park property.~~ The wells shall also serve as the compliance points for groundwater quality monitoring because the treated effluent is expected to improve the groundwater quality in the vicinity of the discharge. This effect can be best quantified by contrasting groundwater quality in wells immediately up and downgradient of the leachfield system and irrigated areas.
3. **Groundwater Limits:** The groundwater sampled at the wells shall not contain constituents in excess of the following limits based on Basin Plan and Ocean Plan requirements and in conformance with the TMDLs quoted above:

<u>Constituent</u>	<u>Units</u>	<u>Maximum</u>
Total Dissolved Solids	mg/L	2,000
Nitrogen	mg/L	1 or 3
Sulfate	mg/L	500
Chloride	mg/L	500
Boron	mg/L	2
Fecal coliform	MPN/100mL	200
Enterococcus	MPN/100mL	104

4. **Groundwater Discharge to Surface:** Any discharge from the groundwater to the surface or surface water, which Regional Board staff identifies as related to the treatment plant operation and disposal of effluent, shall also be sampled by the Dischargers (a) at the surfacing location, (b) at a background location and/or upgradient location such as City of Malibu well 7b and (c) at the effluent sampling point. Testing in a California certified laboratory shall be for three of the following: caffeine, an endocrine disrupter, methylene blue active substances (MBAS) or a tracer placed in the leachfield and sampled at an interval sufficient to allow subsurface transport. A report confirming test results shall be delivered to the Executive Officer 30 days after the effluent's appearance at the surface. If Regional Board staff determines that an equivalent proportion of the chemicals, regardless of the absolute magnitude, are present in the discharged fluids and the effluent or discharge, the fluid shall be considered an illicit discharge to the surface, which is prohibited. If the system discharges to the surface, it is a violation of this WDR/WRR and also a discharge without filing a Report of Waste Discharge.
5. **Water Table Elevation:** If Regional Board staff determines that discharge has occurred when the water table is 5 feet below the base of a leachfield at Malibu Lumber or Legacy Park, the discharge shall be considered an illicit discharge to the groundwater, a Water of the State, which is prohibited.

**E. RECYCLING REQUIREMENTS**

1. **Monitoring Point:** The recycling requirements shall apply to effluent before it is discharged into the reuse/recycled/reclaimed system or after 72 hours of storage.
2. **Title 22 Regulations:** The effluent shall be oxidized and comply with the title 22 Department of Public Health Division of Drinking Water Treatment Technology Report for Recycled/Reclaimed Water, January 2007, guidance for disinfected tertiary recycled/reclaimed water, sections 60301.230(a) and (b).
3. **Title 22 Approval:** There shall be no direct or indirect discharge of wastes to a recycle waste system until the California Department of Public Health has approved a complete title 22 Engineering Report. At the time of the approval of the complete recycling plan, the Dischargers will provide quantification of temporary conservation measures such as changes in ~~restaurant operation and~~ water consumption in the water recycling system and irrigation system ('recycle capacity') for approval by the Executive Officer. Storage of the flows before or within the treatment system which does not limit system performance will also be quantified ('storage capacity.')
4. **Numeric Limits:** The recycled/reclaimed water shall not contain constituents with concentrations in excess of the following limits (Table 2)

**TABLE 2: RECYCLED/RECLAIMED WATER LIMITS**

Constituent	Units	Monthly Average	Daily Maximum
Oil and grease	mg/L	10	15
Total dissolved solids	mg/L	--	2000
Chloride	mg/L	--	500
Sulfate	mg/L	--	500
Boron	mg/L	--	2
Total nitrogen	mg/L	--	1 or 3

5. **Turbidity:** The turbidity of the membrane product water prior to disinfection shall not exceed 0.2 NTU more than 5 percent of the time within a 24-hour period and 0.5 at NTU at any time. The turbidity shall be continuously measured with at least one reading every 4 hours and recorded. When the turbidity requirements are exceeded, delivery of recycled/reclaimed water shall be suspended until such time the cause of the exceedance has been identified and corrected.
6. **Disinfection:** Recycled/reclaimed water shall be, at all times, adequately disinfected such that the number of total coliform bacteria shall not exceed any of the following, based on daily grab samples:
  - a. A 7-day median of 2.2 most probable number (MPN) per 100 milliliters;

