



City of Malibu

23825 Stuart Ranch Road ♦ Malibu, California ♦ 90265-4861
Phone (310) 456-2489 ♦ Fax (310) 317-0950 ♦ www.malibucity.org

December 31, 2012

Sent via Email to SUnger@waterboards.ca.gov

Mr. Sam Unger, Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

RE: Memorandum of Understanding (MOU) Quarterly Progress Report
Malibu Civic Center Wastewater Treatment Plan

Dear Sam:

The following is the quarterly progress report for the Malibu Civic Center Wastewater Treatment Plan which covers work activities performed on this project during the period between October 1, 2012 and December 31, 2012. To date, the City has submitted all required documents and met all milestone goals as required by the MOU and is in full compliance. It is noted that the next milestone to be completed is the EIR and this milestone will be delayed approximately 9 months. The reason for the delay has been identified to the RWQCB and is further explained below.

On June 29, 2012, the Conceptual Groundwater Injection Plan (Plan) was prepared and submitted to the Regional Water Quality Control Board (RWQCB) in accordance with the Phase 1, Milestone 3 requirement of the MOU. The RWQCB requested public comments on the plan and we understand that a handful of comments were received by the Board. As of yet, the City has not received any comments on any of the submitted material to the RWQCB. We are ready to address all comments as part of the final reports and EIR documents.

Despite this project's enormous financial costs, the City has made significant progress on the development of a centralized wastewater treatment facility (CCWTF) for the City's Civic Center area. As explained in the last quarterly progress report, the City has already expended approximately \$2.6 million from its general fund to perform scientific investigations and assessments, field analysis, and preliminary design work in a good faith effort to comply with the MOU. However, as we have stated previously, the City is unable to fund the anticipated \$4M in costs to complete the final design work. This work includes constructing full-size test wells to assess hydraulic impacts to the deep well aquifer, modeling the new data with the MODFLOW hydraulic modeling program, completing the EIR, and finalizing the design work for construction. In July of 2012 the City exhausted its previously allocated funds for this remaining work and we turned to the property owners to establish a Community Facilities District (CFD). The City received favorable response from several commercial property owners and we moved forward with



the establishment of that taxing authority. This information was conveyed to the Board Members in June and again in December at the RWQCB meetings (Attachment 1). The Board Members were supportive of this approach and obtaining property owner support for the design work.

In order to complete the CFD, the following actions were taken:

- June 25, 2012, the City Council initiated the formation of a CFD.
- August 13, 2012, the City Council adopted Resolutions establishing the CFD.
- August 20, 2012, ballots were mailed to property owners within the CFD.
- On November 26, 2012, the City Council certified results of the November 20, 2012 Special Tax and Bond Election.
- November 26, 2012, the City Council introduced the 1st reading of an Ordinance authorizing the levy of a special tax within the CFD for the purpose of financing the design and environmental analysis work required to construct the Malibu Civic Center Wastewater Treatment Plant Design Phase One (Attachment 2).
- December 10, 2012, the City Council adopted the final reading of the CFD Special Tax Ordinance (Attachment 3).
- January 9, 2013, Ordinance becomes effective.
- January 14, 2013, the City Council will adopt a Resolution approving the issuance of bonds.
- 1st week of February 2013, bonds will be sold and the City receives funding from the bond sale.

The approval of the CFD will allow the design work to be finalized. It is anticipated that an Assessment District will be formed within the next 18 months in order to pay for the construction and to pay off the CFD.

On a side note, the City was very pleased to receive notification on November 16, 2012, that the State approved Abeyance regarding the Petition filed by Santa Monica Baykeepers and Heal the Bay was terminated (Attachment 4). We believe that this was a critical issue to resolve and we sincerely thank the Water Board for resolution of that pending matter. Without the resolution of this issue, it was expected that further delays to the project would be unavoidable.

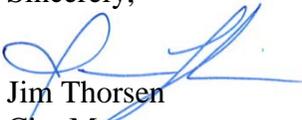
Finally, the City continues to have monthly meetings with stakeholders about the CCWTF (November and December meetings were cancelled due to work stoppage). For several years, the City has met on a monthly basis with stakeholder groups comprised of commercial property owners, residential homeowners association (HOA) representatives and other interested community members. The City also makes presentations to HOA organizations within the prohibition boundary area when requested. There appears to be large support from the commercial property owners for the wastewater treatment plan moving forward. There is much greater concern from residential property owners with regard to cost and overall impacts. The City will be convening the TAC team together within the next 3 months to review progress. In addition, the City is working on setting up a meeting with both Heal the Bay and Santa Monica Baykeepers to review the progress of the project.



