

Grant Adamson  
MHAB

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2009 SEP 28 AM 9 27  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

September 25, 2009

Ms. Tracy Egoscue, Executive Officer  
California Regional Water Quality Control Board  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, Ca 90013

Via Federal Express

Re: Malibu Civic Center Area Proposed Wastewater Discharge Prohibition

Dear Ms. Egoscue:

My family and I attended the September 1, 2009 Public Workshop on the proposed Malibu Civic Center Area prohibition on onsite wastewater disposal systems. While viewing the map of the proposed boundaries, we noticed that land in Serra Canyon owned by our family for over a hundred years is located in the far northeast corner of the proposed prohibition area (see attached map). My family and I have been working for the last 16 years to get approvals needed to develop five residential parcels in Serra Canyon that are now within the proposed prohibition area. We applied to Los Angeles County for our Parcel Map 23897 in 1993. We have been in a slow "permitting pipeline" to get our parcel map, a conditional use permit, Coastal Development permit, Fish & Game, Army Corp and Regional Water Quality approvals, recordation of the Parcel Map, a second conditional use permit, a revised Coastal Development Permit and endless grading plan checks for two stages of grading the second of which is nearly completed. Two of the five homes are approved by LA County Regional Planning. Four of the five parcels have LA County Environmental Health approval for their advanced wastewater treatment systems.

We are in the process of grading the driveway to access four of the parcels and installation of utilities is scheduled. Three of the five parcels are already graded. The proposed prohibition would be a severe hardship for us. Below we propose an alternative to allow us to complete our project and also help accomplish our mutual objectives of cleaning up Malibu Creek and Lagoon.

Our land is located in the Lower Malibu Creek watershed, but our nearest proposed building site is more than ¼ mile to Malibu Creek and more than one mile north of Malibu Lagoon. The lots in our subdivision are greater than 8 acres each. It is our understanding that parcels with lot sizes greater than 5 acres don't usually require a permit from the Regional Water Quality Control Board. Because the lots are on the fairly steep southern slopes of the Santa Monica Mountains, there is insufficient level land for the installation of leach field disposal systems on four of the five parcels. For the four

09-107 GRND WATER  
PERM.

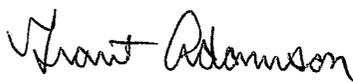
Ms. Tracy Egoscue, Executive Director  
September 25, 2009, Page 2

parcels with seepage pit disposal, we are proposing installation of advanced onsite treatment systems. Wastewater discharged from our proposed development will be treated and would have minimal or no real impact on the bacteria/nutrient load to Malibu Creek and Malibu Lagoon.

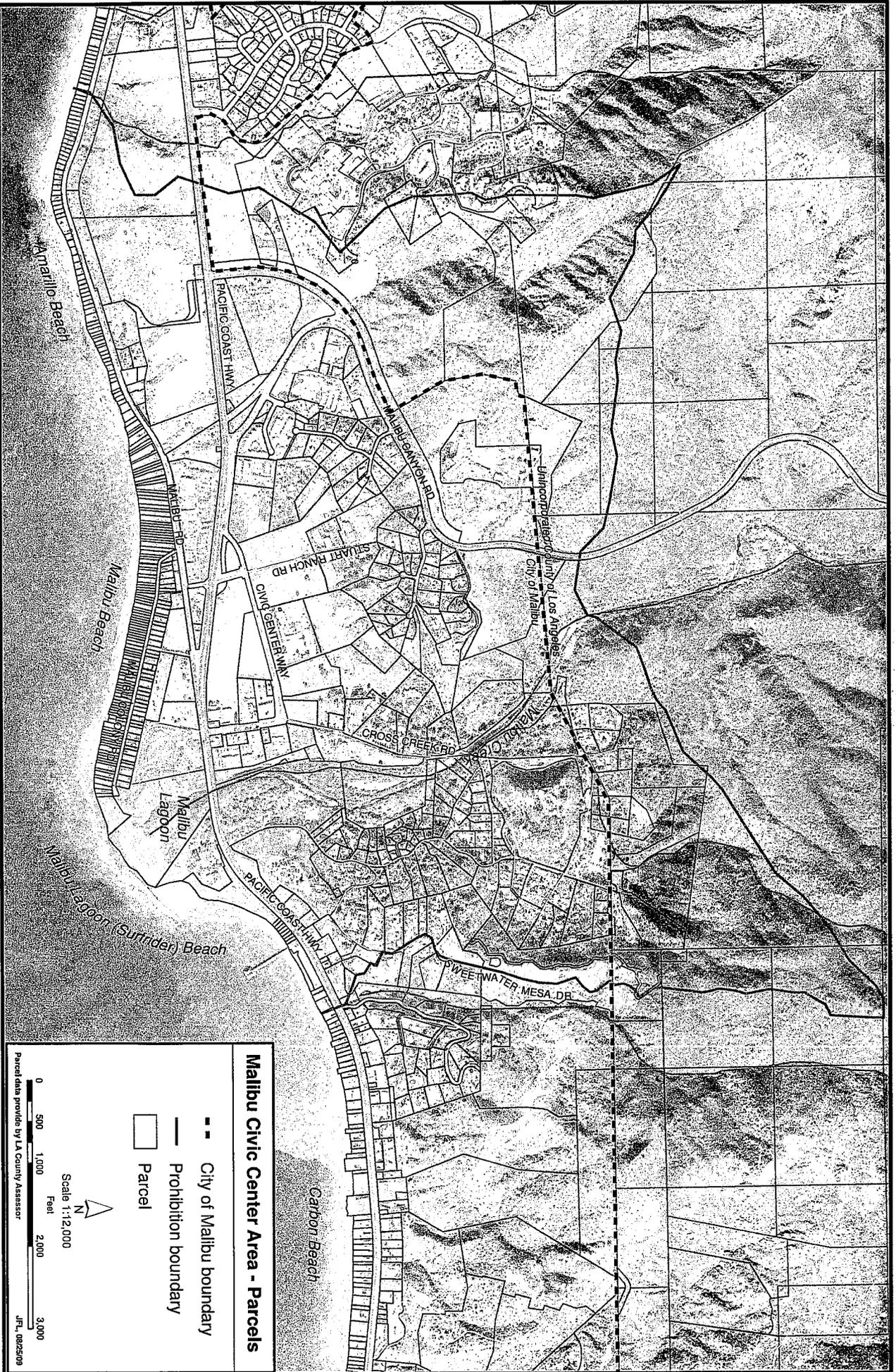
My family has consistently supported a centralized wastewater collection system for Malibu in each of the three or four times it has been before the voters of Malibu. We will support a centralized wastewater collection system for the Civic Center area, pay our share of it and hook up when available. My family has invested a huge sum of money over the past 16 years on our Serra Canyon parcels and to have our plans suspended until such time as a hook-up to a community sewer collection system at our remote Serra Canyon location is available would be a tremendous financial burden.

Since our lots are among about 20 privately owned parcels within the Los Angeles County side of the proposed prohibition area, there is no guarantee that LA County will ever serve so few rural parcels with a sewer system. Final construction approvals are pending for our parcels. We have been in the "permitting pipeline" for 16 long years. We have a huge investment in this project. It would not be fair to us if the "rules of the game" were changed so drastically that our project would become in a state of indefinite limbo. Please allow us to complete our project with advanced treatment systems. We will commit to pay our share of the centralized wastewater collection system and hook up when available. Thank you for your consideration.

Sincerely,  
M.H.A.B. Trust

  
Grant Adamson, Co-Trustee

Attachment  
Copy: Dr. Rebecca Chou



**Malibu Civic Center Area - Parcels**

- - - City of Malibu boundary
- Prohibition boundary
- Parcel

Scale 1:12,000  
 Feet  
 0 500 1,000 2,000 3,000  
 Parcel data provided by LA County Assessor  
 JFL 082509

M.H.A.B. Trust  
 Property (held in  
 separate entities)

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG\*  
REBECCA A. THOMPSON  
NANCI SESSIONS-STACEY  
KIMBERLY A. RIBLE  
ALICIA B. BARTLEY

\* a professional corporation

LAW OFFICES OF  
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16633 VENTURA BOULEVARD, SUITE 1220  
ENCINO, CA 91436-1872

TELEPHONE (818) 933-0200  
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INTERNET: WWW.GAINESLAW.COM

October 7, 2009

**ORIGINAL BY U.S. MAIL**

**VIA E-MAIL [rchou@waterboards.ca.gov](mailto:rchou@waterboards.ca.gov)**

California Regional Water Quality Control Board  
Attn: Dr. Rebecca Chou  
320 West 4<sup>th</sup> Street, #200  
Los Angeles, CA 90013

Re: Public Comments on Proposed Amendment to Water Quality Control Plan  
Opposition to Proposed Prohibition on OWDS in the Malibu Civic Center Area

Dear Dr. Chou:

This office represents the M.H.A.B Trust with regard to its interest in the proposed amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to prohibit on-site wastewater disposal systems in the Malibu Civic Center area (the "Proposed Prohibition"). M.H.A.B. Trust is the owner of five residential parcels in Serra Canyon and within the area affected by the Proposed Prohibition. The parcels are in the permitting "pipeline," and over the past 16 years, M.H.A.B. Trust has obtained various approvals required for the parcels' development with single family homes. The purpose of this correspondence is to respectfully urge that the California Regional Water Quality Control Board (the "Regional Board") not adopt the Proposed Prohibition for the reasons outlined below.

**The Proposed Prohibition Disproportionately Impacts Property Owners that Have Made No Contribution Towards Water Contamination.**

The Proposed Prohibition would immediately prohibit all new discharges from on-site wastewater disposal systems ("OWDS") in the Malibu Civic Center Area, and would prohibit discharges from existing systems within five years from the date of adoption. As such, the impacts of the Proposed Prohibition are most immediately felt by property owners such as M.H.A.B. Trust, with projects in the permitting "pipeline" that do not have existing OWDSs that have contributed to the water contamination the Proposed Prohibition seeks to address.

Dr. Rebecca Chou

October 7, 2009

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Clearly the burden created by the Proposed Prohibition on landowners with projects in the permitting process has no nexus to the impacts those pending projects have had on the alleged contamination of water resources within the Malibu Civic Center area. While properties with existing OWDSs, some of which may have directly contributed to the contamination, are permitted to continue discharging for up to five years after the Proposed Prohibition is adopted, innocent property owners who have expended significant time and resources on the land development permitting process but have not yet received final project approval are stopped dead in their tracks. In effectively rendering vacant parcels within the Malibu Civic Center area undevelopable unless and until a centralized wastewater collection system is implemented, the Proposed Prohibition goes too far in taking more private property rights than reasonably needed to address the impacts of any pending projects to local water resources. See Dolan v. City of Tigard, 512 U.S. 374 (1994) [condition must be roughly proportional to burden created].

The Proposed Prohibition also fails to take into consideration in any way that the OWDS that is now required for any new development would include an advanced treatment system which would result in discharged water quality at the same or even cleaner levels than would result from a centralized wastewater collection system.

#### **The Proposed Prohibition Constitutes a Regulatory Taking.**

The Proposed Prohibition provides for no hardship exemption, leaving property owners with projects in the permitting "pipeline" with no recourse, no matter how much time and money has been invested in the land development permitting process, no matter how far along the project is short of final project approval, and no matter what the facts are regarding the water quality of potential discharges from the property. The draconian effect of the Proposed Prohibition is that economically viable pieces of property cannot be developed, rendering such property valueless for an indeterminate amount of time.

A land use regulation results in a "taking" of private property that requires payment of compensation to the owner if it denies the property owner of economically viable use of property. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1016-1026 (1992). Here, M.H.A.B. Trust has been in the "permitting pipeline" with respect to its parcels within the Proposed Prohibition area for sixteen years, and has made a huge financial investment into the project. M.H.A.B. Trust has received various permits and approvals from several agencies for the project. However, despite M.H.A.B. Trust's due diligence, final project approval has not yet been obtained. Application of the Proposed Prohibition to properties with pending projects such as M.H.A.B. Trust's constitutes a regulatory taking in that the regulation "unreasonably impair[s] the value or use of [the] property," and interferes with private property owners' "distinct investment backed expectations." Allegretti & Co. v. County of Imperial, 138 Cal.App.4th 1261, 1278-1279 (2006).

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**The Proposed Prohibition Violates Vacant Property Owners' Civil Rights.**

The Proposed Prohibition unfairly singles out owners of undeveloped property within the Proposed Prohibition area and denies them reasonable use of their property, while allowing owners of developed properties with existing OWDSs to continue discharging for up to five years after its adoption. Such action bears no rational relationship to the Regional Board's purported interest in restoring water quality because the existing dischargers, some of whom may have directly contributed to the alleged contaminated water supply, may continue discharging for up to five years, while property owners who have made no discharges are indefinitely prohibited from doing so, regardless of how advanced their proposed OWDSs may be.

Moreover, the Proposed Prohibition bears no rational relationship to the Regional Board's Strategic Goal No. 4: to ensure that "water resources are fairly and equitably used and allocated with public trust." It is patently unfair to single out owners of undeveloped property and effectively hold their development rights hostage until a centralized wastewater collection system can be established in Malibu.

The concept of equal protection has been judicially defined to mean that no person or class of persons shall be denied the same protection of law that is enjoyed by other persons or other classes in like circumstances. Hawn v. County of Ventura, 73 Cal.App.3d 1009, 1018 (1977). Here, the Proposed Prohibition arbitrarily and irrationally singles out owners of undeveloped property within the Malibu Civic Center area and immediately prohibits them from discharging any waste, while existing dischargers may continue to do so for up to five years. As such, the Proposed Prohibition violates both equal protection rights and substantive due process. See Del Monte Dunes v. City of Monterey, 920 F.2d 1496, 1509 (9<sup>th</sup> Circ. 1990) [city's attempt to bring back threatened butterfly species by creating butterfly park may be rational, but not rational to single out one parcel to provide the park]; Lockary v. Kayfetz, 917 F.2d 1150, 1155 (9<sup>th</sup> Circ. 1990) [rational relationship test will not sustain government conduct that is irrational or plainly arbitrary].

**The Proposed Prohibition Violates State Policies.**

Finally, the Regional Board has failed to analyze the economic impacts of the Proposed Prohibition. While land use regulations traditionally seek to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry and encourage conditions which make a community a pleasant place to live and work (see Hernandez v. City of Hanford, 41 Cal.4th 279, 291 (2007)), the Regional Board has failed to take such planning and/or economic considerations into account.

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In addition, while the basin planning process may have been certified as functionally equivalent to a full California Environmental Quality Act ("CEQA") review, the process is still required to strictly adhere to all of the requirements of California Code of Regulations, Title 23, Section 3777(a). The process for the Proposed Prohibition has clearly failed to follow all such requirements, including with regard to the requirement to fully analyze all reasonable alternatives and mitigation measures. The Proposed Prohibition fails completely to analyze any alternative which would allow for reasonable economic use of currently undeveloped properties in the project area.

Conclusion.

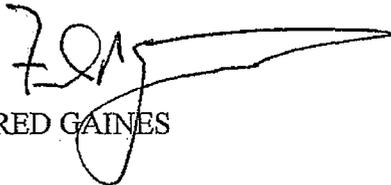
Based upon the foregoing, we respectfully urge that the Regional Board not adopt the Proposed Prohibition. The Proposed Prohibition is patently unfair to owners of undeveloped property in the Malibu Civic Center area, and violates important Federal and State constitutional rights.

Thank you for your time and consideration of this matter. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By

  
FRED GAINES

**From:** Rebecca Chou  
**To:** GW permitting team; Phillips, Wendy; student assistant team; Villar, ...  
**Date:** 10/7/2009 3:30 PM  
**Subject:** Fwd: Public Comments on Proposed Amendment to Water Quality Control Plan  
**Attachments:** Letter to CRWQCB dated 10-07-09.pdf

>>> "Tiffany Perry" <[tperry@gaineslaw.com](mailto:tperry@gaineslaw.com)> 10/7/2009 3:10 PM >>>  
Dr. Chou,

Attached please find correspondence to you dated October 7, 2009. If you have any questions, please do not hesitate to contact our office.

Tiffany D. Perry

Gaines & Stacey LLP

16633 Ventura Boulevard, Suite 1220

Encino, CA 91436

Telephone: (818) 933-0200 ext. 212

Fax: (818) 933-0222

Email: [tperry@gaineslaw.com](mailto:tperry@gaineslaw.com)

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Thank you.

**From:** Rebecca Chou  
**To:** GW permitting team; Phillips, Wendy; student assistant team; Villar, ...  
**Date:** 10/8/2009 11:11 AM  
**Subject:** Fwd: Water Quality Control Plan

>>> <[MEBARCH@aol.com](mailto:MEBARCH@aol.com)> 10/8/2009 10:12 AM >>>

Dr.Rebecca Chou

I am a architect who has lived and worked in Malibu since the sixties. I also live in Malibu Knolls, I am opposed to a moratorium and a resulting sewer system for Malibu Knolls because your staff have failed to show the science that would prove that the septic systems in the Knolls are polluting in the Lagoon. The City of Malibu is having five studies conducted that have reached a preliminary conclusion that disagree with your staff's findings.

If the Board makes a decision to imposed the moratorium on the civic center area without evaluation these additional reports it would be a "rush to judgement" based on incomplete science. At your workshops Dr. Richard Ambrose stated regarding his testing of the Malibu Lagoon that "To me that means the human contamination can't be very much or else we would have found it".

The Board needs to get all of the facts before making the decision regarding a civic center moratorium. The financial impact of a sewer system for the areas adjacent to the civic center will impose a economic hardship on the Malibu Knolls residents. I trust the Board Members will take the time to wait until the five reports are completed and evaluate the additional information.

Sincerely

Mike Barsocchini AIA

**From:** Rebecca Chou  
**To:** GW permitting team; Phillips, Wendy; student assistant team; Villar, ...  
**Date:** 10/8/2009 10:29 AM  
**Subject:** Fwd: Civic Center Septic System Prohibition  
**Attachments:** Virginia VDH Letter.txt; Bringing Them Back Article.txt; Copy of Journal Sentinel Article.txt; Features & Benefits.txt

>>> "Sally & Chris Benjamin" <[indyjo@earthlink.net](mailto:indyjo@earthlink.net)> 10/8/2009 8:54 AM >>>  
October 8, 2009 at 8:50 AM

Dear members of the Regional Water Quality Board,

I am writing to address the proposed amendment to the Water Quality Control for the Los Angeles Region to prohibit on-site waste water disposal systems in the Malibu Civic Center area. The on-site waste water disposal system in the Civic Center should be able to continue. Septic system when managed correctly can co-exist next to the ocean or a stream without causing ill effects.

Thus far the Regional Water Quality Control Board hasn't taken any active steps to promote clean water and ensuring the safety of our current systems whether it be sewer or septic. What education has the RWQB done to inform the public that septic systems are different than sewers and need to be treated differently? What fliers or videos have you circulated to the Malibu residents or to the public or required Malibu to post in public areas? Malibu is an interface between people who use sewers and those who don't. RWQB should play a major part in educating the public about the management of waste via sewer/septic systems and how to manage them.

The RWQB says, it knows of specific offenders which are polluting the ocean and stream and has not cited/ restricted their outflow or septic system use. If you can show that an owner of a septic system is actually polluting the ocean or stream why haven't you declared that a public health violation and closed the system down until it works properly? What mechanism does the RWQB have in place for notification of septic system overflows to protect the public? Where are you posting this information so the public can notify you of blatant septic system problems?

Because a few septic systems are/ or have failed, it doesn't mean that ALL septic systems within the "declared Civic Center Area" are failing or have failed. Your proposal requires that every septic system, failed or not, be abandoned. It also implies a failed system can't be restored and can never work properly once it has failed. This couldn't be further from the truth. There is a method to correct the problem for less cost and less environmental impact to the area. People could continue using their septic systems and the outflow can be clean; clean enough to use as irrigation water.

Will the RWQB repay the homeowners and commercial property owners when the "sewer system" doesn't solve the pollution problem? What will the RWQB do when the sewer system

spills gallons and gallons into the waterways, as we read about other sewer systems doing? Or do you think that Malibu's system will be different? A sewer system brings problems of its own; spillage, getting rid solid waste, building a size to accommodate unforeseen needs and disposing of its waste water. RWQB is asking Malibu citizens to invest in a system which will bring more and bigger problems and CAN NOT guarantee that this request will solve the problem at hand.

Does the Regional Water Control Board know that residents receive flyers from pumping companies stating that it is time to pump? I received one about 3 months ago stating "we haven't pumped in 3 years isn't it about time?" With this type of solicitous propaganda a home owner might think they should be pumping whether they have a problem or not. The Regional Water Quality Board better be careful when concluding that a home owner has septic problems if they are having their system pumped. The homeowner might just be answering to the Septic Company desire for additional income.

Has the Regional Water Quality Board reviewed the wildlife statistics in the area to determine if due to our draught conditions that more wildlife are coming down to the stream and ocean to drink? With more wildlife hunting for water and entering our streams and oceans they also leave behind scat containing e.coli; raccoons, and deer are animals which carry e.coli; not just humans as is being conveyed to the public. Has the RWQB done DNA testing of the e.coli to determine its' origin before drawing the conclusion that it is human based? Warm blooded animals carry e.coli not just humans and Malibu has allot of wildlife.

Currently the Water Quality Board is thinking linearly, mandating common solutions of society "the only way to cleanup water is to ban septic systems and force Malibu into a sewer system." This is an easy, managerial solution and a very costly one for the City and its citizens. RWQB is not able to determine or accurately estimate the cost of such a project. More importantly, RWQB can NOT affirm such a solution will solve the problem. The cost figures given at this time is \$12,000 per year per household. How many years will that have to be paid, and how accurate is that figure? Given the history with the County trying to place a sewer system in Malibu, those figures will be out dated the first year of planning. This is Bureaucracy gone mad; not one searching for alternative methods of solution, or lower cost solutions, or truly desiring to clean-up the ocean and stream, or working with its people.

There are other successful ways to clean-up our ocean and continue to have septic systems. If one takes out the nitrates and nitrites out of the water, the bacteria are not able to survive. Septic system failure occur when the system turns anaerobic causing a bio-film to form. This film build ups and the septic system back-up. By creating an environment that causes the septic system to become aerobic; the bacteria eat up the sludge (bio-film), cleaning the water and allowing the plume to flow naturally and cleanly into the soil. The system costs \$1,075 to \$1,300 per household and slightly more for a commercial business. A septic system can be turned around into an aerobic system in 12 months and benefits seen in just a few weeks. An anaerobic septic system can be aerobic in 4 days.

The system is designed by Aero-stream, found at [www.aero-stream.com](http://www.aero-stream.com). They work globally and patents are pending on their design. I found this reviewing septic system articles while

attempting to arrive at a better solution than mandating that Malibu Civic Center HAS to connect to a sewer system. A sewer system, which at this point in time, is being located close to the Malibu fault line. How can the RWQD think that is okay with the risk of quakes, fracturing structures and spilling waste all over the Civic Center, into the stream and ocean?

Aero-stream places oxygen into an anaerobic environment which brings aerobic bacteria to life breaking down the waste, eliminating 95% of the nitrates and nitrites in the septic system. By eliminating nitrates and nitrites the bad bacteria have lost their food source to grow and multiply. This is much simpler solution than asking homeowners to fund a sewer system especially when their septic systems are working fine. Several articles are attached explaining the system, the benefits, saving failed systems using this method and approval from Virginia's Health Department.

I strongly believe that Malibu can have septic systems and safe water for swimming and clean ground water. RWQD needs take a roll in educating the public and Malibu residents, place several effective alternative systems before the residents rather than a sewer system, limit construction, establish a lot size requirement for septic systems ownership and continue to monitor our water. Malibu can be the environmental example of the future with your help.

Thank you for reviewing, and evaluating this position.

Sally Jo Benjamin

3216 Colony View Circle

Malibu Knolls Resident for 26 years

Aero-stream [www.aero-stream.com](http://www.aero-stream.com)

Don Burcham

Technical Support

1-877-254-7093

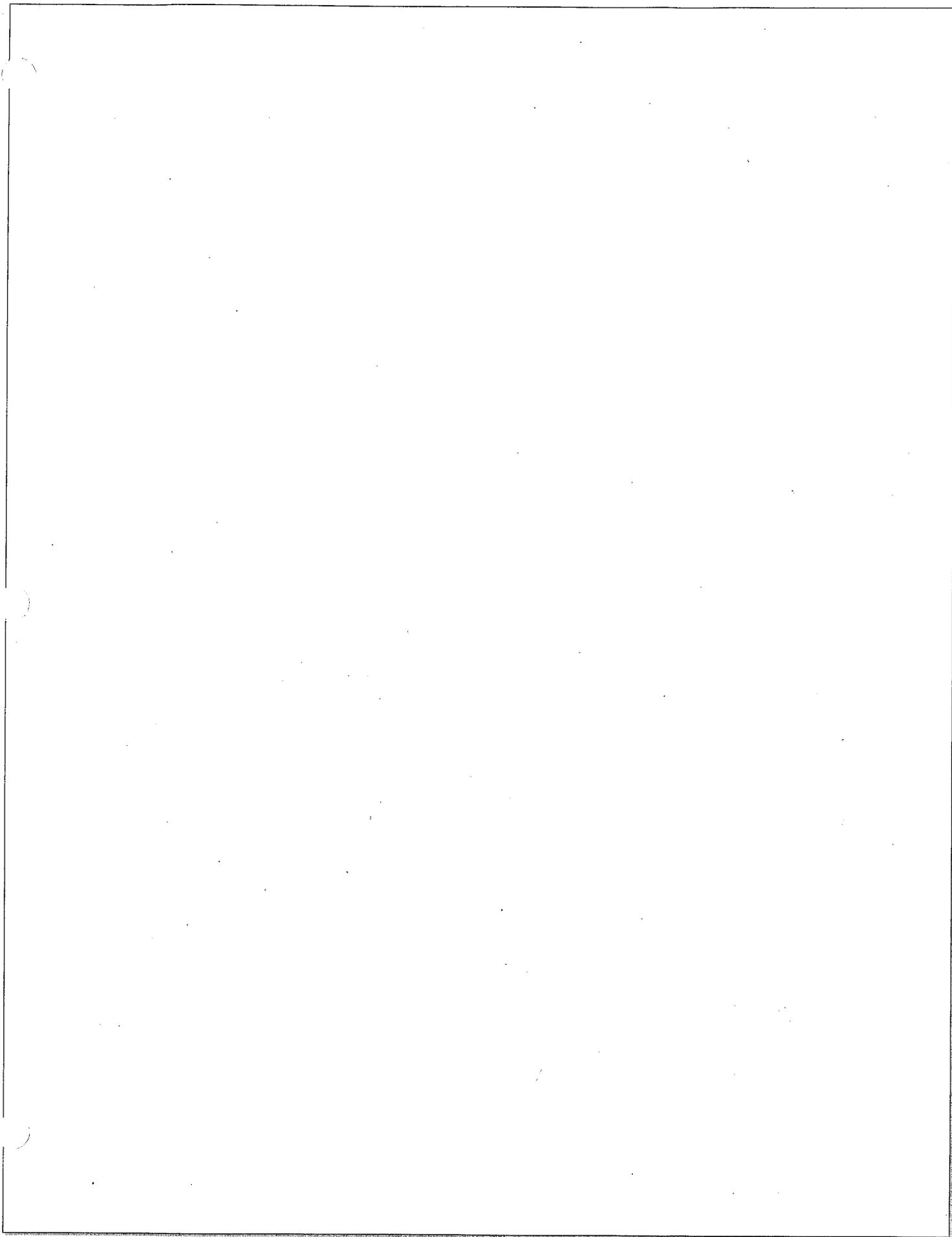
1-262-583-4093 FAX

1-920-763-3655 Cell

Men are won, not so much by being blamed, as by being encompassed with love.

---

William Ellery Channing



techtomics  
Bringing Them Back

Aerobic treatment of effluent proves successful in rejuvenating failed drainfields, after accurate diagnosis of the cause of the failure

By William L. Stuth and Matt M. Lee

W

W

hen faced with a failed drainfield, a home

owner has a choice.

Replacing the drainfield isn't cheap, and in some situations it isn't even feasible. Remedies like lateral line jetting, soil fracturing, and biological remediation cost a great deal less, but they may not work, and if they do, perhaps not for long.

In recent years, another rejuvenation method has gained attention: aerobic treatment of effluent. The placement of an aerobic treatment unit at the septic tank outlet has been shown to restore drainfields that failed from organic overloading and the buildup of a heavy biomat. Where it's feasible, this method splits the cost difference between outright field replacement and the shorter-term measures.

An important caveat applies: Aerobic effluent treatment — or any other method of drainfield restoration — should not be used without a thorough diagnosis to determine why the system failed.

It is not possible to recover all failing systems using aerobic effluent. Before attempting recovery, it's essential to perform a comprehensive investigation and to analyze all the information gathered.

#### Three cases in point

Three case studies illustrate a variety of circumstances in which aerobic-treated effluent can be used for drainfield restoration. The sites are:

- A residential system with a conventional gravity drainfield.
- A residential mound system.
- A cafe with a gravity drainfield.

All three were restored using one aerobic treatment unit (ATU) product line that includes a residential model and a commercial model. The models shared several features, including control of system flow, reduction of BOD5, discharge of effluent very high in dissolved oxygen (DO) and with near-neutral

pH, and discharge aerobic microorganisms.

In all three cases, the drainfield restoration plan included provisions for a drainfield expansion, but in each case, the expansion turned out to be unnecessary. The aerobic treatment unit by itself solved the problem.

#### Case Study 1: Residential Gravity System

A 6-year-old gravity septic system failed at a three-bedroom home occupied by two adults and two teenagers. The septic system design was based on a flow of 360 gpd with a loading rate of 0.8 g/sf over 450 square feet of drainfield. The system had a 1,000-gallon, two-compartment septic tank and a 225-foot, 2-foot-wide serial distribution drainfield. Drainfield line lengths were 28, 30, 70, and 97 feet.

At the first inspection, all drainfield lines were flooded, and the lowest line was surfacing. The owner reported that the system had been pumped three times since installation, at two, three-and-a-half, and five years. Each time, sewage had backed up into the home.

A soil investigation between drainfield lines one and two showed soils with the characteristics of loamy sand to a depth of 60 inches, verifying the 0.8 g/sf loading rate called for in the design. This was underlain by hardpan or glacial till between 60 and 64 inches below the surface.

The evaluation concluded with an analysis of the effluent for BOD<sub>5</sub>, (biochemical oxygen demand), TSS (total suspended solids), FOG (fats, oils, grease), pH, temperature, and DO (dissolved oxygen). Water district records indicated the actual flow to be 300 gpd. The Washington state regulation defined the maximum residential BOD<sub>5</sub> waste strength as 230 mg/l but gave no clear definition for TSS and FOG.

From its own database of residential waste strengths analyzed in Washington, Aqua Test deter-

Aerobic effluent treatment — or any other method of drainfield restoration — should not be used without a thorough diagnosis to determine why the system failed.

mined the maximum residential waste strengths to be 76 mg/l for TSS and 25 mg/l for FOG. Based upon the frequency of pumping and the analytical test results, Aqua Test and the local health regulator concluded that the likely cause of the failure was organic overloading, resulting in formation of a heavy biomat.

The evidence indicated that the construction of an additional drainfield with no change in the waste stream would lead to another failure relatively soon. An alternative was to recover the existing drainfield using an ATU, and add 100 feet of new drainfield. Table 1 summarizes the waste strengths and loading rates for three phases of operation: design, failure and recovery.

The repair started with vacuum pumping of the septic tank and the first line of the drainfield. An ATU was then installed in the second compartment (outlet) of the septic tank, and 100 feet of drainfield was added. After 30 days, there was only a small amount of ponding in each drainfield line. Within 90 days, the only line showing ponding was the first line. The total flow from the home, averaging 313 gpd, was being completely absorbed in the first 28 feet of drainfield.

TABLE 1. TESTING RESULTS: RESIDENTIAL GRAVITY SYSTEM

Mode  
Flow  
Unit flow  
BOD5  
BOD5 #  
BOD5 # per ft2  
TSS  
FOG  
pH  
Temp  
DO  
(gpd)  
(gal/ft2)  
(mg/l)  
per day  
per day  
(mg/l)  
(mg/l)

(C)  
(mg/L)

Design

360

0.80

230

0.69

0.0015

76.0

25.0

NA

NA

NA

Failure

300

0.66

340

0.85

0.0019

24.7

57.7

6.6

18 degrees

0.3

Recovery

313

5.59

61.7

0.16

0.0029

35.0

26.0

7.6

20 degrees

5.5

Available Area

313

0.48

61.7

0.16

0.00024

### Case Study 2: Residential Mound System

Aqua Test investigated a failing onsite mound system serving a three-bedroom house built in 1990 and home to two adults and two small children. The system had begun surfacing when the home was two years old. The system was designed for 360 gpd with a loading rate of 1.2 g/sf over 300 square feet of disposal bed. It had a 1,000-gallon, two-compartment septic tank, a 250-gallon pump tank, and a 1/3 hp, float-controlled pump.

Effluent samples were collected from the pump tank, and an hour meter was installed on the pump. Over one month, the flow averaged 196 gpd. The pump was delivering 52 gallons in a 2.5-minute cycle

— half what the pump was discharging at installation. There was ponding in the gravel bed in the top of the mound. The amount of effluent surfacing was about 10 gallons per cycle. This meant the mound was absorbing 42 gallons per cycle.

Further investigation showed that the mound sand had the proper composition for the area. Table 2 summarizes the waste strengths and loading rates for the design, failure and recovery modes.

Aqua Test and the health regulator concluded that organic overloading and the formation of a heavy biomat probably caused the failure. To correct the problem, Aqua Test recommended recovery of the drainfield using an ATU and the installation of additional drainfield, if needed.

Work began with pumping of the septic tank and the gravel bed of the mound. An ATU was then installed. One week after the ATU began operating, effluent was no longer surfacing. The system was then monitored twice a year, and no surfacing was detected. Therefore, the additional drainfield did not have to be built.

This diagram shows the site of the failed mound system in Case Study 2. The new drainfield shown in the diagram did not need to be built because the ATU installed after the septic tank produced clean effluent that allowed the mound to recover.

### Case Study 3: Commercial Gravity System

Aqua Test investigated a system failure at a 45-seat cafe serving typical American dishes for lunch and dinner, seven days a week, ten hours

per day (150 meals per day on average). The design flow used to size the system was 1,100 gpd. The system had separate 1,000-gallon septic tanks for black water and gray water.

A common line ran from the tanks to the drainfield, a gravity serial distribution system using drop boxes between the lines. There were eight trenches, each 3 feet wide and 65 feet long, for a total of 1,560 square feet,

corresponding to a loading rate 0.70 g/sf.

Within two years of installation, the drainfield failed, and citizens complained to the local health department about odors. To determine the effluent strength, the health department sampled the flow entering the first drop box. The department ordered the owner to fix the problem within 30 days or the cafe would be closed. Table 3 summarizes the waste strengths and loading rates for the design, failure, and recovery modes.

Aqua Test was asked to design a system compliant with health department requirements. A drainfield investigation identified the soil as loamy sand from the surface to 52 inches, and glacial till or hardpan to 60 inches.

The drainfield was installed in the top 24 inches, meeting local regulations for drainfield separation.

To remedy the failure, Aqua Test recommended a phased approach. The first phase called for installation of an ATU to reduce the waste strength of the gray water to residential levels, vacuuming of the drainfield, and weekly monitoring of the system for two months. The second phase — drainfield replacement — would be implemented if sewage surfaced or if drainfield lines seven and eight ponded during the monitoring period.

After startup, monitoring never found more than four lines ponded. The replacement drainfield was not needed. (The routine pumping of this system includes vacuuming of drainfield lines one and two.)

A workable alternative

These case studies show that aerobic-treated effluent can help restore drainfields that fail because of organic

overloading, leading to formation of a heavy biomat. However, before attempting recovery of any onsite system using aerobic effluent, it is necessary to establish whether an excessive biomat is truly the problem.

If the biomat is verified to be the cause, it is necessary to evaluate the extent of the clogging. If the disposal system will not hydraulically accept any flow, it may not be recoverable without adding more disposal area. Review of records from many recovered systems shows that the fastest recoveries occur when the treatment or disposal system is vacuumed out before aerobic effluent is introduced to the system.

William L. Stuth is president and Matt M. Lee is general manager with Aqua Test Inc. in Black Diamond, Wash. The firm specializes in onsite system design and drainfield rejuvenation, and also supplies Nibbler aerobic treatment systems. †

#### TABLE 2. TESTING RESULTS: RESIDENTIAL MOUND SYSTEM

Mode

Flow

Unit flow

BOD5

BOD5 #

BOD5 # per ft2

TSS

FOG

pH

Temp

DO

(gpd)

(gal/ft2)

(mg/l)

per day

per day

(mg/l)

(mg/l)

(C)  
(mg/L)  
Design

360

1.20

230

0.69

.0023

76.0

25.0

NA

NA

NA

Failure

196

0.65

262

0.43

.0014

36.0

61.0

7.4

16 degrees

0.2

Recovery

319

0.94

63.5

0.17

.00056

31.3

10.1

7.7

23 degrees

6.3

TABLE 3. TESTING RESULTS: COMMERCIAL GRAVITY SYSTEM

Mode

Flow

Unit flow

BOD5

BOD5 #

BOD5 # per ft2

TSS

FOG

pH

Temp

DO

(gpd)

(gal/ft2)

(mg/l)

per day

per day

(mg/l)

(mg/l)

(C)

(mg/L)

Design

1100

0.64

230

2.11

0.0014

76

25

NA

NA

NA

Failure

1013

0.64

4900

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Recovery

891

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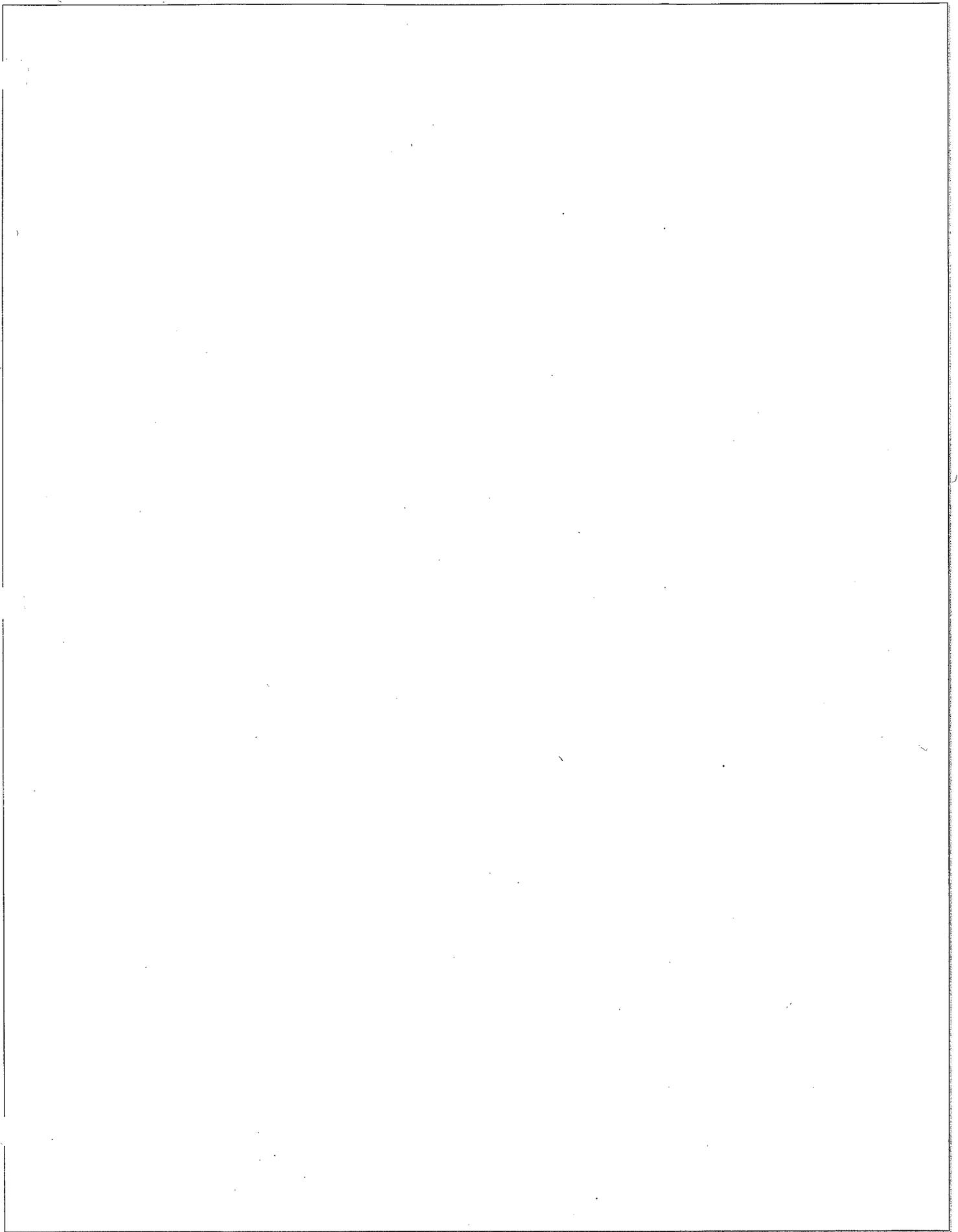
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By Kathleen Gallagher of the Journal Sentinel  
Posted: Nov. 21, 2008

## Pumping life into septic tank

Company's product adds oxygen to extend system's existence

Thoughts of gurgling toilets, sewage backup and foul-smelling liquid saturating the lawn flashed across Karl Holt's mind when he realized his septic tank was nearly full. It was potentially a very dirty problem, but Holt said he didn't like the available remedies.