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- b. 23 MPN per 100 milliliters in more than one sample in any 30 day period prior to delivery of recycled/reclaimed water; and,
  - c. MPN/CFU of 240 total coliform bacteria per 100 milliliters.
7. UV Equivalency: Within 6 months of adoption, the Dischargers shall send a report to the Regional Board and the CADPH that demonstrates equivalency of UV disinfection to chlorine disinfection as used in recycled/reclaimed water treatment plants. Equivalency of UV disinfection to a conventional process used in wastewater recycling and reuse/recycle/reclamation must be demonstrated by the following criteria:
  - a. Total coliform count equal to or less than 2.2/100 ml met with the sample statistical frequency as required for chlorine disinfection; and,
  - b. Virus inactivation efficiency equivalent to that achieved with chlorine disinfection 4 log of inactivation (i.e., 99.99 percent reduction), based on plaque-forming units of F-specific bacteriophage MS2 or polio virus in wastewater.
8. pH: The pH of the recycled/reclaimed water shall be, at all times, within the range of 6.5 to 8.5 pH units. Excursions from this range shall not be considered a violation provided the duration is not more than 10 minutes in a 24-hour period, and the pH shall at all times be within 6 to 9.
9. Narrative Limits: The recycled/reclaimed water shall not contain trace, toxic and other constituents in concentrations exceeding:
  - a. The current applicable Maximum Contaminant Levels (MCLs) for drinking water established by the CADPH.
  - b. Any new Federal or State MCL upon adoption; or
  - c. At levels that adversely affect the beneficial uses of receiving groundwater.
10. Uses: The treated recycled/reclaimed water may be used for the following:
  - a. Surface irrigation in the following areas: Food crops, including all edible root crops, where the recycled/reclaimed water comes into contact with the edible portion of the crop; parks and playgrounds; school yards; residential and freeway landscaping; unrestricted access golf courses; and other allowable irrigation applications specified in the Water Recycling Criteria, Chapter 3, title 22, California Code of Regulations, provided approval from CADPH and Regional Board Executive Officer are obtained prior to delivery.

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- b. Industrial or commercial cooling tower, Industrial boiler feed, and Recreational Impoundments are also allowed.
11. Additional Uses: The recycled/reclaimed water shall not be used other than as specified above unless an engineering report has been submitted for such other uses and/or requirements for these uses have been prescribed by this Regional Board, in accordance with section 13523 of the California Water Code.
12. No Human Consumption: Recycled/reclaimed water shall not be used for direct human consumption or for the processing of food or drink intended for human consumption.
13. Users: The delivery of recycled/reclaimed water to end-users shall be subject to CADPH approval and/or its delegated local agency.
14. Use Area: Use area is an area of recycled/reclaimed water use with defined boundaries, which may contain one or more facilities where recycled/reclaimed water is used. The Dischargers shall be responsible to ensure that all users of recycled/reclaimed water comply with the following:
  - a. All use areas where recycled/reclaimed water is used that are accessible to the public shall be posted with signs that are visible to the public, in a size no less than 4 inches high by 8 inches wide, that include the following wording: "RECYCLED/RECLAIMED WATER — DO NOT DRINK". Each sign shall display an international symbol to alert people who do not read English.
  - b. No physical connection shall be made or allowed to exist between any recycled/reclaimed water piping and any piping conveying potable water, except as allowed under section 7604 of title 17, California Code of Regulations.
  - c. The portions of the recycled/reclaimed water piping system that are in areas subject to access by the general public shall not include any hose bibs. Only quick couplers that differ from those used on the potable water system shall be used on the portions of the recycled/reclaimed water piping system in areas subject to public access.
15. Unstable Earth: Recycled/reclaimed water use shall not result in earth movement in geologically unstable areas.
16. Water Well Protection: No impoundment or effluent holding ponds of disinfected recycled/reclaimed water shall occur within 50 feet of any domestic water wells, potable water reservoirs, and streams used as sources of water supply.
17. Drift: Whenever a cooling system, using recycled/reclaimed water in conjunction with an air conditioning facility, utilizes a cooling tower or otherwise creates a

