

AZ WINTER MESA LLC
C/O BRP MANAGEMENT LLC
315 SOUTH BEVERLY DRIVE, SUITE 211
BEVERLY HILLS, CA 90212
310-734-2300
RGOLD@BIGROCKPARTNERS.COM

June 30, 2011

BY EMAIL-ewu@waterboards.ca.gov

Dr. Eric Wu, Chief of Groundwater Permit Unit
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Tentative Memorandum of Understanding with the City of Malibu on the Malibu Civic Center Area Prohibition ("MOU")

Dear Dr. Wu:

AZ Winter Mesa, LLC ("AZWM") appreciates the opportunity to provide comments with respect to the Tentative Memorandum of Understanding with the City of Malibu (the "City") on the Malibu Civic Center Area Prohibition (the "Prohibition").

AZWM owns two contiguous properties in Winter Canyon that are within the current Prohibition boundary, 24200 Pacific Coast Highway (the "Crummer Site") and 23915 Malibu Road (the "Towing Site"). Both the Towing Site and the Crummer Site are included in the "residential pipeline exemption" contained in Resolution R4-2009-007.

Our comments will be brief.

First, we want to commend both the staff and their legal counsel at the LARWQCB and the City of Malibu for their hard work, thoughtfulness and collaborative efforts in drafting the MOU. Subject to the comments below, we believe that the MOU represents a positive development for both agencies and property owners in the Civic Center areas toward achieving our shared goal of improved water quality and therefore we support the approval of the MOU with our proposed modifications.

Prior exhibits produced by the LARWQCB and reproduced by the City which designate the compliance schedule for the Civic Center Area have repeatedly shown the Towing Site as commercial and therefore subject to the compliance requirements of other commercial properties within the Prohibition boundary. This is incorrect. The Towing Site is residential. This error was pointed out to Wendy Phillips and she confirmed that the Towing Site was included in the residential exemption contained in Resolution R4-2009-007 as indicated in the attached email from Ms. Phillips dated December 1, 2009. While the MOU indirectly addresses this error by designating the Towing Site in Phase Three, the MOU also provides that the MOU can be terminated and in that event the terms of Resolution R4-2009-007 would apply. Therefore, in order to prevent any confusion in that eventuality, we want to include this comment in the record.

The City has approved AZWM's application to subdivide and build four single family residences on the Towing Site. AZWM has also filed applications with the City for the development of the Crummer Site, which is currently undeveloped land, for the construction of five single family residences. The plans for the development of both sites include separate OSWTS with advanced treatment. In addition, the LARWQCB as turned over the permitting of both the Towing Site and the Crummer Site to the City. See email of Wendy Phillips to Andrew Sheldon dated December 23, 2009 attached hereto. The MOU contemplates that the Towing Site will be included in Phase Three, while the homes built on the Crummer Site would need to comply with the terms of the Resolution for other residential properties. Therefore, any development on these properties would ultimately have to connect to the City's Wastewater Treatment facility. Depending on various timing issues it may be advantageous to have the Towing Site and/or the Crummer Site connect directly to the City wastewater treatment plant rather than constructing the OSWTS on the properties.

Article III D of the MOU provides "certain properties within Phase Three, including Hughes Research Laboratory and other properties, may choose to join an assessment district, connect to the Wastewater Treatment facility, and pay all associated dues". We have two concerns about this language. First, the language does not specify that undeveloped properties may elect to do so. While we assume that this language is not intended to limited the ability of undeveloped properties, especially new subdivisions, from hooking up to the City's Wastewater Treatment Facility, we request that Article III D be modified to specifically allow for this possibility. Second, while we recognize that it is impractical to include in the MOU an unrestricted right allowing any property in Phase Three, especially certain single family residences, the ability to join the assessment district, we are concerned that the language "Hughes Research Laboratory and other properties" could be interrupted to limit the ability of the Towing Site to join the Phase One or Phase Two

Dr. Eric Wu
June 30, 2011
Page 3 of 3

assessment district if the property owner desires to do so. Therefore, we request that Article III D also be modified to specifically allow for this possibility.

Finally, we are concerned that Article II A (4) of the MOU provides that the Environmental Impact Report is to be prepared in phases. Unless the Basin Plan is subsequently amended to eliminate Phase Two and Phase Three, we believe that the cumulative impacts of all three phases must be included in the EIR for Phase One. The failure to include all properties subject to the Prohibition in the initial EIR could result in CEQA challenges to the EIR. In addition, if the EIR does not include all properties within the Prohibition boundary, this may also result in the unintended consequence of preventing other property owners, like AZWM or Hughes Research Laboratory from joining the Phase One assessment district because the impacts of including these properties in Phase One were not analyzed in the EIR. We believe that this is contrary to the Resolution's goal of increasing water quality in the Civic Center Areas and its underlying mechanism to achieve this goal, having as many properties within the Prohibition boundary connected to the City's Wastewater Treatment Facility as soon as possible.

This letter is being submitted without prejudice to prior comments submitted by AZWM with respect to the Prohibition.

Thank you for your time and consideration.

Respectfully submitted,

/s/ 

Robert Gold

Enclosures

CC: Jim Thorsen, City Manager, City of Malibu
Sam Unger, Executive Director, LARWQCB

Robert Gold

From: Wendy Phillips [wphillips@waterboards.ca.gov]
Sent: Tuesday, December 01, 2009 8:33 AM
To: Robert Gold
Cc: Deborah Smith; Jeff Ogata; Tracy Egoscue
Subject: Re: FW: Malibu Civic Center Prohibition
Attachments: Wendy Phillips.vcf

Yes - That is correct, as it pertains to your proposed five single family residences. The map (and color coding) is intended as a convenience. The language that applies to your exemption is in Resolution No. R4-2009-007.