Pumping the tank is a short-term solution, and additives can hurt more than they help, he reasoned. Replacing the system would cost a minimum of \$15,000 -not including re-seeding the lawn and replacing the deck. "I was looking to save that \$15,000," said Holt, 45, president of Aero-Stream LLC in Hartland. So he began tinkering. The result is a patented product that sells for less than \$1,000 that Holt says homeowners can use to revive failed septic systems and avoid more expensive alternatives.

"One of the difficult things about this business is you have to educate people," Holt said. "They won't think twice about putting a coat of paint on the house or getting an oil change every 3,000 miles, but they just want to flush their toilet and not think about their septic tank."

Janet Vance was one of those people, until the septic system at her second home in Kentucky failed. "We couldn't do laundry and we flushed once a day. It was pretty much a goner," Vance said. She did extensive research and found Aero-Stream® on the Internet. Holt's solution seemed too good to be true, and Vance said her husband and other family members discouraged her from pursuing it. It seemed worth a try, though, and Holt offers a refund if customers aren't satisfied at the end of a year, she said. It worked, and now the water in the septic tank is clear with no odor, Vance said.

Aero-Stream®'s product, called a Remediator, transforms a septic system into one that is filled with oxygen-loving bacteria instead of less efficient, oxygen-hating bacteria, Holt said. Users plug the Remediator into an outside electrical outlet, he said.

Call it aerobic exercise for a septic system; the Remediator pumps oxygen into the tank through a hole customers drill in its cover.

Holt says that destroys within 48 hours the oxygen-hating bacteria in the tank that have been eating the waste and encourages the growth of oxygen-loving bacteria.

Oxygen-rich liquid begins to flow out of the tank into the leach field. The oxygen-loving bacteria are so much

more efficient at gobbling up waste they cut off the oxygen-hating bacteria's food source by 70% to 80%, Holt said. They also eat the black slimy mix of oxygen-hating bacteria and their secretions that have been clogging the soil, and treated water starts flowing again down into the water table.

"Many people, even in the industry, do not understand the mechanics of the process and therefore find it difficult to comprehend the simple solution," Holt said.

Ken Adamec, manufacturing manager at Aero-Stream® LLC, uses a drill press at the company's factory, where the Remediator oxygen-injecting system is built.

## Professional doubt

The way Holt's product works is theoretically possible, but experts who aren't familiar with it wonder how the Remediator can get enough oxygen into the leach field to fix the problem quickly. Can it really unclog a drain field, given all the organic matter that stops water from flowing through it in a failing septic system, asked Brian Holmes, a professor of biological systems engineering at the University of Wisconsin-Madison.

It would seem more promising if the oxygen were being delivered directly to the field, said Rick Reichardt, an environmental engineer with the state Department of Natural Resources.

Karl Holt is president of Aero-Stream® LLC, a Hartland company that sells a patented product for making

Holt says once it's aerated, the liquid -known as septic systems more efficient. Holt says his product effluent -flows fairly quickly out of the tank to help

helps homeowners avoid having to replace failed septic get rid of oxygen-hating bacteria. Soggy lawns with systems. surface ponding will lose their odor within two weeks, and dry out in six to eight weeks, he said.

Ten reviews of Aero-Stream's product on [www.ratepoint.com](http://www.ratepoint.com) are all positive, as is Linda Paun, owner of the Merton Custard Shoppe. Cut her costs

Paun says she wouldn't have been able to build her restaurant if she'd had to install the as-much-as \$75,000 system Waukesha County initially wanted instead of the non-industrial system she installed that uses two Remediators.

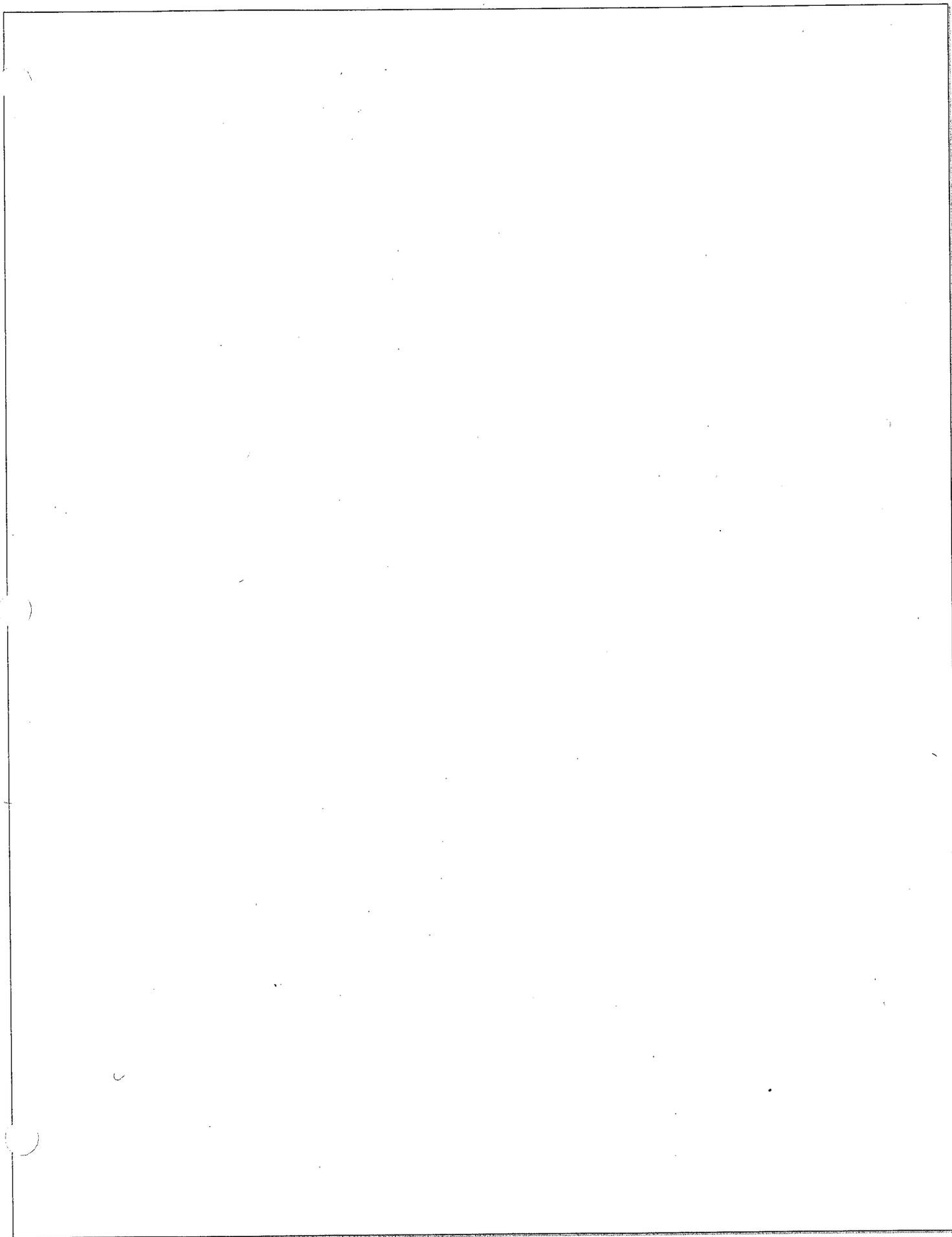
"I don't know where Karl comes up with all these ideas, and I don't know how he figures out how to design and build them, but it works," Paun said.

Holt has a mechanical engineering degree from Milwaukee School of Engineering, and he's done product development at Harley-Davidson Inc., Strattec Security Corp. and other companies. Holt says he's also made a Zamboni out of a garden tractor to shovel an ice rink on the lake near his home, and made progress developing an electric drive system for pontoon boats. The simpler, the better is his motto, he said.

Aero-Stream is distributing the Remediator across North America, including Canada, which now provides about 20% of sales, Holt said. Aero-Stream has five employees and is producing revenue, said Greg Reuter, an accountant at EWH Small Business Accounting in Waukesha, which does the company's accounting work. "If he can hit the right marketing streams, I think it's got unlimited potential basically because he's

looking at anyone who isn't hooked up to a city sewage system, " Reuter said.

For more information:  
Aero-Stream®, LLC.  
1-877-254-7093  
[info@aero-stream.com](mailto:info@aero-stream.com)



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September 22, 2009  
Steven and Helen Clarke (age 72)  
3752 Serra Rd  
Malibu CA 90265

Dr. Rebecca Chou  
Cal. Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, #200  
Los Angeles, CA 90013

RE: Malibu Septic Issues

Dear Dr. Chou

I attended the September 1st, workshop at Pepperdine concerning the above situation. It was a wonderful presentation and your teams' slides and oral comments were quite professional. This does not mean that we agree with the conclusions and remedies as it concerns us and many senior citizens that will be profoundly affected as to their financial well being and quality of life.

We like many others have lived in our house for over 32 years. Our kids went to school here and have since moved away. We have never had a septic problem and we suspect our discharge footprint is very small in relation to the total Civic Center. You may not know that according to the last U.S. census that there are 12,575 people in all of Malibu and that 14% were over age 65. Of these, 8 % of all seniors were classified below the poverty line (please see attachment).

The stock market crash and negligible rates on savings have had a profound effect on seniors' financial outlook. When you add the sharp decline of housing prices and the forthcoming cut in Medicare that congress is talking about, making a \$500 billion reduction to help pay for the new health care initiative is another huge unknown. Refinance the house? Can't really assume that credit will be available at that time, can you?

It is the cost of a new, personal waste water system that was mentioned as being from \$100,000 to \$1,000,000 that is of grave concern. The Board can't seriously believe that everyone is just super rich and can afford this. Many will have to move at the most venerable time of their life. At our age we face severe life and health challenges and the prospect of, in home, care. I know several seniors who are looking at this.

We propose that seniors over the age of 75 have an extra 5 years to meet the Board's goals. Yes, that includes us and a few others. The harsh reality of human mortality should cure most of the issues by the new expiration date. Senior exemptions are very common.

Respectfully,

*Steve Clarke - Helen Clarke*

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2009 SEP 23 PM 2 11  
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QUALITY CONTROL BOARD  
LOS ANGELES REGION

uniformly north-south. Around Malibu (and Santa Barbara) the coastline runs almost entirely east-west, as does its main artery, Pacific Coast Highway. While traveling northbound on PCH through Malibu, one is actually traveling west. Likewise, the Pacific Ocean is due south and the inland Santa Monica Mountains are north. The result of this is many, not all, of Malibu's beaches actually face south.

Carbon Beach, Paradise Cove, Escondido Beach, Surfrider Beach, Broad Beach, Pirate's Cove, Westward Beach, Zuma Beach, and Trancas are places along the coast in Malibu. Point Dume forms the northern end of the Santa Monica Bay, and Point Dume Headlands Park affords a vista of stretching to the Palos Verdes Peninsula and Santa Catalina Island. Directly below the park, on the western side of the point, is Pirates Cove, named for rumrunners during prohibition who liked the secluded beach for offloading their cargo. Because of its relative seclusion, Pirate's Cove was previously used as a nude beach, but because nudity is now illegal on all Los Angeles County beaches, nude sunbathers are subject to fines and/or arrest. On the eastern side of the point is "Little Dume", a surf spot which is accessible only by an unmarked trail below Wildlife Drive which has a locked gate. Surfers often paddle out from Paradise Cove to the area when the waves are breaking.

Like all California beaches, Malibu beaches are technically public land below the mean high tide line. Many large public beaches (Zuma Beach, Surfrider Beach) are easy to access, but such access is sometimes limited in some of the smaller and more remote beaches. Although access to most all Malibu beaches can be obtained after a bit of a walk, the issue of expanded public access is continuously addressed and debated by the City. Many Malibu homeowners favor limited public access expansions to some beaches, claiming that many visitors are less likely than residents to respect the beaches or private property.

## Demographics

As of the census<sup>[42]</sup> of 2000,<sup>[43]</sup> there were 12,575 people, 5,137 households, and 3,164 families residing in the city. The population density was 244.4/km<sup>2</sup> (632.9/mi<sup>2</sup>). There were 6,126 housing units at an average density of 119.0/km<sup>2</sup> (308.3/mi<sup>2</sup>). The racial makeup of the city was 91.91% White, 8.49% Asian, 0.90% African American, 0.21% Native American, 0.10% Pacific Islander, 1.67% from other races, and 2.72% from two or more races. Hispanic or Latino of any race were 1.48% of the population.

There were 5,137 households out of which 25.3% had children under the age of 18 living with them, 51.5% were married couples living together, 6.7% had a female householder with no husband present, and 38.4% were non-families. 27.3% of all households were made up of individuals and 6.7% had someone living alone who was 65 years of age or older. The average household size was 2.39 and the average family size was 2.86.

The age distribution was 19.6% under the age of 18, 7.9% from 18 to 24, 26.4% from 25 to 44, 32.0% from 45 to 64, and 14.0% who were 65 years of age or older. The median age was 43 years. For every 100 females there were 97.8 males. For every 100 females age 18 and over, there were 95.6 males.

The median income for a household in the city was \$102,031, and the median income for a family was \$123,293. Males had a median income of \$100,000+ versus \$46,919 for females. The per capita income for the city was \$74,336. About 3.2% of families and 7.6% of the population were below the poverty line, including 6.8% of those under age 18 and 1.1% of those age 65 or over.

## Government and infrastructure

### Local government

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CALIFORNIA REGIONAL WATER CONTROL BOARD

50% OF SENIORS  
BELOW POVERTY LINE

**Rosie Villar - Feedback on Tuesday's Malibu meeting**

---

**From:** "Ken Duzy" <kskd2@ix.netcom.com>  
**To:** <wphillips@waterboards.ca.gov>  
**Date:** 9/2/2009 11:02 AM  
**Subject:** Feedback on Tuesday's Malibu meeting  
**CC:** <jthorsen@ci.malibu.ca.us>

---

Ms. Phillips-

I'm a homeowner in the Malibu Knolls area and I attended Tuesday morning's meeting at Pepperdine.

By way of feedback, I'd like to suggest that in future meetings:

- 1) Spend less of the limited time available proving the existence of pollutants since countless studies have shown that they exist.
- 2) Spend more time on identifying the major sources of pollution. In your prohibition, every homeowner is treated the same as every current violator of standards like Jack in the Box or every high volume water user like the many restaurants.

For example, our house, according to your map, is 3,500 feet from the ocean and 2,700 feet from Malibu Creek, and I know that we are at 300 feet above sea level. In the 19 years that just my wife and I have lived there, we've never had so much as a damp spot over our drainage field.

I'm far from convinced that we, or even our entire neighborhood, should be treated the same as the many high traffic restaurants that are within 10 feet of sea level and not far from Malibu Creek. And I'm also not convinced that the 30 or 50 or \$70,000 that each homeowner will pay to build and connect to the sewer system will, in the end, improve water quality by more than a few percent beyond the gains made from addressing the core civic center area.

One alternative is to approach the problem in two phases, first the commercial, apartment, condominium and substandard beach properties and second, if it is proved necessary, the outlying residences. Properties bordering Webb Way could be part of a northern boundary for separating phase 1 and phase 2, with perhaps the exception of Hughes Research Lab. I suspect that it will take the full 5 years to build out phase 1 and begin to measure its effect.

We need more flexible solutions than the "one size fits all" prohibition, and 5 weeks is not going to be enough time to develop them if the next public information meeting is not until October 1 and the deadline for comments is only a week after that.

Finally, if your staff is considering solutions that involve Tapia without ever having contacted the manager there, as he stated, that is a red flag that the process is moving too fast. More time and more flexible solutions are needed.

Regards,

Ken Duzy

**From:** Rebecca Chou  
**To:** GW permitting team; student assistant team; Villar, Rosie  
**Date:** 10/7/2009 4:28 PM  
**Subject:** Fwd: Written comments on amendment to prohibit On-Site Wastewater Disposal systems in the Malibu Civic Center Area

>>> "Ken Duzy" <[kskd2@ix.netcom.com](mailto:kskd2@ix.netcom.com)> 10/7/2009 4:19 PM >>>  
Written comments on the amendment to prohibit On-Site Wastewater Disposal systems in the Malibu Civic Center Area

### A Simple and Practical Improvement to the Prohibition

#### First Focus on the Sources of 90% of the Pollution

According to the RWQCB's presentation slide titled "#3 Is there a pathway from OWDSs in the Civic Center to the beaches?", the civic center commercial properties produce 10 times the pollution produced by residences (110,000,000 vs 11,500,000 MPN/100 ml of enterococcus).

This validates the common sense conclusion that restaurants and other businesses that are closer to the ocean, near sea level and use large volumes of water to prepare food, wash dishes and flush the toilets used by many hundreds of customers a day do indeed contribute far more to the civic center's water pollution than residences that can be 3,000 feet from the ocean and 200 or 300 feet above sea level.

If money were no object, then drawing the prohibition boundaries based on watershed ridgelines, as the RWQCB has done, would make perfect sense. But the prohibition will have a huge financial impact on the residents of the civic center area-perhaps \$100,000 per residence to fund a wastewater treatment plant.

Given the enormity of the financial impact on residents, doesn't it make great sense to first focus the prohibition on the commercial properties that

the RWQCB says generate 90% of the pollution? Once that has been done, if levels of pollution are still not acceptable, then impose the prohibition on residences.

Not all residents are the rich and famous. Among my fellow residents of Malibu Knolls are a librarian, an electrician and a gardener. Residences are not businesses that can raise prices on items sold to pay for the wastewater system.

A simple, practical and humane starting point for the northern boundary of the prohibition would be to use properties bordering Civic Center Way as the initial northern boundary. Since that will include virtually all commercial properties, it should eliminate 90% of the current pollution according to the RWQCB's own study cited at the beginning of these comments.

Ken Duzy

23837 Harbor Vista Dr.

Malibu, CA 90265

October 7, 2009

**Rosie Villar - Postponing the RWCB vote to prohibit Malibu Civic Center septic systems**

---

**From:** <busurfmnd@aol.com>  
**To:** <rhou@waterboards.ca.gov>, <erichson@waterboards.ca.gov>, <rvillar@waterboards.ca.gov>, <drice@waterboards.ca.gov>  
**Date:** 10/8/2009 3:12 PM  
**Subject:** Postponing the RWCB vote to prohibit Malibu Civic Center septic systems  
**Attachments:** SCRWQCB10809.doc

---

Thursday 10/08/09

Dear Dr. Chou:

I am attaching a written memo for you, the Board members and staff to incorporate in your evaluations on the proposed amendment to the Basin Plan.

I originally was one of the activists that stimulated the Malibu Creek Watershed evaluations and discussions. I have been relatively inactive in recent studies and discussions in part due to illness, family, and a growing appreciation that water related illnesses have sharply declined since the Malibu Lagoon berm has been allowed to remain intact more often and other improvements have been made.

I look forward to working with you, other staff and the Board members on our common goals..

Thanks,

Jeff Harris MD MPH

PS Please acknowledge receipt of my submission.

310-456-1891

Jeff Harris MD MPH  
23712 Malibu Road  
Malibu CA 90265

RE Proposed Amendment to Prohibit OWDSs in Malibu 10/8/09

Dear Board Members, Staff and Stakeholders:

I am recommending that you postpone any action on the proposed amendment to prohibit septic systems in the Malibu Civic Center area. Pending results by many qualified scientists on Malibu Creek's lower watershed pathogens, water hydraulic pressures, nutrient sources etc. should be evaluated by you before any vote is taken. These results are due to be published early next year.

My perspective comes from many years of treating surfers and swimmers for infections at Surfrider Beach; I can confidently announce that I have not seen nor heard of water related infections for at least the past five years during the peak use summer months.

I expect the latest epidemiological study done this summer at Surfrider Beach will indicate little if any water related illness when it is published early next year. The Regional Board, SMBRP, Heal the Bay, Baykeeper, LVRCD and other activist stakeholders will deserve accommodations for this accomplishment early next year.

The Board and others must realize that they cannot get current human pathogen risk assessments relying on outdated and invalidated fecal and coliform bacteria indicators. As you know the many lagoon birds and small animals cause high levels of these indicators.

The Board should insist that present and future monitoring for Malibu Creek, Lagoon and Beach should be done with rapid pathogen specific indicators currently in use by UCSB, UCLA and the EPA.

The recent fish and crayfish kills in lower Malibu Creek and Lagoon emphasize the need for understanding the relative contributions of nutrients to algae growth and eutrophication. Again pending studies with the latest testing methods will be due next year.

Now is the time to wait for definitive study results, not vote to proceed.

**Rosie Villar - FW: Malibu Community Meeting for Prohibition: Public Comment**


---

**From:** "Chris Deleau" <cdeleau@schmitzandassociates.net>  
**To:** "Wendy Phillips" <wphillips@waterboards.ca.gov>  
**Date:** 9/14/2009 4:34 PM  
**Subject:** FW: Malibu Community Meeting for Prohibition: Public Comment  
**CC:** "Elizabeth Erickson" <eerickson@waterboards.ca.gov>, "Rebecca Chou" <Rchou@waterboards.ca.gov>, "Don Schmitz" <DonS@schmitzandassociates.net>, "Donna Shen" <dshen@schmitzandassociates.net>, "Sharon Martin" <smartin@schmitzandassociates.net>, "Julie Crooks" <jcrooks@schmitzandassociates.net>, "Stein, Tamar C." <TStein@coxcastle.com>, <jrepking@coxcastle.com>, "Paradise, Kate J." <KParadise@coxcastle.com>, "Tracy Egoscue" <tegoscue@waterboards.ca.gov>

---

Ms. Phillips,

I offer the following comments on behalf of Malibu La Paz Ranch, LLC, who as you know owns property located in the Malibu Civic Center Prohibition Area, said land being commonly referred to as Los Angeles County Assessor Parcel Numbers 4458-022-023 and 4458-022-024 totaling 15.29 acres in size:

**I. THE OCTOBER 1, 2009 MEETING SHOULD BE RESCHEDULED TO PROVIDE FOR AMPLE OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD:**

I note that the next monthly Board Meeting will take place on October 1, 2009 (the same day as the proposed Community Meeting on the Prohibition). I am to understand that the Regular Board Meeting will occur in the AM while the Community Meeting will occur in the PM? If you could confirm that both meetings will in fact take place on the same day it would be very helpful. I think it would be prudent of the Board to schedule the Community meeting on a different day than the regular Board Meeting as I believe that many residents would like to attend both meetings and that this may be difficult for some to do. If the idea is to provide ample opportunity for public participation I believe a different date should be made for the community meeting.

Thank you for your call on September 2, 2009 wherein you acknowledged that during the Community Meeting which took place the prior day at Pepperdine University I had submitted a speaker slip but that due to time constraints I (among others) had been unable to present my comments. I hope to have the opportunity to present my more substantive comments to the Board both verbally and in writing at the next meeting.

That said I do have several comments that go more towards the decorum of the September 1, 2009 Community Meeting which I feel are time sensitive and warrant immediate discussion.

**II. THE SEPTEMBER 1, 2009 MEETING WAS TOO SHORT AND THE VENUE WAS INAPPROPRIATE:**

Given the extreme importance of community discussion on the proposed septic prohibition, ample time and opportunity needs to be afforded the general public for a meaningful discussion of the prohibition. The last hearing had 100 or so residents in attendance and it lasted only 2 hours with members of the public such as myself (representing *several* commercial and residential property owners in the prohibition area) being unable to comment due to time constraints. Over half of that two hour meeting was dedicated to staff PowerPoint presentations leaving only minimal time for public discussion.

We expect a much larger turnout at the next Community Meeting and expect that more people will wish to speak including some who were allotted only 1 minute of time at the previous September 1, 2009 Community Meeting. I would recommend that the Board avail itself of the City's facilities so as to avoid any scheduled interruptions such as the class that interrupted the last community meeting at Pepperdine. Malibu High School or Middle School Gymnasiums would be good potential locations for the meeting as they will have the potential to seat the hundreds of people that will be in attendance. I just received the Board's notice of hearing and I am displeased to note that again, only two hours has been allocated for public discussion (and presumably, as currently envisioned, this will be the last scheduled community meeting). How much of this time will be allocated towards staff/ City presentations and how much time will be allocated towards public discussion/ Q&A? *Two hours is an insufficient amount of time for the public to become educated and discuss the proposed prohibition.* In allocating only 4 hours of total meeting time prior to hearing on the prohibition, this gives the impression that the Board is purposefully rushing through the public comment phase. This impression is only made worse by the fact that the draft prohibition, its proposed boundaries and its supporting technical documents have been and continue to be substantively revised (all the more reason for extensive public discussion/ Q&A).

I would also request that any and all members of the *public be allowed at least 5 minutes to speak* as was the case with the first meeting. It is only fair that all members of the public be provided with the same opportunity to address the Board and staff on these issues. As several members of the public were already provided with approximately 5 minutes time (technically there were no time limits in the beginning of the meeting for public comment), it would be inappropriate to provide others with less time to speak as occurred during the last meeting. Additionally, for those who spoke at the last meeting and who were not afforded a complete opportunity to voice their thoughts (i.e., were afforded less time than other individuals) I would ask that those individuals be provided with additional time to speak should they so desire. *These meetings should be expected to take at least 4 hours* and they may run longer. A shorter time allotment will not provide ample time for meaningful discussions (back and forth) on the subject matter or public education. This is especially true when Staff has substantive presentations to make which consume a great deal of time.

### **III. MORE WORKSHOPS AND "TOWN HALL" MEETINGS ARE NEEDED TO PROPERLY EDUCATE THE PUBLIC AND PROVIDE THE PUBLIC WITH AN ADEQUATE OPPURTUNITY TO BE HEARD**

I would ask that the Board hold *at least two more community workshops* to help facilitate a discussion between the City, the Board and the residents/stakeholders in the City. While there may be disagreement on the impacts of the prohibition (i.e., negative or positive), I think everyone can agree, including the Board, that this prohibition will have a significant impact on the Community of Malibu. The subject matter is of the utmost importance and the costs of the City and State to achieve compliance with the mandates of the prohibition are substantial (in the tens of millions of dollars). Due to the significance of the subject matter and the potential ramifications of the Board's proposal, La Paz would like to respectfully request that 2 members of the Regional Board be present at the next Community Meeting on October 1, 2009. This occurred previously when Commissioners Glickfeld and Lutz attended a "town hall" format meeting which was held a few months ago at the City to discuss general water quality matters. Its my feeling that when the Board members are present and directly involved in these meetings it conveys to the residents of Malibu that their interests and concerns are being taken very seriously by the decision makers. That is helpful for everyone.

### **IV. STAFF MADE INACCURATE AND UNSUBSTANTIATED ALLEGATIONS AT THE HEARING WHICH WERE MISLEADING TO THE GENERAL PUBLIC:**

For the Record, I strongly object to Ms. Erickson and Ms. Chou's characterization of various forms of bacteria in Malibu Lagoon and Surfrider Beach as being "**Septic Bacteria**" or waste from septic. With several epidemiological studies having been conducted to date (and several pending), none of those scientific studies to my knowledge have been able to demonstrate that septic systems in the Civic Center are conveying **human fecal bacteria** into those listed water bodies. The Board's technical memoranda do not support this conclusion either, at least not in a manner that is close to being scientifically acceptable. What has been offered to date to support this allegation remains highly speculative, based upon correlation loosely derived from data, and is inconclusive at best. It is therefore a complete misstatement of fact, proffered without reservation or proper context, that there are "septic bacteria" in the Lagoon and at Surfrider Beach.

**V. THE PUBLIC DESERVES TO BE PROVIDED WITH HONEST ANSWERS AS TO WHAT THE BOARD INTENDS TO PROSCRIBE AND WHAT THE PRECISE CONSEQUENCES OF THAT PROSCRIPTION WILL BE.**

It was irresponsible to advise the property owners within the prohibition area (as staff did during the last meeting) that the Board will likely not take a strict approach towards enforcement. In fact, you suggested that the Board would refrain, at least for an indeterminate period of time, from processing NOV's, levying Fines or pursuing other possible enforcement measures. I would first note that this is contrary to past prohibitions that have been passed in this and other districts in California where Board enforcement staff did in fact serve several NOV's on private property owners (residential properties included).

How the Board staff envisions enforcement practices 5 years+ out from the present day is not the issue at all and is a matter of pure speculation. What is the only item of any real consequence is that **residents within the prohibition area will be legally required to cease all discharges within 5 years of the enactment of the prohibition by the LARWOCB.** This leaves residents and business owners with two alternatives to comply with the law as I see it: 1. Keep their septic tanks and/or expand them to **store** more effluent, eliminate their leach fields and pits and use the tanks for storage only, and then pump the tanks regularly and Truck 100% of their effluent off site to a licensed treatment facility or; 2. Abandon the premises as inhabitable (de facto red tag). This is what the Board staff should be advising residents within the prohibition area as these are their only legal alternatives to achieve compliance with your intended mandates. Advising them implicitly as you did that they would be able to discharge during the prohibition without penalty or consequence and lulling them into a false sense of security could also potentially undermine the legal validity/enforceability of the prohibition itself.

I offer these comments on behalf of Malibu La Paz, LLC ("La Paz") for inclusion in the Administrative Record. La Paz would greatly appreciate it if staff could provide La Paz with copies of any comment letters or correspondence on the moratorium/prohibition that are received by staff as those documents become available.

I look forward to seeing you at the next meeting. Should you have any questions please do not hesitate to contact us.

Regards,

**Christopher M. Deleau**

*Special Projects Manager*

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October 8, 2009

File No. 47864

**VIA E-MAIL**

Los Angeles Regional Water Quality Control Board  
320 West 4th Street  
Suite 200  
Los Angeles, CA 90013  
Attn: Dr. Rebecca Chou

Re: Proposed Los Angeles County Basin Plan Amendment to Prohibit Onsite  
Wastewater Disposal Systems in the Malibu Civic Center Area

Dear Dr. Chou:

We represent Malibu La Paz Ranch, LLC ("La Paz"). This letter contains La Paz's comments on the Environmental Staff Report, which constitutes the CEQA review for the proposed prohibition of Onsite Wastewater Disposal Systems in the Malibu Civic Center area ("the Prohibition"). For the reasons which follow, the Environmental Staff Report is inadequate and must be significantly revised and made available for another public review.

Although the basin planning process of the State Board and Regional Boards is a certified regulatory program (14 Cal Code Regs ("CEQA Guidelines") § 15251(g)), the preparation and approval process for basin plans and their amendments is the "functional equivalent" of the preparation of an EIR contemplated by CEQA. (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1408 ("*City of Arcadia*").) First and foremost, CEQA requires an analysis of the significant environmental effects of the entire project. (CEQA Guidelines, §§ 15126, 15165.) Under this test, future actions must be treated as part of the project and included in the impact analysis if those actions are likely to result from an approval of the project. (See *National Parks and Conservation Association v. the County of Riverside* (1996) 42 Cal.App.4th 1505, *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712.) Here, the project would immediately prohibit all new discharges from onsite wastewater disposal systems in the Malibu Civic Center area and would establish a five year schedule to cease discharges from existing systems. Despite the breadth of the project, nowhere in the Environmental Staff Report is there any analysis of the potentially significant environmental impacts that would result if, in five years, all existing systems must cease discharges because the Prohibition's schedule for implementation of a community sewer collections system is not met.

Second, throughout the Environmental Staff Report, staff takes the position that its analysis of impacts can only be conceptual because there is no way to examine project level impacts which are claimed to be entirely dependent upon the speculative possibilities of how subsequent

Los Angeles Regional Water Quality Control Board  
Attn: Dr. Rebecca Chou  
October 8, 2009  
Page 2

decision makers may choose to comply with the Prohibition. However, even if a tiered environmental analysis is appropriate, the Environmental Staff Report is not an adequate first level EIR or its functional equivalent. This can be seen in the following respects.

#### The Alternatives Discussion is Inadequate

The Environmental Staff Report looks at only two program alternatives, one of which is the required “no project” alternative. Under alternative number one, a municipality, utility or other local authority would provide community services to collect and dispose/reuse wastewater in order to replace on-site septic systems. This is not a true alternative; it is merely an alternate means for complying with the prohibition. In other words, the means of compliance with the project and the alternative means of complying with the project are identical. The only difference is that the Prohibition would be initiated by the Board while, under alternative one, the same thing would occur via a voluntary action by a local agency. In any event, alternative one is rejected out of hand, without any environmental analysis, because “such a voluntary, or discretionary effort is not currently available.” (Report, p. 15.)

This analysis does not comply with CEQA. An EIR or the functional equivalent thereof must contain sufficient information about each alternative to permit an evaluation of the relative merits of the alternatives and the project. (CEQA Guidelines, §15126.6(a).) The analysis must contain concrete information about each alternative sufficient to allow a fact-based comparison of the project alternatives. (*Id.*) The significant adverse environmental effects of each project alternative must be discussed, albeit in less detail than is required for the project’s effects. (*Id.*) Information sufficient to allow an informed comparison of the impacts of the project with those of the alternatives should be provided. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733 (absence of comparative data precluded meaningful consideration of alternatives).) The analysis of alternatives must compare the adverse impacts of the alternatives with the adverse impacts of the proposed project, which are determined by comparing the project’s impacts against existing baseline physical conditions. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168.) A conclusory discussion is not adequate. (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 404.) Public Resources Code § 21159(a) mandates an analysis of “reasonably foreseeable alternative means of compliance with the rule or regulation.” Alternative one flunks this test.

Further, the Environmental Staff Report dismissed out of hand an alternative that assumes that dischargers would haul quantities of sewage offsite, based on speculative numbers that are unsupported by any of the studies in the record. There is no data substantiating staff’s assumption as to the impacts that presently occur, nor with respect to travel time to other facilities or the possibility for noise and odor.

There are other obvious alternatives to the Prohibition, including the imposition of more stringent regulations on proposed and existing on-site waste disposal systems or other cooperative approaches that are not an outright prohibition. These alternatives are wholly ignored.

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Put simply, the alternatives analysis is neither an objective nor good faith effort to compare the environmental impacts of the proposed Prohibition with those of the reasonably foreseeable alternative means of compliance.

The Analysis of Reasonably Foreseeable Environmental Impacts of the Methods of Compliance is Inadequate

The environmental checklist utilized by the Environmental Staff Report assumes that compliance will occur in a vacuum, such that the analysis of impacts cannot be taken beyond a conceptual level. The checklist maintains this position, even though it specifies Legacy Park is a possible site for integrated facilities. (See checklist at page 40, and others in this record have suggested a portion of the La Paz site.) The Malibu Civic Center is a relatively small area; nevertheless, neither of these sites is used as the basis for an examination of reasonably foreseeable environmental impacts. Indeed, there is no discussion of the baseline conditions against which any impacts would be measured. The air quality portion of the checklist has no data supporting its conclusion that impacts would be less than significant with mitigation incorporated. The section on water admits that a portion of the 300,000 GPD flow may need to be discharged either in areas with favorable hydrogeologic conditions for sub-surface disposal or into the ocean. Yet, there is not even the most general attempt to assess whether there are favorable hydrogeologic conditions in the small Malibu Civic Center area, nor what the impacts might be if treated wastewater is discharged into the ocean. The water section concedes that the Prohibition would alter the direction and rate the flow of groundwater in the Civic Center area and suggests that delivery of potable water to the community by Los Angeles County Waterworks District No. 29 may be disrupted. Nevertheless, evaluation of these impacts in their entirety is dumped into the lap of those handling project level planning and design.

Moreover, the analysis fails to take into account other impacts. In five years, the Prohibition would apply to existing systems, and everyone would be required to place their wastewater in holding tanks, which would need to be regularly pumped and trucked to licensed treatment/disposal sites outside the City limits. This substantial additional truck traffic would cause air quality impacts, contribute to global warming, and cause traffic impacts. Additionally, there would be a potential for spills from the storage tanks and trucks. The increased pumping activity would cause a significant increase in odor problems within the Civic Center which might deter tourist traffic and shoppers from retailers in the area. In fact, due to the additional costs, the Prohibition could force businesses in the Civic Center to shut down, causing urban blight and decreasing commercial and other visitor-serving activities in violation of the Coastal Act and the City's Local Coastal Program.

Likewise, the prohibition could cause several utilities and other public facilities to be closed, including one Fire Department Station on Malibu Road, the Malibu City Hall, the Malibu Library, the County Court House, the Los Angeles County Water Works District 29, Charter Cable, and other various utilities, emergency services and public entities,. The Board did not analyze the impacts of emergency services and public utilities and facilities being lost due to the impact of the prohibition.

The Analysis of Mitigation Measures and the Statement of Overriding Considerations are  
Inadequate

The checklist assumes, without foundation, that every impact can be mitigated to a less than significant level, including impacts such as construction, air quality and noise, and traffic and circulation. The checklist does not propose any specific mitigation measures whatsoever, let alone include any analysis of whether those mitigation measures will reduce impacts to a less than significant level. Mitigation measures must not be remote or speculative. (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.) An agency cannot use vague or incomplete mitigation measures as a means of avoiding evaluating project impacts. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195.) Furthermore, CEQA prohibits deferring the formulation of a mitigation measure to a future date. (CEQA Guidelines, § 15126.4(a)(1)(B).)

This failure to determine whether impacts are significant and whether specific mitigation measures can reduce those impacts to a less than significant level undermines the statement of overriding considerations. A statement of overriding considerations is allowed where an agency finds “that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” (Pub. Resources Code, § 21081(b).) However, before making this determination, the agency must identify significant impacts and all feasible mitigation measures and alternatives to reduce those impacts. (See *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.) “The statement’s purposes are undermined if . . . it misleads the reader about the relative magnitude of the impacts and benefits the agency has considered.” (*Id.*) The purpose of the statement of overriding considerations is to “rub” the decisionmakers “noses . . . in those environmental effects” before making their decision to approve the project despite those effects. (*Id.*) Here, it is impossible to tell from the checklist or the statement of overriding considerations which impacts remain significant. Therefore, the entire impacts analysis needs to be redone before a statement of overriding considerations can be adopted.

The Board Has Failed to Take Economic Issues Into Account

The proposed Prohibition fails to take into account economic and practical issues relating to its implementation. The economic impacts of a septic prohibition must be analyzed in accordance with California Water Code Sections 13243 and 13281. The foreseeable closing of businesses and the greatly diminished sales tax revenues accruing to the City could further delay and frustrate a working solution to the existing wastewater problem. The City estimates that it will cost at least 30-40 million dollars to construct a centralized plant. If all residents and businesses were forced to comply with the Prohibition and incurred substantial economic losses as the result thereof, it is foreseeable that Assessment Districts could not be formed as there would be no discretionary income to provide for their formation.

The failure of the prohibition on on-site wastewater systems in Los Osos shows why the proposed Malibu Civic Center Prohibition will also fail. The Los Osos prohibition was put into

effect in the early 1980s, but a centralized plant has still not been constructed. The Los Osos prohibition shows that outright prohibitions do not expedite community goals and plans for improving wastewater management, but, instead, cause confusion, resentment and delays.

#### The Prohibition Should Include A Reasonable Exemption

The Board should adopt a moratorium that provides a meaningful exemption for systems that meet specified criteria. For example, a meaningful exemption would allow for systems that treat effluent to Title 22 standards and which propose to recycle and reuse 100% of their water). The current proposed exemption is impossible to meet in that it requires an applicant to recycle and “evapotranspire” one hundred percent of their reclaimed water. One hundred percent evapotranspiration is scientifically impossible because maximum irrigation efficiency ranges depending upon climate, landscape palettes, soil types and various other factors. In other words, some small amount of water is neither absorbed by plants (transpired) nor evaporated but instead makes its way to the groundwater (irrigation return flow). Additionally, it is standard practice to slightly over-irrigate landscaping so as to flush accumulated salts out of soils which accumulates over time with standard irrigation practices regardless of whether potable water or reclaimed water is used for irrigation. Salt flushing is a necessary practice on routine irrigation projects. Therefore, the exemption, as currently drafted, is impossible to meet. Furthermore, the lack of a meaningful exemption discourages water recycling and reuse in contravention of Water Code § 13241, as well as the State Water Board’s recently enacted Water Recycling Policy

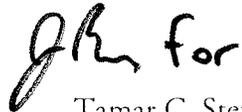
La Paz requests that the exemption language be revised as follows:

An exemption would allow for projects that propose to recycle and reuse 100% of the wastewater generated by the project. To comply with California State Health Code, projects would be required to provide for 60 days of storage for off-specification wastewater; emergency discharge of off-specification wastewater will not be permitted. Projects seeking exemption qualification shall demonstrate to the City of Malibu and the Board through the use of transient hydrogeologic modeling that use of reclaimed (Title 22) water on the project site for irrigation purposes will not cause a significant rise in groundwater; in making this significance determination, the City and the Board shall use the City’s significance criteria which is found in the City of Malibu’s Local Coastal Program at Sections 18.4(D) & (F).

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Attn: Dr. Rebecca Chou  
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For all of the reasons above, La Paz requests that the Environmental Staff Report be revised and made available for another public review before taking any further action to approve the Prohibition.

Very truly yours,

A handwritten signature in black ink, appearing to read "TCS for". The signature is written in a cursive, somewhat stylized font.

Tamar C. Stein

TCS/nmg

47864\1429860v6

Dear Ms. Rodriguez:

Thank you for giving me the opportunity to voice my questions from the recent meeting that went unspoken when time ran out for public comments. Note that while I am representing Our Lady of Malibu Church (OLM), I actually come from the world of Aerospace (I'm one of those "rocket scientists"), and, as such, I am only beginning to learn the language of "your" world, so forgive me if my questions are not posed precisely. I have only recently become involved with the wastewater treatment and Prohibition proposals and I know that there is a huge amount of background data that has been developed over the years - my experience is limited to what I have heard at this meeting (September 1) and at the recent City of Malibu meeting (August 25). In my current studying of the topic, I have derived several additional questions beyond that original one.

1) In this meeting, I heard that the presence of the enterococcus bacteria is used as a measure of human fecal contamination in the Malibu Lagoon and the adjacent ocean water, as it is elsewhere. The data presented implied a very significant amount of such contamination. On the other hand, presentations (a UCLA study and a U.S. Geological Survey study) at the earlier meeting and as Mr. Thorsen summarized at the recent meeting, implied that Human Specific Bacteroides (HSB) play only a minor role in the contamination of the Lagoon and ocean waters.