As you can see, the City is committed to working with the community and the RWQCB in a diligent effort towards the design and completion of the CCWTF for the Civic Center area. The RWQCB and MOU set out a very aggressive schedule that was dependent on having no delays at all. Therefore, with the delay caused by funding and formation of the CFD, the City will diligently be looking at ways to comply with the deadlines. As we have discussed, the most likely time savings could occur within the construction phase. We sincerely appreciate all the assistance and collegial working relationship with the RWQCB staff.

If you have any questions, or require additional clarification, please do not hesitate to contact me at (310) 456-2489, extension 226, or jthorsen@malibucity.org.

Sincerely,



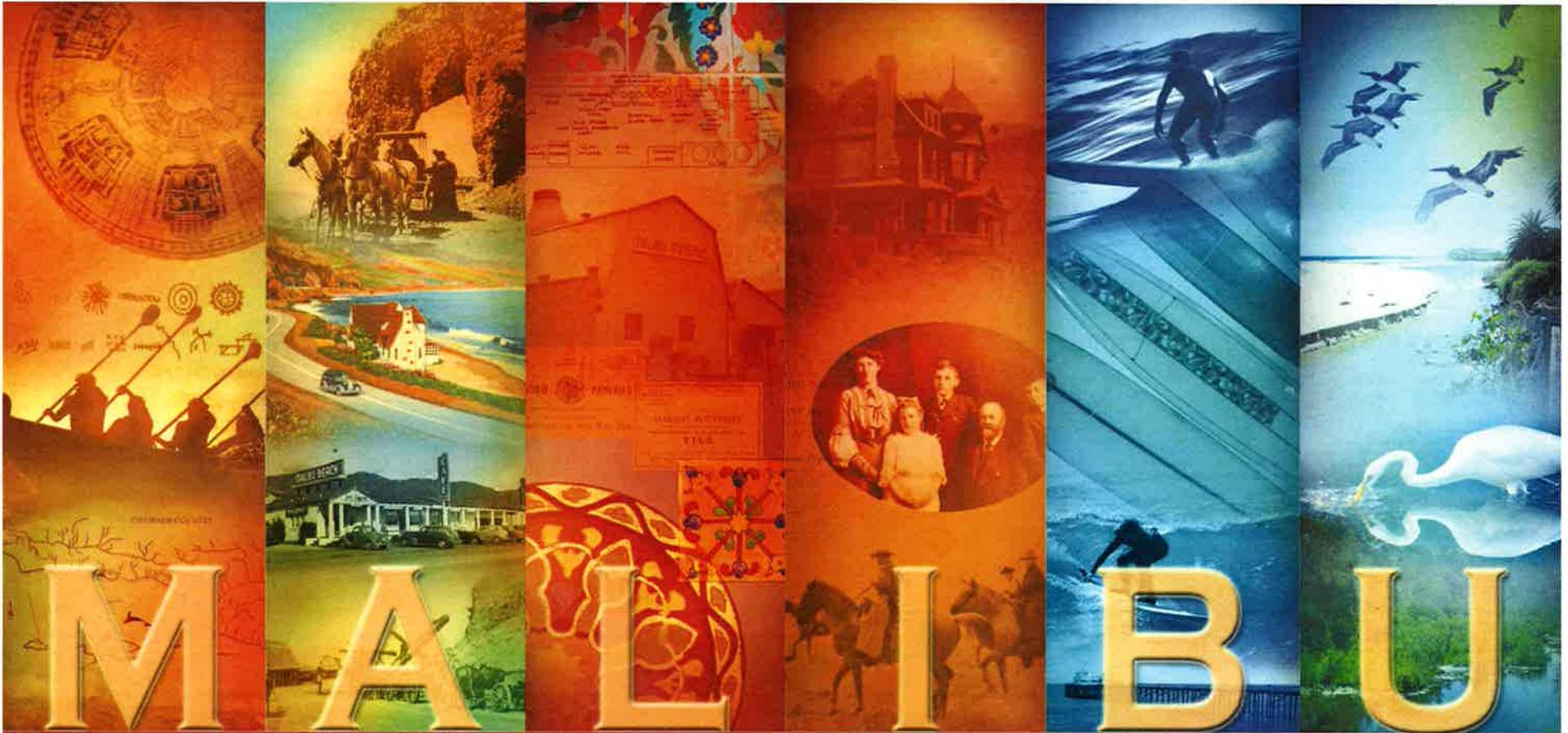
Jim Thorsen
City Manager

Attachments:

1. December 6, 2012 PowerPoint Progress Report to the RWQCB of CCWTF Design
2. November 26, 2012 City Council Agenda Report, Item No. 4.A
3. December 10, 2012 City Council Agenda Report, Item 3.A.1
4. November 16, 2012 Letter from the Water Board Regarding Status of Abeyance

cc: Mayor La Monte and Honorable Members of the Malibu City Council
Vic Peterson, Environmental Sustainability Director
Bob Brager, Public Works Director
Joyce Parker-Bozylinski, Planning Director
Craig George, Environmental Sustainability Manager / Deputy Building Official





Progress Report Civic Center Wastewater Treatment Facility Design



6 December 2012

Prohibition Area



Phase 1

Phase 2

Malibu Creek

Google earth

CHUMASH

Humaliwa "sun sword" today, was a Chumash Indian village on the high ground at the foot of Malibu Canyon where the creek ran into the ocean.