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mist that could come into contact with employees or members of the public, the cooling system shall comply with the following:

- a. A drift eliminator shall be used whenever the cooling system is in operation.
  - b. A chlorine, or other, biocide shall be used to treat the cooling system recirculating water to minimize the growth of *Legionella* and other microorganisms.
18. Irrigation and wells: No irrigation areas with recycled/reclaimed water shall be located within 50 feet of any domestic water supply well unless all of the following conditions have been met:
- a. A geological investigation demonstrates that an aquitard exists at the well between the uppermost aquifer being drawn from and the ground surface;
  - b. The well contains an annular seal that extends from the surface into the aquitard;
  - c. The well is housed to prevent any recycled/reclaimed water spray from coming into contact with the wellhead facilities;
  - d. The ground surface immediately around the wellhead is contoured to allow surface water to drain away from the well; and
  - e. The owner of the well approves of the elimination of the buffer zone requirement.
19. Irrigation and waterbodies: No irrigation shall take place within 50 feet of any reservoir or stream used as a source of domestic water.
20. Maintenance: Use of recycled/reclaimed water shall comply with the following:
21. Recycled/reclaimed water shall be applied at such a rate and volume as not to exceed vegetative demand and soil moisture conditions.
- a. Special precautions must be taken to: prevent clogging of spray nozzles, prevent over-watering, and minimize the production of run-off.
  - b. Pipelines shall be maintained so as to prevent leakage;
22. Irrigation Runoff: Any irrigation runoff shall be confined to the recycled/reclaimed water use area and shall not be allowed to escape as surface flow, unless the runoff does not pose a public health threat and is authorized under a National Pollutant Discharge Elimination System (NPDES) permit issued by this Regional Board. For the purpose of this requirement, however, minor

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amounts of irrigation return water from peripheral areas shall not be considered a violation of this Order;

23. **Spray:** Spray, mist, or runoff shall not enter dwellings, designated outdoor eating areas, or food handling facilities, and shall not contact any drinking water fountain and public present. Drinking water fountains must be equipped with hoods or covers;
24. **No Rainfall Irrigation:** Recycled/reclaimed water shall not be used for irrigation during periods of rainfall and/or run-off.
25. **Recreational Lakes:** Recycled/reclaimed water used for irrigation shall not be allowed to run off into recreational lakes unless it meets the criteria for such lakes.
26. **Public Contact:** Recycled/reclaimed water use should be limited to times when public is not present.
27. **Marking:** All above ground irrigation appurtenances need to be marked appropriately.
28. **Inspection:** The area using recycled/reclaimed water shall be inspected annually by the Dischargers.
29. **Oversight:** Supervisors must be appointed for the recycled/reclaimed water use areas and their staff must be trained on the hazards of working with recycled/reclaimed water and periodically retrained.
30. **User Agreement:** The Dischargers will develop the User Agreements and Ordinances with the potential agricultural, industrial, and recreational users of recycled/reclaimed water. Copies of the User Agreements and Ordinances shall be provided to the Regional Board and the CADPH.
31. **Adjacent Homeowners:** If the recycled/reclaimed water system lateral pipelines are located along the property lines of homeowners, there may be a potential for cross connections. A buffer zone between the recycled/reclaimed water lines and the property owners is necessary. However, if the Dischargers cannot maintain adequate control of the recycled/reclaimed water system pipelines, the pipelines shall be relocated or a physical barrier needs to be installed to prevent this type of potential problem. The homeowners shall be educated on the use of recycled/reclaimed water in the area. The Dischargers shall specify a plan to interface with the homeowners as a part of a Rules of Service Agreement in an adjacent property awareness program. The Dischargers shall submit this plan to the Regional Board and the CADPH within 30 days of becoming informed of the potential cross connection problem.
32. **Dual Plumbing:** The public water supply shall not be used as a backup or supplemental source of water for a dual-plumbed recycled/reclaimed water

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system unless the connection between the two systems is protected by an air gap separation that complies with the requirements of sections 7602 (a) and 7603 (a) of title 17, California Code of Regulations. Air gaps shall be at least twice the pipe diameter and be located above ground.

