

To: Chairperson and Members,
Board of LARWQCB

November 3, 2014

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To: Ms. Ronji Moffett,
Clerk of Regional Water Quality Control Board, Los Angeles Region
To: Don Tsai, Ph.D., Staff Official, LARWQCB

From the Desk of Joan C. Lavine

Attorney at Law

123 North Hobart Blvd., Los Angeles, California 90004, U.S.A.

Office Phone: (213)627-3241

E-mails: JCLavine@aol.com; JoanLavineCallLaw@gmail.com

Monday, November 3, 2014

Board Chairperson and Board Members, California Regional Water Quality Control Board, Los Angeles Region (Region 4)
Ms. Ronji Moffett, Clerk, Regional Water Quality Control Board, Los Angeles Region
Dr. Don Tsai, Ph.D., Staff Member, LARWQCB
California Regional Water Quality Control Board, Los Angeles Region/Region 4
320 West Fourth (4th) Street, Room 200
Los Angeles, CA. 90013

Transmitted (body of Nov. 3, 2014, comment only) via email to:

Don.Tsai@waterboards.ca.gov

Hand-delivered also with CD disk containing attachments, prior filings and evidentiary support

Re: Notice, dated October 14, 2014, of Tentative Resolution LARWQCB Resolution No. R14-XXXX, to amend MOU, adopted in 2011, between City of Malibu and LARWQCB, regarding Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties Prohibiting On-site Wastewater Disposal Systems in the Malibu Civic Center Area (Posted October 14, 2014); comment due date, Tuesday, November 4, 2014, at 5:00 p.m. PST, labelled "tentative" in right-hand column "AUTHORIZING THE EXECUTIVE OFFICER TO SIGN A REVISED MEMORANDUM OF UNDERSTANDING WITH THE CITY OF MALIBU AND THE STATE WATER RESOURCES CONTROL BOARD REGARDING THE MALIBU CIVIC CENTER PROHIBITION" and document, labelled "tentative" in right-hand column, "MEMORANDUM OF UNDERSTANDING (REVISED ON DECEMBER 4, 2014) BETWEEN CITY OF MALIBU AND REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION AND STATE WATER RESOURCES CONTROL BOARD REGARDING PHASED IMPLEMENTATION OF BASIN PLAN AMENDMENT PROHIBITING ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

TO: Board Chairperson and Board Members, California Regional Water Quality Control Board, Los Angeles Region (Region 4)
Ms. Ronji Moffett, Clerk, Regional Water Quality Control Board, Los Angeles Region
Dr. Don Tsai, Ph.D., Staff Member, LARWQCB

Dear Chairperson and Members of the California Regional Water Quality Control Board, Los Angeles Region (Region 4), Clerk of Board Ms. Moffett and Staff Official Dr. Tsai:

To: Ms. Ronji Moffett,
Clerk of Regional Water Quality Control Board, Los Angeles Region
To: Don Tsai, Ph.D., Staff Official, LARWQCB

The purpose of this letter is to comment on and to object to the proposed amendment(s) to the 2011 MOU, Los Angeles Region/Region 4 Resolution above referenced, the original MOU itself, and the outright, blanket, unexcepted, unexempted, un-grandfathered in prohibition by regulation of all on-site wastewater disposal systems, particularly as applied to residential properties, within the entire Malibu Civic Center area of Malibu, California. Those resolutions and MOUS illegally outright ban all use of on-site wastewater management systems in the Malibu Civic Center, but contain exemptions for several commercial ventures in a list in Table 4zz.

The pending proposed resolution that is the subject of the pending proceeding and this comment proposes again fails to exempt already permitted residential properties constructed pursuant to permits and relied on and does not propose to effectively exempt them in the future. I object that the septic ban regulations fail to exempt any fully permitted residential property within the ban zone or to grandfather them in in order to continue to be used as lawfully permitted. I object that they also fail to provide any procedural mechanism to allow property owners to petition for exemption for good cause.

This proposal operates under incorrect assumptions about California property and constitutional law. The proposed exemptions conflict with settled state law on the constitutional right to exemptions and the grandfathering in and allowance of continued permitted property uses. I object that California state law exempts permitted construction that has been commenced and/or completed and permitted use. It does not grant exemptions to construction projects which have not been granted permits and/or have not commenced substantial construction and/or permitted use.

I object that the proposed amended MOU lacks either legal or a factual basis, just as the original MOU lack(ed) same, and the underlying septic ban prohibition lack(ed) a legal and/or factual basis. It is contrary to the USGS findings, in a report published in 2012 and peer-reviewed, and an April 30, 2014, referenced herein geology report served on the LARWQCB in our about April 30, 2014. See attached documents in full on enclosed CD disk. It is contrary to the SWRCB's own published interactive mapping of the Malibu Civic Center area.