Now to my uneducated ears, these seem to be conflicting results. According to MedicineNet.com, the definition of enterococcus is that it is a "Bacteria normally found in the feces of people and many animals" and another reference states that "enterococci are benign bacteria when they reside in their normal habitat such as the gastrointestinal tracts of human or animals." (ref.: [http://www.sourcemolecular.com/newsite/index.php?option=com\\_content&task=view&id=28&Itemid=17](http://www.sourcemolecular.com/newsite/index.php?option=com_content&task=view&id=28&Itemid=17)).

This latter reference goes on to say that: ". . . it has been hypothesized that relative levels of human pollution can be interpreted by the proportion of the esp human gene biomarker found in E. faecium relative to the total population of E. faecium in the water sample. Nonetheless this data should serve only as a preliminary indicator of relative human pollution in the water sample. Furthermore, the context of the sample should be taken into account when interpreting the relative percentage provided."

How does your data reconcile these apparent discrepancies? It seems that the mere presence of enterococcus bacteria is not completely indicative

of the extent of human specific pollution - it could very likely include a significant amount of animal sources of enterococcus. Did your research separate out the presence of human pollution vs, animal pollution?

2) During the public comments, the speaker stated that how the boundaries of the Prohibition area were defined and how they were established would be made available. Where is that description published?

It would appear that the boundary includes those watershed areas that do not contribute to the Civic Center and Lagoon pollution. Specifically, I refer to the Winter Canyon watershed area (please see attached Google Earth image which depicts what I believe to be the Canyon view looking south). This region clearly drains directly into the ocean, being bounded on the west by the Malibu bluffs and on the east by the ridge extending from the mountains. This ridge is plainly shown in the 1938 image of Malibu (please see the attached photo) just beyond the flooded area of the flatlands. OLM is located in the relatively flat area about two-thirds of the way up and beyond the ridge. This geography is also clear on your "Malibu Civic Center Area - Parcels" map, JFL08/25/09. To include this area west of the natural ridge just doesn't make sense as it is a natural barrier to wastewater flowing in to the lagoon area.

This, then, raises another dilemma. Since this area drains directly into the ocean, it would seem to appear that it falls into the same category as the properties extending east for several miles from the general Malibu Pier area which have been excluded from the Prohibition area. How is this discrepancy been justified?

3) A fully enacted sewer system does not seem to be a complete answer, also. The attached map of sewer overflows from May - August 2009 clearly shows that sewer beaches are not immune from pollution. These are events directly associated with sewerage overflows, not implied merely by the presence of enterococcus bacteria.

4) What constitutes a "Notice of Violation (NOV)?" I have heard that a septic tank pumping event results in an NOV, not just a spill or overflow.

5) Where are meetings such as the one on September 1 advertised? I can only find reference to the one scheduled for November 5.

6) Finally, has opening the berm at the mouth of the Lagoon been considered? This would enable a twice daily flushing action in the Lagoon and relieve the results of the current water stagnation. At present, there is no flow through the Lagoon for several months - a

natural effect, however - but there is little about the Lagoon that is natural any more, anyway. This would also allow steelhead trout a year round access to the creek.

Thanks again for giving me this opportunity.

Regards,

Carl Ehrlich  
818-880-1759



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gery Date: Oct 23, 2007

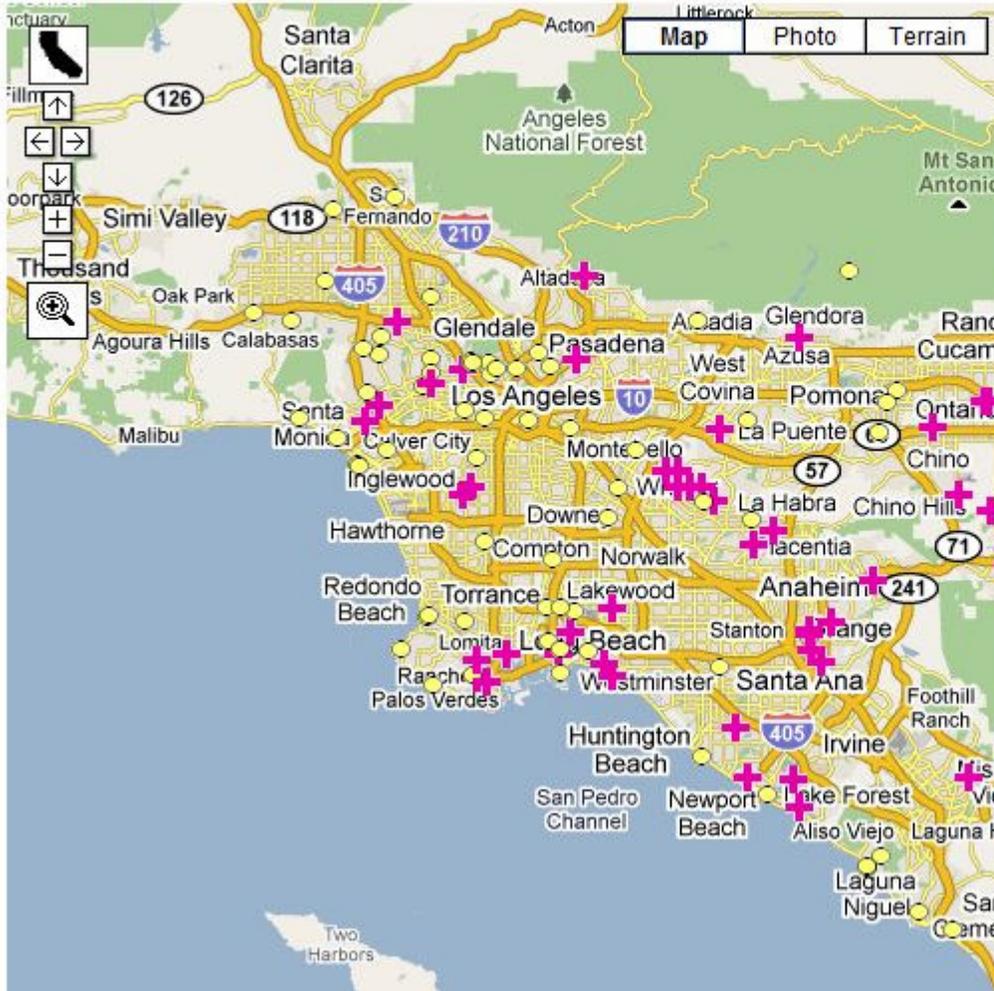
34°02'37.27" N 118°42'07.31" W elev 636 ft



Malibu Lagoon and surrounding wetland ecosystem in 1938. Photo Courtesy of Air Photo Archives, [UCLA Department of Geography](#).

# SANITARY SEWER OVERFLOWS: 05/02/2009 - 09/02/2009

Spill type: + [Category 1](#) ● [Category 2](#)  
Click on a map icon for incident information.



Note: Map does not include spills from sewage treatment plants.

- Show all incidents
- Show only incidents with valid coordinates

Filter by volume (gallons):  
0 - 1,000,000+ gal.

Minimum:

Maximum:

Filter by date:  
05/02/2009 - 09/02/2009

Start:

End:

Filter by Agency:  
(All)

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# LATHAM & WATKINS LLP

October 8, 2009

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## VIA EMAIL AND HAND DELIVERY

Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
California Regional Water Quality Control Board, Los Angeles Region  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Re: Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu Civic Center Area

Dear Dr. Chou:

We are submitting comments on behalf of a number of business and residential property owners potentially affected by the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (the "Basin Plan") to prohibit subsurface discharges from on-site wastewater disposal systems ("OWDSs") in the Civic Center area of the City of Malibu (the "Proposed Prohibition"), which is under consideration by the California Regional Water Quality Control Board, Los Angeles Region (the "RWQCB"). Our comments also refer to, and incorporate by reference, a series of reports which have been submitted separately to the RWQCB as comments. Most importantly, based on our concerns, we have also attached for Staff's and the Board's consideration a set of proposed changes to the text of the proposed amendment which would address the concerns we discuss below.

The parties on whose behalf we submit these comments share the RWQCB's vision of clean water as they live, work, and play in the City of Malibu and enjoy the natural beauty that is the Santa Monica Bay. However, as drafted, the Proposed Prohibition raises many questions and will very likely have far-reaching, unintended, and potentially adverse environmental and economic consequences for the Malibu Civic Center area and its receiving waters. At a minimum, many of the impacts we are concerned about have not been evaluated or addressed in the Proposed Prohibition and the supporting documentation.

LATHAM & WATKINS LLP

We are especially concerned that the Proposed Prohibition will not allow discharges after the effective date of the amendment from the following systems because they are technically not yet “existing discharges” and would be prohibited as “new discharges”:

- (1) **Permitted but not-yet-operating systems;**
- (2) **New OWDSs that have substantially completed the City of Malibu or RWQCB wastewater discharge permitting processes; and**
- (3) **OWDSs that upgrade or replace existing systems.**

With respect to the first two categories above, prohibiting these discharges after the effective date places a very unfair economic hardship on property owners in the Civic Center area who have made substantial investments to install advanced OWDSs capable of protecting the waters of the state and who may now be forced to either abandon their homes or businesses or arrange to truck all generated wastewater offsite. For property owners such as those who are replacing homes lost in fires or are in the process of upgrading their OWDSs to provide a higher quality of effluent treatment, this regulatory effect is unfair, inconsistent with the Board’s objectives to encourage better water quality, and not justified by any data or evidence provided in the Technical Reports supporting the Proposed Prohibition.

Likewise, banning new discharges from systems that may be installed after the effective date to upgrade or replace old, less effective and in some cases non-compliant systems makes no sense from a public policy perspective. Because such discharges from such upgraded or replacement systems would be banned after the effective date by the current text of the Proposed Prohibition as “new discharges”, the amendment creates incentives not to make such changes in the transitional period (i.e., from the effective date to the date of the complete ban), which is exactly the opposite of what the Board wants to achieve. Another unintended consequence of the current text of the Proposed Prohibition is that it militates against upgrading OWDSs to increase the amount of treated wastewater that can be recycled for use in landscape irrigation. As drafted, the Proposed Prohibition does not provide any certainty for those property owners who wish to upgrade their systems to treat wastewater so it can be used for irrigation that this use is not a “new discharge” which would be banned after the proposed amendment becomes effective. Because California is facing an unprecedented water crisis, the Regional Board has already made clear that encouraging water recycling is a top priority, and it would appear very inconsistent with that objective to dissuade upgrades for this purpose.

As explained in further detail below, there is substantial evidence that allowing such discharges from these categories of OWDSs would not be expected to have any adverse impacts on groundwater quality in the Civic Center area and, in fact, will support the RWQCB’s water quality objectives. For these reasons, we propose revisions in the language of the text of proposed Amendment which we have set out in Attachment 1, which we believe will address these concerns. **We ask that the Regional Board Staff consider incorporating them into a revised Resolution.**

## **DETAILED COMMENTS**

The discussion below describes in greater detail our concerns with the Proposed Prohibition. We offer these comments after having consulted with recognized experts at Earth Consultants International, CB Richard Ellis, and Matrix Environmental, the comments from which are submitted under separate cover and incorporated by reference herein. In addition, with respect to the likelihood that a centralized wastewater treatment system can be in place and operational by the proposed date of the total ban of OWDSs in 2014, we have evaluated the comments submitted under separate cover by Jim Arnone of Latham & Watkins, a recognized expert in CEQA compliance, and incorporate them in our comments as well. We have attached a copy of all those additional comments to this letter and incorporate them by reference herein.

### **Allowing Discharge Through Substantially Permitted New Systems and Replacement Systems During the Transitional Period Supports the RWQCB's Stated Goal of Protecting the Beneficial Uses of Water in the Malibu Civic Center**

#### *Substantially Permitted Systems<sup>1</sup>*

Civic Center properties with substantially permitted new systems (the RWQCB has referred to these systems as "In Pipeline") will treat effluent with advanced onsite wastewater treatment systems ("OWTSS" rather than "OWDSs") that will, in operation, improve the quality of the regional groundwater by discharging water that meets or exceeds Basin Plan water quality objectives. Because the City of Malibu and the RWQCB require upgrading the level of treatment for any OWDSs currently in the permitting process (in the case of the City of Malibu, it requires upgrading to secondary treatment with disinfection), the RWQCB can take confidence that the substantially permitted new systems will result in fewer pollutants entering the State's waters. Allowing such properties to proceed to begin discharging, even after the effective date, will allow property owners to realize their substantial investment in improving their home or business while still accomplishing the RWQCB's water quality objectives.

As documented in the comments submitted by recognized Earth Consultants International, which are set out in Attachment 2, there is a limited universe in the Civic Center area of substantially permitted new systems and nearly all of them involve the installation of advanced OWDSs. Revising the text of the Basin Plan Amendment to allow this limited number of properties to discharge once fully permitted and/or operational will not have an adverse impact on the receiving groundwater and surface waters, such as Malibu Lagoon and Malibu Creek; in fact, it is more likely that such upgrades will have a positive impact because of improvements in the quality of water that will be discharged. Nearly all on-going development activity in the Civic Center area involves either the full demolition and reconstruction of

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<sup>1</sup> By substantially permitted we mean any residential OWDS for which the City of Malibu's Environmental Health Review Division has received and approved the initial application for Conformance Review or a complete wastewater discharge permit application has been submitted to the RWQCB, as appropriate, before the effective date of the Proposed Prohibition.

previous structures (some of which were lost in the fire of 2007), or a partial remodel of existing homes and businesses. Though some of these remodels may include additional fixtures, the volume contribution from these properties to the entire Civic Center system will be essentially unchanged. Also, because many of these substantially permitted systems are actually replacing a previous OWDS onsite, water that will be discharged from the newly remodeled or rebuilt properties will be processed through a new and fully upgraded advanced OWTSs and in many cases will meet Title 22 water quality standards for recycled water (especially in the case of commercial developments). For these reasons, it is expected that discharges from such substantially permitted systems support the RWQCB water quality goals and will have a beneficial impact on the Civic Center's receiving waters.

#### *Replacement Systems*

Similarly, allowing systems that upgrade or replace existing OWDSs after the effective date of the Proposed Prohibition to discharge will not have an adverse impact on Civic Center receiving waters; rather, as a matter of simple logic, these upgraded systems will discharge a higher quality treated effluent to the subsurface, resulting in an outcome which clearly promotes the RWQCB's water quality objectives.

Replacement systems by their very definition will replace conventional, and in many cases noncompliant, OWDSs. And, generally, flows through such replacement systems are not expected to be significantly higher than what passed through the previous OWDS. Even where individual discharges increase when the capacity of some OWDSs is expanded, such increases will not substantially change the cumulative flows into the Civic Center area and are not expected to make an adverse difference, since the water discharged from such replacement systems will be of a better quality, treated to meet the RWQCB Basin Plan standards and in many cases Title 22 standards for recycled water.

#### **Allowing Discharge Through Substantially Permitted New Systems and Replacement Systems Will Help Prevent Urban Decay in the Malibu Civic Center**

##### *Substantially Permitted Systems*

As documented in the comments submitted by CB Richard Ellis and Matrix Environmental, which are set out in Attachments 3 and 4, allowing property owners to discharge through their substantially permitted new systems will allow these property owners to recover their significant investments to date and complete their projects so they can move into their remodeled or rebuilt homes and open their businesses. However, the Proposed Prohibition as written would prevent discharge from these new but not yet operational systems, which would force property owners to consider abandoning their redevelopment efforts because they are unable to discharge their wastewater. In such cases, these unfinished projects will likely contribute to in blight to the Civic Center area and have significant impacts on the health of neighborhoods.

### *Replacement Systems*

Similarly, the effective prohibition of replacement systems that results from the current language in the Proposed Prohibition also threatens to contribute to urban decay and blight in the Civic Center. Under the Proposed Prohibition during which no additional or new waste discharge from a replacement system would be permitted, the ban would result in limiting the reuse of commercial properties as building interior adaptations will generally be required to accommodate the needs of new tenants and require the upgrading or expansion of the current OWDSs. If the existing system cannot handle the new flows or treat wastewater to the City of Malibu's or RWQCB's standards, commercial reuse will be effectively prohibited. This will lead to a reduction in marketability of commercial properties and an inevitable increase in vacancies, which in turn would significantly reduce the potential rent. Lower rents would lead to fewer funds being available for maintenance and upkeep. Effectively, the Proposed Prohibition creates a disincentive for property owners to improve their businesses or homeowners to remodel as it may trigger a prohibited discharge.

### **Allowing Discharge Through Substantially Permitted Systems and Replacement Systems Will Reduce the Need to Pump and Haul Waste Offsite**

As also documented in the comments submitted by CB Richard Ellis and Matrix Environmental, which are set out in Attachments 3 and 4 respectively, the Proposed Prohibition will have potential significant impacts on the Malibu community by increasing waste hauling from property owners who will be prevented from discharging through their substantially permitted systems or who are prevented from replacing a failing system. If homeowners and businesses are not able to use their substantially permitted OWDSs or replace their aging failing systems with new advanced treatment systems, many of these property owners will be forced to either (A) abandon their business or home; or (B) haul all of their generated wastewater offsite until such time as a centralized wastewater treatment plant comes online. As described in those Attachments, the RWQCB has not considered these significant impacts in evaluating the viability of the Proposed Prohibition.

### **General Concerns With the Proposed Prohibition**

#### **The RWQCB Failed to Adequately Consider the Potentially Significant Impacts of the Proposed Prohibition and Timing Constraints on any Comprehensive Compliance Project**

##### *California Environmental Quality Act and California Public Recourse Code*

As documented in the comments submitted by Matrix Environmental, which are set out in Attachment 4, there is a concern that the Environmental Staff Report does not comply with the basic requirements of Public Resources Code Section 21085.5 or the basic requirements of CEQA, as it does not adequately describe the proposed activity, does not evaluate the reasonably foreseeable environmental impacts of the proposed activity, and does not provide for alternatives or mitigation measures to reduce the significant adverse effects on the environment.

LATHAM & WATKINS<sup>LLP</sup>

We believe that the RWQCB's Environmental Staff Report failed to adequately assess the impacts associated with the integrated facilities, interceptor sewer and decentralized facilities that could be implemented as part of the Proposed Prohibition. The analysis within the Environmental Staff Report evaluates these new wastewater systems "on a conceptual basis only" and indicates that additional project-specific environmental analysis is to be conducted. As the project-specific analyses would occur following implementation of the Proposed Prohibition, there is no certainty that the prohibition would not lead to direct and indirect impacts that are greater or equally objectionable to those that the prohibition is seeking to address. Furthermore, because of the limited analysis done to date, we believe that it will be incredibly difficult to have one of these proposed solutions in place within five years.

*Timing of a Comprehensive Civic Center Solution*

As also documented in the comments submitted by James L. Arnone of Latham & Watkins LLP, which are set out in Attachment 5, the Proposed Prohibition fails to adequately consider the very real possibility that a centralized wastewater treatment facility or other regional solution will not be available in five years when the Proposed Prohibition takes effect. At a minimum, the RWQCB should consider extending the time period to six or seven years before the total ban takes effect. Given the importance of time to obtain approvals and implement an alternative system to the current OWDSs within the Civic Center area, we also believe that the effective date should not be retroactive to the date of the RWQCB's approval of the amendment, but should be drafted to account for the additional time it will be necessary to process the proposal. We have included language in Attachment 1 to address this issue.

The RWQCB should be particularly concerned with the potentially significant impacts of the waste hauling that will be necessary if the ban takes effect without a regional solution in place. CB Richard Ellis determined (as expressed in their comments attached hereto as Attachment 3) that assuming on an average 2,000-gallon truck, at least 46,000 tank truck trips per year would be required each year to pump and haul the ban area's wastewater. This would have a significant impact on local traffic congestion, air quality and other environmental concerns. The RWQCB estimated that currently 7% of the generated waste in the study area is hauled offsite. See Technical Memorandum #5: *Dischargers with Unsuitable Hydrogeologic Conditions for High Flows of Wastewaters Resort to Hauling Liquid Sewage and Sludge to Communities that have Sewer and Wastewater Treatment Facilities (Draft Dated July 31, 2009)*. Based on this estimate, the RWQCB calculated that hauling activity in the Civic Center currently produces 252 tons of carbon dioxide per year. In five years, if a solution is not in place when the total ban goes into effect, pumping and hauling wastewater from the Civic Center will have to be expanded considerably and using the RWQCB's own estimates, these circumstances would result in an estimated additional 23,436 tons of carbon dioxide a year. These potential effects on climate change have not been evaluated by the RWQCB in assessing the viability of the Proposed Prohibition.

LATHAM & WATKINS<sup>LLP</sup>

Conclusions

We believe that the text of the Proposed Prohibition has serious flaws which need to be addressed before the Board acts on it. We have included proposed changes to that amendment in Attachment 1, which we believe address the most serious of our concerns.

We appreciate the opportunity to submit these comments for the RWQCB's consideration. We respectfully request that all of our public comments, including those herein and included in attached technical reports, be given appropriate consideration, be placed in the administrative record for this rulemaking, and be maintained in the agency's records.

We are available to meet with the RWQCB to discuss these comments and believe that such would be advantageous in fully understanding the issues and concerns raised in these comments. Should you have any questions or wish to discuss our comments and proposals, please feel free to contact me at 213-891-8332.

Respectfully submitted,



Gene A. Lucero  
of LATHAM & WATKINS LLP

Attachments

1. Proposed Revisions to the Language of the Text of the Proposed Basin Plan Amendment
2. Comments on the RWQCB's Proposed OWDS Prohibition For the Malibu Civic Center Area Prepared by Earth Consultants International
3. Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region Prepared By CB Richard Ellis
4. Comments on the Environmental Staff Report in Support of the Proposed Amendment to the Water Quality Control Plan to Prohibit On-Site Wastewater Disposal Systems in the Civic Center Area of the City of Malibu Prepare by Matrix Environmental
5. Comments Concerning Unrealistic Timing Assumptions for the Environmental Analysis, Project Consideration, Potential Litigation, Election on Potential Assessment District, Obtaining of State Loan, Public Bidding Process, and Construction of Potential Centralized Wastewater Treatment Facility in the Malibu Civic Center (Scheduled for RWQCB Consideration on Nov. 5, 2009) Prepared by James L. Arnone of Latham & Watkins LLP

**Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit Discharges from OWDSs in the Malibu Civic Center Area**

**INDEX OF ATTACHMENTS**

<b>TAB #</b>	<b>DOCUMENT</b>
1.	Proposed Revisions to the Language of the Text of the Proposed Basin Plan Amendment
2.	Comments on the RWQCB's Propose OWDS Prohibition For the Malibu Civic Center Area Prepared by Earth Consultants International
3.	Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region Prepared By CB Richard Ellis
4.	Comments on the Environmental Staff Report in Support of the Proposed Amendment to the Water Quality Control Plan to Prohibit On-Site Wastewater Disposal Systems in the Civic Center Area of the City of Malibu Prepare by Matrix Environmental
5.	Comments Concerning Unrealistic Timing Assumptions for the Environmental Analysis, Project Consideration, Potential Litigation, Election on Potential Assessment District, Obtaining of State Loan, Public Bidding Process, and Construction of Potential Centralized Wastewater Treatment Facility in the Malibu Civic Center (Scheduled for RWQCB Consideration on Nov. 5, 2009) Prepared by James L. Arnone of Latham & Watkins LLP

# **ATTACHMENT 1**

<b>EFFECTIVE DATE OF THE PROHIBITION</b>	<b>SUGGESTED BASIN PLAN AMENDMENT LANGUAGE</b>
I. Set the effective date of the prohibition after approval of the Basin Plan amendment by the Office of Administrative Law; prohibit all discharges five years from the effective date.	<i>Effective 30 days after approval of this amendment by the California Office of Administrative Law, (the "Effective Date"), all wastewater discharges from residential, commercial, and public on-site wastewater disposal systems in the Malibu Civic Center area shall be prohibited except as follows:</i>
<b>CATEGORY OF DISCHARGE</b>	<b>SUGGESTED BASIN PLAN AMENDMENT LANGUAGE</b>
I. Discharges Through Permitted Systems	<i>With respect to any wastewater discharges from an operational on-site wastewater disposal system, including a permitted but not yet operating system, as of the Effective Date, such discharges shall not be prohibited until five years after the Effective Date.</i>
II. Discharges Through Substantially Permitted or "In Pipeline" Systems	<i>With respect to any wastewater discharges from on-site wastewater disposal systems for which the City of Malibu's Environmental Health Review Division has received and approved the initial application for Conformance Review or a complete wastewater discharge permit application has been submitted to Regional Water Quality Control Board, as appropriate, before the Effective Date, but which is permitted after the Prohibition's Effective Date, such discharges shall not be prohibited until five years after the Prohibition's Effective Date.</i>
III. Discharges Through Replacement Systems	<p><i>Any repairs, maintenance, or replacement shall not affect or modify the dates the prohibition takes effect for the on-site wastewater disposal systems described in subsections 1 and 2 above provided that such repairs, maintenance, or replacement does not increase the amount or timing of discharges in such a way that would adversely affect the beneficial uses of receiving waters of the State of California.</i></p> <ul style="list-style-type: none"> <li>▪ <i>Any replacement on-site wastewater disposal system described in Subsection 3 above shall be designed to treat wastewater to the water quality standards established for new on-site</i></li> </ul>

EFFECTIVE DATE OF THE PROHIBITION	SUGGESTED BASIN PLAN AMENDMENT LANGUAGE
	<p><i>wastewater treatment systems in the vicinity of impaired water bodies by Title 27 Division 5 Chapter 1 Article 1 of the California Code of Regulations (as required by Assembly Bill 885 adding Chapter 4.5 (Section 13290 to 13291.5) to Division 7 of the California Water Code), as well as any applicable requirements of the City of Malibu, including, but not limited to, secondary treatment with disinfection.</i></p>
<p>IV. Discharges Through Systems Capable of Recycling 100% of Effluent Generate Onsite</p>	<p><i>With respect to any wastewater discharges from an on-site wastewater disposal system where the prospective discharger demonstrates before or after the Effective Date that (i) reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site; (ii) will not contribute to an adverse rise in the water table; and (iii) will contain and properly handle any brines and/or off-specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the Basin Plan, such wastewater discharges shall be permitted by the Executive Officer.</i></p>

# **ATTACHMENT 2**



**To: California Regional Water Quality Control Board, Los Angeles Region**  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

**Attention: Dr. Rebecca Chou**  
Chief Groundwater Permitting Unit

**Subject: Comments on the RWCQB's Proposed OWDS Prohibition for the Malibu Civic Center Area**

**Dear Sirs:**

At the request of our client, Earth Consultants International (ECI) has prepared this letter as a public comment in response to the Regional Water Quality Control Board's proposed Prohibition Zone for the Malibu Civic Center Area and their supporting Technical Memorandum. Our comments fall within four general areas, as divided out below:

**1. The groundwater quality in the Civic Center area has shown consistent improvement since 2006:**

OWDSs are not the sole causative factor in the degradation of the water quality in Malibu Lagoon, but no other alternative causes are evaluated. Major conservative assumptions are made with respect to wastewater volumes passing through OWDS, bacterial and nutrient loads, groundwater flow velocities, and soil cleaning potential. Despite these large assumptions, the Board's own data show that the water quality has made significant improvement in the last few years.

Table 2 in Tech Memo 3 actually shows a stark reduction of the bacteria problem in the sampling sites around the Lagoon. Three of the five sites (60%) show ZERO days of exceedence in 2008, a significant decrease in 2007, and all show declining impact days across the board. Actually this table seems to show that the City of Malibu has been quite proactive in trying to solve the Board's concerns since 2006, and the Board's plot shown in their Fig. 6 in Tech Memo 3 demonstrates this. In that chart, the highest values come from SMB-12, which is not even shown on their map, as it is likely outside the Civic Center Prohibition Zone, like SMB-13.

In Tech Memo 1, the Board uses "Failure of Wells" as a datum to show that nearly all of the wells in the Civic Center have failed. What they do not reveal in their Memo's writeup is that most of these "failures" occurred only once in a well's 5-year history, and generally this was in 2003-2004. In any managed system, a failure can occur. The important aspect that should be analyzed is to understand the cause of a failure, whether that failure was rapidly corrected, and whether it has remained corrected. The City of Malibu's aggressive regulation and inspection of OWDS within their jurisdiction has clearly shown this to be the case. An accurate use of these wells' test data would reveal that in the period between 2003-2008 the water quality of the Civic Center fails to support the Board's position.

When one considers that these test results are only obtained from the shallow, upper, unconfined aquifer, which was never a groundwater resource and which has no pre-OWDS baseline data, instead of raising the red flag, it looks more like a success story for OWDS operations and environmental management than as the justification for a Prohibition Zone.

Numerous other examples of the Board's reliance on old data exist. For example, a 1996 report comparing bacterial exceedence days for sewered and non-sewered beaches, and a 2002 Heal the Bay report, both show significantly high values for Surfrider Beach. But, these values have plummeted in the last few years as shown by the Board in Tech Memo 3.

The City has made considerable progress in regulating improvements in Civic Center (and City-wide) OWDS treatment systems in both residential and commercial systems. The Board fails to credit any of this progress by using outdated data to justify its position, but generally doing this non-transparently in their statements and charts. Use of more modern data would generally fail to support the Board's conclusions. The use of old data at the expense of new data shows bias in the Board's analysis, and fails to support their case for a Prohibition.

## **2. There are a limited number of proposed new and remodeled homes in the Civic Center area:**

Those business or residential entities who, in good faith, entered into expensive development plans in the last few years, and who will be stalled by this Board prohibition are being particularly penalized. None of these contributed to the condition of the groundwater in the Civic Center area before they applied for development permits. Many of these new permits are really redevelopment proposals for existing homes or businesses. In these cases, the prior OWDSs will be replaced with advanced onsite wastewater treatment systems [OWTS] that will, in operation, be improving the groundwater quality of the region over the prior, and in many cases still operating, OWDS systems.



Nearly all on-going activity involves either the full demolition and reconstruction of previous structures (some of which were lost in the fire of 2007), or a partial remodel of existing homes and businesses. In all of these cases, the volume contribution of the site's wastewater to the entire Civic Center system is essentially unchanged. The only change is that the wastewater that will be discharged will either be so completely treated that it is essentially drinking water quality, or in the case of individual homes, be processed through a new and fully upgraded advanced OWTS. Little to no change in overall volume is expected from the upgraded OWTS. The recharged effluent-water quality will be improved from all upgraded systems, as they are required to meet or exceed the City's requirements.

### **3. These homes generate trivial volumes of wastewater to the area:**

Individually, any single residence's OWDS contribution is minor compared to any single commercial discharge. For example, if a residential remodel required an increase in wastewater flow to accommodate a remodel or rebuild, it is not expected to have an adverse impact on water level or quality, a fact quietly acknowledged by the Board in that they only focused their volumetric analysis on the commercial discharges.

The City's assignment of wastewater volumes based on 100 gallons per day per bathroom is outmoded and conservative. Per the City's Plumbing Code, a remodeled home now is required to utilize water conservation features, such as low-flow toilets and flow reducers on shower heads and sink faucets. The overall water awareness campaigns, and the price of water, have all driven water usage volumes lower, resulting in lower wastewater discharge volumes for most new structures.

### **4. Even if discharges are the same or larger, the water quality discharged from these advanced treatment systems improves the current water quality in the Civic Center area**

All of the currently proposed new commercial systems utilize advanced sterilization and treatment solutions, with substantial on-site reuse of the treated water for landscaping. The OWTS result in no bacterial and negligible nitrogen discharges to the groundwater, but the Board's analysis does not consider whether advanced treatment systems are in effect which might change their nitrogen production rates. New residential OWTS units result in similar reductions of nitrogen and bacteria.

There is no consideration in the Board's analysis that adding modern advanced wastewater treatment systems to the Civic Center area would help to improve the current situation even in advance of their 2014 prohibition. The Board's intent to prohibit any OWDS improvement during the coming 5 year prohibition period is counter-productive to improving the Civic Center's water quality.



Over time, all of the OWDSs in the City will be upgraded to the advanced OWTS process. This is how change comes to communities. The Board should be encouraging the City's progress towards modernizing the OWDS within the Civic Center area, but this proposed Prohibition essentially freezes in place any of that progress, and leaves all existing non-conforming systems in place for at least the next 5 years.

If a permit application has been processed, it should be allowed to move forward, with the clear awareness that eventually it will be subject to the requirements of the regional treatment solution when that becomes available. Additionally, and especially for residential systems, any conversion from an OWDS to an OWTS should be permitted, and encouraged.

Based on the Board's own data, the incidence of bacterial exceedence days at the Lagoon beaches are now below even sewerred beaches like Will Rogers farther east, the incidence of failing water quality in wells is almost zero, and the percentage of correct discharger reporting is way up.

**Respectfully submitted,**

**EARTH CONSULTANTS INTERNATIONAL, INC.**

Eldon Gath, CEG 1292  
President

Dr. W. Richard Laton, PG 7098  
Sr. Consultant/Professor of Hydrology

**Distribution:** (1) Addressee

**Eldon Gath**, President of Earth Consultants, a Past-President of the Association of Engineering Geologists and a PhD Candidate at UC Irvine, has 30 years of geologic consulting experience in southern California. He was the senior author of the 1994 Leighton & Associates report on the geologic conditions in the Malibu Civic Center, and the geologist responsible for the removal of the State's active fault zone across Winter Mesa.

**Dr. Richard Laton**, a Senior Consultant at Earth Consultants International and the current NWWA National Lecturer in Hydrogeology is also an Associate Professor of Hydrogeology at California State University @ Fullerton.



# **ATTACHMENT 3**

October 7, 2009

Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
California Regional Water Quality Control Board, Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

**RE: Comments on Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region**

Dear Dr. Chou:

Through a proposed amendment to its Water Quality Control Plan, the California Regional Water Quality Control Board, Los Angeles Region (CRWQCB) has proposed a ban in a portion of the City of Malibu on discharges from on-site wastewater disposal systems (OSWDSs) for new development and on increases in currently permitted levels of discharge from on-site wastewater disposal systems for existing developments for a five-year period. After that five-year period, the amendment would prohibit any discharge from any OSWDS, including all existing permitted systems.

If OSWDS discharges are banned, property owners would not be able to occupy and conduct business on their properties unless they were able to make other arrangements for treatment and disposal of the sewage and wastewater generated in their businesses or residences.

CB Richard Ellis was engaged to investigate the potential impact that the proposed amendment and ban on waste water discharge would have on physical aspects of the real estate in the Ban Area.

The Ban Area encompasses the Malibu Civic Center area. That area represents the major commercial core of the City of Malibu, with three major shopping centers and numerous freestanding commercial stores and restaurants, totaling over 200,000 square feet.

A physical survey of the area on Sept 26, 2009 found numerous vacant establishments totaling over 25,000 square feet, including a major restaurant site, a gas station site and a half dozen infill retail storefronts.

The proposed ban will have a significant adverse impact on the economic viability of the commercial centers in the Ban Area, potentially causing physical blight conditions which impacts have not been addressed in the RWQCB Environmental Assessment.

California Health & Safety Code Sec 33035 states that "The existence of blight... constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety and welfare of the people..." It contributes substantially to the problems of crime prevention, the preservation of the public health, and the maintenance of adequate police fire and other public services.

Causes of blight include conditions that prevent or hinder the viable reuse of buildings or vacant lots and result in abnormally high vacancies with subsequent physical deterioration. This is a likely outcome resulting from the proposed ban.

Based on a review of various CRWQCB technical reports, a compilation of property information from the Los Angeles County Assessor's Office, a survey of the commercial properties themselves as well as research into the cost of pumping and hauling discharge to disposal sites outside the Ban Area, CB Richard Ellis has reached the following conclusions with respect to the potential adverse physical impact of the proposed ban on waste water discharges in the Malibu Civic Center area (Ban Area).

1. A survey of the non-residential properties in the Ban Area revealed significant vacant space, especially in the vast majority of the properties that are at least 20 years old and which would be likely candidates for significant physical upgrades or renovation upon tenant turnover or earlier
2. For the five years during which no additional discharge would be permitted, the ban would result in limiting the reuse of properties if interior building adaptations are required to accommodate the needs of new tenants.
3. This reduction in marketability and certain increase in vacancies would significantly reduce the potential rent and result in less funds being available for maintenance and upkeep.
4. Without a sewer system in place by year five, when the total ban on discharges becomes effective, the economic burden on both residential and non-residential properties would be extremely large. At a cost of \$0.20 per gallon for removal and average daily discharge of over 250,000 gallons:
  - a. The cost of pumping and hauling all sewage for the Ban Area is in excess of \$20 million per year.
  - b. The average cost of pumping/hauling for a single residence is \$26,000.
  - c. The pumping/hauling cost burden for commercial businesses will likely range from \$25 per square foot for general retail to \$50 per square foot for restaurants and \$100 per square foot for fast food establishments.

With annual rents of \$40 to \$60 per square foot, this added burden will force many businesses to close.

- d. The reduced maintenance and subsequent deterioration would result in blighted conditions and urban decay with additional adverse spillover effects on nearby properties.
5. Based on average 2,000-gallon truck, at least 46,000 tank truck trips per year would be required to pump and haul off all of the effluent if the total ban becomes effective. This would have a deleterious impact on local traffic congestion, air quality and other environmental impacts.

The greater these economic burdens are compared to the value of the commercial activities on individual parcels, the greater will be the adverse physical impact that will result and spillover to other properties.

Exhibit 1 presents a tabulation of the discharge estimated by the CRWQCB for properties in the Ban Area. It also presents an estimate by CB Richard Ellis of the annual cost of hauling and pumping the discharge with a full ban on discharge in effect. Exhibit 2 presents a tabulation of all the parcels in the Ban Area with the age and square footage of selected parcels. Exhibit 3 presents photographs of representative vacant properties in the Ban Area taken on September 26, 2009. The type of blight and urban decay depicted in those photographs is illustrative of the type of adverse physical impact that could result from the proposed amendment.