- a. The Dischargers shall not deliver recycled/reclaimed water for any internal use to any individually-owned residential units including free-standing structure, multiplexes, or condominiums.
- b. The Dischargers shall not deliver recycled/reclaimed water for internal use, except for fire suppression system, to any facility that produces or processes food products or beverages.
- c. The Dischargers shall not deliver recycled/reclaimed water to a facility using a dual plumbed system unless the report required under section 13522.5 of the Water Code, which meets the requirements set forth in section IV.8 and/or IV.9, has been submitted to, and approved by, the Regional Board and CADPH.

33. Dual Plumbing Requirements: If the Dischargers choose to proceed with dual plumbing they shall submit to the CADPH pursuant to section 13522.5 of the Water Code shall contain the following information for dual plumbed systems, in addition to the information required by section 60323 of title 22 of the California Code of Regulations:

- a. A detailed description of the intended use site identifying the following:
  - 1) The number, location, and type of facilities within the use area proposing to use dual plumbed systems;
  - 2) The average number of persons estimated to be served by each facility on a daily basis;
  - 3) The specific boundaries of the proposed use site including a map showing the location of each facility to be served;
  - 4) The person or persons responsible for operation of the dual plumbed system at each facility; and
  - 5) The specific use to be made of the recycled/reclaimed water at each facility.
- b. Plans and specifications describing the following:
  - 6) Proposed piping system to be used;
  - 7) Pipe locations of both recycled/reclaimed and potable systems;

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- 8) Type and location of the outlets and plumbing fixtures that will be accessible to the public; and
  - 9) The methods and devices to be used to prevent backflow of recycled/reclaimed water into the public water system.
  - 10) The methods to be used by the Dischargers to assure that the installation and operation of the dual plumbed system will not result in cross connections between the recycled/reclaimed water piping system and the potable water piping system. These shall include a description of pressure, dye or other test methods to be used to test the system every four years.
- c. Prior to the initial operation of the dual-plumbed recycled/reclaimed water system and annually thereafter, the dual plumbed system within each facility and use site shall be inspected for possible cross connections with the potable water system. The recycled/reclaimed water system shall also be tested for possible cross connections at least once every four years. The testing shall be conducted in accordance with the methods described herein. The inspections and the testing shall be performed by a cross connection control specialist certified by the California-Nevada section of the American Water Works Association or an organization with equivalent certification requirements. A written report documenting the result of the inspection and testing for the prior year shall be submitted to the CADPH within 30 days following completion of the inspection or testing.
  - d. The Dischargers shall notify the CADPH of any incidence of backflow from the dual-plumbed recycled/reclaimed water system into the potable water system within 24 hours of discovery the incident.
  - e. Any backflow prevention device installed to protect the public water system serving the dual-plumbed recycled/reclaimed water system shall be inspected and maintained in accordance with section 7605 of title 17, California Code of Regulations.

**F. PROHIBITIONS**

1. Limited Discharge: There shall be no direct or indirect discharge of wastes to groundwater or surface water, Waters of the State, at any time other than specified by this permit.
2. Zero Discharge Conditions: There shall be no direct or indirect discharge of wastes to groundwater or surface water, Waters of the State, when the separation between the base of the leach field and the water table is less than 5 feet in the groundwater monitoring wells.