I object that the Malibu Civic Center residential property owners are the subject(s) of spot zoning and have been subjected to invidious, uneven-handed, discriminatory, confiscatory regulations and confiscatory regulatory takings in violation of the Due Process and Takings Clauses of the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 13A, 13B, 13C, 13D, and 13E, California Constitution.

I object that these prohibitions violate the California Constitution requirement that the State of California FUND what it mandates. I object to the attempt, successful so far, of the SWRCB and the LARWQCB to illegally cost-shift any cost of its sewer installation mandates to residential property owners in violation of California Constitution, Article 13B, Section 6. Same is confiscatory and confiscatory regulation.

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I object that the entire septic ban amendment, the MOU and this revised MOU, and the 2012 OWTS Policy, SWRCB Regulation 2012-0032, violate federal law under the Uniform Relocation Assistance, etc. Act, 42 USC 4601, et seq.

I object that this proposal is invidiously discriminatory against residential property owners. Each property and proposed project on it have the effect of advancing an agenda or set of agendas that will likely destroy or substantially reduce the residential community. It has the substantial adverse effect of displacing and/or making homeless and destitute, several hundred residents, many of whom are seniors without resources to relocate. Replacement housing for up to 1500 residents will likely be required. No provisions are made to mitigate this housing loss and residents' dislocation.

I object that the effect of the septic ban in the Malibu Civic Center is to ultimately create an "open" zone and to make the Malibu Civic Center into solely a commercial district contrary to the City of Malibu democratically, constituent-established, voted-on choices of the electorate. The cumulative effect of advancing the multiple large-scale commercial projects has significant adverse effects on the Malibu Civic Center area, which is dedicated to residential and recreational use. Altogether, the pending several commercial ventures would make the Malibu Civic Center into a "downtown" commercial zone. This is entirely contrary to and overwhelmingly conflicts with the City of Malibu General Plan.

The City of Malibu Land Use Plan provides for protection of recreational and residential uses, facilities, activities and environment. I object that this proposal therefore undermines, conflicts with, runs counter to and violates the City of Malibu Local Land Use Plan and Coastal Land Use Plan.

The City of Malibu General Plan established Malibu as a rural-style residential community and requires that any commercial uses be local neighborhood-servicing and/or visitor/recreational serving. See City of Malibu General Plan, §§ 1.0, et seq.

City of Malibu General Plan, § I.1 provides in pertinent part:

Malibu has remained a primarily residential community. Commercial areas are limited to small neighborhood serving and visitor serving uses interspersed throughout the City, but located primarily in the Civic Center area and the Point Dume area. (Emphasis added.)

City of Malibu General Plan, § 1.1.2 provides in pertinent part:

The Malibu Land Use Element is designed to provide maximum social, economic and environmental benefits for City residents through planned distribution, location and intensity of land use. (Emphasis added.)

City of Malibu General Plan, § 1.5.5 provides in pertinent part:

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The CC (Community Commercial) designation is intended to provide for the resident serving needs of the community similar to the CN designation, but on parcels of land more suitable for concentrated commercial activity. The community commercial category plans for centers that offer a greater depth and range of merchandise in shopping and specialty goods than the neighborhood center although this category may include some of the uses also found in a neighborhood center.

I object that this proposal fails to support, fails to advance, and fails to implement resident-serving uses or needs.

I object to the previous granting of exemptions to several massive commercial ventures whose construction is not permitted. The substantial adverse effect is of advancing and implementing a strategy of commercial property owners and commercial developers to cost-shift to residents and residential property owners the installation of infrastructure to commercialize the Malibu Civic Center and Malibu in general. The cumulative adverse effects are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. The proposal has the potential to degrade the quality of the environment by creating substantial amounts of pollution.

I object that the significant adverse effects of the massive traffic increases would make the area generally inaccessible for residents and recreational day users of the parks and public beaches.

Has a CEQA review and proceeding been conducted for the septic ban? If not, why not? Isn't this agency sufficiently committed to the septic ban, cost-shifting infrastructure to the residential and non-commercial property owners and destruction of the residential and recreational uses of the area that CEQA environmental proceedings and review are required under California law?

I object that State of California and its agencies have failed to fund the installation, operation and other costs of a sewer system, as required by California Constitution, Art. 13B, Sec. 6, and Water Code, § 13291.5 the alternative it seeks to impose, a sewer system.