Sincerely,



Thomas R. Jirovsky  
Senior Managing Director



Ross S. Selvidge, Ph.D.  
Managing Director

*Mr. Jirovsky and Dr. Selvidge both have more than 30 years experience in real estate and land use consulting. They have conducted numerous analyses of the potential for urban decay in accordance with the California Environmental Quality Act as well as negotiating terms of transactions in redevelopment project areas that have the object of eliminating blight.*

**Exhibit 1  
Malibu CRWQCB Discharge Ban Area**

	Discharge GPD	Discharge GPYr	Total Annual Pump and Haul Cost	Annual Cost PSF
<b>Sector 1</b>				
HRL - 3011 Malibu Cyn Rd	3,426	1,250,490	\$250,098	\$1.14
LA Co Main Yard - 3637 Winter Cyn Rd	252	91,980	18,396	
Malibu Colony Plaza - Disposal in Winter Cyn	16,617	6,065,205	1,213,041	\$9.94
Malibu WPCP - 3260 Vista Pacifica	22,500	8,212,500	1,642,500	
Webster Elementary - 3602 Winter Cyn Rd	5,000	1,825,000	365,000	
Our Lady of Malibu - 3625 Winter Cyn Rd	2,500	912,500	182,500	
Malibu Presbyterian Nursery School - 3324 Malibu Cyn Rd	1,500	547,500	109,500	\$7.05
<b>Sector 2</b>				
Serra Retreat - 3401 Serra Rd	720	262,800	\$52,560	
<b>Sector 3</b>				
Malibu Animal Hospital - 23431 PCH	500	182,500	\$36,500	
Malibu Adm. Center - 23519 Civic Ctr Wy	4,038	1,473,870	294,774	
Raquet Club - 23847 Stuart Ranch Rd	1,500	547,500	109,500	
Prudential Realty - 23405 PCH	450	164,250	32,850	\$15.63
Malibu Country Mart I - 3635 Cross Creek Rd	8,400	3,066,000	613,200	
Malibu Country Mart II - 23410 Civic Ctr Wy	6,300	2,299,500	459,900	\$13.05
Malibu Country Mart III - 3900 Corss Creek Rd	3,400	1,241,000	248,200	\$7.18
Malibu Shell - 23387 PCH	300	109,500	21,900	\$12.65
Malibu Prof. Arts Bldg - 23440 Civic Ctr Wy	450	164,250	32,850	\$2.60
Malibu Lumber - 23479 PCH	8,500	3,102,500	620,500	
Mira Mar Properties - 23805-23815 Stuart Ranch Rd	3,200	1,168,000	233,600	
J & P Limited - 3805 Cross Creek Rd	500	182,500	36,500	
So. Calif. Edison	400	146,000	29,200	
Verizon South, Inc. - 3705 Cross Creek Rd	400	146,000	29,200	
Mariposa Land Company, LLC - 3728 Cross Creek Rd	400	146,000	29,200	
Malibu Creek Plaza/Malibu Village - PCH Cross Creek	11,000	4,015,000	803,000	
<b>Sector 4</b>				
Malibu Rd., LLC - 23676-23712 Malibu Rd	400	146,000	\$29,200	\$2.42
Morton-Gerson - 23730 Malibu Rd	400	146,000	29,200	\$9.06
LA Co Fire Station #88 - 23720 Malibu Rd	540	197,100	39,420	
Lisa Krasnoff - 23655 Malibu Colony Rd	400	146,000	29,200	\$8.86
Mesa, LLC - 23915 PCH	400	146,000	29,200	
<b>Sector 5</b>				
Surfrider Co. Beach - 23080 PCH	3,188	1,163,620	\$232,724	
Malibu Pier State Park - 23000 PCH	3,000	1,095,000	219,000	
Malibu Shores Motel - 23033 PCH	2,843	1,037,695	207,539	\$44.84
Malibu Beach Inn - 22878 PCH	2,843	1,037,695	207,539	\$9.36
Jack-In-The-Box - 23017 PCH	4,500	1,642,500	328,500	\$239.61
Malibu Plaza - 22917 PCH	1,500	547,500	109,500	\$4.43
Malibu Inn & Restaurant - 22969 PCH	6,200	2,263,000	452,600	\$63.00
Surfshack/Fish Grill - 22935 PCH	400	146,000	29,200	\$22.50
Spcl & Span Cleaners/Chabad - 22941 PCH	400	146,000	29,200	\$10.81
<b>TOTAL</b>	<b>129,267</b>	<b>47,182,455</b>	<b>\$9,436,491</b>	

Gallons Per Truck Trip            2,000  
 Trips Per Year                        23,591  
 Trips Per Day                         65

Source: RWQCB Report 8-5-09 Table 1 - Page T4-20 and CB Richard Ellis

**Exhibit 1 Continued**  
**Malibu CRWQCB Discharge Ban Area**

	Total Discharge GPD	Total Discharge GPYr	GPD Discharge Per Home	Total Annual Pump and Haul Cost	Annual Cost Per Home
<b>Sector 1</b>					
Residential 61 Homes	17,800	6,497,000	292	\$1,299,400	\$21,302
<b>Sector 2</b>					
Residential 83 Homes	31,100	11,351,500	375	2,270,300	\$27,353
<b>Sector 3</b>					
Residential 2 Homes	800	292,000	400	58,400	\$29,200
<b>Sector 4</b>					
73 of 180 Res. @50% Flow to Lagoon	25,900	9,453,500	355	1,890,700	\$25,900
107 of 180 Res. @20% Flow to Lagoon	39,900	14,563,500	373	2,912,700	\$27,221
<b>Sector 5</b>					
Residential 23 Homes	10,800	3,942,000	470	788,400	\$34,278
<b>Total</b>	126,300	46,099,500	362	\$9,219,900	\$26,418

Number of Homes                    349

Gallons Per Truck Trip            2,000

Trips Per Year                        23,050

Trips Per Day                         63

Source: RWQCB Report 8-5-09 Table 1 - Page T4-20 and CB Richard Ellis

**Cost Per Gal                    \$0.20**

**Exhibit 2  
Malibu Ban Area Parcels**

APN	Property	Street No.	Street name	Owner	Description	Year Built	Square Feet Improvements
<b>COMMERCIAL</b>							
4458-029-001		00000		HUGHES RESEARCH LABORATORIES INC	Industrial / Vacant land		
4458-029-006		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing		6,830
4458-029-016		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing		
4458-029-015	HRL Labs,LLC - Malibu Facility	03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing	1988	90,648
4458-029-013		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing	1983	5,773
4458-029-012		03011	MALIBU CANYON RD	HUGHES RESEARCH LABORATORIES INC	Heavy manufacturing		115,673
4458-021-003		03542	COAST VIEW DR	WAVE PROPERTY INC	Nursery or Greenhouse		
4458-027-034		03547	WINTER CANYON RD	LEMONNIER	Store and residential combination		
4458-022-025		03700	LA PAZ LN	KNAPP	Commercial / Vacant land		
4452-011-037		03728	CROSS CREEK RD	MARIPOSA LAND COMPANY LTD	Nursery or Greenhouse		
4452-012-024		03738	CROSS CREEK RD	MARIPOSA LAND CO LTD	Store and residential combination		
4452-011-035	J and P Limited	03806	CROSS CREEK RD	PARTNERSHIP	Office Building		
4458-020-014	Malibu Country Mart I	03835	CROSS CREEK RD	CREEK LLC	Shopping center (neighborhood)		
4458-011-042	Malibu Country Mart III	03900	CROSS CREEK RD	ACQUISITION CO.	Shopping center (neighborhood)	1972	25,832
4452-011-039		03900	CROSS CREEK RD	LLC	Stores		8,724
4452-005-031	Malibu Beach Inn	22878	PACIFIC COAST HWY	MALIBU BEACH INN INC	Motel - under 50 units / 3 stories	1989	22,165
4452-019-011		22917	PACIFIC COAST HWY	EQUITIES LLC	Office Building	1989	24,739
4452-019-004		22969	PACIFIC COAST HWY	WAVE SOUND INC	Restaurant	1950	7,184
4452-019-003	Jack in the Box #160	23017	PACIFIC COAST HWY	CHECKER BOARD PROPERTIES INC	Restaurant	1969	1,371
4452-019-002	Malibu Shores Motel	23033	PACIFIC COAST HWY	LEON	Motel - under 50 units	1953	4,628
4452-011-043		23359	PACIFIC COAST HWY	MALIBU RETAIL ACQUISITION CO.	Shopping center (neighborhood)		
4452-011-033	Malibu Shell	23387	PACIFIC COAST HWY	OIL LLC	Service station	1964	1,731
4458-020-002	Prudential Malibu Realty	23405	PACIFIC COAST HWY	CROSS CREEK REAL ESTATE GROUP LLC A	Office Building	1947	2,102
4458-020-010	Malibu Country Mart II	23410	CIVIC CENTER WAY	MALIBU CROSS CREEK LTD	Commercial		35,230
4458-020-004	Malibu Professional Arts Bldg	23440	CIVIC CENTER WAY	PARTNERS LLC	Professional Building	1972	12,644
4458-019-008		23614	PACIFIC COAST HWY	CHEVRON USA INC	Service station		
4458-020-016		23641	PACIFIC COAST HWY	LAND CORP.	Commercial		
4458-001-007		23644	MALIBU RD	PERENCHIO	Industrial / Misc.		
4458-002-019		23700	MALIBU RD	23676 AND 23726 MALIBU RD LLC	Bank		12,050
4458-002-018	23730 Malibu Road	23730	MALIBU RD	GERSON	Office Building	1960	3,224
4458-018-002	Malibu Colony Plaza	23755	MALIBU RD	CITY NATIONAL BANK	Commercial / Vacant land		
4458-022-011		23789	STUART RANCH RD	MALIBU BAY COMPANY	Commercial		
4458-021-173	Miramar Building (23805-15)	23805	STUART RANCH RD	MIRAMAR PROPERTY INVESTMENT CO	Commercial		
4458-021-005		23833	STUART RANCH RD	YAMAGUCHI	Nursery or Greenhouse		
4458-019-010		23841	MALIBU RD	COLONY LLC	Shopping center / Lift		
4458-021-002		23847	STUART RANCH RD	MALIBU RACQUET CLUB	Club	1974	3,900
4458-019-003		23900	PACIFIC COAST HWY	LAND CORP.	Professional Building		
4458-018-004		23915	MALIBU RD	MESA LLC	Store and residential combination		
4458-028-020		24000	CIVIC CENTER WAY	LAND CORP.	Commercial		

**Exhibit 2 Continued  
Malibu Ban Area Parcels**

APN	Property	Street No.	Street name	Owner	Description	Year Built	Square Feet Improvements
<b>INSTITUTIONAL</b>							
4452-019-008		22931	PACIFIC COAST HWY	CHABAD OF MALIBU	Religious		
4452-020-098		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-020-099		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-020-076		00000		MOUNTAINS RESTORATION TRUST	Religious		
4452-019-010		22935	PACIFIC COAST HWY	CHABAD OF MALIBU INC	Religious	1963	1,298
4458-038-010		24255	PACIFIC COAST HWY	PEPPERDINE UNIVERSITY	College		
4458-025-023		03324	MALIBU CANYON RD	MALIBU PRESBYTERIAN CHURCH	Church	1951	15,536
4458-027-024		03625	WINTER CANYON RD	ROMAN CATHOLIC ARCHBISHOP OF LA	Church	1949	4,854
4458-027-023		03625	WINTER CANYON RD	ARCHDIOCESE OF LA EDUC AND WELFARE	Religious		
4458-027-035		00000		ARCHDIOCESE OF LOS ANGELES EDUCATIC	Religious		
4458-027-025		03625	WINTER CANYON RD	ROMAN CATHOLIC ARCHBISHOP OF LA	Religious	1970	5,290
4452-019-009		22941	PACIFIC COAST HWY	CHABAD OF MALIBU	Religious	1962	2,700
4458-021-172	Vineyard Christian Church	23825	STUART RANCH RD	VINEYARD CHRISTIAN FELLOWSHIP OF MA	Religious		
<b>UTILITY</b>							
4458-027-800		00000		SO CALIF EDISON CO SBE PAR 1 MAP 14	Utility		
4458-022-022		00000		MALIBU PARK PLACE LLC	Utility		
4452-011-803	Edison	03808	CROSS CREEK RD	SO CALIF EDISON CO SB OF E PAR 1 MA	Utility		
4458-022-802		03705	CROSSCREEK RD		Utility		

**Exhibit 2 Continued  
Malibu Ban Area Parcels**

APN	Property	Street No.	Street name	Owner	Description	Year Built	Square Feet Improvements
<b>GOVERNMENT PROPERTIES</b>							
4458-023-902		00000		STATE OF CALIF	Govn't owned property / Sewer		
4458-023-903		00000		SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-027-903		00000		SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-027-900	Road Maintenance Yard 336	03637	WINTER CANYON RD	L A COUNTY	Govn't owned property / Open		
4458-027-904		00000		SANTA MONICA UNIFIED SCHOOL DIST	Government Property		
4458-002-900	Fire Station No. 88	23720	MALIBU RD	L A COUNTY CONSOLIDATED FIRE PRO DI	Govn't owned property / Police & Fire stations		
4458-022-803		00000		LOS ANGELES SMSA LTD SBE 2532-19-18	Govn't owned property / Govn't services		
4458-022-904		23525	CIVIC CENTER WAY	L A CO CAPITAL ASSET LEASING RP	Government Property		
4458-019-900		23950	PACIFIC COAST HWY	L A CO WATERWORKS DIST NO 29	Govn't owned property / Sewer		
4452-011-903		00000		STATE OF CALIF	Govn't owned property / Open		
4452-011-901		00000		STATE OF CALIF	Govn't owned property / Vacant		
4452-018-903		00000		STATE OF CA MTNS RECREATION AND COI	Govn't owned property / Vacant		
4452-018-900		00000		STATE OF CA MTNS RECREATION AND COI	Govn't owned property / Vacant		
4452-018-902		00000		STATE OF CA MTNS RECREATION AND NSE	Govn't owned property / Vacant		
4452-006-903		00000		STATE OF CALIF	Govn't owned property / Open		
4452-005-902	Malibu Pier State Park	00000		STATE OF CALIF	Govn't owned property / Vacant		
4452-018-901		00000		STATE OF CA MTNS RECREATION AND COI	Govn't owned property / Vacant		
4452-005-901		00000		L A COUNTY	Govn't owned property / Vacant		
4452-007-903		00000		STATE OF CALIF	Govn't owned property / Open		
4452-006-902		00000		L A COUNTY	Govn't owned property / Open		
4452-007-900		00000		STATE OF CALIF	Govn't owned property / Open		
4452-012-902		00000		STATE OF CALIF	Govn't owned property / Vacant		
4452-007-902		00000		L A COUNTY	Govn't owned property / Open		
4458-020-900		00000		L A COUNTY	Govn't owned property / Open		
4458-018-900		24250	PACIFIC COAST HWY	L A COUNTY	Govn't owned property / Vacant		
4458-020-901		00000		L A COUNTY	Govn't owned property / Open		
4458-018-902		00000		STATE OF CALIF	Govn't owned property / Vacant		
4458-018-903		00000		STATE OF CALIF	Govn't owned property / Vacant		

Exhibit 3  
Malibu Ban Area Vacant Properties

APN 4458-019-008



APN 4458-019-010

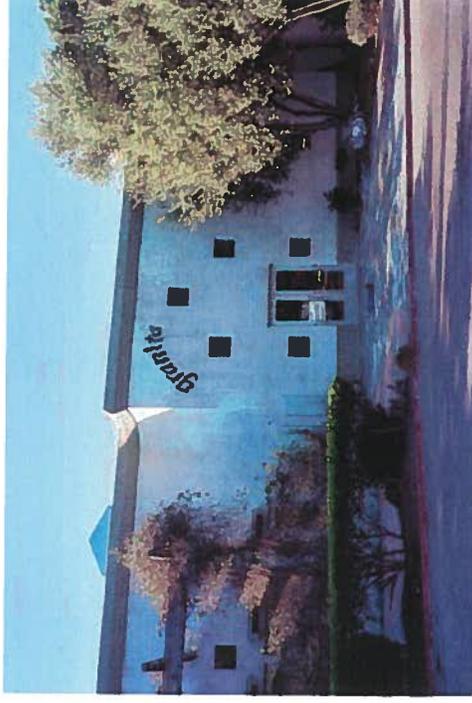
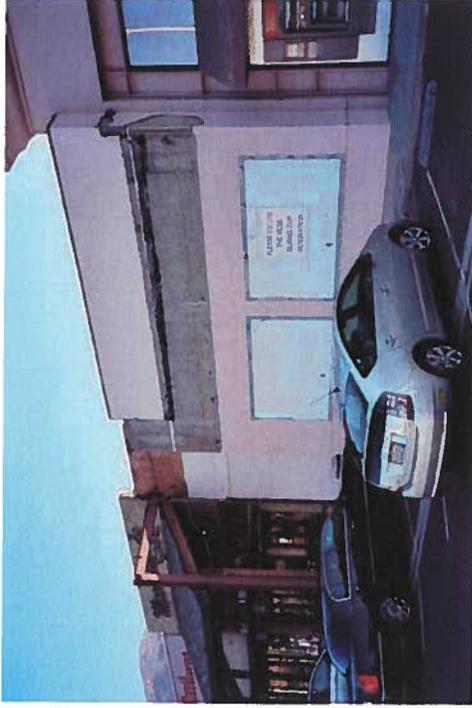


Exhibit 3 (Continued)  
Malibu Ban Area Vacant Properties

APN 4452-011-903



# **ATTACHMENT 4**



October 8, 2009

Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
California Regional Water Quality Control Board, Los Angeles Region  
320 W. 4th Street, Suite 200  
Los Angeles, California 90013

**RE: Comments on the Environmental Staff Report in support of the Proposed Amendment to the Water Quality Control Plan to Prohibit On-Site Wastewater Disposal Systems in the Civic Center Area of the City of Malibu**

Dear Dr. Chou,

Matrix Environmental (MATRIX) on behalf of a number of parties potentially affected by the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (the "Basin Plan") has reviewed the Environmental Staff Report prepared for the proposed prohibition of on-site wastewater disposal systems in the Civic Center area of the City of Malibu (the "Project"). MATRIX is a specialized environmental consulting firm led by Stephanie Eyestone-Jones and Bruce Lackow, recognized leaders in the environmental consulting field who together have over 40 years of environmental consulting experience in preparing legally sound CEQA and National Environmental Policy Act (NEPA) documentation for many of the most high-profile projects in southern California.

MATRIX has reviewed the Environmental Staff Report for the Project with regards to its adequacy for serving as the CEQA document for the proposed Project. Based on this review we offer the following comments.



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION  
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## **Comments Regarding Environmental Assessment Prepared Regarding the Prohibition of On-site Wastewater Disposal Systems in the Malibu Civic Center Area**

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The State of California Regional Water Quality Control Board, Los Angeles Region has prepared the "Environmental Staff Report Containing Substitute Environmental Documentation in Accordance with the California Environmental Quality Act in support of an Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area." A review of this document, hereinafter referred to as the Environmental Staff Report, was conducted. Based on this review and as demonstrated by comments provided herein, the Environmental Staff Report does not satisfy the basic requirements of the California Environmental Quality Act (CEQA) Statute (See Cal. Public Resources Code, § 21000 *et. seq.*) and the CEQA Guidelines (See Cal. Code Regs. tit. 14, § 15000 *et. seq.*)

### **THE DOCUMENT FAILS TO MEET THE BASIC REQUIREMENTS OF CEQA (E.G., PUBLIC RESOURCES CODE § 21085.5)**

Public Resources Code Section 21085.5 (a) provides that "when a regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section." In addition, Public Resources Code Section 21085.5 (d)(3) states that the plan or other written documentation required by the regulatory program shall include "a description of the proposed activity with alternatives to the proposed activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity." The Environmental Staff Report does not comply with these basic requirements



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Chief Groundwater Permitting Unit

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of Public Resources Code Section 21085.5 or the basic requirements of CEQA as it does not adequately describe the proposed activity, does not evaluate the reasonably foreseeable environmental impacts of the proposed activity, and does not provide for alternatives or mitigation measures to reduce the significant adverse effects on the environment. Additional documentation based on substantial evidence must be provided in order for the decision maker to make an informed decision about the proposed activity.

### **Inadequate Project Description**

The "Proposed Action" or "Project" set forth in the Environmental Staff Report is to prohibit the discharge of wastewater through on-site wastewater disposal systems (OWDS) in the Civic Center area of the City of Malibu. Existing residents, businesses, and public facilities that discharge wastewater through OWDS in the Civic Center area would be affected by the proposed prohibition as well as future dischargers who may plan to discharge in this area. As set forth in the Environmental Staff Report, the Project would immediately prohibit all new discharges from OWDS in the Civic Center area and would establish a five-year schedule to cease discharges from existing systems. The Project Description in the Environmental Staff Report fails to recognize that in order to implement the proposed ban, a new wastewater system must be in place and thus, such a system must be fully described so that the reasonably foreseeable impacts of the system can be disclosed to the public and decision-makers. Rather, the Environmental Staff Report states that "it will be the responsibility of the community and stakeholders to select a strategy for compliance [with the ban] and it will be the responsibility of a local government (local agency) to perform a specific project-level analysis and disclose those environmental impacts." While three conceptual wastewater systems that could be implemented as part of the Proposed Action are described in the Environmental Staff Report, such concepts have not been fully vetted and described. Thus, no meaningful evaluation of environmental impacts of the Project has been provided. As a result, the Environmental Staff Report is "piecemealing" the Project and inappropriately deferring analysis of potential environmental impacts. California courts have considered separate activities as one CEQA project and required them to be reviewed together where, for example, the second activity is a reasonably foreseeable consequence of the first activity (See Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263 [118 Cal. Rptr. 249, 529 P.2d 1017]); the second activity is a future expansion of the first activity that will change the scope of the first



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activity's impacts (Laurel Heights I, supra, 47 Cal.3d 376); or both activities are integral parts of the same project (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal. App. 3d 223 [242 Cal. Rptr. 37]); see also Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116.)

In addition, based on public comments made at the September 1, 2009 Public Workshop at Pepperdine University on the Proposed ban, it appears that the Environmental Staff Report was completed without input from several key agencies and stakeholders. For example Dr. Radal Orton told the Regional Board at that Public Workshop that the Las Virgenes Municipal Water District was not consulted and any system that relies on the Tapia Treatment Facility may not be feasible. As a result, the Project Description has not been fully vetted and the basic components of the Project need modification. For example, the boundaries of the ban appear to be in flux and it also appears that the use of Legacy Park to implement any of the new wastewater systems identified in the Environmental Staff Report may also be difficult as Legacy Park also has percolation capacity constraints. (See Final Integrated Water Quality Management Feasibility Study, Questa Engineering Corporation (April 28, 2005).) Another example of the short-sightedness of the Project Description and associated environmental analysis is that the new wastewater system(s) described and evaluated in the Staff Report do not provide for growth set forth by the General Plan. Specifically, page 35 of the Environmental Staff Report states that the compliance projects are expected to be sized to replace existing OWDS flows only and no new connections are anticipated. Again, without an adequate Project Description, the reasonably foreseeable environmental implications cannot be adequately disclosed.

Based on public comments regarding the proposed ban at the September 1, 2009 and October 1, 2009 Public Workshop at Pepperdine University, it also appears that additional study of potential environmental solutions to address water quality in the Project vicinity is currently underway. We understand these studies include work done by the University of California, Los Angeles, the United States Geological Survey, the Southern California Coastal Water Research Project, and Stone Environmental. Numerous comments have been made stating that these studies, which include studies of stormwater and urban runoff, should be completed prior to approval of the proposed ban since such studies could provide key information and new solutions that may change the proposal to ban OWDSs. The public should be provided the opportunity to review and comment on



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
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these studies within an adequate timeframe and such studies should also be presented to the decision makers so that they may make an informed decision regarding the Project.

### **Inadequate Analysis of Environmental Impacts**

The analysis of impacts associated with the integrated facilities, interceptor sewer and decentralized facilities that could be implemented as part of the proposed ban is insufficient. The analysis within the Environmental Staff Report evaluates these new wastewater systems "on a conceptual basis only" (p. 3) and indicates that additional project-specific environmental analysis is to be conducted. As the project-specific analyses would occur following implementation of the prohibition, there is no certainty that the prohibition would not lead to direct and indirect impacts that are greater or equally objectionable to those that the prohibition is seeking to address. Thus, given the broad and profound implications of the prohibition, a comprehensive analysis of the environmental impacts of the Project is necessary at this time. Further, the Environmental Staff Report repeatedly makes the assumption that all impacts can be mitigated. This assumption is erroneous and unfounded since the analysis was completed on a conceptual basis and in many cases, the analysis was simply deferred. As demonstrated by the comments provided below, the Project has the potential to result in numerous significant environmental impacts that are not identified in the Environmental Staff Report, including impacts associated with the following issue areas:

#### *Construction Impacts*

- The Environmental Staff Report states that construction impacts are not significant as they are short-term. While construction impacts may be considered short-term in the context of the operational life of the Project, the mere fact that impacts are short-term is not sufficient unto itself to declare impacts less than significant as evidenced in the examples below.
  - *Traffic/Circulation*
    - In-street construction impacts are problematic with regard to traffic, buses, bicyclists, and pedestrians.



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Chief Groundwater Permitting Unit

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- Two options, by themselves or in combination, are available to address in-street impacts – lane closures and/or rerouting traffic
  - Lane closures along PCH would be particularly problematic given the role of PCH as a life line connecting Malibu to areas up and down the coast as well as inland connectors to the regional freeway system.
  - Given the multiple purposes that PCH serves, these impacts would be realized not only during commuting hours but throughout the day as PCH is the main roadway to access coastal recreational resources.
  - Potential impacts in terms of limiting coastal access during non-commuting periods (e.g., weekends and during the summer) would also be of concern to agencies such as the California Coastal Commission.
  - Re-routing works when the streets used for re-routing have comparable capacities and are arranged in a grid pattern. Neither is the case with regard to PCH. Adequate and convenient alternatives for rerouting traffic, as well as buses, bicyclists and pedestrians are extremely difficult.
  - Construction traffic may also result in significant impacts to intersections and street segments.
- *Parking*
    - The loss of parking during construction will be of concern to businesses and residents. The Environmental Staff Report defers this analysis.
  - *Air Quality*
    - The SCAQMD has established daily thresholds in terms of regional emissions and requires analysis of localized impacts based on ambient air quality standards which are expressed in terms of 1-hr, 8-hr, and 24-hour thresholds depending on the pollutant. As a result, Projects lasting a day or less can result in significant impacts.



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Chief Groundwater Permitting Unit  
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- No analysis of these potential impacts is provided. Therefore, one cannot independently verify the conclusions that impacts are less than significant because they are so-called "short-term" in nature.
- *Noise*
  - In-street construction whether it lasts one hour, one day, or one year can be significant and detrimental. Noise levels from construction often reach 90 dBA or higher at a distance of 50 feet from the source. No analysis is provided relative to the standards expressed in Section 8.24.040 of the Malibu Municipal Code which states:
    - "No person shall make, or cause or suffer, or permit to be made upon any public beach, occupied by such person, any unnecessary noises, sounds or vibrations which are physically annoying to reasonable persons of ordinary sensitivity or which are so harsh or so prolonged or unnatural or unusual in their use, time, or place as to occasion unnecessary discomfort to any persons within five hundred (500) feet of the place from which said noises emanate or which interfere with the peace and comfort of other occupants of the beach or the residents of the neighborhood or their guests, or the operators or customers in places of business in the vicinity, or which may detrimentally or adversely affect such occupants or residences or places of business."
  - No information is provided regarding the hours of permitted construction. While Section 8.24.060 of the City's Municipal Code provides exemptions for hours of construction, such exemptions are ineffective in terms of addressing the significant noise impacts that could occur from construction between weekday hours of 7:00 P.M. and 7:00 A.M. or at any time on Sundays or holidays.
- *In-Street Capacity*
  - The Environmental Staff Report is inadequate as there is no technical support or information demonstrating that there is adequate capacity in



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Chief Groundwater Permitting Unit  
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the street to accommodate the additional infrastructure or subsurface infrastructure.

- *Risk of Upset*
  - Environmental site assessments have not been conducted. Therefore, there is no discussion of potential presence of subsurface hazardous materials. Therefore, an unknown risk could occur.
  - No analysis is provided regarding potential impacts associated with the subsurface infrastructure accidentally being breached by a third-party after construction is completed.

#### Trucking

- Due to land area constraints, the new wastewater system(s) may indeed require trucking. Such trucking could result in a number of significant impacts that are not disclosed in the Environmental Staff Report.
- The RWQCB estimated that 7% of the generated waste in the study area was hauled offsite. See Proposed Prohibition Technical Memorandum #5: Dischargers with Unsuitable Hydrogeologic Conditions for High Flows of Wastewaters Resort to Hauling Liquid Sewage and Sludge to Communities that have Sewer and Wastewater Treatment Facilities (Draft Dated July 31, 2009). Based on this estimate, the RWQCB calculated that hauling activity in the Civic Center currently produces 252 tons of carbon dioxide per year. Using the RWQCB's own estimates, in five years, if a centralized wastewater treatment system (or other solution) is not in place, waste hauling from the Civic Center would produce an estimated 23,436 tons of carbon dioxide a year.

#### Climate Change

- Climate change is not addressed in the Environmental Staff Report. Quantification of greenhouse gas (GHG) emissions associated with project construction and operations is required under CEQA.



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- Information regarding energy usage that would support a climate change analysis is also not provided.
- Mitigation measures that have been independently determined to be reasonable and feasible with regard to reducing a project's GHG emissions are set forth in the Climate Change Scoping Plan prepared by the California Air Resources Board, related GHG documents, as well as by the State Attorney General are not acknowledged or discussed.

#### Land Use

- The Environmental Staff Report indicates that the land required for the new wastewater system(s) may require changes in land use and that additional land may be required for infiltration when discharge of wastewater to the subsurface is required. However, no analysis of the land use alteration impacts is provided. Rather, the analysis is deferred.

#### Water Quality

- The Environmental Staff Report states that with the new wastewater system(s), there may not be sufficient demand for recycling of all wastewaters and discharge of flows may be required if adequate subsurface disposal area is not available. The report suggests that an ocean outfall may be required. However, none of the potentially significant impacts associated with the outfall are described and no mitigation is provided.

#### Groundwater

- The Environmental Staff Report states that for all of the new wastewater system(s) options, termination of discharges from OWDSs would alter groundwater flow patterns. In addition, the report also states that subsurface systems that may be used for the new system options would also alter groundwater flows on a larger scale. However, no analysis of these impacts is provided and no mitigation measures are proposed to



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**  
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address these potentially significant impacts. Rather, the report defers the analysis of this impact to future environmental studies.

#### *Air Toxics and Odors*

- The SCAQMD has established specific methodologies and thresholds of significance regarding odors and air toxics that are not included.

#### *Urban Decay*

- The proposed ban could have a significant impact on the economic viability of the Malibu Civic Center commercial center, potentially causing blight conditions which impacts have not been addressed in the Environmental Staff Report.

#### *Environmentally Sensitive Areas*

- The Environmental Staff Report recognizes that there are environmentally sensitive areas in the Project vicinity and that the new wastewater system options could result in significant impacts to such areas. However, no analysis is provided. Rather, the discussion states that mitigation measures would be required by the local agency and does not provide any specificity as to what such mitigation measures may be.

#### *Mitigation Measures*

- Throughout the environmental checklist, numerous issue areas are indicated as "less than significant with mitigation incorporation." However, mitigation is referred to but no specific mitigation measures are provided.

### **Inadequate Analysis of Alternatives**

CEQA requires that alternatives be identified to reduce or eliminate the significant environmental impacts of a project. See Cal. Code Regs., tit. 14, § 15350 *et. seq.* As indicated above, the proposed ban and associated new wastewater system(s) have the potential to result in significant environmental impacts. Thus, in accordance with CEQA,



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
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alternatives to reduce or eliminate such significant impacts must be identified and a comparative analysis of such alternatives with those of the Project should be provided. However, the analysis of alternatives within the Environmental Staff Report focuses on just two alternatives that were not formulated with the intent of addressing such significant impacts. Specifically, the first alternative, Alternative 1, includes an initiative by a municipality, utility or other local government to cease discharge through OWDSs by providing community services to collect and dispose/reuse wastewater in a manner that will restore water quality and beneficial uses of impaired waters. The second alternative, Alternative 2, is a no action alternative that assumes dischargers continue to rely on OWDSs. The impact analysis for Alternative 1 within the Environmental Staff Report defers to the analysis completed for the Proposed Action or Project and concludes that all of the impacts for this Alternative would be of relatively short duration and can either be mitigated or alternative options to achieve water quality objectives may be available. The analysis for Alternative 2 merely states that this program alternative would result in continuing worsening impairments to beneficial uses of the water resources in and around the Malibu Civic Center. Thus, neither of the alternatives was designed with the intent of reducing the significant impacts of the Project and no comparative analysis of the environmental implications of these alternatives relative to the Project was included in the Environmental Staff Report.

In addition, as indicated above, studies are underway which may inform what the "Project" should truly be. These studies may demonstrate that other solutions are available to address water quality issues within the Project vicinity and such studies and solutions should also be accounted for in the analysis of alternatives provided in the Environmental Staff Report.

Finally, there are several additional alternatives that have been suggested in public comments made at the September 1, 2009 and October 1, 2009 Public Workshops at Pepperdine University that have not been accounted for in the Environmental Staff Report. For example, upgrades of existing systems should be accounted for as an alternative to the proposed ban. The staff report acknowledges that "dischargers could voluntarily implement projects to achieve water quality objectives and TDML targets" but "staff believes that this is unlikely" and thus no such alternatives are presented.



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**  
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## **Other CEQA Requirements Not Met**

### *Cumulative Impacts*

CEQA requires that an analysis of cumulative impacts associated with development of a project and related projects must be evaluated. (See Cal. Code Regs., tit. 14, § 15350 et. seq.). The Project clearly includes a new wastewater system(s) whose impacts must be evaluated in the context of other related projects or future growth. The cumulative impact discussion within the Environmental Staff Report does not comply with CEQA as it does not account for the cumulative impacts associated with a new wastewater system(s) and related projects or future growth in the area. Rather, the discussion defers the analysis of cumulative impacts to later documents.

### *Growth-Inducing Impacts*

The discussion of growth-inducing impacts does not account for the fact that several of the alternative systems have the potential to remove obstacles to growth.

### *Statement of Overriding Considerations*

The Statement of Overriding Considerations does not meet the basic requirements of CEQA and lacks clarity. The purpose of the Statement of Overriding Considerations under CEQA is to balance the benefits of the project against the significant impacts of the project. (See Cal. Code Regs. tit. 14, § 15021.) As discussed above, the Environmental Staff Report does not disclose what the significant impacts of the Project might be and additional analysis needs to be completed to identify such impacts. Thus, the Statement of Overriding Considerations does not weigh the significant impacts of the Project against the benefits of the Project. Furthermore, the discussion assumes that the local agency will adopt mitigation measures or alternatives to reduce significant impacts to less than significant levels.

## **FIVE-YEAR TIMEFRAME TO IMPLEMENT OPTIONS IS SHORT-SIGHTED**

Another shortfall of the Project and the Environmental Staff Report is the short-sightedness associated with the five-year timeframe that has been established for



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**  
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imposition of the ban on existing ODWSs. Based on public comments to date, no funding has been identified or approved for any new wastewater system. Moreover, the City of Malibu has recently estimated the cost of a centralized system to be on the order of \$40 to \$60 million dollars as compared to the \$18 million estimate set forth in the Environmental Staff Report. Given the existing state of the economy, such funding will likely take some time to obtain and the fact that the City estimates that the centralized system would cost up to 3+ times more than the original estimate further casts serious doubt as to whether a centralized system could ever be economically feasible. In addition, a substantial amount of time will be required to complete public outreach, consult with agencies, and evaluate, design, and construct a new system. The implications of this impractical timeframe must be accounted for. For example, if the ban were to occur prior to a new system being in place, trucking of wastewater may be necessary. This and other potential ramifications of the proposed five-year timeframe need to be addressed.

## **CONCLUSION**

As demonstrated by the comments above, the environmental analysis provided in the Environmental Staff Report is substantively flawed from a multitude of perspectives. With these flaws, the Environmental Staff Report fails to meet the basic purposes of CEQA including to inform the decision makers and the public about the potential significant environmental impacts of a project, to reduce significant impacts through identification of alternatives or mitigation measures, and to disclose to the public why an agency approved a project if significant impacts are involved. (See Cal. Public Resources Code § 21000 and 21001.)

\* \* \* \* \*



Dr. Rebecca Chou  
Chief Groundwater Permitting Unit  
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**  
October 8, 2009 - Page 14

The preceding constitutes our comments on the Environmental Staff Report and its supporting documentation available as of this date. As additional information and documentation with regard to the Project is released by the Regional Board we reserve the report to supplement these comments at a later date. Please contact the undersigned with any questions you may have with regard to the comments presented above.

Respectfully submitted,  
**Matrix Environmental**

A handwritten signature in black ink, appearing to read "Stephanie Eyestone-Jones".

Stephanie Eyestone-Jones  
President

A handwritten signature in black ink, appearing to read "Bruce Lackow".

Bruce Lackow  
President

# **ATTACHMENT 5**

# LATHAM & WATKINS LLP

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October 8, 2009

Ms. Rebecca Chou  
Ms. Elizabeth Erickson  
Groundwater Permitting  
California Regional Water Quality Control Board  
Los Angeles Region  
320 4th Street, Suite 200  
Los Angeles, California 90013

## VIA EMAIL DELIVERY

Re: **Comments Concerning Unrealistic Timing Assumptions for the Environmental Analysis, Project Consideration, Potential Litigation, Election on Potential Assessment District, Obtaining of State Loan, Public Bidding Process, and Construction of Potential Centralized Wastewater Treatment Facility in the Malibu Civic Center (Scheduled for RWQCB Consideration on Nov. 5, 2009)**

Dear Ms. Chou and Ms. Erickson,

We understand that the proposed November 5, 2014, date by which the Regional Board staff proposes to prohibit any and all discharges from existing septic systems in the Malibu Civic Center area is based on a hypothetical timeline prepared by the City of Malibu that sets forth a “best case” scenario for the potential completion of a centralized wastewater treatment facility in the Civic Center area that would have to exist before the prohibition date to avoid massive environmental and economic disruption. This letter discusses why we believe it is inappropriate to rely on that hypothetical “best case” scenario and why we believe there is no substantial evidence supporting any conclusion that such a centralized wastewater treatment facility could be reliably expected to be completed on any time frame near to the November 5, 2014, date the Regional Board staff proposes.

First, from discussions with City staff it is clear that the “best case” scenario timeline was never intended to be the City’s actual prediction of what would happen in the future. The City’s draft timeline was intended to show an optimistic “best case” scenario of what is theoretically possible assuming that everything that can go easily does go easily and assuming that a broad consensus of all interested stakeholders is reached. That, of course, is not the current situation and is not likely to occur. Based on our expertise in land use permitting, in assisting with environmental assessments, in litigation over environmental and land use matters, in public finance matters, and based on the evidence submitted to the Regional Board, a timing estimate that assumes completion of such a treatment facility by November 5, 2014 is completely

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unrealistic given the facts as they actually exist today.<sup>1</sup> We also believe that there is no substantial evidence that supports a November 5, 2014 date and that a reasonable timing estimate would be closer to ten years from the final adoption of any septic ban.

To highlight the unrealistic assumptions in that “best case” scenario, we point out that for the City’s hypothetical timeline to work all of the following things must occur.

1. The “best case” timing scenario assumes that there will be no substantial opposition to the basic idea of having a centralized treatment system in the Civic Center area. This timing scenario is impossible with substantial opposition so any such opposition to the basic idea of such a system would derail the timing. Given the tremendous interest the Regional Board staff has seen from the community on this issue, it is clear that a vast portion of the Malibu community believes that the Regional Board has not made a compelling case for such a system and based on the current evidence would oppose such a system.

2. The “best case” timing scenario assumes that there will be no substantial opposition to the specific configuration of a potential centralized treatment system that the City might create. However, the City has stated that it believes any such system would require off-site wastewater dispersion locations that have not been identified, would require a substantial portion of treated water to be sent back to the locations from which waste water originated, and that some degree of pre-treatment may be needed at the source locations. All of those issues are yet to be described and are likely to create concerns and opposition from impacted stakeholders.

3. The “best case” timing scenario appears to assume an illegal CEQA process that would run afoul of the California Supreme Court’s recent decision in Save Tara v. City of West Hollywood. The scenario calls for the City to acquire land for the future placement of the treatment facility and wastewater dispersal facilities nearly a full year before the City certifies an EIR for the project. This is exactly the sort of initial public action on a project preceding the project’s EIR that the Supreme Court firmly rejected.

4. The “best case” timing scenario assumes that the CEQA process will proceed in a streamlined fashion, with a Draft EIR being published in July 2010 (just about nine months from now for a highly complex technical document that has not yet been started) and without any comments being made on the Draft EIR that would necessitate substantial revisions or recirculation. That is completely unrealistic for any high-quality EIR for a project of this complexity and with this level of community interest. A period of two years or more for a high-quality Draft EIR under a situation like this is far more likely.

---

<sup>1</sup> The signer of this letter is a partner of the international law firm of Latham & Watkins LLP, a nineteen year practitioner of environmental and land use law, a frequent author and lecturer on environmental and land use legal issues, and has been an adjunct faculty member at USC Law School since 1997 where he teaches Environmental Law. He is a 1990 graduate of Harvard Law School, cum laude, and a 1987 graduate of UCLA. His professional biography is enclosed.

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5. The “best case” timing scenario assumes that the City’s Planning Commission and City Council will be fully satisfied with whatever Draft EIR is given to them without requiring revisions or further work on the CEQA document. That is an unrealistic assumption in light of the obligation that those bodies exercise their “independent judgment” as CEQA requires. If either body determines that more assessment is needed, as is often the case, then an additional year or more can be required to complete that work and circulate it for public comment.

6. The “best case” timing scenario assumes that the City’s Planning Commission and City Council will approve the treatment system project at the first request, without changes or more work being needed on the project itself, even though there are many concerns already being expressed by members of the public and by members of those two City bodies and even though it is illegal for any such action to be prejudged in any way.

7. The “best case” timing scenario assumes that there will be no litigation challenging the City’s presumed approval of the EIR and the project. That is an extremely unlikely assumption in light of the great controversy over this proposed treatment facility and the frequency of litigation over Malibu land use decisions for matter with far less controversy and impact than this. Even if the City were to win such litigation in the trial court and in the appellate court, that process typically takes about two years assuming that the City wins at every step and assuming that the Supreme Court does not accept the case for review.

8. The “best case” timing scenario assumes that there will be broad public and landowner support for the financing mechanism – a new assessment district that requires an affirmative vote of the property owners expected to pay the new assessment – even though no one has even begun to educate the impacted people about how much money this might cost them. The City recently unveiled potential system designs with costs in the range of \$40 million to \$60 million. Those estimates may well prove to be far too low, too, as the actual costs will not be known until a public bidding process is completed. It is common for predictions of bids to be far lower than actual bids. Even using the City’s rough cost estimates, there are only approximately 387 businesses and residences that would be in the assessment district so that would mean that the average parcel would be expected to pay a total of about \$103,000 to \$155,000 each, plus substantial interest from any loan or bond, all for a system that duplicates septic systems that property owners already have and paid for and that have not been shown based on adequate evidence to cause any environmental harm that a reasonable enforcement process could not completely solve.

9. The “best case” timing scenario assumes that a state loan will be available to the City but there is no adequate basis to make that assumption given the severe economic recession and widespread state budget cuts to crucial, high-priority services like health care, education, nutrition to the poor and the ill, state parks, fire fighting, the state court system, and so forth. It is unrealistic to assume that it will be an easy thing for a small city known for having wealthy residents to get such a loan on reasonable terms in the current economic environment. It is also unrealistic to assume, as the scenario does, that it will take only two months from the

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City's filing of a final loan application to approval and funding of the presumed loan. Even if a state loan is available, it is reasonable to expect that it will take much longer to complete.

10. The "best case" timing scenario assumes that the treatment system will be easy to bid out for construction work, that there will be no glitches in the highly-regulated public bidding process, that there will be no litigation from disappointed bidders, and that the costs of the successful bidders will be within an acceptable range. It assumes that no re-bidding will be needed, though re-bidding is often needed for public projects. It is unwise to assume that none of those common sorts of glitches or delays will happen here.

11. The "best case" timing scenario assumes that the treatment system will be easy to build and will be on-time and on-budget. In fact, the scenario calls for only eleven months of construction from the awarding of the construction contract to the completion of all construction. That is an extraordinarily optimistic construction assumption. There is no adequate basis for concluding it is likely to work out that way and it is unwise not to factor in a healthy time cushion for the countless things that can and often do go wrong during construction to slow things down and/or to drive costs up. For example, Malibu has a long and rich history of having a Native American culture that has existed for hundreds of years and it is entirely possible that Native American resources or remains could be found that require a halt in construction and possibly major re-routing or other changes to minimize the impacts on those resources. That is the sort of thing that is reasonably foreseeable in Malibu and that can make an overly optimistic eleven month construction period last several years.

In all, it is clear that the City's "best case" timing scenario for the potential completion of a treatment system is extremely optimistic and extremely unlikely to occur. A great many of the factors that dictate timing of such a system – if one is approved and survives legal challenge – are unknowable at this time. We believe based on our expertise, experience, and review of the evidence that at least ten years is needed to account reasonably for the many steps that must occur, for the litigation that is likely to occur, for the election over an assessment district that is needed, for other financing mechanisms to be found, if needed, and for these actions to take place for this major public works project in an environment of great controversy and disagreement over its value and need. Ten years is not a long time for major public works projects in a controversial environment and it is unreasonable based on the information available today to be confident that a shorter time would occur.