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3. Waste Characteristics: Wastes discharged shall not impart tastes, odors, color, foaming or other objectionable characteristics to the receiving ground water.
4. Stormwater Protection: Adequate facilities shall be provided to divert surface and stormwater away from the treatment plant and disposal system and from areas where any potential pollutants are stored.
5. Flood: The septic tanks, treatment system, sewer collection system and the sewage disposal system, shall be protected from damage by storm flows or runoff generated by a storm up to and including the 100-year storm.
6. Sludge: There shall be no onsite disposal of sludge. Any offsite disposal of sewage or sludge shall be made only to a legal point of disposal. For purposes of this Order, a legal disposal site is one for which requirements have been established by a California Regional Water Quality Control Board, and which is in full compliance therewith. Any sewage or sludge handling shall be in such a manner as to prevent its reaching surface waters or watercourses.
7. Odors: Sewage odors shall not be detectable. The close proximity of the property to other businesses mandates mechanical movement of fumes through filters where vacuum seals are least reliable. Sufficient technological remedies exist to prevent odor discharge from the treatment and disposal system at all times. Odor complaints, even if made by the public and not detected by the operator, are considered indicative of improper operation. Multiple odor complaints are considered indicative of a preventable nuisance which has not been remedied by the Dischargers.
8. Nuisance: The discharge of waste shall not create a condition of pollution, contamination, or nuisance. It shall not be considered an excuse that the property is in close proximity to other businesses as this treatment process has been selected by the Dischargers.
9. Toxicity: Wastes discharged from the wastewater treatment plant shall at no time contain any substances in concentrations toxic to human, animal, or plant life.
10. Biota: Nutrient materials in the waste discharged to the leachfields shall not cause objectionable growth or degrade indigenous biota.
11. Bypass: Bypass (the intentional diversion of waste stream from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against the Dischargers for bypass unless:
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that cause them to become inoperable, or substantial and permanent loss in the absence of a

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bypass. Severe property damage does not mean economic loss caused by delays in production);

- b. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied because of failure to design, permit or install a recycled/reclaimed water system for operation when discharge exceeds leachfield assimilation capacity.
- c. The Dischargers must submit written notice at least 24 hours in advance of the need for a bypass to the Regional Board Executive Officer.
- d. Pumping waste from the treatment system for purposes other than regularly scheduled maintenance, indicates loss of system performance, and is also prohibited, without notification of the Executive Officer.

#### G. PROVISIONS

1. Deed Restriction: Before discharge, the Dischargers the City shall file with the Regional Board a letter from ~~their~~ its attorneys stating that the deed restrictions on the Malibu Legacy Property do not conflict with their obligations under the state and non-profit grants which provided funds for the purchase, nor with their obligations to the residents of the City of Malibu and especially those of Malibu Colony.
2. Monitoring Reports: The Dischargers shall file, with the Regional Board, technical reports on self-monitoring work performed according to the detailed specifications contained in Monitoring and Reporting Program No. CI-XXXX, and as directed by the Executive Officer. The results of any monitoring done more frequently than required at the location and/or times specified in the Monitoring and Reporting Program shall be reported to the Regional Board.
3. Groundwater Monitoring: A monitoring program for groundwater shall be submitted and approved by Regional Board Executive Officer 30 days after approval of this Order so that the groundwater can be measured, sampled, and analyzed, and to determine if discharges from the disposal system have impacted, or are impacting, water quality or water levels. The wells included in the monitoring program will include, as a minimum, groundwater monitoring wells within 5 feet of the edge of the Malibu Lumber leachfield and at the center and with adequate frequency around the edge of Legacy Park.

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4. Baseline Groundwater Elevation: The Dischargers shall establish baseline groundwater elevations from monitoring wells installed at the leachfields or irrigation and document them in monitoring reports.
5. Title 22 Approval: Final approval of the complete title 22 Engineering plan, with plumbing design, shall be approved by CADPH before recycled/reclaimed water use begins. The Recycle and Storage capacity, defined under findings in this WDR/WRR, shall be quantified and submitted in the title 22 Engineering Report.
6. Leachfield Replacement: A 100% replacement area for the leachfield shall be identified on a map and submitted before discharge begins, unless the Dischargers increase the elevation of the leach field through soil addition, allowing the replacement of the added material when percolation rates drop **The Dischargers have the option to identify this 100% replacement area within the proposed leachfield through mechanical changes.**
7. Water Conservation Report: The Dischargers shall provide an annual report regarding water conservation and water recycle/reclamation measures implemented, describing the operation and maintenance of the water conservation equipment and variations in potable, influent and effluent water flows. The first report is due 30 days after approval of this Order and shall include documentation of pre-treatment education, the method of attaining the recycle and storage capacities, and the maintenance or operational protocol established to enforce additional water conservation or storage measures when discharge is not possible.
8. Inspection: The Discharge shall cause the treatment and disposal system to be inspected once every year during the life of the permit by an inspector to be retained by the Dischargers.
9. Onsite Wastewater Treatment Systems Regulations: The Dischargers shall comply with all applicable requirements of Chapter 4.5 (commencing with section 13290) of the California Water Code.
10. TMDL Compliance: The Regional Board has placed a Total Maximum Daily Load (TMDL) for bacteria in the Malibu Creek and Lagoon in the Basin Plan. USEPA has completed a TMDL for nutrients in Malibu Creek and Lagoon. The Dischargers shall comply with waste load allocations developed and approved pursuant to the TMDL for the area. ~~The Regional Board may require that the Dischargers meet pathogen or nutrient limits stricter than those imposed in this Order.~~
11. Reduction of Impairments: The State Water Resource Control Board (SWRCB) and the Regional Board designated Malibu Creek, Malibu Lagoon and Malibu Lagoon (Surfrider's) Beach as impaired for coliform, swimming restrictions; and beach closures on the 2002 303d list. The discharge from this facility, and resultant changes in discharge from adjacent facilities, shall not cause continuing impairment of beneficial uses in the waterbodies adjacent to the site.