I object that the pending resolution lacks either factual or legal bases and are null and void.

I object that a current list of properties, listed by Los Angeles County Assessor's ID Number and by locally known street addresses, covered by and in the Malibu Civic Center septic ban zone has not been attached to this proposal. The mapping is too vague to identify the properties affected by this MOU and MOU as revised and amended. This impairs my ability to provide a complete comment based on the nature and extent of the proposal, the proposed projects, and the proposed resolution. It is essential that this agency identify exactly which properties are subject to the septic ban. The vague mapping and ambiguous, changing lists of "exemptions" cause a prejudicial lack of fair, reasonable and actual notice of the nature and extent of the ban/prohibition. It violates

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the rights to reasonable, fair, mailed notice and to Due Process of Law under the 5th and 14th Amendments, U.S. Constitution.

I object to the use of email notice and the waiver by the involved officials of the federally required written, mailed notice under 40 FCR, §25.5 as provided for in Art. VI(A), p. 10 of proposed revised MOU.

I object that the regulations adopted and enacted in SWRCB Resolution No. 2010-0045 and LARWQCB R4-2009-007, and also the 2012 OWTS Policy, SWRCB No. 2012-0032, lack either factual or legal bases and are null and void. They are overbroad, confiscatory, discriminatory and not even-handed. They are illegal “spot zoning”.

I object that constitutionally adequate, fair notice has not been given to the property owners, residents, occupants and others materially affected as required by federal law. Said notice is required to be in written and MAILED via the U.S. Mails. See 40 FCR §25.5; Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865, 1950 U.S. LEXIS 2070 (1950).

I object that the proposed general order fails to comply with federal Clean Water Act regulatory requirements for adequate written, mailed notice to interested parties under Title 40 CFR, Sec. 25.5, and Due Process of Law reasonable notice and reasonable opportunity to be heard requirements of the 5th and 14th Amendments, U.S. Constitution.

I incorporate several prior comments I have made and that the City of Malibu filed in or about July, 2010, opposing the septic ban in its entirety. I incorporate my comments and those of the City of Malibu by reference as though fully set forth herein. I attach and enclose with this hand-delivered and filed copies of those comments, on a CD disk, and also the Izbicki report, dated 2011, and the USGS study, dated July, 2014, and incorporate them by reference as though fully set forth herein, and cite them as authority and evidentiary support for my comments, oppositions, objections and arguments. See below list.

The proposed resolution should be rejected in its present resolution form. The proposed resolution should be amended to include an immediate exemption of all permitted residential properties in the septic ban exemptions and grandfathering in of all permitted properties and it provide that those septic ban exemptions be permanent and to authorize municipal permitting and use of OWTS in the Malibu Civic Center forthwith and nunc pro tunc to November 5, 2009.

Thank you.

Very truly yours,

JOAN LAVINE, Residential Property Owner in Malibu Civic Center, Malibu, California
90265

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Board of LARWQCB

November 3, 2014

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To: Ms. Ronji Moffett,
Clerk of Regional Water Quality Control Board, Los Angeles Region
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Attachments.

ATTACHMENT LIST:

1. Joan C. Lavine Comment, filed July 12, 2010, with SWRCB
2. City of Malibu Comment, and attachments, filed July 9, 2010, with SWRCB.
3. Izbicki Report, final form on July 19, 2012, and accepted July 25, 2012, regarding Malibu Lagoon bacteria, contaminants and pollutants. Electronic publication address: www.aes.northeastern.edu, ISSN 1939-2621.
4. Joan C. Lavine Comment, filed May 4, 2012, with SWRCB, regarding the 2012 OWTS Policy, SWRCB Resolution No. 2012-0032.
5. Joan C. Lavine Comment, filed June 30, 2011, with LARWQCB, regarding the involved original MOU between the City of Malibu and the LARWQCB.
6. Joan C. Lavine Comment, filed December 30, 2013, with LARWQCB
7. April 30, 2014, Geology/Geotechnical Report, prepared by Citadel Environmental Services, regarding testing of wells and groundwater in Serra Canyon area of Malibu Civic Center, Malibu, California.
8. USGS Report on Groundwater Injection induced earthquake activity, published approximately during June, 2014

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From the Desk of Joan C. Lavine

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123 North Hobart Blvd., Los Angeles, California 90004, U.S.A.