While it is one thing for the City to create a "best case" timing scenario of what could happen if everything proceeded perfectly and without controversy, it would be irresponsible for the Regional Board to assume that optimistic state of affairs when imposing a ban on septic system discharges that would devastate the Malibu business and residential communities if such a system were not approved and completed before the ban came into effect.

Very truly yours,



James L. Arnone  
of LATHAM & WATKINS LLP

## James L. Arnone

### Partner

#### Practices

Air Quality Regulation  
 Climate Change  
 Contaminated Properties/ Waste  
 Environmental Litigation  
 Environmental Regulatory  
 Land Use  
 Real Estate

#### Bar Qualifications

California

#### Education

JD, Harvard Law School, 1990

BA, Univ. of California, Los Angeles, 1987



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#### Experience

Jim Arnone is a partner in the Los Angeles office of Latham & Watkins and is a member of the Environmental, Land & Resources Department. Mr. Arnone practices land use and environmental law, focusing on high-controversy real estate developments and local government-related disputes. He advises clients and litigates highly controversial matters implicating a wide range of state and federal environmental and land use laws, including having handled many matters arising under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the federal and California "Superfund" laws, the Clean Air Act and regional air quality regulations, the Clean Water Act, state and local water quality and water supply regulations, the Endangered Species Act, the California Coastal Act, historic preservation laws, California's "Proposition 65," California's "Unfair Competition Law" and nuisance and trespass law. Mr. Arnone also advises clients and litigates many matters arising from state government and local government law, including matters arising under the Ralph M. Brown Act, the Public Records Act, state and local laws governing initiatives and referenda and state and local government contracting laws. Mr. Arnone also advises clients on the implications of current and pending global climate change rules and regulations and serves on the South Coast Air Quality Management District's Global Climate Change CEQA Working Group.

Mr. Arnone has extensive courtroom experience, both in the trial courts and in the appellate courts. He has handled many writ of mandate trials and other dispositive court hearings in land use, environmental and local government-oriented cases. Mr. Arnone is a frequent author and lecturer on environmental and land use law. Mr. Arnone is an adjunct professor at the University of Southern California Law School, where he has taught Environmental Law since 1997. He recently co-authored a global climate change chapter in an ABA-published Environmental Litigation book, authored articles on case law developments and proposed environmental and land use rules. He has spoken on many expert panels on global climate change, CEQA and land use topics.

Mr. Arnone is also active in bar associations and charitable activities. He previously served on the Executive Committee of the Los Angeles County Bar Association's Environmental Law Section, where he served as Chair of its Land Use Committee, Chair of its Litigation and Insurance Committee and Chair of its Legislation Review Committee. He currently serves as Chairman of the Board of AIDS Project Los Angeles, as a board member of the Ketchum-Downtown YMCA and as Board Treasurer of the West Hollywood Library Fund. He has previously served on the board of the Western Center of Law and Poverty.

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October 8, 2009

CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

LARWQCB  
320 West 4<sup>th</sup> Street  
Suite 200  
Los Angeles, CA 90013  
Attn. Dr. Rebecca Chou

VIA FACSIMILE NO.  
(213) 576-5777 AND  
REGULAR MAIL

Re: Malibu Water Quality Control Plan

Dear Dr. Chou:

The undersigned is the President of the Malibu Knolls Property Owner's Association. I am writing in opposition to the proposed resolution which contemplates the prohibition of all discharges of all wastewater from all Onsite Wastewater Treatment Systems in the Civic Center Study Area of Malibu which includes Malibu Knolls. The Association and the undersigned are in opposition to the proposal for the following reasons:

1. The scientific data presented by the California Regional Water Quality Control Board Los Angeles Region ("Regional Board") does not support the proposed prohibition of discharges in general and in particular in the Malibu Knolls area.
2. The preliminary data from various studies initiated by the City of Malibu, including, but not limited to, studies by UCLA, the USGS and SCWRRP, clearly indicate that human bacteria has little or no effect on the case of bacteria levels in the ground water and Malibu Creek Lagoon.
3. The proposal, as drafted, does not take into consideration the inherent differences of the locales in the Civic Center Study Area and in particular the elevation differences between of Malibu Knolls and other areas in the Study Area.
4. There is no urgency to the adoption of the resolution in light of the fact that the City of Malibu has undertaken additional studies which preliminarily contradict the findings of the Regional Board's science, and in particular will prove that the proposed ban of discharges will not improve water quality.
5. Although an exemption to the ban for "Zero-Discharge" projects is available, the size of various lots and the topography and configuration of various lots in Malibu Knolls may make it problematic to comply with the exemption. Furthermore, in the Malibu Knolls, numerous properties have been owned for years by elderly residents,

who would be caused undue financial hardship if they were required to install a "Zero-Discharge" system.

6. Even if an owner wanted to apply for and install a "Zero-Discharge" system, the Regional Board is not adequately staffed to provide reasonably timely responses based on its record.

7. The proposal, if adopted, would have an immediate and material adverse affect on the property values of owners of residential units in the Civic Center area and in the ability to market their properties.

For all of the foregoing reasons, we believe that the proposed ban on discharges should be withdrawn, as a minimum to a point in time when the City's studies are available which we understand to be between six and nine months.

If you have any questions regarding the foregoing, please contact the undersigned.

Yours very truly,

RICHARD N. SCOTT, INC.

By: 

RICHARD N. SCOTT  
President

RNS:sd

**Rosie Villar - Questions Regarding R4-2009-xx**

---

**From:** "Brad Williams" <brad@marmol-radziner.com>  
**To:** <wphillips@waterboards.ca.gov>  
**Date:** 8/21/2009 12:07 PM  
**Subject:** Questions Regarding R4-2009-xx  
**CC:** "Chris Shanley" <Chris@Marmol-Radziner.com>

---

Wendy,

Thank you for your time yesterday. Per our conversation, below are two questions we would like to get some guidance on. Both of these questions pertain to a Single family residence in the Civic Center Area, in Malibu, California.

- On a lot with an existing residence and OWTS, will a new Single Family Residence with an upgraded OWTS be permitted as long as the upgraded OWTS does not exceed the certified capacity of the existing system?
- If a new OWTS is permitted and installed prior to the passing of Resolution R4-2009-xx, could a new residence, designed and permitted at a later date, utilize that OWTS? If yes, is there a time limitation from the date of the new OWTS installation to the date when the new residence is permitted that we should be conscious of?

Thanks again for your time,

Brad Williams  
Project Manager

**Marmol Radziner & Associates AIA**

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Received 10/8/09

California Regional Water Quality Control Board,  
Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, California 90013  
Attn: Dr. Rebecca Chou, Chief of the Groundwater Permitting Unit

October 2, 2009

**RE: STOP the Prohibition in Wastewater Treatment Systems--Malibu**

Dear Dr. Chou;

The proposed 'Prohibition' on local Malibu wastewater systems will go into place on November 15, 2009 implemented by the Regional Water Quality Control Board.

Our community has seen an increase in wastewater enforcement actions by the Regional Board, with a proposed 'Prohibition' looming on the horizon on November 15, 2009. As a small business we are simply ununiformed about the current requirements for wastewater permitting and the implications for our business.

To better understand the current situation some historical prospective is necessary. Almost all of Malibu's commercial properties were built prior to the City's Incorporation in 1991. Typically, these properties were constructed 30-50 years ago in accordance with the codes in effect at that time, which generally did not require a separate wastewater permit from the Regional Board. The standard wastewater system utilized was a septic system. Septic systems have been used successfully for decades. In reality, their main emphasis is on disposal with treatment a lesser level of concern. For the most part these systems satisfactorily perform the disposal objective and do provide an effective level of treatment.

We all know that there have been many changes since then, not only from a regulatory stand point, but also from a scientific and technological prospective; however many small businesses have not stayed current with these changes. For the most part if there are small businesses or property owfiers who are out of compliance with the current laws it is likely they are simply unaware of the rules. Their buildings were built with all the needed permits, the wastewater systems adequately dispose of the effluent and they perform the necessary pumping their systems require.

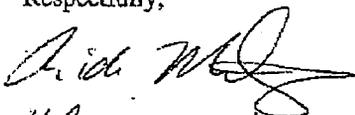
*We feel that the California Regional Quality Water Board has proposed this 'Prohibition,' for the Civic Center, without giving time to the businesses and residents to completely understand how to implement needed forms and/or a way for the City of Malibu to meet the list of recommendations of a new 'sewer system.'*

This prohibition will impact our business during an already historical economic recession! We have had 3 fires, huge transportation issues added to the down economy in only the last 3 years.

We request that the RWQCB delay the actions they have deemed necessary for a prohibition, and ask that they 'partner,' with the Malibu community to create a mutual goal for all business and local community members within Malibu.

Please stop this prohibition and work with us to make it a community we can all be proud of. We look forward to working with you in a positive way to support our local businesses and residents of Malibu.

Respectfully,



VP - Malibu Martial Arts, Inc

22333 PCH # 214

Malibu CA. 90265

310-456-3802

Sept. 1 2009

2009 SEP 3 PM 2:07

REGIONAL WATER  
CONTROL BOARD  
LOS ANGELES REGION

Dr. Rebecca Chou  
320 W. 4th St. #200  
Los Angeles CA 90013

Dear Dr. Chou:

I have received notice of the Water Quality Control Plan to be amended.

As a 40 year resident of the area targeted I am concerned about overhauling my existing septic tank.

I think that since this area is rife with tanks in varying conditions this would be a good time to consider sewer system in the central area.

Sewers were always dreaded in Malibu because they would "bring development." Now seemingly unfettered development is occurring and the question is moot. More and bigger systems are required all over. This will require more maintenance and more traffic down the PCH to dump what's pumped.

This would be the time to consider a sewer system! We have lost on the development issue and sewers seem preferable to more and bigger septic systems.

The Regional Water Control Board has the opportunity to Bring Malibu into the 21st century!

Yours truly,

*Jean Rosenfeld*

JEAN L. ROSENFELD  
3515 CROSS CREEK LANE  
MALIBU, CA 90265

(310) 456-0433

**From:** Rebecca Chou  
**To:** Villar, Rosie  
**Date:** 10/7/2009 9:48 AM  
**Subject:** Fwd: Malibu proposed amendment

>>> "Laura Z. Rosenthal" <[drlaurazr@gmail.com](mailto:drlaurazr@gmail.com)> 10/6/2009 4:44 PM >>>

Dear Ms. Chou,

I am writing to urge you to delay the proposed Malibu prohibition. I have been at both of the local meetings at Pepperdine and it is clear to me that there is absolutely NOTHING TO LOSE if we wait a few more months to get all of the studies completed and analyzed. Why not take the high road and CLEARLY DEMONSTRATE that you want to be fair and thorough about your decision.

Malibu is really made up of a wonderful mix of people - rich, middle class, old, young. In many ways (except for the super rich), it could be any town in America. As a community member, it feels like your decision is already made. Please, show Malibu that you are listening to us and especially the people that will be affected by this prohibition (I do NOT live in the proposed area). Wait for the rest of the science to come through. Try to negotiate something that isn't as drastic as a prohibition.

I do understand that the city has dragged its feet. I have lived here for 20 years and have spent the last number of them waiting for SOMEONE to step up and clean up the lagoon. We must do it, that is clear. However, I also know that when you ask the best of Malibu, we will give it to you. Give us a chance. Give those of us who care deeply the chance to push, cajole, threaten, entice our city government to get the job done.

Thanks for listening. Again, TAKE THE HIGH ROAD! You can never lose doing that.

Best,  
Laura

Laura Z. Rosenthal, PhD  
[drlaurazr@gmail.com](mailto:drlaurazr@gmail.com)  
310 924-1555

Rebecca Chou  
Sr. Water Resources Control Engineer  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Dear Ms. Chou,

Following are several suggestions and requests that I hope the Water Board will consider:

1. Consider expanding the boundaries of the overlay district as follows:
  - a) Expand the district to the East to include both sides of the Pacific Coast Highway past Las Flores to include Dukes Restaurant.
  - b) Expand the district to the west, to include all of Malibu Road, and consider expanding the area to include PCH to the 76 gas station at Corral Canyon.
  
2. Consider establishing an overlay district for the Serra Canyon, East of Malibu Creek. Said district to have its own wastewater treatment facility, and its own Sewer system. The sewer system would not have to cross the creek, and would result in no potential waste discharge into the creek in the event of an earthquake.

Ozzie Silna  
23301 Palm Canyon Lane  
Malibu, Ca. 90265

310-456-8054

**From:** Rebecca Chou  
**To:** Villar, Rosie  
**Date:** 10/7/2009 9:48 AM  
**Subject:** Fwd: STOP prohibition in Malibu Wastewater Treatment Systems

>>> Carole Stark <[cmason5@earthlink.net](mailto:cmason5@earthlink.net)> 10/6/2009 2:26 PM >>>  
Dear Dr. Chou

The proposed "prohibition" on local Malibu wastewater systems will go into place on November 15, 2009 implemented by the Regional Water Quality Control Board.

Our community has seen an increase in wastewater enforcement actions by the Regional Board, with a proposed "prohibition looming on the horizon on November 15, 2009.

As a resident we are simply uninformed about the current requirements for wastewater permitting and the implications for our residences.

To better understand the current situation some historical perspective is necessary. Almost all of Malibu's commercial properties and residences were built prior to the City's Incorporation in 1991. Typically these properties were construction 30-50 years ago in accordance with the codes in effect at that time, which generally did not require a separate wastewater permit from the Regional Board. The standard wastewater system utilized was a septic system. Septic systems have been used successfully for decades. In reality, their main emphasis is on disposal with treatment of a lesser level of concern. For the most part these systems satisfactorily perform the disposal objective and do provide an effective level of treatment.

We all know that there have been many changes since then, not only from a regulatory standpoint, but also from a scientific and technological perspective; however many small businesses and residences have not stayed current with these changes. For the most part if there are small business owner or property owners who are out of compliance with the current laws it is likely they are simply unaware of the rules. Their buildings were built with all the needed permits, the wastewater systems adequately dispose of the effluent and they perform the necessary pumping their systems require.

We feel that the California Regional Quality Water Board has proposed this "prohibition". for thr Civic Center, without giving time to the businesses and residents to completely understand how to implement needed forms and/or a way for the City of Maliby to meet the list of

recommendations of a new "sewer system."

This prohibition will impact our businesses and residents during an already historical economic recession! We have had 3 fires, high transportation issues added to the down economy in only the last 3 years.

We request that the RWQCB delay the actions they have deemed necessary for a prohibition, and ask that they 'partner' with the Malibu Community to create a mutual goal for for all business and local community members within Malibu.

Please stop this prohibition and work with us to make it a community we can all be proud of. We look forward to working with you in a positive way to support our local businesses and residents of Malibu.

Respectfully,

Daniel and Carole Stark  
30 year residents of Malibu  
28184 Rey de Copas Lane,  
Malibu , CA 90265

email: [cmason5@earthlink.net](mailto:cmason5@earthlink.net)

Robert Gold

**BIG ROCK**

PARTNERS LLC

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CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street  
Suite 200  
Los Angeles, CA 90031

Attn: Rebecca Chou, Ph.D. P.E.

January 20, 2009

Re: Comment Letter – Proposed Prohibition of Onsite Wastewater Treatment Systems (the “Prohibition”)  
in the Malibu Civic Center Area (“MCC”)

Dear Dr. Chou:

Thank you providing AZ Winter Mesa LLC (AZWM) with the opportunity to submit comments on the Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (“RWQCB”). While AZWM does not own any property in the MCC, we do own two properties adjacent to the MCC, 23915 Malibu Road, colloquially known as the “Towing Site” and 24200 Pacific Coast Highway, colloquially known as the “Crummer Site”. Both of these properties are in the Winter Canyon watershed which we understand will be included in the study area for modeling purposes of the MCC. AZWM has filed with the City of Malibu applications for Coastal Development Permits to subdivide these sites as separate developments. It is contemplated that each site will be served by a separate community OSWTS. A Draft Environmental Impact Report for the Towing Site was published on December 25, 2008. AZWM filed its Form 200 and related technical studies for the Towing Site with the RWQCB. On January 15, 2009 AZWM received conformance approval on the OSWTS for the Towing Site. We are preparing additional scientific studies which we will be providing you in connection with the OSWTS for the Crummer Site.

We are very concerned about statements made by RWQCB staff that Winter Canyon and MCC are hydraulically connected. This implies that even though Winter Canyon is outside the MCC groundwater basin/shed, (while within the regional groundwater study area), potential impacts to MCC exist from activities in Winter Canyon. This has been studied and for all intents and purposes Winter Canyon has been shown to not impact or interact with MCC (Stone Environmental, 2004).

Rebecca Chou, Ph.D. P.E.  
January 20, 2009

It is our understanding that the RWQCB has commissioned the groundwater study because of ongoing concerns related to the water quality in Malibu Creek, Malibu Lagoon and the Pacific Ocean beyond. We share these concerns and support the efforts of local environmental groups working to improve the quality of the groundwater in the MCC. However, from the brief description provided in the "Notice of CEQA Scoping" it is difficult to understand some basic issues such as the scope of the Prohibition or how the Board is going to define "Malibu Civic Center Area", how the Board will define separate watersheds/groundwater basins or how the Board will measure impacts from separate watersheds/water basins

Winter Canyon and MCC have from a hydrologic perspective been consistently viewed as separate and distinct watersheds and basins. As such Winter Canyon has been excluded from your study area of the proposed Prohibition. There is no scientific basis to conclude that Winter Canyon and MCC are hydraulically connected. These two areas are very different with respect to water levels and flow gradient. In fact in 2003 the DWR delineated the boundaries of the MCC, "termed "Malibu Valley Groundwater Basin and in 2004 defined it as "a small alluvial basin located along the Los Angeles County coastline. The basin is bounded by the Pacific Ocean on the south, and by non water bearing Tertiary rocks on all remaining sides. The valley is drained by Malibu Creek into the Pacific Ocean." The DWR limits of the Malibu Valley Groundwater basin did not include Winter Canyon. That being said we hope you can understand our concern that RQWCB staff may view Winter Canyon as hydraulically connected to MCC. We believe that it would be manifestly unjust and create a dangerous precedent, if the RQWCB subsequently changes its definition of MCC as the basis for either extending the Prohibition area to include Winter Canyon or use hydraulic connectivity to justify the RQWCB's refusal to act on applications for discharge permits for properties within Winter Canyon until it has completed its studies of MCC.

In view of the unprecedented economic crisis facing the country and the State of California we believe that a careful and comprehensive evaluation of the economic impact of instituting the Prohibition (in whatever form it may ultimately takes) is required.

In addition, current regulations of the California Coast Commission and the City of Malibu require the use of OSWTS. Even if a feasible alternative exists it is necessary to carefully evaluate all of the possible benefits of individual onsite wastewater systems compared with one large system. A failure of a regional plant could have the potential to cause significantly more environmental damage than a failure at one smaller system. Can the construction of a new OSWTS have a positive environmental impact on existing conditions? A detailed analysis of the alternatives and their feasibility is needed in order to fully understand the impact of the Prohibition in MCC. This includes an analysis of extending the proposed Prohibition beyond MCC to properties that are not hydrologically connected to the MCC or using hydraulic connectivity as a basis for the refusal of the

Rebecca Chou, Ph.D. P.E.  
January 20, 2009

RQWCB to act on applications for discharge permits for properties within Winter Canyon until completion of its studies of MCC.

Thank you for your consideration of the issues raised herein.

Respectfully submitted,

*/s/ Robert Gold*

Robert Gold

Ensitu Engineering Inc.  
685 Main Street, Suite A  
Morro Bay, CA 93442

February 18, 2009

Mr. Robert Gold  
Big Rock Partners, LLC  
315 S. Beverly Drive., Suite 315  
Beverly Hills, CA 90212

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CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION



Engineering Inc  
685 Main St.  
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Morro Bay, CA  
93442

Tel: 805.772.0150  
Fax: 805.772.0813

[ensitu@ensitu.com](mailto:ensitu@ensitu.com)

Page 1 of 2

SUBJECT: Proposed Wastewater Treatment System Design Intent for Malibu Towing Site

Dear Mr. Gold,

The proposed wastewater treatment system to serve the residential project at the Malibu Towing Site is a community system designed to treat and dispose of wastewater from each of the four residences and the guard house. The waste flow is a residential strength waste with the following characteristics:

Wastewater Estimated Flow and Characteristics	
Peak Design Daily Flow	3,170 gpd
Average Daily Flow	2,120 gpd
Influent BOD <sub>5</sub>	<220 mg/L
Influent TSS	<220 mg/L

The wastewater strength at the treatment system influent is expected to have lower BOD<sub>5</sub> and TSS concentrations due to the removal of solids at the individual septic tanks.

The design intent of the treatment system is to meet the receiving water quality limitations presented in the following table:

Constituent	Units	Maximum Limit
BOD*	mg/L	20
Suspended Solids*	mg/L	20
Fecal Coliform*	MPN/100mL	<200
Enterococcus*	MPN/100mL	<104

\*Also City of Malibu Plumbing Code

Treatment shall be performed using AdvanTex Treatment Systems by Orenco Systems. AdvanTex Treatment Systems work like recirculating sand/gravel filters, which treat wastewater through a combination of physical, chemical, and biological processes. AdvanTex Treatment Systems use an inert nonwoven textile material to treat wastewater. Two AdvanTex AXI 00 Treatment units shall be used in the onsite wastewater treatment system design for the subject site.

Disinfection shall be performed using Liquid Chlorination. Treated wastewater shall flow from the recirculating splitter valve to the liquid chlorination unit by gravity and through a static mixer. The treated and disinfected wastewater shall flow by gravity to the dosing compartment. Once inside the dosing compartment, the treated and disinfected wastewater shall be pumped through a Liquid Dechlorination unit and static mixer, where the treated, disinfected, and dechlorinated wastewater shall continue to disposal.

"Dedicated to achieving higher standards in onsite and decentralized wastewater systems."



The high quality effluent proposed produced by the proposed treatment and disinfection components of the system will treat the residential wastewater to meet Ocean Total Maximum Daily Loads (TMDLs). The treated effluent will meet effluent limits prior to discharge to seepage pits.

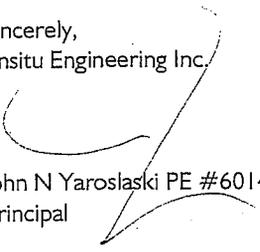
Engineering Inc  
685 Main St.  
Suite A  
Morro Bay, CA  
93442

Tel: 805.772.0150  
Fax: 805.772.0813

[ensitu@ensitu.com](mailto:ensitu@ensitu.com)

Page 2 of 2

Sincerely,  
Ensitu Engineering Inc



John N Yaroslaski PE #60149  
Principal

*"Dedicated to achieving higher standards in onsite and decentralized wastewater systems."*

**BIG ROCK**  
PARTNERS LLC

October 7, 2009

**VIA E-MAIL AND HAND DELIVERY**

California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
Attn: Dr. Rebecca Chou, Chief of the Groundwater Permitting Unit

**RE: PROPOSED AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE COASTAL WATERSHEDS OF VENTURA AND LOS ANGELES COUNTIES (BASIN PLAN) TO PROHIBIT ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE CIVIC CENTER AREA OF THE CITY OF MALIBU**

Dear Dr. Chou:

On behalf of Big Rock Partners, LLC, manager of AZ Winter Mesa, LLC (collectively "AZWM"), thank you for the opportunity to submit comments in connection with the proposed amendment to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan)* to prohibit on-site wastewater disposal systems (herein after referred to as either "OWDS" or "OWTS") in the Civic Center area of the City of Malibu (hereinafter referred to as the "Prohibition").

AZWM is the owner of two contiguous parcels of land located in Winter Canyon, commonly known as the "Towing Site" (23915 Malibu Road) and the "Crummer Site" (24200 Pacific Coast Highway). AZWM purchased the Crummer Site in August 2005 and the Towing Site in April 2006, with the intention of developing each property for residential use. We have engaged in exhaustive analyses of environmental and geotechnical issues at our properties, including preparation of an Environmental Impact Report ("EIR") and detailed plans for a proposed state-of-the-art OWTS package plant that would treat wastewater generated from each of four residences and a gatehouse at the Towing Site. The proposed OWTS received conformance approval by the City of Malibu's Department of Environmental Health on January 15, 2009, after extensive conformance review. The Towing Site's EIR included an analysis of the treatment of wastewater generated by the proposed development Malibu's Planning Commission certified the Towing Site's EIR on August 4, 2009 by Resolution No. 09-49 (attached hereto as Exhibit "1"). Resolution No. 09-49 included fourteen (14) conditions numbered 95 through 108, with respect to the construction, operation, maintenance and monitoring

of the Towing Site's proposed OWTS. Despite sound science clearly demonstrating that water quality objectives can be satisfied, and various other public benefits associated with the proposed plans, AZWM has been unable to move forward pending Regional Board approval. Thus, the issues presented herein are of direct interest to us, as well as many other similarly-situated local residents and businesses in Malibu.

As explained further below, AZWM believes that the proposed Prohibition would cause severe hardship for many local residences and businesses, and will not reasonably achieve the goal of improved water quality in the proposed Prohibition area. On the other hand, enacting the Prohibition will certainly have the affect of further polarizing stakeholders.

We also believe that the Prohibition is legally defective because:

- The Staff Report and the supporting Technical Memoranda do not meet the requirements of a functional equivalent under the California Environmental Quality Act ("CEQA") for an Environmental Impact Report ("EIR");
- Winter Canyon should be removed from the Prohibition areas because neither the Staff Report nor the Technical Memoranda support the inclusion of Winter Canyon in the Prohibition area; and
- The enactment of the Prohibition constitutes an unlawful taking.

In the event the LARWQCD is inclined to approve the Prohibition which applies to Winter Canyon, which it should not, the Prohibition at a minimum be revised to include the following elements:

- Any Prohibition should include a "grandfather" clause exempting all projects which are in the "pipeline" i.e. all projects or properties for which Coastal Development Permits ("CDPs") have been applied for with the City of Malibu and fees for the filing of such CDPs have been paid. These pipeline projects should continue to be processed in a timely fashion by the LARWQCD pursuant to criteria in effect prior to the effective date of the Prohibition; and
- The exemption from the Prohibition should be expanded to include the new OWTSs using performance based criteria based on site specific conditions rather than be limited to "zero-discharge" projects.

## **I. Background.**

The Staff Report to the Prohibition states that "the goal of the proposed prohibition on OWDSs is to remedy pollution of water resources, including beaches, Malibu Lagoon and Creek, and groundwater, that are affected by discharges from OWDSs." The

LARWQCD method of achieving this goal is to “immediately prohibit all new discharges from OWDS in the Malibu Civic Center area, and establish a five-year schedule to cease all discharges from existing systems.”

The Staff Report contains five (5) technical memoranda which staff is relying on as evidence to support the proposed Prohibition.<sup>1</sup> These Technical Memoranda assert the following conclusions:

- Technical Memorandum #1-Dischargers have poor records of compliance with Regional Board Orders;
- Technical Memorandum #2-Pathogens and nitrogen in wastewaters impair underlying ground water as a potential source of drinking water;
- Technical Memorandum #3-Pathogens in wastewaters that are in hydraulic connection with beaches represent a source of impairment for water contact recreation;
- Technical Memorandum #4-Nitrogean loads from wastewater flowing to Malibu Lagoon are a significant source of impairment to aquatic life; and
- Technical Memorandum #5-Discharges with unsuitable hydrogeologic conditions for high flows of wastewaters resort to hauling liquid sewage and sludge to communities that have sewer and wastewater treatment facilities.

The City of Malibu has presented scientific studies to question the conclusion that OWDSs in the Civic Center area are the source of the pathogens and nitrogen discussed in the Technical Memoranda. The City is also in the process of completing several additional studies which will analyze the source of the pathogens and nitrogen at Malibu Lagoon and Creek, including the beaches and groundwater.

As discussed further below, many of staff's other conclusions are similarly based on erroneous assumptions or are otherwise not sufficiently supported by technical data or legal requirements.

**II. THE STAFF REPORT AND THE SUPPORTING TECHNICAL MEMORANDA DO NOT MEET THE REQUIREMENTS OF A FUNCTIONAL EQUIVALENT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) FOR AN ENVIRONMENTAL IMPACT REPORT (“EIR”).**

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<sup>1</sup> For the purpose of this comment letter all references to the “Staff Report” shall be deemed to mean the Staff Report and all five (5) Technical Memoranda except in instances when reference is made to a particular Technical Memorandum.

The Staff Report indicates that the LARWQCD's basin planning process is exempt from certain requirements of CEQA, including the requirement to prepare an EIR for an amendment to its Basin Plan. Instead the LARWQCD "prepares environmental information and analyses that are the functional equivalent of an environmental impact report." The Staff Report purports to be a "good faith" effort of "full disclosure of the reasonably foreseeable environmental impacts that could be attendant with the" Prohibition. The Staff Report notes that CEQA does not require unanimity of opinion among experts and that analysis is satisfactory so long as those opinions are considered.

Members of the LARWQCB's staff have repeatedly stated that they are reviewing water quality issues in other areas of the City of Malibu that are outside of the proposed Prohibition area, and that these areas may be subject to future actions by the LARWQCB, including prohibitions against OWTS. We believe that the Staff Report fails to meet the requirements of CEQA for the following reasons:

1. The Staff Report does not contain any analysis of the potential cumulative environmental impacts of future LARWQCB actions in the City of Malibu;
2. The Staff Report fails to adequately evaluate mitigation and/or alternatives for any significant environmental impacts of future LARWQCB actions in the City of Malibu.

Without such analyses the Staff Report does not meet the basic purposes of CEQA because it fails to (a) identify ways that environmental damage from the compliance projects including future requirements and actions with respect to the water quality in the City of Malibu that the LARWQCD is contemplating may be mitigated, and (b) analyze how to prevent significant, avoidable damage to the environment by requiring changes in the project including future LARWQCB actions through the use of alternatives or mitigation measures when feasible. Without providing the details of future actions within the City of Malibu, the City is being deprived of an opportunity to develop the most economically and least environmentally damaging alternative to achieve compliance both now and in the future. This is particularly troubling at a time when municipal resources are being stretched to their limit;

3. While unanimity of expert opinions is not required under CEQA, the City of Malibu is currently conducting several studies that challenge some of the underlying assumptions supporting the Prohibition, including a study by Dr. John Izbicki (US Geological Survey) who was one of the Early Technical Reviewers of the Staff Report. The Staff Report relies on data and reports that in numerous instances are more than 10 to 20 years

old rather than using (and waiting for) an abundance of more modern data that is more precise because of improved testing methodologies that are now available. In view of the Staff Report acknowledgement that "the beach is a more complex microbiological environment that was previously understood" the most up to date data should be utilized in analyzing both the perceived problems and the environmental impacts of remedying such problems;

4. The boundaries of the Prohibition area have been expanded significantly since the publication of the Staff Report. The Staff Report fails to analyze the environmental impacts of the Prohibition and compliance projects subsequent to the expansion of the Prohibition area;
5. The Staff Report fails to analyze other potential causative factors to the degradation of the groundwater quality in the Prohibition area. State Water Resources Control Board Resolution No. 88-63 (as revised by Resolution No. 2006-0008) provides that "*all surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards with the exception of*" where "*there is contamination either by natural process or by human activity (unrelated to the specific pollution incident) that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable practices...*" The Staff Report further fails to analyze whether the groundwater in the Prohibition area could be reasonably treated for domestic use using either Best Management Practices or best economically achievable treatment practices after the enactment of the Prohibition;
6. The Staff Report contains a detailed analysis of three different projects which would achieve the desired compliance under the Prohibition. This analysis is fundamentally flawed. First, the analysis is not based on the expanded boundary of the Prohibition area since the Staff Report was published. Second, "to estimate costs for the three compliance projects, the staff assumed that the projects would be sized to replace the total existing OWDS capacity in the community, and that the projects would not be designed to accommodate increases in flow." We can only surmise this same assumption, which is plainly erroneous, was used for the environmental impact analysis. The LARWQCB has before it a number of projects that have the potential to increase wastewater production in the Prohibition area, included AZWM's Towing Site (for which an application for a discharge permit has been pending with the LARWQCB since August, 2008). In addition, the City of Malibu's LCP contemplates additional development in the Prohibition area. In fact the Staff Report recognizes that future development may occur in the Prohibition area and

recommends that "Community planners may consider the promotion of additional uses for recycled water by requiring dual plumbing for *any new development or retrofit.*" *emphasis added;*

7. The Staff Report includes an analysis of Compliance Project C-decentralized waste water management facilities. This compliance project contemplates two decentralized plants. No explanation is provided as to why a decentralized solution is limited to only two treatment plants. This limitation seems arbitrary and neither reflects the need for additional capacity in the Prohibition area since its boundary has been expanded nor future development in the Prohibition area. There is no analysis of whether some of the existing treatment plants in the Prohibition area could be retro-fitted as part of a compliance solution.

Additionally, LARWQCD staff has stated their preference for municipal systems. Table 4 in Technical Memorandum #1 contains a summary of violations from 20 permitted and non-permitted dischargers in the Prohibition area. It should be noted that the Malibu Water Pollution Control Plant, a public sector facility, had 635 violations while the other 19 discharges had a total of 551 discharge violations. In addition, 64% of the discharge violations were attributable to the public sector treatment plants compared to 36% for private discharges. In view of the fact that public sector treatment plants generally process greater quantities of wastewater, the environmental impact of the public sector discharge violations outlined in Table 4 is likely to have been of a much greater magnitude than the private dischargers;

8. The Staff Report states that "the impacts from possible compliance projects are analyzed below on a *conceptual basis*...It will be the responsibility of the community and stakeholders to select a strategy for compliance. And as a strategy and compliance project are selected, it will be the responsibility of a local government (local agency) to perform specific project-level analysis and disclose environmental impacts in accordance with CEQA..." (emphasis added) In view of the fact that the Staff Report neither analyzes the expanded Prohibition area nor the potential for future development in the Prohibition area, coupled with the fact that the analysis contained in the Staff Report was based on a "conceptual" compliance project, the Environmental Checklist provides little or no basis for an environmental impact analysis of the Prohibition and how the City of Malibu will comply with the Prohibition;

9. Technical Memorandum #4 made no distinction between the quality of the effluent produced by septic treatment systems and the quality of effluent produced by advanced treatment systems. This Memorandum

assumed that the nitrogen concentration in the treated residential wastewater in the Prohibition area is 45mg/L. However, the advanced treatment systems proposed by AZWM, for example, will reduce nitrogen levels in the cleaned effluent to less than 10 mg/L. This Memorandum also states that "when actual data were not available, conservative assumption, based on information from published literature were used..." Table 2 in Technical Memorandum #4 uses one data point from property owned by AZWM. This data is incorrect in three respects. First, the APN for this property in the Table 2 is incorrect. (the APN for this property is 4458018004). Second, the Table indicates that this property contains five bedrooms and four bathrooms, while the Los Angeles County Assessor's records, the presumed "published literature" for APN 4458018004 indicates that this residence contains two bedrooms and two bathrooms. In fact, this residence actually contains one bedroom and one bathroom. Therefore, the assumption about the quantity of wastewater being produced from just one of the 349 properties summarized in Table 2 is 75% higher than it actually is. We can only assume that it is an accurate assumption that this is not the only factual error contained in this table;

10. The Technical Memoranda do not contain sensitivity analysis in the modeling necessary to explore the importance of all the variables or specific factors in the analysis;

11. The Staff Report fails to analyze the short term economic impact to stakeholders who will be prevented from developing their properties until a compliance project is on line;

12. The Technical Memorandum contains numerous factual errors, ignores published hydraulic data and analyses and manipulates the data to support the enactment of the Prohibition. Therefore, the Staff Report does not provide the public with an accurate environmental assessment; and

13. The Staff Report's Statement of Overriding Consideration and Determination is flawed because of the defects outlined herein.

In addition, the Regional Board's failure to include a revised Summary of Economics reflecting the expanded Prohibition area, future development within the Prohibition area, and possible future compliance efforts required outside the Prohibition area, also renders the Staff Report noncompliant with the California Water Code. Water Code section 13241 requires the Regional Board to consider, when exercising its discretion, a list of non-exclusive factors, including beneficial uses, environmental characteristics, realistic outcomes, economics, the need for housing, and the need to recycle water. California law further requires the Regional Board to provide a record of the required analysis which is sufficient to demonstrate that it has meaningfully weighed and considered each of the

prescribed non-exclusive factors. See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (“the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. . . . [and] the relationships between evidence and findings and between findings and ultimate action. . . .”)

Thus, in addition to failing to comply with CEQA, the proposed Prohibition would also be violative of the Porter-Cologne Water Quality Act.

### **III. NEITHER THE STAFF REPORT NOR THE TECHNICAL MEMORANDA SUPPORTS THE INCLUSION OF WINTER CANYON IN THE PROHIBITION AREA.**

On January 22, 2009, AZWM submitted written comments at the Scoping Meeting for the Prohibition (A copy of this Letter Dated January 21, 2009 is attached hereto as Exhibit “2”) This comment letter expressed AZWM’s concern that Winter Canyon would ultimately be included in the Prohibition area, since LARWQCD was including Winter Canyon in the study area for modeling purposes of the Civic Center Area. However, the Notice of the Scoping Meeting did not include Winter Canyon in the Prohibition area. Our comment letter pointed out that “Winter Canyon and [Malibu Creek watershed] have from a hydrologic perspective been consistently viewed as separate and distinct watersheds and basins...There is no scientific basis to conclude that Winter Canyon and the Malibu [Creek] Civic Center Area watersheds are hydraulically connected. These two areas are very different with respect to aquifers, water levels and flow gradient. In fact in 2003 the DWR delineated the boundaries of the [Malibu Civic Center Area], termed “Malibu Valley Groundwater Basin and in 2004 defined it as “a small alluvial basin located along the Los Angeles County coastline. The basin is bounded by the Pacific Ocean on the south, and by non-water bearing, Tertiary-age bedrock on all remaining sides. The valley is drained by Malibu Creek into the Pacific Ocean.” The map delineating the DWR limits of the Malibu Valley Groundwater Basin (DWR Basin Number 4-22) does not include Winter Canyon. In addition, City’s Final Report Risk Assessment of Decentralized Wastewater Treatment System in High Priority Areas in the City of Malibu, CA (Stone, 2004), excluded the Towing Site, the Crummer Site and portions of Winter Canyon from the Study Area.

Earth Consultants International also submitted a comment letter dated January 20, 2009 at the Scoping meeting (see copy attached hereto as Exhibit “3”) which also concluded that that there is no hydraulic connection between the Winter Canyon and Malibu Creek groundwater basins and that “Neither system flows into the other-the only location where mixing of waters might occur is south of Malibu Road, at the ocean/groundwater interface.” (ECI, January 20, 2009).

Subsequent to the Scoping Meeting the Prohibition area has been expanded and currently includes Winter Canyon and Winter Mesa. However, the Staff Report has not respond at all, let alone directly, to the comments presented at the Scoping Meeting and does not present any scientific evidence of a hydraulic connection between the Winter Canyon and the Malibu Creek Watersheds.

Technical Memorandum #3 entitled "Pathogens in Wastewaters that are in Hydraulic Connection with Beaches Represent a Source of Impairment for Water Contact Recreation" contains only one reference to Winter Canyon (in a discussion of the MOU dated September 17, 2004 between the City and the LARWQCB). In this paragraph the author states that "as of the date of this document, the City of Malibu has not provided documentation that systems within the six month-time-of-travel zone have been upgraded to prevent bacteria discharge to the subsurface or include disinfection, nor has an ordinance to this effect been passed by the City of Malibu." The author neglects to state that even without the enactment of such an ordinance, the property owners, such as AZWM, have designed systems that meet both of these requirements. (See ECI First Response to LARWQCB Comment set forth in, *Second Response to California Regional Quality Control Board Questions Regarding the Towing Site, Malibu California, dated September 18, 2009*, (attached hereto as Exhibit "4"). Moreover, AZWM has designed its OWTS so that the travel time of the cleaned effluent introduced to its seepage pits will certainly be greater than six (6) months and will not require the hauling of liquid sewage to communities that have sewer and wastewater treatment systems.

At the October 1, 2009 Community Meeting sponsored by the LARWQCD, staff was questioned about the postulated hydraulic connection between Winter Canyon and Malibu Creek, Surfrider Beach and the Malibu Lagoon. Staff replied that all groundwater in Winter Canyon eventually flows into the ocean at Amarillo Beach, where long-shore currents transport impaired groundwater down the coast to Surfrider Beach. Notwithstanding, Amarillo Beach has not been identified as impaired due to high-fecal-indicator bacteria and/or beach closures and therefore has not been placed on the California Clean Water Act section 303(d) list.

Technical Memorandum #4 (page T4-9) states that "the greatest volume of wastewater from Sector I is discharged into the Winter Canyon drainage, but the Winter Canyon flow is estimated to have a relatively low contribution (1%) to Malibu Lagoon." This Memorandum then states that "[m]ost of the wastewater discharged in Winter Canyon is *assumed* to discharge into Malibu Beach." (emphasis added). However, no support is given for the assumption that most wastewater from Winter Canyon is discharged to Malibu Beach.

Neither Technical Memorandums #3 or #4 contain any information on the water quality at Amarillo Beach or an analysis of the possible impacts of the mixing of waters that might occur south of Malibu Road, at the ocean/groundwater interface on Surfrider Beach, the Malibu Lagoon or Creek. In the event groundwater coming from Winter

Canyon contained pathogens, water cannot be transported by long-shore currents from the ocean off Winter Canyon into the Lagoon because the Lagoon is topographically higher than the ocean and except in breach conditions is prevented from entry by a sand bar.