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12. **Notification of Surfacing:** The Dischargers shall notify the Regional Board within 24 hours, by telephone, of any surfacing of wastes. Written documentation of the flows shall follow within 30 days and shall include information relative to the location(s), estimated volume, date and time, duration, cause, and remedial measures taken to affect cleanup and measures taken to prevent any recurrence and long term effects. Remedial measures shall include photographic documentation, immediate containment and chlorine disinfection of the surface flows and the removal of those flows by vacuum truck for legal offsite disposal. Sampling is required and includes assessment of chemicals included in the Groundwater Monitoring portion of the Monitoring and Reporting Program, CI XXXX, with the results to be provided within 30 days. Illegal surfacing of wastes may also include fluid flows to the surface adjacent to any part of the discharge system, even if storm or irrigation flows are thought to contribute to the discharge, under conditions described in Groundwater Limits Section.
13. **Protection of Human Health:** Any water quality impact to surface and groundwater such as, but not limited to, risks to human health from pathogens, and accelerated eutrophication of surface waters from nutrients in wastewaters, shall be reported.
14. **Posting:** A copy of this Order shall be maintained at the treatment plant so as to be available at all times to operating personnel.
15. **Future Studies:** The Dischargers shall participate in the implementation of a watershed-wide Monitoring Program if the Executive Officer determines that a groundwater monitoring program for the Civic Center area is needed to evaluate cumulative impacts from waste discharges to groundwater. The Regional Board may require the Dischargers to participate with the Regional Board, and other stakeholders, in the development and implementation of a watershed-wide monitoring program.
16. **Treatment Plant As-Built:** The Dischargers shall submit a final engineering report for the treatment plant, collection system, discharge systems, including the 'as built' engineering diagrams, to the Executive Officer within 30 days of the beginning of discharge.
17. **Material Changes:** In accordance with Water Code section 13260(c), the Dischargers shall file a report of any material change or proposed change in the character, location, or volume of the discharge. A material change includes pumping of more than 90% of the effluent, consistent with National Pollutant Discharge Elimination System requirements for treatment plants.
18. **Responsible Operation:** The Dischargers shall operate and maintain its wastewater collection, treatment and disposal facilities in a manner to ensure that all facilities are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as necessary, to provide adequate and reliable transport,

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treatment, and disposal of all wastewater from all wastewater sources under the Dischargers' responsibilities.