Wendy Phillips wphillips@waterboards.ca.gov
Chief, Groundwater Cleanup and Permitting Section
CA Regional Water Quality Control Board, LA Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
phone: (213) 576-6618 fax: (213) 576-5777

>>> On Monday, November 30, 2009 at 6:06 PM, "Robert Gold" <rgold@BigRockPartners.com> wrote:
Ms. Phillips and Mr. Ogata-I hope that you both had an enjoyable Thanksgiving.

This email is to confirm our conversation of November 23, 2009, in which you confirmed that the "commercial" designation of 23917-23923 Malibu Road, on the Compliance Schedule is meant to refer to prior commercial uses of the property, and that this designation does not change our pipeline exemption for our proposed new residential uses requiring compliance in 2019.

Thank you.

Robert

From: Robert Gold
Sent: Tuesday, November 17, 2009 11:29 AM
To: Wendy Phillips
Cc: 'Tracy Egoscue'; 'Elizabeth Erickson'
Subject: Malibu Civic Center Prohibition

Ms. Philips- David Reznick sent me a copy of the revised Resolution which you had emailed him yesterday afternoon.

I have one question and one brief comment.

I pointed out last Monday that one of our properties, known as 23917-23923 Malibu Road was shaded "buff", i.e. "commercial" on the Compliance Schedule (Map of Civic Center area) indicating compliance is required in 2015. However, this property is subject to the pipeline exemption for residential projects, which requires compliance in 2019. This was confirmed by Tracy in her email of November 9th. In order to avoid any confusion please confirm that the "commercial" designation on the Compliance Schedule is simply referring to any commercial uses of the property, as portions of the property had been used for commercial purposes, and that this designation does not change our pipeline exemption for our proposed new residential uses

12/1/2009

requiring compliance in 2019.

In addition, page 5 of 12 of the Resolution refers to pipeline projects identified on "Table 4-yy" and refers to the Compliance Schedule as "Figure 4-yy"; however, the table on page 10 of 12 is labeled "Table 4-zz" and the figure on page 9 of 12 is labeled "Exhibit 1". See also page 12 of 12.

Please let me know if you have any questions concerning this email.

Thank you.

Robert

Robert Gold, Development Partner/Vice President
Big Rock Partners, LLC
315 S. Beverly Drive, Suite 315
Beverly Hills, CA 90212
Direct Dial: 310-734-2353
Mobile: 310-880-7155
Fax: 310-734-2297

This communication, together with any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is **STRICTLY PROHIBITED**. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.

Robert Gold

From: Wendy Phillips [wphillips@waterboards.ca.gov]
Sent: Wednesday, December 23, 2009 2:51 PM
To: asheldon@ci.malibu.ca.us
Cc: Robert Gold; Craig George; Deborah Smith; Elizabeth Erickson; Jeff Ogata; Rebecca Chou; Tracy Egoscue
Subject: Fwd: Re: FW: Malibu Civic Center Prohibition
Attachments: Wendy Phillips.vcf; Re: Modification to LARWQCB Resolution concerning Crummer Site(24200 PCH) and the Towing Site (23915 Malibu Road); Wendy Phillips.vcf

Andrew - Nice talking to you a few minutes ago. As you requested, I am reiterating our agency's expectation that the City of Malibu will oversee design, construction, operation, and maintenance of the on-site wastewater disposal systems for Mr. Gold's properties that are undergoing development for single family residences (referenced below, and in our 'pipeline' exemption to Resolution R4-2009-007). As we discussed, we understand that the City will review the on-site disposal systems for this project, to ensure adequate pre-treatment and disposal capacity.

Also, I've also attached another e-mail regarding the inclusion of these properties in the pipeline exemption - I believe that the City is already aware of this. And as clarified below, discharges from these developments are subject to the 2019 prohibition deadline (not the 2015 deadline). We apologize for any confusion caused by the buff shading the prohibition schedule map; the e-mail below should clarify our intent.

Wendy

Wendy Phillips wphillips@waterboards.ca.gov
Chief, Groundwater Cleanup and Permitting Section
CA Regional Water Quality Control Board, LA Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
phone: (213) 576-6618 fax: (213) 576-5777

>>> On Tuesday, December 01, 2009 at 8:32 AM, Wendy Phillips <wphillips@waterboards.ca.gov> wrote:
Yes - That is correct, as it pertains to your proposed five single family residences. The map (and color coding) is intended as a convenience. The language that applies to your exemption is in Resolution No. R4-2009-007.

Wendy Phillips wphillips@waterboards.ca.gov
Chief, Groundwater Cleanup and Permitting Section
CA Regional Water Quality Control Board, LA Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
phone: (213) 576-6618 fax: (213) 576-5777

>>> On Monday, November 30, 2009 at 6:06 PM, "Robert Gold" <rgold@BigRockPartners.com> wrote:
Ms. Phillips and Mr. Ogata-I hope that you both had an enjoyable Thanksgiving.

This email is to confirm our conversation of November 23, 2009, in which you confirmed that the "commercial" designation of 23917-23923 Malibu Road, on the Compliance Schedule is meant to refer to prior commercial uses of the property, and that this designation does not

1/7/2010