On page T4-12 of Technical Memorandum #4, a discussion of the 180 homes located in Sector IV indicates that "Wastewater, from the five commercial properties and most (107) of the homes, discharges directly to the ocean and the beaches north of Malibu Lagoon. A portion of the nutrient and bacteria load discharged to the beach can be transported with sediments toward the Lagoon by the prevailing long-shore movement of northwest to southeast. Once transported toward the lagoon, it can enter the Lagoon through tidal inflow. The U.S. Environmental Protection Agency estimated that tidal inflow contribute only 1% of the nutrient load in the Malibu Lagoon. Staff estimates that 1% of the 42,040 gpd of wastewater discharged in the main area of Section IV could reach the Lagoon, but *acknowledges the proportion could be much smaller.*" After acknowledging that potentially none of, but at most 1% of wastewater discharge from the main area of Section IV, the majority of which is being discharge from systems that do not have advanced treatment systems, the inclusion of Winter Canyon in the Prohibition area simply cannot be justified. In fact, the information contained in Technical Memorandum #4 negates the purported technical justification for including Winter Canyon in the Prohibition area.

In view of the complete lack data on the quality of the ground water in Winter Canyon, on October 1, 2009 AZWM (in conjunction with Malibu Bay Company which owns the property immediately to the east of the Towing) had Earth Consultants International ("ECI") collect groundwater samples from four monitoring wells: TY-MW-1, TY-MW-5, MBCWC-MW-2 and SMBRP-11 and tested the samples for the following: Fecal Coliform, Total Coliform, Born, Chloride, Nitrate, Nitrite, Sulfates and TDS. It should be noted that TY-MW-1 is located at the northern portion of the Towing Site. The results of these tests are contained in ECI Reported dated October 7, 2009 (See copy annexed hereto as Exhibit "5"). The Report states: "The analytical results suggest that the aquifer waters do not meet Secondary drinking water standards due to elevated concentrations (above MCL) of chloride, sulfate and TDS. Additionally Total Coliform was detected in the groundwater samples collected from the northern-most and southern-most monitoring wells in the study area. The absence of Total Coliform in the groundwater samples collected from the two wells between the northern-most and southern-most monitoring wells suggest that Coliform entering the system from up gradient sources (north of Pacific Coast Highway) are removed before the groundwater reaches Malibu Road. The source of Coliform in the groundwater sample collected from Well SMBRP-11 appears to be the septic systems of homes directly south of Malibu Road." These tests results further confirm that Winter Canyon, including AZWM's properties are not contributing pathogens in wastewater to the beaches and ocean, including Amarillo Beach, Surfrider Beach, the Malibu Lagoon or Malibu Creek.

These test results also refute the notion groundwater in Winter Canyon are a potential source of drinking water as the elevated concentrations (above MCL) of chloride, sulfate and TDS do not meet Secondary drinking water standards. Furthermore, Winter Canyon has never been a source of drinking water, and absent the wastewater disposal systems or local irrigation, its alluvium would likely contain no subsurface water.

The Staff Report does not contain analysis of potential alternative causes to the Civic Center area groundwater being non-compliant with existing regulations for potential drinking water. While Technical Memorandum #2 informs us that the Malibu Valley Groundwater Basin, but not which portions of it sub-basins, "was the community's drinking water source up until the early 1960's" it neither states whether this aquifer was every compliant with current water quality standards for drinking water (the ECI October 7, 2009 report that Winter Canyon does not currently meet these standards) nor analyzes whether this aquifer can be treated for domestic use using either Best Management Practices or best economically achievable practices. This aquifer is not designated as a municipal supply of drinking water in the Basin Plan. In addition, there is no analysis of whether the quality of the cleaned effluent produced by advanced treatment systems, such as the OWTs proposed by AZWM, will have a positive effect of recharging the aquifer.

Finally, it should be noted that in the event the Prohibition area includes Winter Canyon and does not contain a reasonable exemption that allow projects in the "pipeline" (as further discussed herein) to receive discharge permits, storm water runoff from the Towing Site (and other similarly situated facilities) will continue to remain untreated before it enters the ocean. The proposed improvements to the Towing Site include a drainage ditch on the east and west side of the new street running the length of the property that would direct collected storm water toward Filtera units for storm water bioretention filtration. All excess onsite and offsite runoff, including from the western slope, that would initially infiltrate and be treated through porous surfaces, would be collected by drainage ditches and a storm drain system throughout the site, detained, and released to be less than or equal to pre-development flow rates. The Filtera units would be designed to provide preliminary treatment through the settling of sediments and would equalize flows prior to discharging into the Winter Mesa drainage channel along Malibu Road and ultimately into the Pacific Ocean.

#### **IV. THE ENACTMENT OF THE PROHIBITION VIOLATES CONSTITUTIONALLY PROTECTED RIGHTS**

The enactment of the Prohibition constitutes an unlawful taking under both California and Federal law because:

1. The Prohibition denies property owners within the Prohibition area their rights to substantive due process because the Prohibition, as applied to AZWM would be arbitrary and capricious. The Staff Report provides that "It will be the responsibility of the community and stakeholders to select a strategy for compliance. And as a strategy and compliance project are selected, it will be the responsibility of a local government (local agency) to perform specific project-level analysis and disclose environmental impacts in accordance with CEQA." Individual property owners do not have the ability to select a compliance strategy for their property, even if one exists that addresses the goals of Basin Plan. In order to implement the compliance project the local agency, i.e., the City of Malibu will have to create an assessment district to construct a regional wastewater treatment plant(s) and prepare an EIR. Individual property owners in the Prohibition area neither have ability to create an assessment district nor do they have the ability to prepare an EIR necessary for the compliance project. Such an assessment district requires action by both the City of Malibu and the other property owners within a proposed assessment district;
2. The Prohibition deprives property owners within the Prohibition equal protection under the law because property owners within the Prohibition who are currently discharging may continue to do so for five (5) years, while property owners within the Prohibition area who are not currently discharging are prevented from discharging. This is fundamentally unfair because (i) scientifically and technically sound solutions are available to reasonably address water quality concerns at sites such as the AZWM properties; and (ii) property owners that are currently not discharging but seeking to do so in the future will be required, pursuant to the requirements of the Malibu LCP and Plumbing Code, to install advanced treatment systems while property owners who the LARWQCB claims have created the need for the Prohibition would be allowed to continue to discharge; and
3. The Prohibition denies AZWM all reasonable, feasible economic use of its property within the Prohibition area. AZWM in good faith has made a considerable investment to develop its two properties in compliance with the existing water quality regulations. Based on this investment there is no reasonable economic use of the properties other than the proposed developments which given present circumstances creates a "Catch-22."

**V. IN THE EVENT THE PROHIBITION IS ADOPTED, IT SHOULD INCLUDE A "GRANDFATHER" PROVISION FOR ALL PROJECTS WHICH ARE IN THE "PIPELINE."**

AZWM along with many other commercial and residential property owners have in good faith made considerable investments to develop or redevelop properties located within the proposed Prohibition area. If the Prohibition is enacted it will result in significant economic harm for many of these property owners, because these property owners will, for all intents and purposes, be prevented from proceeding with their projects until one of the three methods of compliance with the Prohibition is available whether this takes five (5) years or some longer period of time. In order to prevent such economic hardship the Prohibition should contain a broad exemption to process discharge permits for new or increased flow for development/redevelopment projects that have "commenced" prior to the effective date of the Prohibition.

"Commenced" could reasonably be defined as having submitted an application for CDPs and the payment of the required filing fees in connection with those CDPs, prior to the effective date of the Prohibition. This would provide an objective standard as to what constitutes a "pipeline" project as potentially affected property owners will have reasonable notice and opportunity to file for CDPs.

Some property owners, such as AZWM have spent millions of dollars to develop their properties, which includes extensive analysis for separate EIR's for each of its properties located in Winter Canyon. In the case of AZWM, these expenses include the design of two separate OWTS that satisfy the stringent requirements of both the City of Malibu's LCP and Plumbing Code while addressing the particular geological aspects of each of these properties. The City of Malibu has one of the most rigorous technical design, analysis and review processes for OWTS in the nation. Other property owners who might be affected by the Prohibition include families who might have recently purchased a vacant piece of land or an existing home with the intention of building or remodeling that home. Some of these families may have applied for CDPs and paid filing fees but were prevented from proceeding any further because of an illness or loss of a job. Other property owners may have filed their CDPs in good faith but further movement on their project may have been delayed due to a variety of procedural or regulatory hurdles. The development process has many variables which are not in the control of the property owner. A property owner who has proceeded in good faith should not be prevented from receiving a permit for new or increased discharge from their property simply because a project is not completed nor has not reach some arbitrary stage in the approval process prior to the effective date of the Prohibition.

Therefore, in the event a Prohibition is approved by the LARWQCD, we request that a grandfather provision be included for all "pipeline" projects for which an application for CDPs and payment of required filing fees has been submitted, prior to the effective date of the Prohibition. Approvals of Pipeline projects by the LARWQCD should not contain

onerous conditions that would make a project economically unfeasible rendering the approval illusory. Of course, an approval conditioned upon an owner agreeing to connect to an integrated water resources management facility, a community sewage collection system and interceptor sewer line or decentralized wastewater management facilities when such an option becomes available seems appropriate.

**VI. THE EXEMPTION FROM THE PROHIBITION SHOULD BE EXPANDED TO INCLUDE THE EVALUATION OF NEW OWTSS USING PERFORMANCE-BASED CRITERIA AND SITE SPECIFIC CONDITIONS, RATHER THAN LIMITED TO "ZERO-DISCHARGE" PROJECTS**

The Staff Report contains a very limited exemption to the Prohibition that would allow new discharges within the Prohibition area for "zero-discharge" projects provided a "discharger can demonstrate, to the satisfaction of the Executive Director, that reuse, evapotranspiration, and/or transpiration will use 100% of the wastewater generated by activities on a site, will not contribute to a rise in the water table, and will contain and properly handle any brines and/or off-specification wastewaters that cannot be reused/discharged in a manner that meets the water quality objectives established in the Basin Plan."

While the goal of a "zero-discharge" project as defined in the exemption is laudable, it is beyond dispute that the combination of geology in the Prohibition area and economics of such a project creates insurmountable barriers for many stakeholders. This is especially true for residential stakeholders who would seek to install a treatment system that meets all of the requirements of this exemption as currently written. These residential stakeholders who require new discharges will therefore be deprived of the use of their property, until a compliance project becomes available.

We urge the LARWQCB to expanded the exemption to permit the use of performance-based criteria based on site specific conditions that would allow for new discharges that can not otherwise meet the requirements of a "zero-discharge system.

For example, working with the City and our consultants, AZWM concluded that based on site specific geological conditions that a clustered advanced treatment system would be the most environmentally-sound, and the only technically-feasible, solution for both its Towing Site and its Crummer Site. Once the system is operational the wastewater will be treated and the effluent disposed in a manner that will substantially conform to the goals established in the Staff Report. Issuing a discharge permit to AZWM's projects and other projects that may satisfy a site specific performance based review, will create new locations for the use of recycled water. This is due to the fact that projects can be dual plumbed as recommended in the Staff Report, and could therefore receive recycled water from either a centralized or decentralized compliance project.

## VII. CONCLUSION

AZWM has expended considerable time and money to prepare this comment letter because we believe that is extremely important for the LARWQCB to understand the impact that the Prohibition will have on the property owners, like AZWM, who despite every effort to abide by the rules, are caught in the middle of a dispute over which we have no control.

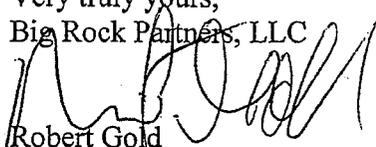
While we believe that the Prohibition is deeply flawed for the reasons herein, we strongly believe that if all stakeholders in this process-including the City, the LARWQCB, property owners and environmental groups-all of whom sincerely care about the quality water in the City of Malibu, its local beaches, are given the opportunity to meaningfully work together a consensus can emerge based on a deeper understanding of the issues. This will enable the most appropriate solution, both in terms of environmental and economic impacts to be found and implemented in a timely fashion.

AZWM desires to assist both the City and the LARWQCB in achieving the goal of improved water quality. As mentioned above, we have invested considerable resources in trying to work together with other interested parties to help address Malibu's water quality issues. We want to and can be part of the solution. Needless to say, we strongly believe that a blanket prohibition on OWTS pending the long-term development of a centralized treatment system is not the answer. Rather, we urge the City and LARWQCB to continue working with AZWM, as well as other property owners and environmental groups, to find both interim and long-term solutions to the Civic Center Area that do not severely harm local interests. In this regard we believe a blanket Prohibition will only serve to further polarize the positions of the stakeholders. Indeed, we believe a cooperative collaborative process is the only way a comprehensive and long-term solution can ultimately be achieved for this area.

We look forward to being able to continue to work with the City, the LARWQCB and other interested parties on this issue.

Thank you for your consideration.

Very truly yours,  
Big Rock Partners, LLC

  
Robert Gold

Enclosures (5).

CC: Jim Thorsen, City Manager, City of Malibu  
Craig George, Environmental and Building Safety Manager, City of Malibu  
Victor Peterson, Community Development Director, City of Malibu

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 09-49

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU CERTIFYING ENVIRONMENTAL IMPACT REPORT NO. 07-001, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING TENTATIVE TRACT MAP NO. 07-002, COASTAL DEVELOPMENT PERMIT NOS. 07-024, 07-025, 07-026, 07-027 AND 07-028, SITE PLAN REVIEW NOS. 07-022, 023, 07-024, 07-025 AND 09-037 AND DEMOLITION PERMIT NO. 07-005 - FOR THE DEMOLITION OF ALL EXISTING ONSITE STRUCTURES, A TENTATIVE TRACT MAP FOR THE SUBDIVISION OF ONE 5.45 ACRE PROPERTY INTO SEVEN INDIVIDUAL PARCELS; FOUR OF WHICH WOULD BE DEVELOPED WITH TWO-STORY SINGLE-FAMILY RESIDENCES WITH BASEMENTS AND SWIMMING POOLS, AND THE OTHERS WOULD BE PRESERVED FOR OPEN SPACE, STREET, DISPERSAL AREA, A GATE HOUSE AND ONSITE WASTEWATER TREATMENT SYSTEM PACKAGE PLANT TO SERVE THE FOUR HOMES; INCLUDING CDPs FOR EACH OF THE FOUR PROPOSED RESIDENCES, SPRs FOR CONSTRUCTION OF EACH RESIDENCE IN EXCESS OF 18 FEET IN HEIGHT, NOT TO EXCEED 28 FEET FOR A PITCHED ROOF, AND A SPR FOR CONSTRUCTION OF THE RESIDENCE AT PARCEL 1 ON SLOPES BETWEEN 3 TO 1 AND 2 ½ TO 1 AT 23915 MALIBU ROAD (AZ WINTER MESA LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On March 5, 2007, an application for the proposed project was submitted for processing. The application was routed for review to the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and the Los Angeles County Fire Department (LACFD) for Local Coastal Program (LCP) and Malibu Municipal Code (M.M.C.) conformance review.

B. On August 27, 2007, the City Council approved a contract with The Planning Center to initiate work on the preparation of an Environmental Impact Report (EIR) for the proposed project.

C. On September 11, 2007, the Governor's Office of Planning and Research distributed the Notice of Preparation (NOP) and Initial Study to responsible agencies for comments for a 30-day public review period, September 11, 2007 through October 10, 2007 [State Clearing House (SCH) # 2007091048]. The City received written responses to the NOP from the following agencies: the Native American Heritage Commission, the Metropolitan Transportation Authority, the California Department of Transportation, the South Coast Air Quality Management District and the LACFD Land Development Unit.

*Environmental Health*

95. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of onsite facilities.
96. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.
97. A final plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC), and the LCP/LIP, including necessary construction details, the proposed drainage plan for the developed property, and the proposed landscape plan for the developed property. If inclusion of the above items renders the plot plan difficult to read, then the above items shall be submitted on two or more plot plans.
98. The complete engineering design drawings, calculations, construction specifications, and an operation and maintenance manual shall be submitted to the City of Malibu Environmental and Building Safety Division. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow-equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be included in the construction plans so as to continuously gauge the quantity of effluent flowing daily through each wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all wastewater discharges from all proposed residential buildings at the subject property.
99. An operations and maintenance manual specified by the AOWTS design engineer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
100. Water level monitoring devices shall be installed within the seepage pits with telemetric notification to the maintenance service provider. Instructions to the service provider for notification to the Homeowners Association of high water conditions, and associated requirements for switching discharge to expansion seepage pits, must be addressed in an operation and maintenance manual prepared by the AOWTS designer.
101. Submit building plans, wastewater plans, and all necessary supporting forms, and reports, to the Los Angeles Regional Water Quality Control Board, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). RWQCB Waste Discharge Requirements shall be obtained and submitted to the City of Malibu Environmental Health Administrator.
102. Prior to receiving Environmental Health approval, the owner shall legally establish a Homeowners Association governing document that obligates the collection of assessments,

specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the Homeowners Association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.

103. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed AOWTS.
104. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Please note only original "wet signature" documents are acceptable.
105. The City Public Works Department final approval shall be submitted to the City Environmental Health Administrator. The City Public Works reviewer shall review the AOWTS design to determine conformance with flood hazard area requirements, if applicable.
106. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
107. The City Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on sensitive habitat, if applicable.
108. In accordance with MPC Section 103.5.5.1, an application shall be made to the Environmental Building Safety Division for an OWTS operating permit.

#### *Fire Safety*

109. The project requires Fire Department Plan Check and developer fee.
110. The project may require interior fire sprinklers.
111. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

#### *Trash Storage Areas*

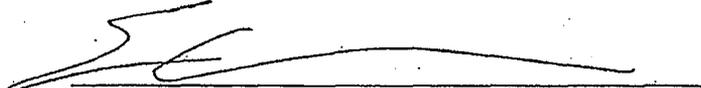
112. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
113. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

comply with this coastal development permit. Temporary Certificates of Occupancy may be granted at the discretion of the Building Official, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

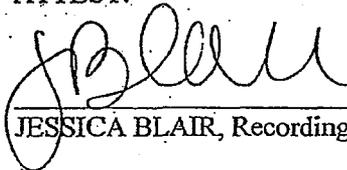
Section 13. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of August 2009.

  
ED GILLESPIE, Planning Commission Chair

ATTEST:

  
JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at [www.ci.malibu.ca.us](http://www.ci.malibu.ca.us), in person at City Hall, or by calling (310) 456-2489, extension 374.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

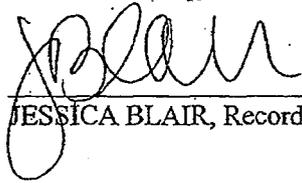
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 09-49 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 4<sup>th</sup> day of August 2009, by the following vote:

AYES: COMMISSIONERS: HOUSE, JENNINGS, MAZZA AND GILLESPIE

NOES:

ABSTAIN:

ABSENT: COMMISSIONERS: SCHAAR



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JESSICA BLAIR, Recording Secretary

**BIG ROCK**  
PARTNERS LLC

California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street  
Suite 200  
Los Angeles, CA 90031

Attn: Rebecca Chou, Ph.D. P.E.

January 20, 2009

Re: Comment Letter – Proposed Prohibition of Onsite Wastewater Treatment Systems (the “Prohibition”) in the Malibu Civic Center Area (“MCC”)

Dear Dr. Chou:

Thank you providing AZ Winter Mesa LLC (AZWM) with the opportunity to submit comments on the Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (“RWQCB”). While AZWM does not own any property in the MCC, we do own two properties adjacent to the MCC, 23915 Malibu Road, colloquially known as the “Towing Site” and 24200 Pacific Coast Highway, colloquially known as the “Crummer Site”. Both of these properties are in the Winter Canyon watershed which we understand will be included in the study area for modeling purposes of the MCC. AZWM has filed with the City of Malibu applications for Coastal Development Permits to subdivide these sites as separate developments. It is contemplated that each site will be served by a separate community OSWTS. A Draft Environmental Impact Report for the Towing Site was published on December 25, 2008. AZWM filed its Form 200 and related technical studies for the Towing Site with the RWQCB. On January 15, 2009 AZWM received conformance approval on the OSWTS for the Towing Site. We are preparing additional scientific studies which we will be providing you in connection with the OSWTS for the Crummer Site.

We are very concerned about statements made by RWQCB staff that Winter Canyon and MCC are hydraulically connected. This implies that even though Winter Canyon is outside the MCC groundwater basin/shed, (while within the regional groundwater study area), potential impacts to MCC exist from activities in Winter Canyon. This has been studied and for all intents and purposes Winter Canyon has been shown to not impact or interact with MCC (Stone Environmental, 2004).

315 S. Beverly Drive, Suite 315  
Beverly Hills, CA 90212

EXHIBIT 2

Rebecca Chou, Ph.D. P.E.  
January 20, 2009

It is our understanding that the RWQCB has commissioned the groundwater study because of ongoing concerns related to the water quality in Malibu Creek, Malibu Lagoon and the Pacific Ocean beyond. We share these concerns and support the efforts of local environmental groups working to improve the quality of the groundwater in the MCC. However, from the brief description provided in the "Notice of CEQA Scoping" it is difficult to understand some basic issues such as the scope of the Prohibition or how the Board is going to define "Malibu Civic Center Area", how the Board will define separate watersheds/groundwater basins or how the Board will measure impacts from separate watersheds/water basins

Winter Canyon and MCC have from a hydrologic perspective been consistently viewed as separate and distinct watersheds and basins. As such Winter Canyon has been excluded from your study area of the proposed Prohibition. There is no scientific basis to conclude that Winter Canyon and MCC are hydraulically connected. These two areas are very different with respect to water levels and flow gradient. In fact in 2003 the DWR delineated the boundaries of the MCC, "termed "Malibu Valley Groundwater Basin and in 2004 defined it as "a small alluvial basin located along the Los Angeles County coastline. The basin is bounded by the Pacific Ocean on the south, and by non water barring Tertiary rocks on all remaining sides. The valley is drained by Malibu Creek into the Pacific Ocean." The DWR limits of the Malibu Valley Groundwater basin did not include Winter Canyon. That being said we hope you can understand our concern that RQWCB staff may view Winter Canyon as hydraulically connected to MCC. We believe that it would be manifestly unjust and create a dangerous precedent, if the RQWCB subsequently changes its definition of MCC as the basis for either extending the Prohibition area to include Winter Canyon or use hydraulic connectivity to justify the RQWCB's refusal to act on applications for discharge permits for properties within Winter Canyon until it has completed its studies of MCC.

In view of the unprecedented economic crisis facing the country and the State of California we believe that a careful and comprehensive evaluation of the economic impact of instituting the Prohibition (in whatever form it may ultimately takes) is required.

In addition, current regulations of the California Coast Commission and the City of Malibu require the use of OSWTS. Even if a feasible alternative exists it is necessary to carefully evaluate all of the possible benefits of individual onsite wastewater systems compared with one large system. A failure of a regional plant could have the potential to cause significantly more environmental damage than a failure at one smaller system. Can the construction of a new OSWTS have a positive environmental impact on existing conditions? A detailed analysis of the alternatives and their feasibility is needed in order to fully understand the impact of the Prohibition in MCC. This includes an analysis of extending the proposed Prohibition beyond MCC to properties that are not hydrologically connected to the MCC or using hydraulic connectivity as a basis for the refusal of the

Rebecca Chou, Ph.D. P.E.  
January 20, 2009

RQWCB to act on applications for discharge permits for properties within Winter Canyon until completion of its studies of MCC.

Thank you for your consideration of the issues raised herein.

Respectfully submitted,

*/s/ Robert Gold*

Robert Gold



January 20, 2009

**To:** California Regional Water Quality Control Board  
Los Angeles Region  
320 w. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

**Attention:** Ms. Rebecca Chou

**Subject:** CEQA Scoping Meeting, Proposed Septic Prohibition in the Malibu Civic Center Area (Public Notice No. 08-061) - Comments on Groundwater Basins in the Winter Canyon and Civic Center (Malibu Creek) Areas

Pursuant to the Notice of CEQA Scoping Meeting dated December 19, 2008, we appreciate the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a Septic (Onsite Wastewater Treatment System - OWTS) Prohibition in the Malibu Civic Center Area. We understand that according to the City of Malibu, Winter Canyon is not included in the area for the proposed OWTS moratorium. However, we have heard concerns raised that the Winter Canyon and Malibu Creek/Civic Center area groundwater basins are hydraulically connected. The implication from this connection is that the addition of water into either basin might cause an increase in groundwater levels in other basin. With respect to this issue, we provide the following information:

Winter Canyon and Malibu Creek are separate watersheds. Although they are adjacent, an intervening ridge divides surface waters such that each watershed drains independently towards the ocean. The ridge is composed of siltstone bedrock of the Monterey Formation, which is partially capped by Quaternary terrace deposits (see Figure 1).

Both Winter Canyon and the Malibu Creek/Civic Center area are filled with sediments capable of storing and transmitting water. These sediments could be considered "aquifers" in this sense, even if they are judged to lack yields significant enough to be considered as water supply sources.

The California Department of Water Resources (DWR) defines groundwater basin as follows:

"An alluvial aquifer or stacked series of alluvial aquifers with reasonably well-defined boundaries in a lateral direction and having a definable bottom"

By the DWR definition above, Winter Canyon is a separate groundwater basin, as its boundaries are well defined by the surrounding hills, including the bedrock ridge that separates it from the Malibu Creek/Civic Center area. Further, the DWR has delineated the

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EXHIBIT 3

January 20, 2009

boundaries of the Malibu Creek groundwater basin, termed "Malibu Valley Groundwater Basin (2003), and has defined it as follows (2004):

"Malibu Valley Groundwater Basin is a small alluvial basin located along the Los Angeles County coastline. The basin is bounded by the Pacific Ocean on the south and by non water-bearing Tertiary age rocks on all remaining sides. The valley is drained by Malibu Creek to the Pacific Ocean."

The DWR boundaries of the Malibu Valley Groundwater Basin, shown on Figure 2, do not include Winter Canyon.

The lack of hydraulic connectivity between Winter Canyon and the Civic Center area is further illustrated in Figures 3 and 4, reproduced from Stone Environmental, Inc. (2004). Water levels measured during September 2003 (unbreached lagoon) and during March 2004 (breached lagoon) show:

- The two areas are very different with respect to water level and flow gradient.
- Neither system flows into the other – the only location where mixing of the waters might occur is south of Malibu Road, at the ocean/groundwater interface.
- Although flow patterns in the Malibu Creek/Civic Center area are altered significantly by changes in the lagoon's exposure to the ocean, Winter Canyon's water levels are not affected.

As demonstrated herein, the Winter Canyon and Malibu Creek/Civic Center area have separate and distinct groundwater basins. It is therefore our opinion it would not be appropriate, from a hydrogeologic point of view, to include Winter Canyon in the region under consideration for the proposed Malibu Civic Center Septic Prohibition area.

Thank you for your consideration,

**EARTH CONSULTANTS INTERNATIONAL, Inc.**



**Dr. W. Richard Laton PG 7098**  
Senior Consultant



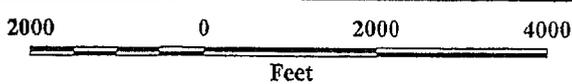
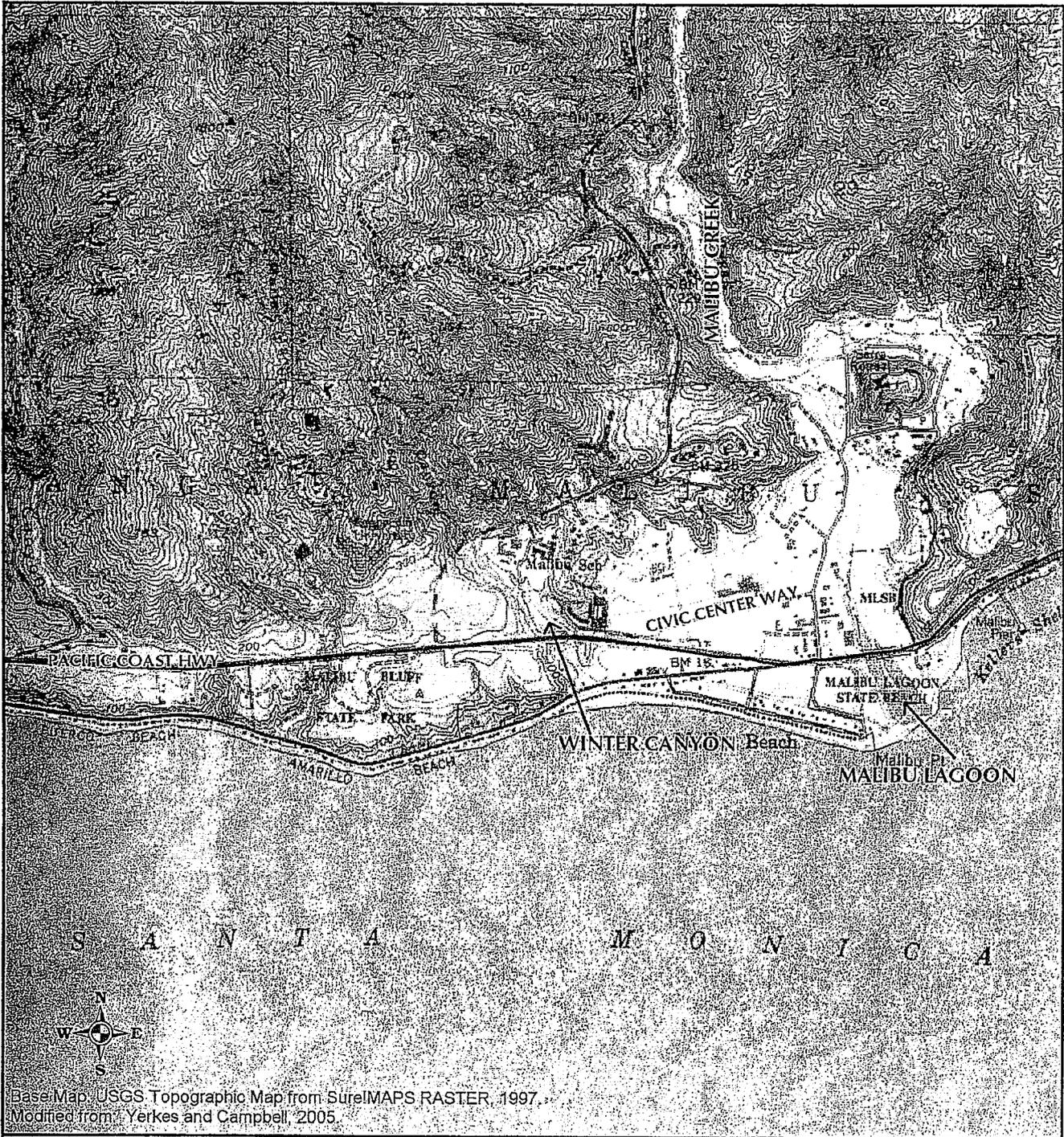
**Kay St. Peters CEG 1477**  
Project Consultant



**References**

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- Stone Environmental, 2004, Final Report, Risk Assessment of Decentralized Wastewater Treatment Systems in High Priority Areas in the City of Malibu, California, Project Number 011269-W, dated August 30, 2004.
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Scale: 1:24,000

**Geologic Units**

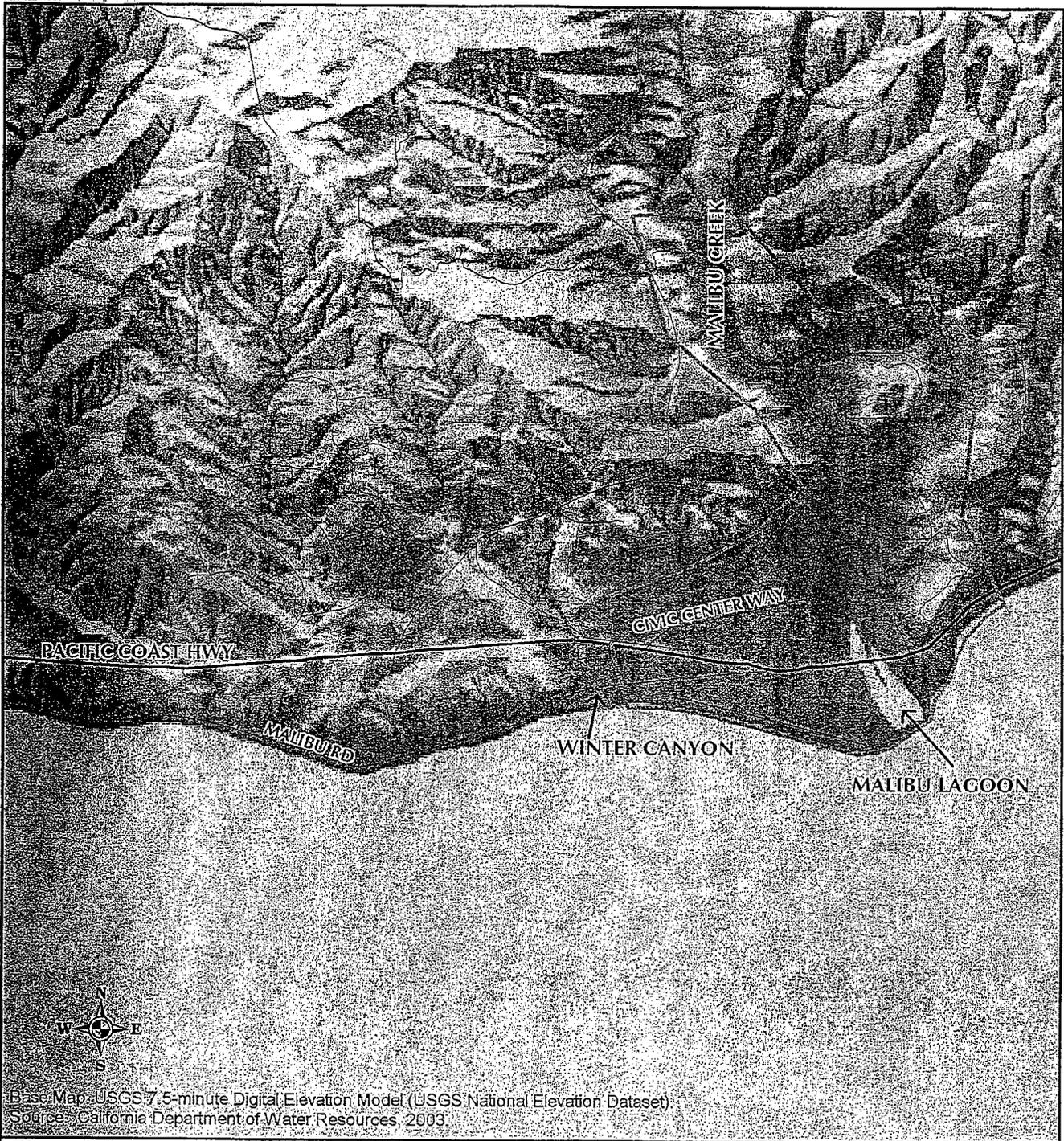
- |  |                  |  |           |
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|  | Artificial Fill  |  | Landslide |
|  | Young Alluvium   |  | Bedrock   |
|  | Terrace Deposits |  |           |

Earth  
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Project Number: 2802  
 Date: January 2009

**Simplified Geologic Map**  
 Vicinity of Winter Canyon and Civic Center Area  
 Malibu, California

**Figure 1**



Scale: 1:24,000

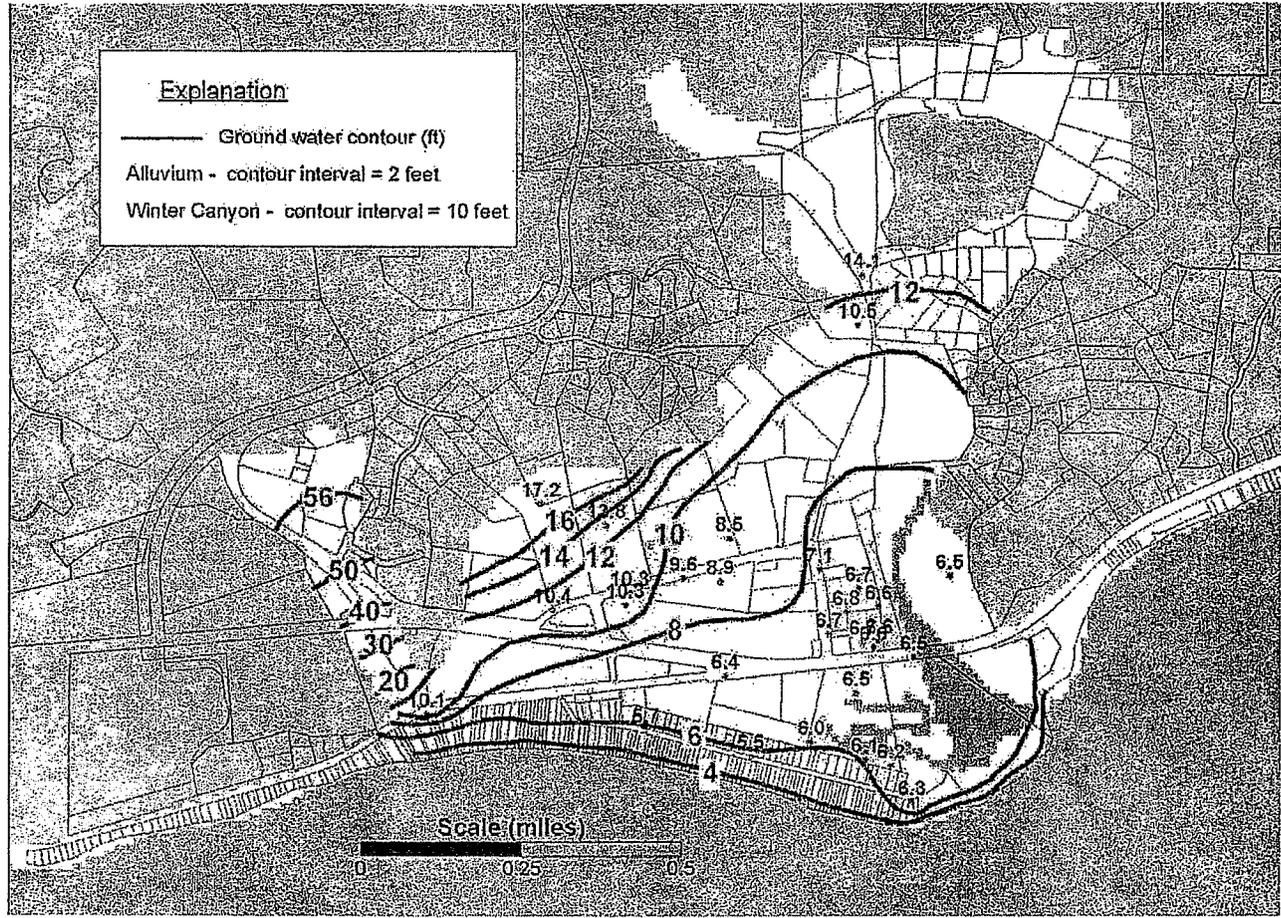
 DWR Limits of Groundwater Basin 4-22



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 Project Number: 2802  
 Date: January 2009

**Malibu Valley Groundwater Basin  
 (DWR Basin Number 4-22)**  
 Malibu, California

**Figure 2**



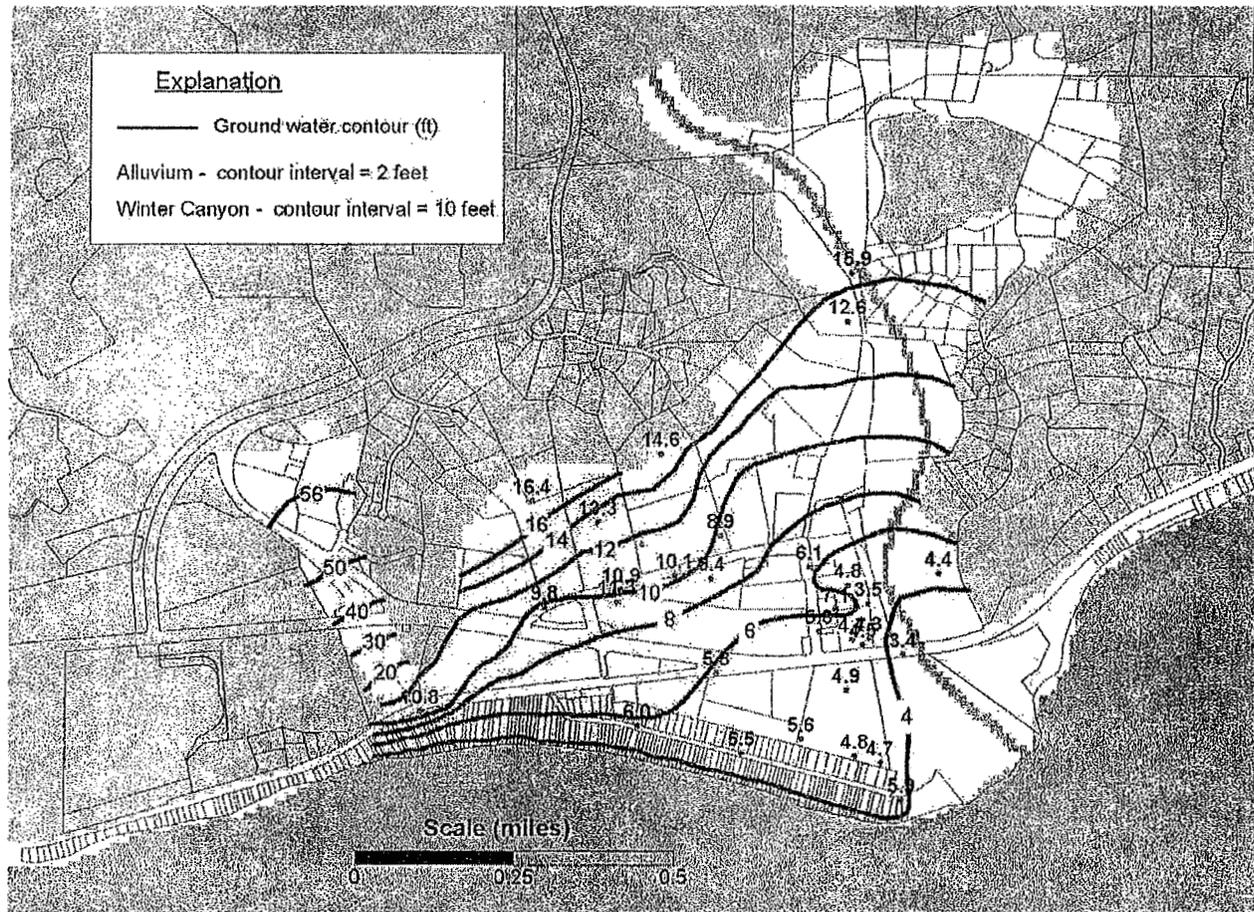
Source: Stone Environmental, 2004



Project Number: 2802  
Date: January 2009

## Water Levels Measured On September 25, 2003 Unbreached Lagoon

Figure 3



Source: Stone Environmental, 2004



Project Number: 2802  
Date: January 2009

## Water Levels Measured On March 9, 2004 Breached Lagoon

Figure 4

Malibu). Table 2 below shows the model calculated increase in water levels beneath the seepage pits and includes the combined effect of the following:

- Stormwater recharge: 11.93"
- Design/peak flow discharge from Towing Site pits: 3,170 gpd
- Original discharge from upgradient sources: 88,191gpd
- Additional discharge to include maximum permitted for upgradient Winter Canyon treatment facilities: 29,000 gpd

**Table 2: Model Calculated Results for Hypothetical Severe Storm Conditions**

Seepage Pit No.	Pit Bottom Elevation (ft amsl)	Existing GW Elevation (ft amsl)	Separation (ft)	Modeled GW elevation (ft amsl) with Hypothetical Severe Conditions	Separation (ft)
SP-1	52	33.47	18.53	34.68	17.32
SP-2	53	35.49	17.51	36.72	16.28
SP-3	53	37.33	15.67	38.56	14.44
SP-4	54	38.91	15.09	40.15	13.85
SP-5	54	40.93	13.07	42.18	11.82
SP-6	55	41.61	13.39	42.86	12.14
SP-7	55	42.00	13.00	43.25	11.75
SP-8	55	41.66	13.34	42.91	12.09
EP-1	55	40.86	14.14	42.12	12.88
EP-2	55	39.39	15.61	40.64	12.36
EP-12	54	39.71	14.29	40.96	13.04
EP-13	51	31.33	19.67	32.52	18.48
EP-14	54	40.79	13.21	42.05	11.95

All units are in feet

Plate 1 (map) illustrates groundwater elevation contours based on the highest recorded water levels (blue contours) at Towing Site, and the hypothetical contours (red contours) from the confluence of events described above. The model of the presented Hypothetical Severe Conditions concludes that even under "extreme" hydraulic conditions overflows and effluent surfacing will not occur. In addition, under the Hypothetical Severe Conditions vertical separation to groundwater below the proposed seepage pits ranges from 11.75 to 18.48 feet with an average of 13.72 feet.