19. **Operator Certification:** Anyone employed in the operation of the wastewater treatment plant must be certified pursuant to Water Code sections 13625-13633. Additional supervision of the waste treatment process and disposal activities is required due to evidence of groundwater discharge to surface water which is impaired for bacteria in a high use area. The treatment plant does not meet the exception in Water Code section 13625.1(a) because operator failure may lead to a violation of water quality objectives. The operator must hold a certification as required by the California Department of Public Health.
20. **Operation and Maintenance Manual:** The Dischargers shall submit to the Regional Board an Operations and Maintenance Manual (O&M Manual) for the treatment plant and disposal facilities for approval by the Executive Officer before discharge. The Dischargers shall maintain the O&M Manual in useable condition, and available for reference and use by all personnel. The Dischargers shall regularly review, and revise or update as necessary, the O&M Manual(s) in order for the document(s) to remain useful and relevant to current equipment and operation practices. Reviews shall be conducted annually, and revisions or updates shall be completed as necessary and submitted to the Regional Board on an annual basis.
21. **Disinfection Manual:** The ultra-violet disinfection system and membrane filtration system require additional operational supervision and maintenance to ensure successful operation. The Discharger shall submit an O&M Manual for these two systems, which the Executive Officer determines is sufficiently detailed, before discharge, and kept on site. The treatment plant maintenance and operation shall comply with the National Water Research Institute/American Water Works Association Research Foundation Ultra Violet Disinfection Guidelines.
22. **Notification:** For any violation of requirements in this Order, the Dischargers shall notify the Regional Board within 24 hours of knowledge of the violation either by telephone or electronic mail. The notification shall be followed by a written report within one week. The Dischargers, in their next regularly scheduled monitoring report shall also confirm this information. In addition, the report shall include the reasons for the violations or adverse conditions, the steps being taken to correct the problem (including dates thereof), and the steps being taken to prevent a recurrence.
23. **Other Regulations:** This Order does not relieve the Dischargers from the responsibility to obtain other necessary local, State, and federal permits to construct facilities necessary for compliance with this Order; nor does this Order prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

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24. Termination or Modification: After notice and opportunity for a hearing, this Order may be terminated or modified for causes including, but not limited, to:
  - a. Violation of any term or condition contained in this Order;
  - b. Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; OR
  - c. A change in any condition, or the discovery of any information, that requires either a temporary or permanent reduction or elimination of the authorized discharge.
25. Additional Reports: The Dischargers shall furnish, within a reasonable period of time, any information the Regional Board may request to determine whether or not cause exists for modifying, revoking and reissuing, or terminating this Order. The Dischargers shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.
26. Standard Provision: This Order includes the attached Standard Provisions Applicable to Waste Discharge Requirements which are incorporated herein by reference and attached. If there is any conflict between provisions stated herein and the Standard Provisions Applicable to Waste Discharge Requirements, the provisions stated herein will prevail.
27. Access: The Dischargers shall allow Regional Board staff, or an authorized representative upon the presentation of credentials and other documents as may be required by law, to:
  - a. Enter upon the Dischargers' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
  - b. Have access to and copy any records that must be kept under the conditions of this Order;
  - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
  - d. Sample or monitor for the purposes of assuring compliance with this Order; or as otherwise authorized by the Water Code, any substances or parameters at any locations.
28. Term: This Order shall remain in effect for a period of 5 years. Should the Dischargers wish to continue discharging to groundwater for a period of time in excess of 5 years, the Dischargers must file a Report of Waste Discharge with the Regional Board no later than 140 days in advance of the 5th-year anniversary date of the Order for consideration of issuance of new or revised requirements. Any

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discharge of waste five years after the date of adoption of this Order, without filing a Report of Waste Discharge with this Regional Board, is a violation of Water Code section 13264. The Regional Board is authorized to take appropriate enforcement action for any noncompliance with this provision including assessment of penalties.

29. Discharge a Privilege: All discharges of waste into the waters of the State are privileges, not rights. In accordance with Water Code section 13263(g), these requirements shall not create a vested right to continue to discharge and are subject to rescission or modification.

#### H. RESCISSION

Enrollment of Malibu Lumber in State Water Resources Control Board Quality Order No. 97-10-DWQ, Series No. 020, and Monitoring and Reporting Program CI-8695 adopted by this Board on January 15, 2004 is hereby rescinded, except for enforcement purposes.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of this Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 11, 2008.

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Tracy J. Egoscue  
Executive Officer

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**Figure 1**

**(Final Malibu Lumber map showing overlap with DEIR Construction plans for Legacy Park and cross sections showing the separation between the base of the Malibu Lumber leach field and the highest recorded water table-to be provided by the Discharger)**

**Figure 2**

**(Final Malibu Engineering Design including modifications made for low flow-to be provided by the Discharger)**

**Figure 3**

**(Operation and Maintenance Manuals for the [a] treatment plant and [b] disinfection system describing daily operation of the UV and membrane systems, including operations at low flow-to be provided by the Discharger)**

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