Office Phone: (213)627-3241

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Tuesday November 4, 2014

Board Chairperson and Board Members, California Regional Water Quality Control Board, Los Angeles Region (Region 4)
Ms. Ronji Moffett, Clerk, Regional Water Quality Control Board, Los Angeles Region
Dr. Don Tsai, Ph.D., Staff Member, LARWQCB, Email: Don.Tsai@waterboards.ca.gov
California Regional Water Quality Control Board, Los Angeles Region/Region 4
320 West Fourth (4th) Street, Room 200
Los Angeles, CA. 90013

Transmitted (body only of Nov. 4, 2014, supplement and addendum to comment) via email to: Don.Tsai@waterboards.ca.gov

Re: SUPPLEMENTAL JOAN C. LAVINE COMMENT AND ADDENDUM, FILED NOVEMBER 3, 2014, on Notice, dated October 14, 2014, of Tentative Resolution LARWQCB Resolution No. R14-XXXX, to amend MOU, adopted in 2011, between City of Malibu and LARWQCB, regarding Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties Prohibiting On-site Wastewater Disposal Systems in the Malibu Civic Center Area (Posted October 14, 2014); comment due date, Tuesday, November 4, 2014, at 5:00 p.m. PST, labelled "tentative" in right-hand column "AUTHORIZING THE EXECUTIVE OFFICER TO SIGN A REVISED MEMORANDUM OF UNDERSTANDING WITH THE CITY OF MALIBU AND THE STATE WATER RESOURCES CONTROL BOARD REGARDING THE MALIBU CIVIC CENTER PROHIBITION" and document, labelled "tentative" in right-hand column, "MEMORANDUM OF UNDERSTANDING (REVISED ON DECEMBER 4, 2014) BETWEEN CITY OF MALIBU AND REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION AND STATE WATER RESOURCES CONTROL BOARD REGARDING PHASED IMPLEMENTATION OF BASIN PLAN AMENDMENT PROHIBITING ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

TO: Board Chairperson and Board Members, California Regional Water Quality Control Board, Los Angeles Region (Region 4)

TO: Ms. Ronji Moffett, Clerk, Regional Water Quality Control Board, Los Angeles Region

TO: Dr. Don Tsai, Ph.D., Staff Member, LARWQCB

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JOAN C. LAVINE ADDENDUM AND SUPPLEMENTAL COMMENT LETTER OPPOSING MALIBU CIVIC CENTER SEPTIC PROHIBITION PROPOSED REVISED MOU, NOTICE DATED OCT. 14, 2014

To: Ms. Ronji Moffett,
Clerk of Regional Water Quality Control Board, Los Angeles Region
To: Don Tsai, Ph.D., Staff Official, LARWQCB

Dear Chairperson and Members of the California Regional Water Quality Control Board, Los Angeles Region (Region 4), Clerk of Board Ms. Moffett and Staff Official Dr. Tsai:

This letter, dated today, November 4, 2014, is a supplemental comment and addendum to my comment which I filed by hand-delivery yesterday, November 3, 2014, regarding and objecting to the above referenced proposed amendment(s) to the 2011 MOU, Los Angeles Region/Region 4 Resolution above referenced and generating a "revised MOU", the original MOU itself, and the outright, blanket, unexcepted, unexempted, un-grandfathered in prohibition by regulation of all on-site wastewater disposal systems, particularly as applied to residential properties, within the entire Malibu Civic Center area of Malibu, California.

In addition to the comments I filed by hand-delivery yesterday, dated November 3, 2014, I have the following additional objections and comments:

THE SWRCB AND LARWQCB LACK JURISDICTION AND EXCEED THEIR RESPECTIVE JURISDICTION(S) AND GRANT(S) OF AUTHORITY BY ASSERTING AUTHORITY TO ENTIRELY PROHIBIT RESIDENTIAL ON-SITE WASTEWATER SYSTEMS IN MALIBU CIVIC CENTER: I object that the legislatively authorized administrative authority of the State Water Resources Control Board and its sub-agency the California Regional Water Quality Control Board, Los Angeles Region/Region 4, is limited to permitting and regulating authority over the use of on-site waste systems, known as septic systems. The California State Water Resources Quality Control Board and California Regional Water Quality Control Board, Los Angeles Region/Region 4 lack statutory or delegated authority to ban septic systems in a manner that denies all reasonable viable, beneficial economic use of the property, because it does not have authority to do so. Thus, California State Water Resources Quality Control Board California Regional Water Quality Control Board, Los Angeles Region/Region 4 exceed their jurisdiction and act without jurisdiction by banning the use of septic systems in the Malibu Civic Center.