***LARWOCB Comment:** The technical remedy you propose is water conservation within the facility, increased storage capacity, and alternative disposal options. The facility must be able to maintain groundwater separation of 5 feet under all conditions for the safe removal of surfactants, solvents, pharmaceuticals, and toxic organic substances. The selected conservation method needs to be better defined, especially how it will be implemented to maintain separation from groundwater.*



Response: [Ensitu] The model calculations for the Hypothetical Storm Events indicate that under the severe conditions described above the minimum separation from the pit bottoms to groundwater ranges from 11.75 feet to 18.48 feet. The proposed community treated water system provides six active and seven expansion seepage pits for disposal of treated and disinfected water. The proposed expansion pits will be installed during construction of the treated water system as part of the overall site development. The expansion pits will not be connected for use at initial system start up, however they would be available for connection at any time if it is deemed necessary to put them into use. Please see City of Malibu Planning Commission Condition of Approval No. 94 in the "OTHER COMMENTS" section below.

Total peak flow for the four residences is calculated at 3,170 gallons per day. Current proposed design of active seepage pits provides a tested acceptance volume of 50,406 gallons per day. At this tested capacity the loading rate based on design flow is 1.65 gpsfd. Based on current design it is anticipated that the minimum separation to groundwater shall be 12.66 feet (considering the highest predicted change in groundwater elevation based on the calibrated flow model by ECI (report dated July 24, 2008) and 11.75 feet under Hypothetical Sever Storm conditions. Each residence is served by a 2,000-gallon septic tank that provides 2.2 days hydraulic retention time (HRT). The gate house is served by a 1,500-gallon septic tank. Including the 20,000-gallon equalization/recirculation/dosing tank, the system has a total septic tank capacity of 29,500 gallons. This provides 9.3 days HRT at the peak flow of 3,170 gallons per day (gpd) or 13.9 days HRT at the average flow of 2,120 gpd. The system's capacity will negate the need to haul liquid sewage and sludge from the Towing Site.

In order to monitor and prevent overflows from the seepage pits, liquid level alarms will be installed in all active seepage pits to monitor the water elevation in pits at all times. Rise in liquid level will trigger an alarm to the maintenance contractor and flows to the pit(s) would be immediately stopped. Please see City of Malibu Planning Commission Condition of Approval Nos. 93 and 94 in the "OTHER COMMENTS" section below.

The system as designed, and as confirmed by the groundwater mounding models, will be able to maintain groundwater separation of 10 feet (as required by both the City of Malibu and the LARWQCB), even under the Hypothetical Severe Conditions, and therefore provide for the safe removal surfacants, solvents, pharmaceuticals and toxic organic substances.

While water conservation was not included as a specific proposal in the water treatment design report, water conservation efforts will be included in the architectural/mechanical design, primarily through the use of ultra-low flow fixtures, and incorporation of many native drought resistant plant species in the Towing Site's landscape plan. While other options for disposal were initially explored for the site, the only practical option is disposal through seepage pits as shown in the proposed design.

#### **TECHNICAL INCONSISTENCIES**

LARWQCB Comment: *The flow lines you provide show uniform discharge out of bedrock into an alluvial aquifer. The high permeability measures in your seepage pit tests predict*



*that flow will be through fractures and not uniform discharge. If so, effluent will be delivered to a small area of the alluvium, possibly at the base of the canyon. Please correct these inconsistencies and modify your application to discuss additional possible flow lines and the implications for the project.*

**Response:** [ECII] We agree that the flow rates are variable, ranging from 48.5 gal/sq ft/day to 12.61 ga/sq.ft/day, based on the percolation test report (Young, 2008). We reviewed the logs for the six borings used in the percolation tests, all of which were downhole logged by a geologist from Leighton and Associates. The percolation rates correlate somewhat with the depth of the zone tested, i.e., the highest rate was recorded in the zone closest to the surface, and the lowest rate corresponds to the deepest zone tested (see Table 3 below). The variable percolation rates are therefore generally related to the degree of weathering of the rock, which is described in the logs. The logs also report that although the rock is fractured, the fractures are commonly infilled. No open fractures that would represent significant conduits were noted. To assist in the Board's review we have included these logs in Appendix B.

**Table 3: Summary of Percolation Test Borings**

<b>Boring</b>	<b>Zone Tested (depth below ground surface in feet)</b>	<b>Percolation Rate (gal/sq ft/day)</b>
SP-1	8-26	48.5
SP-3	12-29	32.93
SP-5	19-36	39.01
SP-7	21-38	33.63
EP-1	25-42	22.42
EP-4*	28-46	12.61

\* This location was tested but not used for a future seepage pit.

We also note that during our many visits to the site, which have occurred during all seasons, we have never observed any springs or areas with water-loving vegetation on the Towing Site that might suggest the presence of an existing groundwater conduit to the surface. Further, Leighton (2005) reported they did not observe any evidence of wetlands or standing water on the site; and Leighton (2007) reported there was no evidence for perched groundwater on the slope along the western portion of the Towing Site.

The lack of open fractures in the rock and the lack of evidence for existing water seepage out of the slope where the future pits will be sited do not suggest there are existing conduits that might bring treated water to the surface. Further, the three-dimensional groundwater flow model used to predict the impacts of future discharges at the Towing Site (ECI, 2008a) has been calibrated using existing groundwater flow conditions, which would implicitly include the presence of conduits (bedrock fractures or permeable sand beds in the alluvium) that could transport water to the base of the canyon. Therefore the modeled pre- and post-development groundwater conditions are appropriate.



LARWOCB Comment: *You state that no-flow enters the eastern drainage ditch from groundwater on your property. We do not concur with your conclusion because it is based on a limited sample of onsite water levels and is not reflective of the range of historical water levels as found in Winter Canyon. Please expand your hydrology data base and your assumptions.*

Response: [ECI] With respect to historical groundwater levels, consultants often refer to the Seismic Hazard Zone Report for Malibu Beach Quadrangle (2001) prepared by the California Division of Mines and Geology (now called the California Geological Survey). This report publishes hypothetical historical high groundwater depths for the Malibu area, including Winter Canyon. Their map shows Winter Canyon groundwater depths of five feet for most of the reach south of PCH, and 10 feet at the northern end of Towing Site (Plate 1.2). According to the author of Section 1 of the report (M. Woods, personal communication), the CDMG relied on data in consulting reports on file with the City of Malibu. It should be noted that the CDMG's estimates for Winter Canyon are based on one geotechnical boring, located near the mouth of Winter Canyon on Malibu Road (CDMG Plate 1.2). Further, the report states that their estimates are made with a conservative bias. For instance, *"In many areas where observed ground-water depths were available, we generally simply rounded those depths up to the next higher five-foot increment."* The CDMG groundwater estimates are made for the purpose of identifying potential liquefaction areas, and are meant to prompt site-specific investigations. They are not sufficient nor were they ever intended to serve as a substitute for site-specific investigations.

Therefore, in order to evaluate the historical high groundwater levels using empirical data, we have undertaken a comprehensive search of the available reports and records for Winter Canyon and the beach area below. This includes reports on file at the City of Malibu and the LARWQCB. The addresses of test pits, borings, or monitoring wells are presented in Table 4 along with the depth to groundwater and the date the reading was recorded. For geotechnical test pits and borings, this is the date of excavation. For monitoring wells, we show the depth and date of the highest recorded reading. These excavations cover a range of years between 1966 and 2009, and were made during various seasons. We limited the results of this review, compiled below in Table 4, to those excavations along Malibu Road where we could determine the elevation of the ground surface at the excavation, and thus determine the groundwater elevations. For comparison, we included Well SMBRP-11.



**Table 4: Tabulated Results for Historical Groundwater Levels Along Malibu Road (1966-2009)**

Address	Boring or Pit No.	Date Excavated	Ground El.	Reported GW Depth	GW El.	Reference
23864	B-1*	5-7-98	14.5	9	5.5	GeoConcepts, 2003
23864	B-2	12-23-02	14.8	8	6.8	GeoConcepts, 2003
23872	TP-3	4-1-08	16.8	8	8.8	GeoConcepts, 2008
23872	TP-6	4-1-08	16.8	8	8.8	GeoConcepts, 2008
23872	TP-7	4-1-08	17.1	8	8.8	GeoConcepts, 2008
23900	SMBRP-11	2-4-03	18.35	7.5	10.85	Depth encountered during drilling (Stone, 2004)
23900	SMBRP-11	2-25-08	18.35	7.47	10.88	Highest recorded measurement (ECI, 2000)
23900	SMBRP-11	8-5-09	18.35	8.24	10.11	Current measurement (ECI)
23910	B-1	6-?-86	17.7	10	7.7	Holt & Assoc., 1986
23910	B-1	3-18-98	17.7	10	7.7	Mountain Geology, 1998
23910	B-3	3-18-98	18.3	10.5	7.8	Mountain Geology, 1998
23910	TP-3	3-19-09	18.4	10.5	7.9	GeoConcepts, 2009
23910	TP-4	3-19-09	18.3	11	7.3	GeoConcepts, 2009
23910	TP-5	3-19-09	18.2	11	7.2	GeoConcepts, 2009
23910	TP-6	3-19-09	18.1	11	7.1	GeoConcepts, 2009
23916	B-3	5.16.66	18±	14	4	Frankian & Assoc., 1966
23930	TP-1	5-16-82	12-13	5	7-8	Triad, 1982
23930	AH-01	10-13-04	19-20	16	3-4	Subsurface Designs, 2004
23936	TP-3	2-17-84	11	11	0	Jeffery A. Johnson, 1984
23940	B-1	3-?-79	21	16	5	John D. Merrill, 1079
23940	TP-3	2-17-84	11-12	11	0-1	Masterman & Assoc. 1984
23952	B-1	9-13-82	22	16.5	5.5	Kovacs-Byer-Robertson, 1982
23952	B-2	9-14-82	22	17	5	Kovacs-Byer-Robertson, 1982

\*Boring used by the CDMG (2001) to estimate historic high water level for lower Winter Canyon to be 5 feet bgs.

Depths and Elevations are reported in feet.



The oldest monitoring well data we have for lowest reach of Winter Canyon are for two wells located just north of Malibu Road (see Plate 1 for location). These readings were 9.65 feet below ground surface (bgs) for Well MBCWC-MW1 (December 15, 1998), and 14.6 feet bgs for Well MBCWC-MW2 (December 15, 1998). Well MBCWC-MW-1 was subsequently destroyed by weed discing; however Well MBCWC-MW2 was monitored from April 1999 through February 2001. During this time frame water depths ranged from 14.75 feet bgs to 19.28 feet bgs. We started monitoring this well again in April 2008 and have continued to monitor it through the present. The range of water levels for the current monitoring period is 17.9 to 19.68 feet bgs.

Well SMBRP-11, located at the intersection of Winter Canyon and Malibu Road, was monitored during the period between January 2003 and March 2004 (Stone, 2004 report), and again during our study for the Towing Site. Figure 3 from ECI report dated 12-12-08 illustrates groundwater levels obtained from this well, and shows very little change occurred overall between the 2003 and 2009 readings, which varied between about 7.5 to 8.5 feet bgs during both monitoring periods.

The historical recorded water levels for Well SMBRP-11 and Well MBCMW-2 are plotted on Figure 1, along with precipitation data for the same time period. We also show the lowest elevation (26.1 feet amsl) in the bottom of the Winter Canyon drainage ditch, which occurs at the storm drain inlet (see Plate 1). The plot shows groundwater levels at that location have remained well below the bottom of the ditch for that time period.

As such, there is nothing in the historical data to suggest groundwater has risen high enough in the past to intercept the base of the Winter Canyon drainage ditch (see Figure 1). In addition, please see Plate 1, which shows the modeled groundwater contours for the hypothetical severe storm event. Even under the Hypothetical Severe Conditions, the contours still do not intercept the base of the ditch.

If the LARWQCB has any historical data confirming that groundwater has risen high enough in the past to intercept the base of the Winter Canyon drainage ditch we would appreciate the opportunity to review this data.

*LARWQCB Comment: Your model assumes a finite boundary condition and continuous flow at the Ocean when your well data shows tidal fluctuations. Further, seasonal conditions have been shown to limit outflow through the shallow subsurface as per the reference provided in our email and technical presentations at Malibu's May [April] 30, 2009 symposium. Please correct these inconsistencies.*

Response: [ECI] Tidal fluctuations noted in our data were in offsite Well SMBRP-11, located on the southern side of Malibu Road. No evidence of tidal fluctuation has been detected in the wells located on the Towing Site, during February 2008 through August 2009. We also point out that dispersal of the treated water from the Towing Site will be relatively constant, and not seasonal.

With respect to the reference provided in the LARWQCB email (de Sieyes et al, 2008), that study documents the influence of the spring-neap tidal cycle (14 day period), on subsurface discharge of fresh groundwater to the ocean from an unconfined, septic effluent-affected aquifer. The changes in subsurface groundwater discharge in the study



were mathematically calculated (not modeled), and not directly measured. The study indicates that groundwater elevation changes in the well closest to the tide line during the spring-neap tidal cycle were reported to range between 19 cm below the cycle average during neap tide and 10 cm above the cycle average during the spring tide, with a maximum increase in sea level of approximately 1 meter (de Sieyes et al., 2008). The authors calculated fresh groundwater discharge to the ocean during neap tide (low tide) to be 4.7L/min/m and 1.2L/min/m for one-hour and four-hour residence times respectively. During the spring tide (high tide), they calculated the discharge to be 0.5L/min/m and 0.1L/min/m for one-hour and four-hour residence times respectively. Consequently, during high tide conditions, groundwater discharged to the ocean at a lower rate than during times when the ocean was at or near mean sea level. But, during low tide conditions, groundwater discharged at a higher rate than the rate during mean sea level. Thus, changes in the groundwater gradients associated with tide fluctuations near the ocean-land interface are responsible for freshwater discharging to the ocean at varying rates.

Although the de Sieyes study illustrates the effect of tides on groundwater discharge, we point out that overall, tidal fluctuations and the resulting groundwater discharge rates average out to the rate that occurs during mean sea level. Given that in Winter Canyon, tidally-influenced changes take place outside of the Towing Site, and that they average out to mean sea level conditions, and that dispersal of treated water for the future Towing Site seepage pits will be relatively constant, it is appropriate for the Towing Site model to use a finite boundary and continuous flow at the ocean.

#### **OTHER COMMENTS**

*LARWOCB Comment: In addition, our survey of the performance of adjacent advanced onsite wastewater facilities raises operational concerns. We need additional documentation on your plans for odor control, operation and maintenance plans including the party responsible for the system after construction, and the quantification of storage planned to prevent system malfunction.*

Response: [Ensitu] AdvanTex systems shall not produce odor. The six active pits proposed for the site provide a total disposal capacity of 50,406 gpd. The proposed expansion pits provide an additional capacity of 51,253 gpd. In addition to servicing the treatment system, the maintenance provider will manage the disposal of treated water to the pits. Disposal of treated water to the pits can be adjusted as necessary for each pit to ensure the pits are performing as optimal capacity. Additionally, the future pits, while not planned for use initially, will be installed during the construction of the active pits and could be brought into service, in case of an emergency.

In addition, the City of Malibu's Planning Commission Resolution No.:09-49 Section 13, approved on August 4, 2009, contains specific conditions of approval with respect to the AOWTS for the Towing Site including the following:

Condition 89: "Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of onsite facilities.



Condition 92: "The complete engineering design drawings, calculations, construction specifications, and an operating a maintenance manual shall be submitted to the City of Malibu Environmental Health and Building Safety Division. Describe all AOWTS components (i.e. alarm systems, pumps, timers, flow equalization devices, backflow devises, etc.) proposed for use in the construction of the systems for onsite water treatment and disposal. Electronically monitored flow meters shall be included in the construction plans so as to continuously gauge the quality of the effluent flowing daily through each wastewater system. The final AOWTS design shall provide for sufficient capacity for onsite treatment and disposal of all wastewater discharges from all proposed residential buildings at the subject property.

Condition 93: "An operation and maintenance manual specified by the AOWTS design engineer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite treated water disposal system."

Condition 94: "Water level monitoring devices shall be installed within the seepage pits with telemetric notification to the Homeowners Association of high water conditions, and associated requirements for switching discharge to expansion seepage pits, must be addressed in an operation and maintenance manual prepared by the AOWTS designer,"

Condition 95: "Submit building plans, wastewater plans, and all necessary supporting forms, and reports, to the Regional Water Quality Control Board, 320 W. 4<sup>th</sup> Street, Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). RWQCB Discharge Requirements shall be obtained and submitted to the City of Malibu Environmental Health Administrator."

Condition 96: "Prior to receiving Environmental Health approval, the owner shall legally establish a Homeowners Association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation to the Homeowners Association to comply with all requirements, references all applicable LUP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by the City Attorney's office and then submitted to the Environmental Health Administrator."

Condition 97: "An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed AOWTS."

Condition 98: "A maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Please not only original "wet signature" documents are acceptable."

Condition 99: "The City Public Works Department final approval shall be submitted to the City Environmental Health Administrator. The City Public Works reviewer shall review the



AOWTS design to determine conformance with the flood hazard area requirements, if applicable."

Condition 100: "The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator."

Condition 101: "The City's Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on sensitive habitat, if applicable."

Condition 102: "In accordance with the MPC Section 103.5.5.1, an application shall be made to the Environmental Safety Division for an OWTS operating permit."

As noted earlier in this response, a 2,000-gallon septic tank will be installed at each house and a 1,500-gallon tank at the gatehouse. A 20,000-gallon treatment tank will include a 10,000-gallon compartment for equalization (3.15 days of hydraulic retention time), a 5,000-gallon recirculation compartment and a 5,000-gallon dosing compartment. With a total septic tank capacity of 29,500 gallons, the HRT is 9.3 days. The proposed 20,000-gallon tank exceeds the minimum 14,000-gallon tank required by City of Malibu Plumbing Code and sizing required by the manufacturer.

The LARWQCB has acknowledged that treatment system problems can occur in both onsite wastewater treatment systems as well as in municipal systems. Problems generally occur due to lack of maintenance or human error. While other manufactured treatment systems on adjacent properties may be experiencing problems, based on direct conversations with representatives of Orenco, it our understanding that *all* AdvanTex onsite wastewater treatment systems along Malibu Road are functioning at top performance. In addition to the Conditions of Approval listed above, the AdvanTex manufacturer Orenco requires as part of the equipment purchase, that the purchaser contract with a certified maintenance provider for an ongoing Management Program (as defined by Orenco) that ensures performance of their equipment.

## CONCLUSIONS

Based on our analysis, it is our opinion that the amount of treated, disinfected water that the completed Towing Site project will add to Winter Canyon will have no adverse impacts on the Winter Canyon drainage ditch or the area identified in the Stone (2004) report as high risk for bacterial contamination to receiving waters already impaired by pathogens. In addition, modeled calculations show the theoretical severe storm, even when coupled with the design/peak flow from Towing Site, and the maximum permitted discharge from the upgradient treatment facilities, will not cause groundwater levels to exceed the 10-foot separation below the seepage pits, nor the base of the Winter Canyon drainage ditch.

With respect to treatment system problems, AdvanTex manufacturer Orenco requires as part of the equipment purchase, that the purchaser contract with a certified maintenance provider for an ongoing Management Program (as defined by Orenco) that ensures performance of their equipment. This coupled with the conditions contained in the City of



September 18, 2009

Malibu's Planning Commission Resolution No. 09-49, should mitigate treatment system problems.

It should also be noted that the property in question has until recently been actively used for over 40 years as a Veterinary Hospital, Towing Facility and Single-Family Home (the single-family home consists of one bedroom and one bathroom and is currently occupied). Each of these entities was discharging concurrently to the subsurface via traditional septic systems pursuant to the Malibu General WDR and to our knowledge have never had a complaint of odor or flowing water in the drainage ditch associated with their subsurface discharges.

As the expected flows for the new development are at or lower than previous rates and are to be treated to a much higher standard we conclude that no adverse impacts to the groundwater will occur as a result of the operation of the proposed system. In addition, based on our models and the operation specifications of the onsite water treatment system we conclude that the operation of the system proposed will not negatively impact the LARWQCB's efforts to restore beneficial uses to nearby water resources, including beaches, the Malibu Lagoon and Creek or groundwater and it will not result in an increase in pathogens and nitrogen that would impair underlying groundwater as a potential source of drinking water. The proposed system provides both adequate vertical separation to prevent bacteria discharges to groundwater and advanced treatment with disinfection as required by Section VI (3) of the MOU.

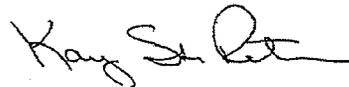
We hope this letter clarifies the questions regarding groundwater conditions and proposed treated water disposal systems at the Towing Site.

Respectfully Submitted,

**EARTH CONSULTANTS INTERNATIONAL, Inc.**



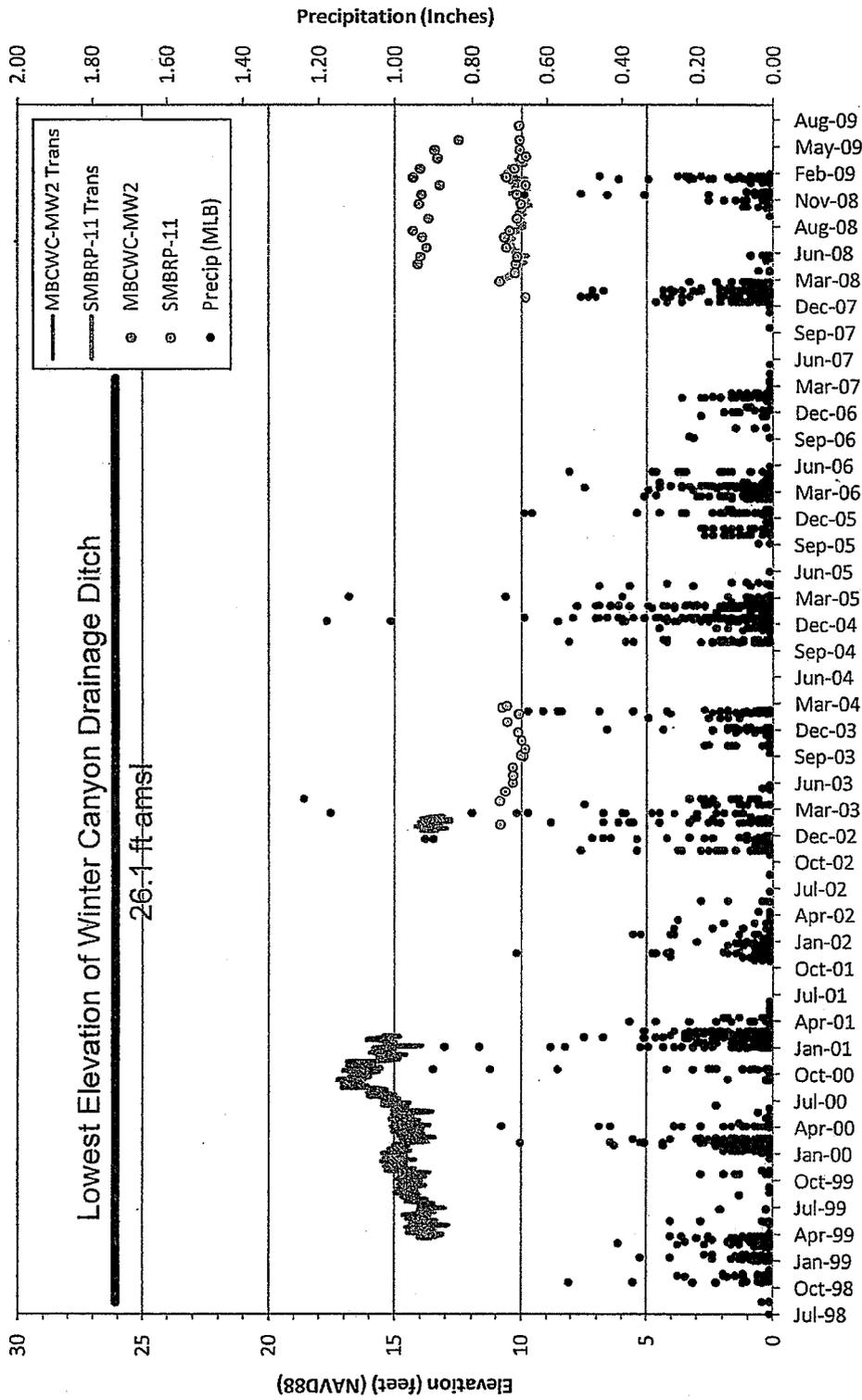
**Dr. W. Richard Laton PG 7098**  
Senior Consultant



**Kay St. Peters CEG 1477**  
Project Consultant

Attachments: Appendix A References  
Appendix B Percolation Test Boring Logs by Leighton and Associates  
Figure 1 Winter Canyon Water Levels (Elevation) vs Precipitation  
Plate 1 Revised Groundwater Elevation Contour Map





Sources:  
Precipitation: CDEC station MLB, CDWR, 2009



Project Number: 2802  
September, 2009

Winter Canyon Water Levels (Elevation) vs Precipitation  
23913 Malibu Road  
Malibu, California

Figure 1

## APPENDIX A

### References

## Appendix A

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APPENDIX B

Percolation Test Boring Logs

# GEOTECHNICAL BORING LOG SP-1

Date 2-15-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 78' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
0									Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
75									<b>COLLUVIUM (Cc):</b> SILTY CLAY, light brown, dry to slightly moist, stiff, diatomaceous with trace fine-grained sand, fine gravel and bedrock fragments, trace roots	
5				B-1					gradational irregular contact <b>MONTEREY FORMATION (Tm):</b> Interbedded DIATOMACEOUS SHALE/ MUDSTONE, light brown, slightly moist, moderately hard, thinly bedded, generally 1/8"-6" thick, oxidized and moderately weathered, calcium carbonate and gypsum along bedding planes and joints, abundant gypsum veins and infilled fractures	
70			C: N25W; 30NE	Cap						
10			B: N80W; 72NE J: N40W; 70SW	R-1	4	63.3	32.2		intersecting joint set, manganese oxide staining very hard silica cemented bed or dolostone bedrock hard to very hard, blocky jointing with gypsum infill	
65			B: N80W; 70NE I: N60E; 50NW J: N45E; 70SE B: N85E; 70NW	B-2					trace rootlets @ 20.5' distinct irregular contact	
60			B: N85W; 72NE	R-2	3	62.3	49.1		Limey SHALE/DOLOSTONE, medium gray, dry, very hard, moderately fractured, mild reaction with hydrochloric acid	
20										
55			J: N35E; 70SE B: N80W; 7NE							
25										
50			B: N86E; 76NW						Interbedded DIATOMACEOUS SHALE/ MUDSTONE, red brown, slightly moist, moderately hard, thinly bedded, trace calcium carbonate and gypsum along bedding planes and joints	
30										

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG SP-1

Date 2-15-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 78' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
		N <span style="margin-left: 20px;">S</span>							Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
30			B: N85W; 76NE						Interbedded DIATOMACEOUS SHALE/ MUDSTONE, red brown, slightly moist, moderately hard, thinly bedded, trace calcium carbonate and gypsum along bedding planes and joints	
45				R-3	9	62.7	50.2			
35									Total Depth Drilled 36' Total Depth Sampled 37' Logged to Total Depth No Seepage Zones No Groundwater Backfilled to 26' for percolation testing	
40										
40										
35										
45										
30										
50										
25										
55										
20										
60										

<b>SAMPLE TYPES:</b> S SPLIT SPOON R RING SAMPLE B BULK SAMPLE T TUBE SAMPLE	<b>G GRAB SAMPLE</b> <b>SH SHELBY TUBE</b>	<b>TYPE OF TESTS:</b> DS DIRECT SHEAR MD MAXIMUM DENSITY CN CONSOLIDATION CR CORROSION SA SIEVE ANALYSIS AT ATTERBURG LIMITS EI EXPANSION INDEX RV R-VALUE
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## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG SP-3

Date 2-14-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 82' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pct	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
		N S							Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
0									<u>COLLUVIUM (Oc):</u> SILTY CLAY, light brown, dry to slightly moist, stiff, diatomaceous with trace fine-grained sand, fine gravel and bedrock fragments, trace roots	
5									indistinct gradational contact	
75									<u>MONTEREY FORMATION (Tm):</u> Interbedded DIATOMACEOUS SHALE and MUDSTONE, medium brown, moist, hard, thinly bedded, 1/4"-4" thick, blocky joint pattern, trace rootlets along bedding and joints, moderately weathered, trace calcium carbonate and gypsum along bedding planes and joints	
10			B: N70E; 68NW	B-1 R-1	6/6"	76.0	23.0			
15			J: N48W; 40SW						Cap	
20			B: N85W; 75NE							
25			J: N40W; 40SW						joint set, manganese and iron oxide stained, with trace gypsum infill, yellow-green staining along bedding planes below 16'	
30			B: N70W; 70NE	R-2	4/8"	63.8	53.5			
35			B: N85W; 68NE							
40			B: N80W; 70NE						bedrock harder, less oxidized, less fractured	
45										
50										
55										
60										
65										
70										
75										
80										
82									Bottom of percolation test	

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG SP-3

Date 2-14-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 82' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
30		N S		R-3	4	68.6	46.6		Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
50		N S							Interbedded DIATOMACEOUS SHALE and MUDSTONE, dark brown, slightly moist, hard, thinly bedded, trace thin, gypsum-infilled fractures	
35									Total Depth Drilled 32' Total Depth Sampled 31' Logged to Total Depth No Seepage Zones No Groundwater	
45										
40										
40										
45										
35										
50										
30										
55										
25										
60										

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



**LEIGHTON AND ASSOCIATES, INC.**

# GEOTECHNICAL BORING LOG SP-5

Date 2-14-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 90' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pct	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
90	0	N S							Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
			B: N75W; 72NE J: N42W; 30SW J: N22E; 70SE B: N80W; 72NE						<u>MONTEREY FORMATION (Tm):</u>  Interbedded DIATOMACEOUS SHALE/ MUDSTONE with interbeds of very hard, medium gray dolostone or silica-cemented beds, medium brown, dry to slightly moist, hard, thinly bedded, 1/4"-4" thick, planer to slightly curvilinear; trace iron oxide staining along bedding planes, blocky joint pattern, trace rootlets to 7', moderately weathered, calcium carbonate and gypsum infill along bedding planes and joints	
85	5		S: N50W; 65NE						bedrock is harder and less weathered below 7'	
80	10		B: N70W; 60NE	B-1						
			B: N85E; 60NE J: N65W; 45SW	R-1	6	131.8	7.0			
			J: N40W; 70SW						joint set	
75	15		B: N80W; 63NE							
			B: N80W; 70NE						fractures are healed and infilled with gypsum, bedrock harder	
70	20			R-2	4	67.9	50.4		MUDSTONE, medium red brown, slightly moist, hard, indistinct bedding, massive appearance, thin gypsum veins	
									gradually becomes less oxidized, color darker	
65	25			B-2					bedrock color is dark brown to black, unoxidized, drilling hard	
60	30									

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
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**LEIGHTON AND ASSOCIATES, INC.**

# GEOTECHNICAL BORING LOG SP-5

Date 2-14-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 90' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
60	30	N S		R-3	6/6"	69.5	41.6		Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
55	35	N S							MUDSTONE, mottled dark red brown to black, slightly moist, hard to very hard, indistinct bedding, massive appearance, thin gypsum veins	
									Total Depth Drilled 36' Total Depth Sampled 32.5' Logged to Total Depth No Seepage Zones No Groundwater	
50	40									
45	45									
40	50									
35	55									
30	60									

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
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## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG SP-7

Date 2-14-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 93' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
0									Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
0-90		N S	J: N20E; 70SE						<b>MONTEREY FORMATION (Tm):</b> Interbedded DIATOMACEOUS SHALE/ CLAYSTONE, light to medium brown, moist, soft, weathered with iron oxide staining along fractures and bedding planes, random fracture/joint pattern, calcium carbonate infill along bedding planes and joints	
90-85	5		B: E-W; 72N							
85-80	10		J: N40W; 35NE J: N20E; 70SE	B-1						
80-75	15		B: N85W; 70NE	R-1	2	69.1	48.3		Interbedded DIATOMACEOUS SHALE/ MUDSTONE, medium red brown, slightly moist, soft to moderately hard, thinly bedded, fractured with trace iron oxide staining and calcium carbonate	
75-70	20		J: N40W; 40SW N85E; 65NW						very hard calcareous zone on NE side of boring, not continuous, blocky fracturing	
70-65	25		J: N55W; 40SW B: N85W; 60NE	B-2						
65-60	30		S: N35W; 60SW S: N40W; 55SW	R-2	2	64.7	51.5	Cap	MUDSTONE, medium red brown, slightly moist, soft, indistinct bedding, massive appearance, fractured and sheared with discontinuous calcium carbonate and gypsum infill up to 3/8" wide	
			B: N80W; 63NE							
			J: N50W; 40SW B: N80E; 60NW	B-3						

**SAMPLE TYPES:**  
 S SPLIT SPOON      G GRAB SAMPLE  
 R RING SAMPLE      SH SHELBY TUBE  
 B BULK SAMPLE  
 T TUBE SAMPLE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR      SA SIEVE ANALYSIS  
 MD MAXIMUM DENSITY      AT ATTERBURG LIMITS  
 CN CONSOLIDATION      EI EXPANSION INDEX  
 GR CORROSION      RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG SP-7

Date 2-14-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 93' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
									Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
30				R-3	10	58.3	52.0		MUDSTONE, dark red brown, slightly moist, hard to very hard, less oxidized, gypsum veins  boring tightens up, fractures are infilled and healed  grades to dark brown and black	
60				R-4	10	62.3	53.4			
35									Total Depth Drilled 38' Total Depth Sampled 39' Logged to Total Depth No Seepage Zones No Groundwater	
55										
40										
50										
45										
45										
50										
40										
55										
35										
60										

Bottom of percolation test

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG EP-1

Date 2-13-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 97' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pct	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
									Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
0		N S							<u>COLLUVIUM (O<sub>c</sub>):</u> SILTY CLAY, light brown, dry, stiff, diatomaceous  indistinct gradational contact	
5									<u>MONTEREY FORMATION (T<sub>m</sub>):</u> Interbedded DIATOMACEOUS SHALE and MUDSTONE, light brown, dry, moderately hard, thinly bedded, oxidized and moderately weathered, blocky joint pattern with trace to few roots along bedding and joints, abundant gypsum veins and infilled fractures	
10				B-1					less weathered and fractured	
85				R-1	2	67.7	37.3		unit becomes more massive with diatomaceous lenses and calcium carbonate blebs	
15									DIATOMACEOUS MUDSTONE, red brown, moist, moderately hard, massive, oxidized and moderately weathered, abundant gypsum veins and calcium carbonate lenses	
80				B-2						
20				R-2	2	66.5	50.5		DIATOMACEOUS SILTSTONE, dark red brown, moist, moderately hard, massive, gypsum or calcium carbonate infilled fractures, and gypsum growth along bedding	
75										
25									Cap	
70										
30										

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG EP-1

Date 2-13-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 97' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pct	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
		N S							Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
30				R-3	4	64.8	55.0		DIATOMACEOUS SILTSTONE, dark brown, moist, moderately hard to hard, massive, few gypsum or calcium carbonate infilled fractures, with calcium carbonate along bedding planes	
65			B: N75W; 68NE							
35										
60										
40										
55				R-4	4	64.8	49.6			
45									Total Depth Drilled 42' Total Depth Sampled 43' Logged to Total Depth No Seepage Zones No Groundwater	
50										
50										
45										
55										
40										
60										

Bottom of percolation test

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.

# GEOTECHNICAL BORING LOG EP-4

Date 2-13-08 Sheet 1 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 103' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
0	0								Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
100	5								<u>ARTIFICIAL FILL</u> SILTY CLAY, light brown, slightly moist, stiff, diatomaceous with angular gravel, trace rootlets  irregular contact CLAYEY SILT with little sand and gravel, dark brown, slightly moist, very stiff, massive	
95	10			B-1						
				R-1	2	88.3	16.8			DS
90	15								indistinct gradational contact <u>COLLUVIUM (Oe)</u>	
85	20			B-2					SILTY CLAY/CLAYEY SILT, reddish brown, moist, very stiff, massive, trace calcium carbonate blebs  grades to weathered bedrock; indistinct gradational contact	
80	25			R-2	2	70.8	45.1		<u>MONTEREY FORMATION (Tm):</u> Diatomaceous MUDSTONE, dark red brown, slightly moist, moderately hard, massive, oxidized and weathered with abundant gypsum veins  less weathered below 23'; walls tighten up	
75	30								trace calcium carbonate veins	
									Cap	

**SAMPLE TYPES:**  
 S SPLT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**

DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION

SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



**LEIGHTON AND ASSOCIATES, INC.**

# GEOTECHNICAL BORING LOG EP-4

Date 2-13-08 Sheet 2 of 2  
 Project AZ Winter Mesa, Towing Site Project No. 031793-011  
 Drilling Co. Roy Brothers Drilling Type of Rig Bucket-Auger  
 Hole Diameter 24" Drive Weight 0-25' = 4901 lbs; 25-50' = 3396 lbs; 50-75' = 2213 lbs Drop 12"  
 Elevation Top of Elevation 103' Location Refer to Geotechnical Map

Elevation Feet	Depth Feet	Graphic Log	Attitudes	Sample No.	Blows Per Foot	Dry Density pcf	Moisture Content, %	Soil Class. (U.S.C.S.)	DESCRIPTION	Type of Tests
									Logged By <u>ARH/MEK</u> Sampled By <u>MEK</u>	
30				R-3	5	72.1	43.8		Diatomaceous MUDSTONE, dark red brown, slightly moist, moderately hard, massive, oxidized, thin calcium carbonate and gypsum veins  less oxidized and rock is harder, brittle	
70				R-4	5	72.0	44.2		very hard, black, siliceous zone, fractured  gradational color change to unoxidized	
35									MUDSTONE, black, dry, hard to very hard, cemented, massive, brittle in zones, few fractures; fractures are closed to healed difficult drilling to total depth	
65										
40										
60										
45										
55										
50										
50										
55										
45										
60										
									Total Depth Drilled 57' Total Depth Sampled 51' Logged to Total Depth No Seepage Zones No Groundwater; Backfilled to 46' for percolation testing	

**SAMPLE TYPES:**  
 S SPLIT SPOON  
 R RING SAMPLE  
 B BULK SAMPLE  
 T TUBE SAMPLE

G GRAB SAMPLE  
 SH SHELBY TUBE

**TYPE OF TESTS:**  
 DS DIRECT SHEAR  
 MD MAXIMUM DENSITY  
 CN CONSOLIDATION  
 CR CORROSION  
 SA SIEVE ANALYSIS  
 AT ATTERBURG LIMITS  
 EI EXPANSION INDEX  
 RV R-VALUE



## LEIGHTON AND ASSOCIATES, INC.





October 7, 2009

To: **AZ Winter Mesa LLC**  
**C/O Big Rock Partners, LLC**  
**315 S. Beverly Drive, Suite 315** and **Malibu Bay Company**  
**Beverly Hills, CA 90212** and **23705 W. Malibu Road, Suite D2**  
**Attn: Mr. Robert Gold** and **Malibu, California 90265**  
**Attn: Mr. David Reznick**

**Subject: Summary of groundwater sample collection from Winter Canyon monitoring wells on October 1, 2009**

Introduction

Earth Consultants International (ECI) was retained by AZ Winter Mesa LLC and Malibu Bay Company to collect groundwater samples from 4 groundwater monitoring wells (TY-MW-1, TY-MW-5, MBCWC-MW-2 and SMBRP-11) on October 1, 2009. Monitoring wells TY-MW-1, TY-MW-5 and SMBRP-11 are screened in the shallow section of the unconfined aquifer in the lower reaches of Winter Canyon (south of Pacific Coast Highway). Monitoring well MBCWC-MW-2 is screened in a deeper section of the same aquifer. The deeper well is screened from a depth of approximately 65 feet below top of casing (btoc) to the bottom of the well (102 feet btoc).

Groundwater sampling from the above-referenced wells was conducted by ECI at the request of the above-referenced entities. It was reported to ECI that the goal of the sampling event was to collect groundwater quality data for the unconfined aquifer of the lower reaches of Winter Canyon. Groundwater samples collected from these wells were analyzed by a State of California-certified analytical laboratory for the following constituents; Boron, Chloride, Nitrate, Nitrite, Sulfate, Total Dissolved Solids (TDS), Total Coliform and Fecal Coliform. In addition to the laboratory analyses, ECI collected several water quality parameters in the field.

Field Activities

ECI personnel arrived at the Tow Yard site at approximately 12:30 PM on the afternoon of October 1, 2009. In order to collect groundwater samples that are representative of aquifer conditions ECI purged the wells prior to the collection of groundwater samples

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1642 East 4<sup>th</sup> Street ☎ Santa Ana ☎ California ☎ 92701 ☎ USA  
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EXHIBIT 5

October 7, 2009

that were sent to the analytical laboratory. Purging was conducted with the use of a 2-inch submersible water pump or polyethylene bailers, depending of the recharge conditions of the well.

Prior to purging of each well, groundwater levels (depth to groundwater) were collected from each well. Well purging consisted of removing of at least 2 well volumes from each well. A well volume consists of the volume of water within the saturated section of the well casing and the volume of water within the well pack (sand between the well casing and the borehole sidewalls). The well volume was calculated for each well prior to purging.

The first well that was purged and sampled on October 1, 2009 was monitoring well TY-MW-1. The depth to groundwater in this well was measured to be 28.10 feet btoc at 12:40 PM prior to purging. The water pump was set at a depth of 35 feet btoc at 12:45 AM. The pump was set at a pumping rate of approximately 1 gallon per minute (gpm). In order to determine when the well was properly purged of standing water, ECI began collecting water samples from the pump discharge line after 1 well volume (calculated to be 16 gallons of water). Water samples were collected after the purging of the following volumes of water; 1 well volume, 1.5 well volumes, 2 well volumes and 2.5 well volumes. Each of these water samples were analyzed for the following water quality parameters with the use of field equipment; temperature, TDS, Electrical Conductivity, pH and Salinity. These parameters were monitored in order to determine if the well was properly purged. The well was considered to be properly purged when subsequent parameter readings varied by less than 10%. The results of the field parameter monitoring for well TY-MW-1 are presented in Table 1 below. The maximum drawdown observed within the well during purging was 1 foot.



Table 1. Field Parameter Results for Well TY-MW-1

Volume Removed (well volume)	Time	Temperature °C	TDS (ppm)	Electrical Conductivity (µS)	pH	Salinity (ppt)
1	13:05	27.4	1,650	3,250	6.53	1.7
1.5	13:15	26.8	1,628	3,262	6.58	1.7
2	13:25	27.8	1,611	3,224	6.55	1.7
2.5	13:35	27.8	1,605	3,197	6.53	1.7

ppm – parts per million

ppt – parts per thousand

After purging of the well was completed and the water level in the well had recovered to 80% of the initial level a water sample for the previously established analytes was collected with the use of a new 0.5 liter disposable polyethylene bailer. The water sample was transferred to laboratory-supplied containers with the use of the water removal tool provided with the bailer. The water sample was labeled as required by the analytical laboratory, placed in a zip-top bag and placed in a cooler with ice in preparation for transportation to the analytical laboratory (TestAmerica) in Colton, California.

After collecting a groundwater sample from monitoring well TY-MW-1, ECI personnel began the purging process of monitoring well TY-MW-5. At 2:30 PM ECI measured the depth to water in well TY-MW-5 to be 14.20 feet btoc. The pump was set a depth of 20 feet btoc at 2:35 PM. The pump was set at a pumping rate of approximately 1.7 gallons per minute (gpm). A well volume was determined to be approximately 12 gallons. The maximum drawdown observed within the well during purging was 1.2 feet. The results of the field parameter monitoring for well TY-MW-5 are presented in Table 2 below. A groundwater sample was collected for laboratory analysis after purging was completed.



Table 2. Field Parameter Results for Well TY-MW-5

Volume Removed (well volume)	Time	Temperature °C	TDS (ppm)	Electrical Conductivity (µS)	pH	Salinity (ppt)
1	14:45	26.0	1,972	3,970	6.49	2.1
1.5	14:49	24.8	1,967	3,941	6.49	2.1
2	14:53	24.9	1,988	3,935	6.55	2.1
2.5	14:58	24.6	1,992	3,999+	6.53	2.1

ppm – parts per million

ppt – parts per thousand

After collecting a groundwater sample from monitoring well TY-MW-5, ECI personnel began the purging process of monitoring well SMBRP-11 on Malibu Road directly south of the Tow Yard site. At 3:40 PM ECI measured the depth to water in well SMBRP-11 to be 8.60 feet btoc. The pump was set a depth of 15 feet btoc at 3:45 PM. The pump was set at a pumping rate of approximately 1 gallon per minute (gpm). A well volume was determined to be approximately 12 gallons. After the removal of approximately 3 gallons from the well, the well pump stopped producing water. A water level measurement at that time revealed that the water level had dropped to the level of the pump. It was determined that the recharge from the aquifer to the well was much lower than 1 gallon per minute, so the purging method was modified. The pump was removed from the well and hand bailing was used to complete the well purging. It was determined that bailing rate would need to be less than 0.5 gallons per 5 minutes in order to keep the well from going dry. Hand bailing continued until approximately 6:55 PM in order to purge 2.5 well volumes from the well. The results of the field parameter monitoring for well SMBRP-11 are presented in Table 3 below. The field parameters revealed that the water quality conditions in the well were still changing after 2.5 well volumes were removed, but due to time constraints and lack of light, a groundwater sample was collected for laboratory analysis at this point.



Table 3. Field Parameter Results for Well SMBRP-11

Volume Removed (well volume)	Time	Temperature °C	TDS (ppm)	Electrical Conductivity (µS)	pH	Salinity (ppt)
1	16:40	23.9	1,501	3,004	7.30	1.6
1.5	17:20	21.9	1,428	2,830	7.16	1.5
2	17:55	22.1	1,271	2,536	7.09	1.3
2.5	18:55	21.8	1,178	2,362	7.37	0.6

ppm – parts per million

ppt – parts per thousand

The purging of Well MBCWC-MW-2 was conducted simultaneously with the purging of Well SMBRP-11. At 4:25 PM ECI measured the depth to water in well MBCWC-MW-5 to be 19.20 feet btoc. The pump was set a depth of 80 feet btoc at 4:35 PM. The pump was set at a pumping rate of approximately 2 gallons per minute (gpm). A well volume was determined to be approximately 82 gallons. The maximum drawdown observed within the well during purging was 3.55 feet. The results of the field parameter monitoring for well MBCWC-MW-2 are presented in Table 4 below. A groundwater sample was collected for laboratory analysis after purging was completed.

Table 4. Field Parameter Results for Well MBCWC-MW-2

Volume Removed (well volume)	Time	Temperature °C	TDS (ppm)	Electrical Conductivity (µS)	pH	Salinity (ppt)
1	17:03	21.8	1,434	2,809	6.91	1.5
1.5	17:25	21.4	1,434	2,874	6.91	1.5
2	17:40	21.7	1,426	2,861	6.92	1.5
2.5	18:05	21.7	1,428	2,851	6.93	1.5

ppm – parts per million

ppt – parts per thousand

#### Analytical Results

The groundwater samples collected from the above-referenced monitoring wells on October 1, 2009 were transported to TestAmerica Laboratories in Colton, California by ECI personnel under strict Chain-of-Custody protocol. The samples were kept in a cooler with ice during transportation and delivered to the laboratory at 8:47 AM on the morning of October 2, 2009.



TestAmerica issued two analytical reports for the groundwater samples on October 6, 2009. The Chain-of-Custody document appended to this report indicates that the samples were delivered intact and on ice, as required by the laboratory. The analytical results, as reported by the laboratory, are presented in Table 5 below.

Table 5. Analytical Results for Groundwater Samples

Analyte	MBCWC-MW-2	SMBRP-11	TY-MW-1	TY-MW-5	MCL
Boron (mg/l)	0.43	0.40	0.41	0.39	N/A
Chloride (mg/l)	<b>270</b>	<b>260</b>	<b>370</b>	<b>460</b>	250*
Nitrate (as N) (mg/l)	6.5	8.9	9.0	2.9	10
Nitrite (as N) (mg/l)	<0.30	<0.30	<0.75	<0.75	1
Sulfate (mg/l)	<b>690</b>	<b>470</b>	<b>490</b>	<b>1,000</b>	250*
TDS (mg/l)	<b>2,100</b>	<b>1,600</b>	<b>1,900</b>	<b>2,900</b>	500*
Total Coliform (MPN/100 ml)	<2.0	2.0	13	<2.0	
Fecal Coliform (MPN/100 ml)	<2.0	<2.0	<2.0	<2.0	

MCL – Maximum Contaminant Level for Drinking Water; \*Secondary MCL; **Bold** – Above MCL; mg/l – milligram per liter; TDS-Total Dissolved Solids; MPN/100 ml) – Most Probable Number per 100 ml of sample (bacteria density)

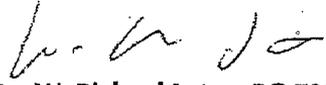
The analytical results suggest that the aquifer waters do not meet Secondary drinking water standards due to elevated concentrations (above MCL) of chloride, sulfate and TDS. Additionally Total Coliform was detected in the groundwater samples collected from the northern-most and southern-most monitoring wells in the study area. The absence of Total Coliform in the groundwater samples collected from the two wells between the northern-most and southern-most monitoring wells suggest that Coliform entering the system from up gradient sources (north of Pacific Coast Highway) are removed before the groundwater reaches Malibu Road. The source of Coliform in the groundwater sample collected from Well SMBRP-11 appears to be the septic systems of homes directly south of Malibu Road.



October 7, 2009

Respectfully Submitted,

**EARTH CONSULTANTS INTERNATIONAL, Inc.**

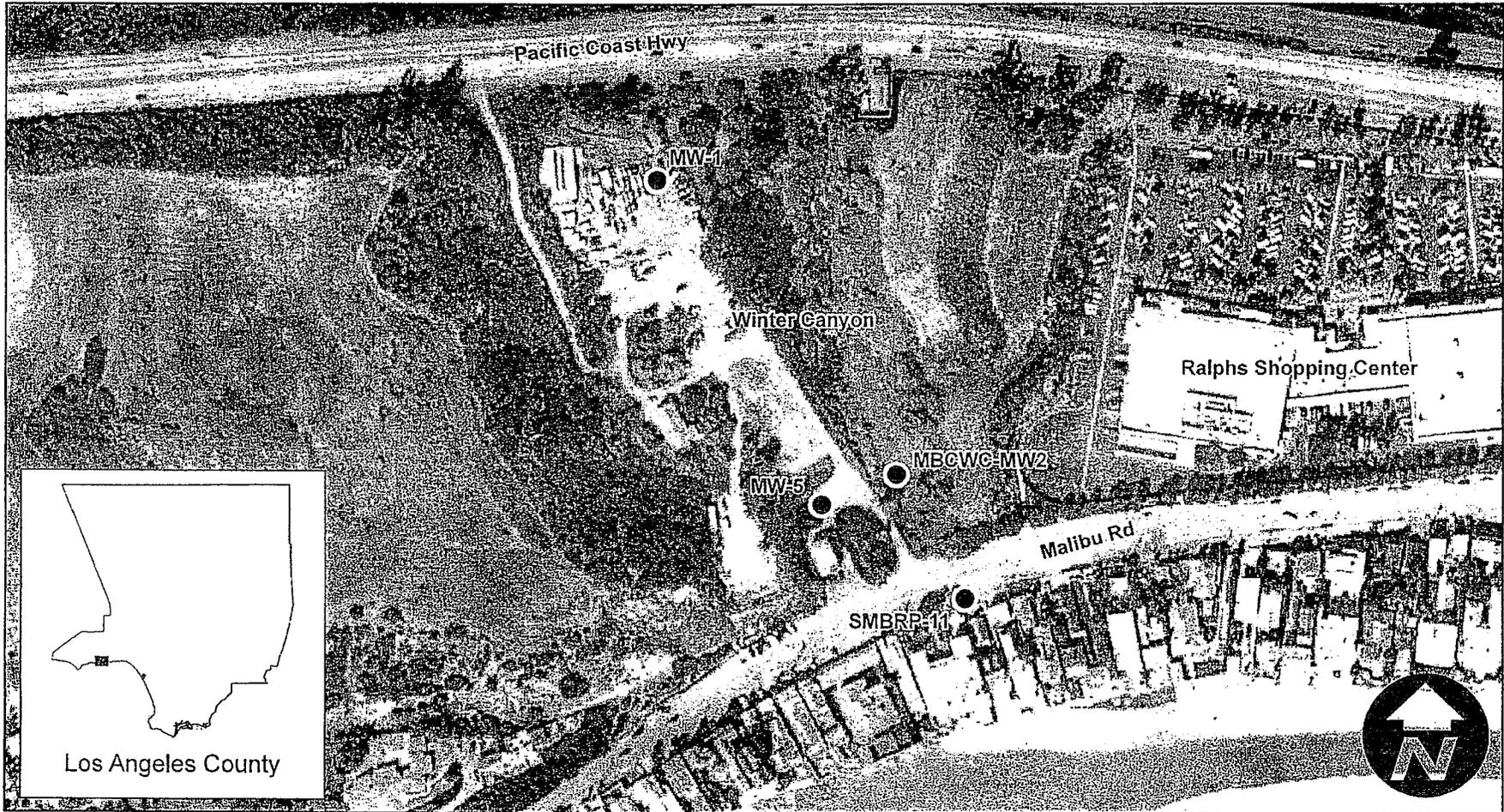


**Dr. W. Richard Laton, PG 7098**  
Senior Consultant

**Otto Figueroa, PG 8351**  
Staff Consultant

Attachments: 1) Figure 1 Groundwater Sampling Location Map  
2) Analytical Reports





Project Number:  
October 2009

## Groundwater Sampling Location Map

Winter Canyon  
Malibu, California

Figure 1

## LABORATORY REPORT

Prepared For: Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project: Winter Canyon

Sampled: 10/01/09  
Received: 10/02/09  
Issued: 10/06/09 17:08

NELAP #01108CA California ELAP#2706 CSDLAC #10256 AZ #AZ0671 NV #CA01531

*The results listed within this Laboratory Report pertain only to the samples tested in the laboratory. The analyses contained in this report were performed in accordance with the applicable certifications as noted. All soil samples are reported on a wet weight basis unless otherwise noted in the report. This Laboratory Report is confidential and is intended for the sole use of TestAmerica and its client. This report shall not be reproduced, except in full, without written permission from TestAmerica. The Chain of Custody, 1 page, is included and is an integral part of this report.*

*This entire report was reviewed and approved for release.*

## SAMPLE CROSS REFERENCE

SUBCONTRACTED: Refer to the last page for specific subcontract laboratory information included in this report.

ADDITIONAL INFORMATION: This is a complete final report.

### LABORATORY ID

ISJ0107-01  
ISJ0107-02

### CLIENT ID

MBCWC-MW2  
SMBRP-11

### MATRIX

Water  
Water

Reviewed By:



TestAmerica Irvine

Pat Abe  
Project Manager

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon

Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

## METALS

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
Sample ID: ISJ0107-01 (MBCWC-MW2 - Water)								
Reporting Units: mg/l								
Boron	EPA 200.7	9J05050	0.050	0.43	1	10/5/2009	10/5/2009	
Sample ID: ISJ0107-02 (SMBRP-11 - Water)								
Reporting Units: mg/l								
Boron	EPA 200.7	9J05050	0.050	0.40	1	10/5/2009	10/5/2009	

TestAmerica Irvine

Pat Abe  
Project Manager

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ISJ0107 <Page 2 of 10>

Earth Consultants  
 1642 East Fourth St  
 Santa Ana, CA 92701  
 Attention: Otto Figueroa

Project ID: Winter Canyon

Report Number: ISJ0107

Sampled: 10/01/09  
 Received: 10/02/09

## INORGANICS

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
<b>Sample ID: ISJ0107-01 (MBCWC-MW2 - Water)</b>								
Reporting Units: mg/l								
Chloride	EPA 300.0	9J02058	25	270	50	10/2/2009	10/2/2009	
Nitrate-N	EPA 300.0	9J02058	0.22	6.5	2	10/2/2009	10/2/2009	
Nitrite-N	EPA 300.0	9J02058	0.30	ND	2	10/2/2009	10/2/2009	RL1
Sulfate	EPA 300.0	9J02058	25	690	50	10/2/2009	10/2/2009	
Total Dissolved Solids	SM2540C	9J05007	10	2100	1	10/5/2009	10/5/2009	
<b>Sample ID: ISJ0107-02 (SMBRP-11 - Water)</b>								
Reporting Units: mg/l								
Chloride	EPA 300.0	9J02058	25	260	50	10/2/2009	10/2/2009	
Nitrate-N	EPA 300.0	9J02058	0.22	8.9	2	10/2/2009	10/2/2009	
Nitrite-N	EPA 300.0	9J02058	0.30	ND	2	10/2/2009	10/2/2009	RL1
Sulfate	EPA 300.0	9J02058	25	470	50	10/2/2009	10/2/2009	
Total Dissolved Solids	SM2540C	9J05007	10	1600	1	10/5/2009	10/5/2009	

TestAmerica Irvine

Pat Abe  
 Project Manager

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ISJ0107 <Page 3 of 10>

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon

Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

## COLIFORMS BY MULTIPLE TUBE FERMENTATION - MPN (SM9221/40 CFR 141.21(f)(6)(i))

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
<b>Sample ID: ISJ0107-01 (MBCWC-MW2 - Water)</b>								
Reporting Units: MPN/100 ml								
Total Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/4/2009	
Fecal Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/4/2009	
<b>Sample ID: ISJ0107-02 (SMBRP-11 - Water)</b>								
Reporting Units: MPN/100 ml								
Total Coliform	SM9221 A,B,C,E	C9J0506	2.0	2.0	1	10/2/2009	10/6/2009	
Fecal Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/5/2009	

TestAmerica Irvine

Pat Abe  
Project Manager

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ISJ0107 <Page 4 of 10>

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon

Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

## SHORT HOLD TIME DETAIL REPORT

	Hold Time (in days)	Date/Time Sampled	Date/Time Received	Date/Time Extracted	Date/Time Analyzed
<b>Sample ID: MBCWC-MW2 (ISJ0107-01) - Water</b>					
EPA 300.0	2	10/01/2009 18:10	10/02/2009 08:47	10/02/2009 14:00	10/02/2009 14:37
SM9221 A,B,C,E	0	10/01/2009 18:10	10/02/2009 08:47	10/02/2009 09:26	10/04/2009 09:50
<b>Sample ID: SMBRP-11 (ISJ0107-02) - Water</b>					
EPA 300.0	2	10/01/2009 19:15	10/02/2009 08:47	10/02/2009 14:00	10/02/2009 14:51
SM9221 A,B,C,E	0	10/01/2009 19:15	10/02/2009 08:47	10/02/2009 09:26	10/05/2009 08:16

TestAmerica Irvine

Pat Abe  
Project Manager

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ISJ0107 <Page 5 of 10>

Earth Consultants  
 1642 East Fourth St  
 Santa Ana, CA 92701  
 Attention: Otto Figueroa

Project ID: Winter Canyon  
 Report Number: ISJ0107

Sampled: 10/01/09  
 Received: 10/02/09

**METHOD BLANK/OC DATA**

**METALS**

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J05050 Extracted: 10/05/09</b>										
<b>Blank Analyzed: 10/05/2009 (9J05050-BLK1)</b>										
Boron	ND	0.050	mg/l							
<b>LCS Analyzed: 10/05/2009 (9J05050-BS1)</b>										
Boron	0.510	0.050	mg/l	0.500		102	85-115			
<b>Matrix Spike Analyzed: 10/05/2009 (9J05050-MS1)</b>										
Boron	0.966	0.050	mg/l	0.500	0.434	106	70-130			
<b>Matrix Spike Dup Analyzed: 10/05/2009 (9J05050-MSD1)</b>										
Boron	0.930	0.050	mg/l	0.500	0.434	99	70-130	4	20	

TestAmerica Irvine  
 Pat Abe  
 Project Manager

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Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon  
Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

**METHOD BLANK/OC DATA**

**INORGANICS**

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC %REC	Limit	RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J02058 Extracted: 10/02/09</b>										
<b>Blank Analyzed: 10/02/2009 (9J02058-BLK1)</b>										
Chloride	ND	0.50	mg/l							
Nitrate-N	ND	0.11	mg/l							
Nitrite-N	ND	0.15	mg/l							
Sulfate	ND	0.50	mg/l							
<b>LCS Analyzed: 10/02/2009 (9J02058-BS1)</b>										
Chloride	4.97	0.50	mg/l	5.00		99	90-110			M-3
Nitrate-N	1.15	0.11	mg/l	1.13		102	90-110			
Nitrite-N	1.52	0.15	mg/l	1.52		100	90-110			
Sulfate	9.95	0.50	mg/l	10.0		100	90-110			M-3
<b>Matrix Spike Analyzed: 10/02/2009 (9J02058-MS1) Source: ISJ0110-01</b>										
Chloride	12.6	0.50	mg/l	5.00	7.64	98	80-120			
Nitrate-N	2.01	0.11	mg/l	1.13	0.916	97	80-120			
Nitrite-N	1.51	0.15	mg/l	1.52	ND	100	80-120			
Sulfate	37.8	0.50	mg/l	10.0	27.4	104	80-120			
<b>Matrix Spike Analyzed: 10/03/2009 (9J02058-MS2) Source: ISJ0131-06</b>										
Nitrate-N	41.7	1.1	mg/l	11.3	30.5	99	80-120			
Nitrite-N	21.0	1.5	mg/l	15.2	ND	138	80-120			MI
<b>Matrix Spike Dup Analyzed: 10/02/2009 (9J02058-MSD1) Source: ISJ0110-01</b>										
Chloride	12.5	0.50	mg/l	5.00	7.64	98	80-120	0	20	
Nitrate-N	2.03	0.11	mg/l	1.13	0.916	98	80-120	1	20	
Nitrite-N	1.54	0.15	mg/l	1.52	ND	101	80-120	1	20	
Sulfate	37.7	0.50	mg/l	10.0	27.4	102	80-120	0	20	

TestAmerica Irvine

Pat Abe  
Project Manager

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Earth Consultants 1642 East Fourth St Santa Ana, CA 92701 Attention: Otto Figueroa	Project ID: Winter Canyon  Report Number: ISJ0107	Sampled: 10/01/09 Received: 10/02/09
---	---	---

**METHOD BLANK/QC DATA**

**INORGANICS**

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J05007 Extracted: 10/05/09</b>										
<b>Blank Analyzed: 10/05/2009 (9J05007-BLK1)</b>										
Total Dissolved Solids	ND	10	mg/l							
<b>LCS Analyzed: 10/05/2009 (9J05007-BS1)</b>										
Total Dissolved Solids	1000	10	mg/l	1000		100	90-110			
<b>Duplicate Analyzed: 10/05/2009 (9J05007-DUP1)</b>										
Total Dissolved Solids	2080	10	mg/l		2080			0	10	

Source: ISJ0107-01

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1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon  
Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

## DATA QUALIFIERS AND DEFINITIONS

- M1** The MS and/or MSD were above the acceptance limits due to sample matrix interference. See Blank Spike (LCS).
- M-3** Results exceeded the linear range in the MS/MSD and therefore are not available for reporting. The batch was accepted based on acceptable recovery in the Blank Spike (LCS).
- RL1** Reporting limit raised due to sample matrix effects.
- ND** Analyte NOT DETECTED at or above the reporting limit or MDL, if MDL is specified.
- RPD** Relative Percent Difference

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ISJ0107 <Page 9 of 10>

# TestAmerica

THE LEADER IN ENVIRONMENTAL TESTING

17461 Derian Avenue, Suite 100, Irvine, CA 92614 (949) 261-1022 Fax: (949) 260-3297

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Winter Canyon

Report Number: ISJ0107

Sampled: 10/01/09  
Received: 10/02/09

## Certification Summary

### TestAmerica Irvine

Method	Matrix	Nelac	California
EPA 200.7	Water	X	X
EPA 300.0	Water	X	X
SM2540C	Water	X	

*Nevada and NELAP provide analyte specific accreditations. Analyte specific information for TestAmerica may be obtained by contacting the laboratory or visiting our website at [www.testamericainc.com](http://www.testamericainc.com)*

### Subcontracted Laboratories

**TestAmerica - Ontario, CA** California Cert #1169, Arizona Cert #AZ0062, Nevada Cert #CA-242

1014 E. Cooley Drive, Suite AB - Colton, CA 92324

Method Performed: SM9221 A,B,C,E

Samples: ISJ0107-01, ISJ0107-02

### TestAmerica Irvine

Pat Abe  
Project Manager

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ISJ0107 <Page 10 of 10>

# TestAmerica

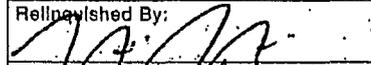
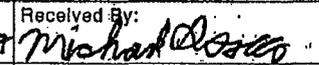
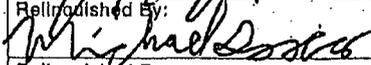
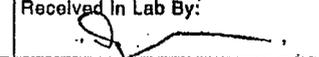
THE LEADER IN ENVIRONMENTAL TESTING

## CHAIN OF CUSTODY FORM

17481 Derian Ave., #100, Irvine, CA 92614 (949) 261-1022 FAX (949) 260-3297  
 1014 E. Cooley Dr., Suite A, Colton, CA 92324 (909) 370-4687 FAX (909) 370-1046  
 9830 South 51st St., Suite B-120, Phoenix, AZ 85044 (480) 785-0043 FAX (480) 785-0851  
 2520 E. Sunset Rd. #3, Las Vegas, NV 89126 (702) 798-3620 FAX (702) 798-3621

TAL-0013(1007)

ISJ 0107 Page 1 of 1

Client Name/Address: <b>ECI</b> <b>1642 East 4th St.</b> <b>Santa Ana, CA 92701</b>			Project/PO Number: <b>Winter Canyon</b>				Analysis Required														
Project Manager: <b>Pat Abe</b>			Phone Number:				TDS	Boron	Sulfate, Nitrate Nitrite, Chloride	Total Coliform 9221	Fecal Coliform 9221									Special Instructions	
Sampler: <b>Nick Napoli</b>			Fax Number:																		
Sample Description	Sample Matrix	Container Type	# of Cont.	Sampling Date	Sampling Time	Preservatives															
MBCWC-MW2	Ground Water	500ml Poly	1	10/1/09	18:10		X														
MBCWC-MW2	"	"	1	10/1/09	18:10	Nitric acid		X													
MBCWC-MW2	"	125ml Poly	1	10/1/09	18:10				X												
MBCWC-MW2	"	Bact. Bottle	1	10/1/09	18:10					X	X										Ground water
<del>SMBRP-11</del>																					
SMBRP-11	Ground Water	500ml Poly	1	10/1/09	19:15		X														
SMBRP-11	"	"	1	10/1/09	19:15	Nitric acid		X													
SMBRP-11	"	125ml Poly	1	10/1/09	19:15				X												
SMBRP-11	"	Bact. Bottle	1	10/1/09	19:15					X	X										Ground water
Relinquished By: 	Date/Time: <b>10/2/09 8:47</b>	Received By: 	Date/Time: <b>10-2-09 8:47</b>	Turnaround Time: (Check)		same day _____ 72 hours _____		24 hours _____ 5 days _____		48 hours <input checked="" type="checkbox"/> normal _____		Sample Integrity: (Check)		Intact <input checked="" type="checkbox"/> on Ice <input checked="" type="checkbox"/>							
Relinquished By: 	Date/Time: <b>10-2-09 12:55</b>	Received By: _____	Date/Time: _____																		
Relinquished By: _____	Date/Time: _____	Received In Lab By: 	Date/Time: <b>10/2/09 12:55</b>																		

Note: By relinquishing samples to TestAmerica, client agrees to pay for the services requested on this chain of custody form and any additional analyses performed on this project. Payment for services is due within 30 days from the date of invoice. Sample(s) will be disposed of after 30 days.

#195

0.12  
2.76

## LABORATORY REPORT

Prepared For: Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project: Tow Yard

Sampled: 10/01/09  
Received: 10/02/09  
Issued: 10/06/09 17:11

NELAP #01108CA California ELAP#2706 CSDLAC #10256 AZ #AZ0671 NV #CA01531

*The results listed within this Laboratory Report pertain only to the samples tested in the laboratory. The analyses contained in this report were performed in accordance with the applicable certifications as noted. All soil samples are reported on a wet weight basis unless otherwise noted in the report. This Laboratory Report is confidential and is intended for the sole use of TestAmerica and its client. This report shall not be reproduced, except in full, without written permission from TestAmerica. The Chain(s) of Custody, 2 pages, are included and are an integral part of this report.  
This entire report was reviewed and approved for release.*

## SAMPLE CROSS REFERENCE

SUBCONTRACTED: Refer to the last page for specific subcontract laboratory information included in this report.

ADDITIONAL INFORMATION: This is a complete final report.

### LABORATORY ID

ISJ0108-01  
ISJ0108-02

### CLIENT ID

MW-1  
MW-5

### MATRIX

Water  
Water

Reviewed By:



TestAmerica Irvine

Pat Abe  
Project Manager

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard

Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## METALS

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
Sample ID: ISJ0108-01 (MW-1 - Water)								
Reporting Units: mg/l								
Boron	EPA 200.7	9J05050	0.050	0.41	1	10/5/2009	10/5/2009	
Sample ID: ISJ0108-02 (MW-5 - Water)								
Reporting Units: mg/l								
Boron	EPA 200.7	9J05050	0.050	0.39	1	10/5/2009	10/5/2009	

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Project Manager

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ISJ0108 <Page 2 of 10>

Earth Consultants 1642 East Fourth St Santa Ana, CA 92701 Attention: Otto Figueroa	Project ID: Tow Yard  Report Number: ISJ0108	Sampled: 10/01/09 Received: 10/02/09
---	--	---

## INORGANICS

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
<b>Sample ID: ISJ0108-01 (MW-1 - Water)</b>								
Reporting Units: mg/l								
Chloride	EPA 300.0	9J02058	50	370	100	10/2/2009	10/2/2009	
Nitrate-N	EPA 300.0	9J02058	0.55	9.0	5	10/2/2009	10/2/2009	
Nitrite-N	EPA 300.0	9J02058	0.75	ND	5	10/2/2009	10/2/2009	RL1
Sulfate	EPA 300.0	9J02058	50	490	100	10/2/2009	10/2/2009	
Total Dissolved Solids	SM2540C	9J05007	10	1900	1	10/5/2009	10/5/2009	
<b>Sample ID: ISJ0108-02 (MW-5 - Water)</b>								
Reporting Units: mg/l								
Chloride	EPA 300.0	9J02058	50	460	100	10/2/2009	10/2/2009	
Nitrate-N	EPA 300.0	9J02058	0.55	2.9	5	10/2/2009	10/2/2009	
Nitrite-N	EPA 300.0	9J02058	0.75	ND	5	10/2/2009	10/2/2009	RL1
Sulfate	EPA 300.0	9J02058	50	1000	100	10/2/2009	10/2/2009	
Total Dissolved Solids	SM2540C	9J05007	10	2900	1	10/5/2009	10/5/2009	

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Project Manager

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Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard

Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## COLIFORMS BY MULTIPLE TUBE FERMENTATION - MPN (SM9221/40 CFR 141.21(f)(6)(i))

Analyte	Method	Batch	Reporting Limit	Sample Result	Dilution Factor	Date Extracted	Date Analyzed	Data Qualifiers
<b>Sample ID: ISJ0108-01 (MW-1 - Water)</b>								
Reporting Units: MPN/100 ml								
Total Coliform	SM9221 A,B,C,E	C9J0506	2.0	13	1	10/2/2009	10/6/2009	
Fecal Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/5/2009	
<b>Sample ID: ISJ0108-02 (MW-5 - Water)</b>								
Reporting Units: MPN/100 ml								
Total Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/6/2009	
Fecal Coliform	SM9221 A,B,C,E	C9J0506	2.0	ND	1	10/2/2009	10/5/2009	

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Project Manager

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Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard  
Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## SHORT HOLD TIME DETAIL REPORT

	Hold Time (in days)	Date/Time Sampled	Date/Time Received	Date/Time Extracted	Date/Time Analyzed
<b>Sample ID: MW-1 (ISJ0108-01) - Water</b>					
EPA 300.0	2	10/01/2009 14:00	10/02/2009 08:47	10/02/2009 14:00	10/02/2009 15:15
SM9221 A,B,C,E	0	10/01/2009 14:00	10/02/2009 08:47	10/02/2009 09:26	10/05/2009 08:16
<b>Sample ID: MW-5 (ISJ0108-02) - Water</b>					
EPA 300.0	2	10/01/2009 15:15	10/02/2009 08:47	10/02/2009 14:00	10/02/2009 15:30
SM9221 A,B,C,E	0	10/01/2009 15:15	10/02/2009 08:47	10/02/2009 09:26	10/05/2009 08:16

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ISJ0108 <Page 5 of 10>

Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard  
Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## METHOD BLANK/OC DATA

### METALS

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J05050 Extracted: 10/05/09</b>										
<b>Blank Analyzed: 10/05/2009 (9J05050-BLK1)</b>										
Boron	ND	0.050	mg/l							
<b>LCS Analyzed: 10/05/2009 (9J05050-BS1)</b>										
Boron	0.510	0.050	mg/l	0.500		102	85-115			
<b>Matrix Spike Analyzed: 10/05/2009 (9J05050-MS1)</b>										
Boron	0.966	0.050	mg/l	0.500	0.434	106	70-130			
<b>Matrix Spike Dup Analyzed: 10/05/2009 (9J05050-MSD1)</b>										
Boron	0.930	0.050	mg/l	0.500	0.434	99	70-130	4	20	

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Project Manager

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ISJ0108 <Page 6 of 10>

Earth Consultants 1642 East Fourth St Santa Ana, CA 92701 Attention: Otto Figueroa	Project ID: Tow Yard  Report Number: ISJ0108	Sampled: 10/01/09 Received: 10/02/09
---	--	---

**METHOD BLANK/OC DATA**

**INORGANICS**

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC %REC	Limits RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J02058 Extracted: 10/02/09</b>									
<b>Blank Analyzed: 10/02/2009 (9J02058-BLK1)</b>									
Chloride	ND	0.50	mg/l						
Nitrate-N	ND	0.11	mg/l						
Nitrite-N	ND	0.15	mg/l						
Sulfate	ND	0.50	mg/l						
<b>LCS Analyzed: 10/02/2009 (9J02058-BS1)</b>									
Chloride	4.97	0.50	mg/l	5.00		99	90-110		M-3
Nitrate-N	1.15	0.11	mg/l	1.13		102	90-110		
Nitrite-N	1.52	0.15	mg/l	1.52		100	90-110		
Sulfate	9.95	0.50	mg/l	10.0		100	90-110		M-3
<b>Matrix Spike Analyzed: 10/02/2009 (9J02058-MS1)</b>					<b>Source: ISJ0110-01</b>				
Chloride	12.6	0.50	mg/l	5.00	7.64	98	80-120		
Nitrate-N	2.01	0.11	mg/l	1.13	0.916	97	80-120		
Nitrite-N	1.51	0.15	mg/l	1.52	ND	100	80-120		
Sulfate	37.8	0.50	mg/l	10.0	27.4	104	80-120		
<b>Matrix Spike Analyzed: 10/03/2009 (9J02058-MS2)</b>					<b>Source: ISJ0131-06</b>				
Nitrate-N	41.7	1.1	mg/l	11.3	30.5	99	80-120		
Nitrite-N	21.0	1.5	mg/l	15.2	ND	138	80-120		MI
<b>Matrix Spike Dup Analyzed: 10/02/2009 (9J02058-MSD1)</b>					<b>Source: ISJ0110-01</b>				
Chloride	12.5	0.50	mg/l	5.00	7.64	98	80-120	0	20
Nitrate-N	2.03	0.11	mg/l	1.13	0.916	98	80-120	1	20
Nitrite-N	1.54	0.15	mg/l	1.52	ND	101	80-120	1	20
Sulfate	37.7	0.50	mg/l	10.0	27.4	102	80-120	0	20

TestAmerica Irvine  
Pat Abe  
Project Manager

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Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard  
Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## METHOD BLANK/QC DATA

### INORGANICS

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Data Qualifiers
<b>Batch: 9J05007 Extracted: 10/05/09</b>										
<b>Blank Analyzed: 10/05/2009 (9J05007-BLK1)</b>										
Total Dissolved Solids	ND	10	mg/l							
<b>LCS Analyzed: 10/05/2009 (9J05007-BS1)</b>										
Total Dissolved Solids	1000	10	mg/l	1000		100	90-110			
<b>Duplicate Analyzed: 10/05/2009 (9J05007-DUP1)</b>										
Total Dissolved Solids	2080	10	mg/l		2080			0	10	

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Earth Consultants

1642 East Fourth St

Santa Ana, CA 92701

Attention: Otto Figueroa

Project ID: Tow Yard

Report Number: ISJ0108

Sampled: 10/01/09

Received: 10/02/09

## DATA QUALIFIERS AND DEFINITIONS

- M1** The MS and/or MSD were above the acceptance limits due to sample matrix interference. See Blank Spike (LCS).
- M-3** Results exceeded the linear range in the MS/MSD and therefore are not available for reporting. The batch was accepted based on acceptable recovery in the Blank Spike (LCS).
- RL1** Reporting limit raised due to sample matrix effects.
- ND** Analyte NOT DETECTED at or above the reporting limit or MDL, if MDL is specified.
- RPD** Relative Percent Difference

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Project Manager

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Earth Consultants  
1642 East Fourth St  
Santa Ana, CA 92701  
Attention: Otto Figueroa

Project ID: Tow Yard

Report Number: ISJ0108

Sampled: 10/01/09  
Received: 10/02/09

## Certification Summary

### TestAmerica Irvine

Method	Matrix	Nelac	California
EPA 200.7	Water	X	X
EPA 300.0	Water	X	X
SM2540C	Water	X	

*Nevada and NELAP provide analyte specific accreditations. Analyte specific information for TestAmerica may be obtained by contacting the laboratory or visiting our website at [www.testamericainc.com](http://www.testamericainc.com)*

### Subcontracted Laboratories

**TestAmerica - Ontario, CA** California Cert #1169, Arizona Cert #AZ0062, Nevada Cert #CA-242

1014 E. Cooley Drive, Suite AB - Colton, CA 92324

Method Performed: SM9221 A,B,C,E

Samples: ISJ0108-01, ISJ0108-02

### TestAmerica Irvine

Pat Abe  
Project Manager

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ISJ0108 <Page 10 of 10>

## CHAIN OF CUSTODY FORM

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 1014 E. Cooley Dr., Suite A, Colton, CA 92324 (909) 570-4667 FAX (909) 370-1046  
 9830 South 51st St., Suite B-120, Phoenix, AZ 85044 (480) 785-0043 FAX (480) 785-0851  
 2520 E. Sunset Rd. #3, Las Vegas, NV 89120 (702) 798-3820 FAX (702) 798-3621

TAL-0013(1007)

ISJ0108

Page 1 of 1

Client Name/Address: BCI 1642 East 4th St. Santa Ana CA 92701		Project/PO Number: Tow Yard					Analysis Required												
Project Manager: Pat Abe		Phone Number:					TDS	Boron	Sulfate; Nitrate Nitrite; chloride	Total Coliform	Fecal Coliform								
Sampler: Nick Napoli		Fax Number:																	
Sample Description	Sample Matrix	Container Type	# of Cont.	Sampling Date	Sampling Time	Preservatives												Special Instructions	
MW-1	Ground Water	500ml Poly	1	10/1/09	2:00pm		X												
MW-1	U	U	1	10/1/09	2:00pm	Nitric Acid		X											
MW-1	U	125ml Poly	1	10/1/09	2:00pm				X										
MW-1	U	Beck Bottle	1	10/1/09	2:00pm				X	X								Ground water	
MW-5	U	500ml Poly	1	10/1/09	3:15pm		X												
MW-5	U	500ml Poly	1	10/1/09	3:15pm	Nitric Acid		X											
MW-5	U	125ml Poly	1	10/1/09	3:15pm				X										
MW-5	U	Beck Bottle	1	10/1/09	3:15pm				X	X								Ground water	
10-2-09 14:54																			
Relinquished By:		Date/Time: 10/2/09 8:47		Received By:		Date/Time: 10-2-09 847		Turnaround Time: (Check)											
Relinquished By:		Date/Time: 10-2-09 12:55		Received By:		Date/Time:		same day _____ 72 hours _____ 24 hours _____ 5 days _____ 48 hours <input checked="" type="checkbox"/> normal _____											
Relinquished By:		Date/Time:		Received in Lab By:		Date/Time: 10/2/09 12:55		Sample Integrity: (Check)											
								Intact <input checked="" type="checkbox"/> on Ice <input checked="" type="checkbox"/>											

Note: By relinquishing samples to TestAmerica, client agrees to pay for the services requested on this chain of custody form and any additional analyses performed on this project. Payment for services is due within 30 days from the date of invoice. Sample(s) will be disposed of after 30 days.

#195

0.12  
270