This undersigned property owner objects that a septic system ban directed at her property and the entire Malibu Civic Center far exceeds the statutory and constitutional authority and jurisdiction of the state board or regional board to obtain compliance with minor violations by the giving of a notice to comply pursuant to Water C. § 13399.2. Said boards exceed their jurisdiction to act and act without jurisdiction by banning septic systems where their enforcement authority is limited by statute as set forth hereinabove. Said assertions of authority without it having been granted to them prejudicially violates Due Process of Law, as guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 13, 16 and 19, California Constitution.

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To: Ms. Ronji Moffett,

Clerk of Regional Water Quality Control Board, Los Angeles Region

To: Don Tsai, Ph.D., Staff Official, LARWQCB

SHIFTS AND REVERSAL IN THE MALIBU CIVIC CENTER SEPTIC BAN REGULATIONS, MOU AND PROPOSED REVISED MOU OF THE PRESUMPTIONS AND BURDENS OF PROVING WHETHER A PRIVATELY OWNED RESIDENTIAL PROPERTY AND/OR ACTIVITIES ON PRIVATELY OWNED PROPERTY CAUSE POLLUTION, CONTAMINATION OR OTHERWISE VIOLATE HEALTH OR SAFETY LAWS OR OTHERWISE CREATE A NUISANCE OR VIOLATE LAWS SO AS TO PRESUME, WITHOUT A FACTUAL BASIS, THE ACTIVITIES AND PROPERTIES CAUSE HARM AND TO SHIFT TO AND TO PLACE THE BURDEN OF DISPROVING WRONG-DOING ON THE PROPERTY OWNER OR OCCUPANT ARE IMPROPER, UNCONSTITUTIONAL ACTIONS TO PRESUME WRONG-DOING AND TO SHIFT BURDEN OF PROVING WRONG-DOING FROM THE GOVERNMENT ENTITY TO THE PROPERTY OWNER/OCCUPANT.

Our U.S. Constitutional and California Constitutional laws PRESUME that individual are innocent until PROVEN guilty of wrong-doing. Laws which PRESUME wrong-doing, criminal and quasi-criminal violations, and other forms of guilt violation this presumption of innocence prejudicially, per se violate Due Process of Law as guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 11, 13, 16 and 19, California Constitution.

I object that the regulations regarding the implementation of the complete prohibition of a septic ban in the Malibu Civic Center constitute unconstitutional presumptions of wrong-doing and liability, in some ways irrebuttable. There is no mechanism or protocol or procedure by which a property owner can challenge in a fair, impartial proceeding these presumptions. I object to this failure to provide an adequate legal process as I have objected.

The government entity with the responsibility of enforcing laws is required to bear the burden of proving whether a property and/or property owner/occupant has violated health and safety laws. The subject septic bans, MOU and proposed revised MOU by creating a presumption of violation and liability and requiring that the property owner to disprove a presumption of violation of the pollution regulations, and shifts the burden of proof to the property owner to disprove wrong-doing. These aspects of the MOU, the proposed revised MOU and the underlying amendments to the Los Angeles Water Basin Plan to entirely prohibit on-site wastewater systems in the Malibu Civic Center prejudicially violate Due Process of Law, as guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 1, 13, 16 and 19, California Constitution.

I incorporate several prior comments I have made and that the City of Malibu filed in or about July, 2010, opposing the septic ban in its entirety. I incorporate my comments and those of the City of Malibu by reference as though fully set forth herein.

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To: Ms. Ronji Moffett,

Clerk of Regional Water Quality Control Board, Los Angeles Region

To: Don Tsai, Ph.D., Staff Official, LARWQCB

These prior comments and evidentiary support were filed yesterday, November 3, 2014, attached and enclosed with the hand-delivered and filed copies of those comments, on a CD disk, and also the Izbicki report, dated 2012, and the USGS study, dated July, 2014, and I incorporate them by reference as though fully set forth herein, and cite them as authority and evidentiary support for both my comments, oppositions, objections and arguments filed November 3, 2014, and this supplement and addendum. See below list.

The proposed resolution should be rejected in its present resolution form and the original MOU should be vacated. The proposed resolution should at the very least be amended to include an immediate exemption of all permitted residential properties in the septic ban exemptions and grandfathering in of all permitted properties and provide that those septic ban exemptions be permanent and to authorize municipal permitting and use of OWTS in the Malibu Civic Center forthwith and nunc pro tunc to November 5, 2009. A mechanism, protocol and procedure by which a property owner can challenge in a fair, impartial proceeding these presumptions or findings should be provided for in this revised MOU or a set of regulations.

Thank you.



JOAN LAVINE, Residential Property Owner in Malibu Civic Center, Malibu, California
90265

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Very truly yours,

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