Imagery Date: 10/22/2007

Image © 2012 City of Thousand Oaks
Image © 2012 DigitalGlobe
Image © S. Geological Survey
34.021726°N 118.413185°W, Elev: 51 ft

Eye alt: 1481 ft

Phase 1: MOU Milestones

Sep 2011:
Public
Outreach
(Completed)

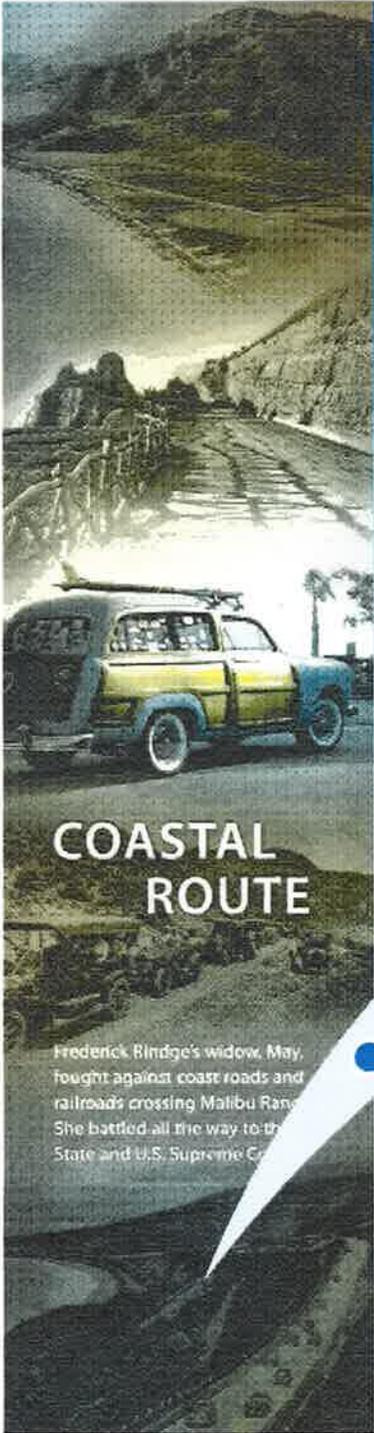
Dec 2011:
Recycle water
study
(Completed)

June 2012:
Groundwater
Injection Study
(Completed)

March 2013:
EIR



Phase 1: MOU Milestones



COASTAL ROUTE

Frederick Budge's widow, May, fought against coast roads and railroads crossing Malibu Range. She battled all the way to the State and U.S. Supreme Court.

June 2013:
Design for WWTF

Sep 2013:
Assessment Dist.

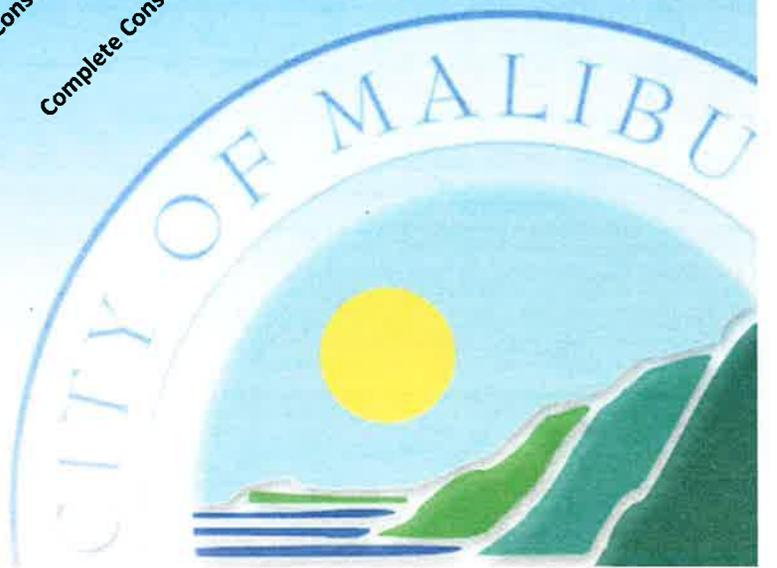
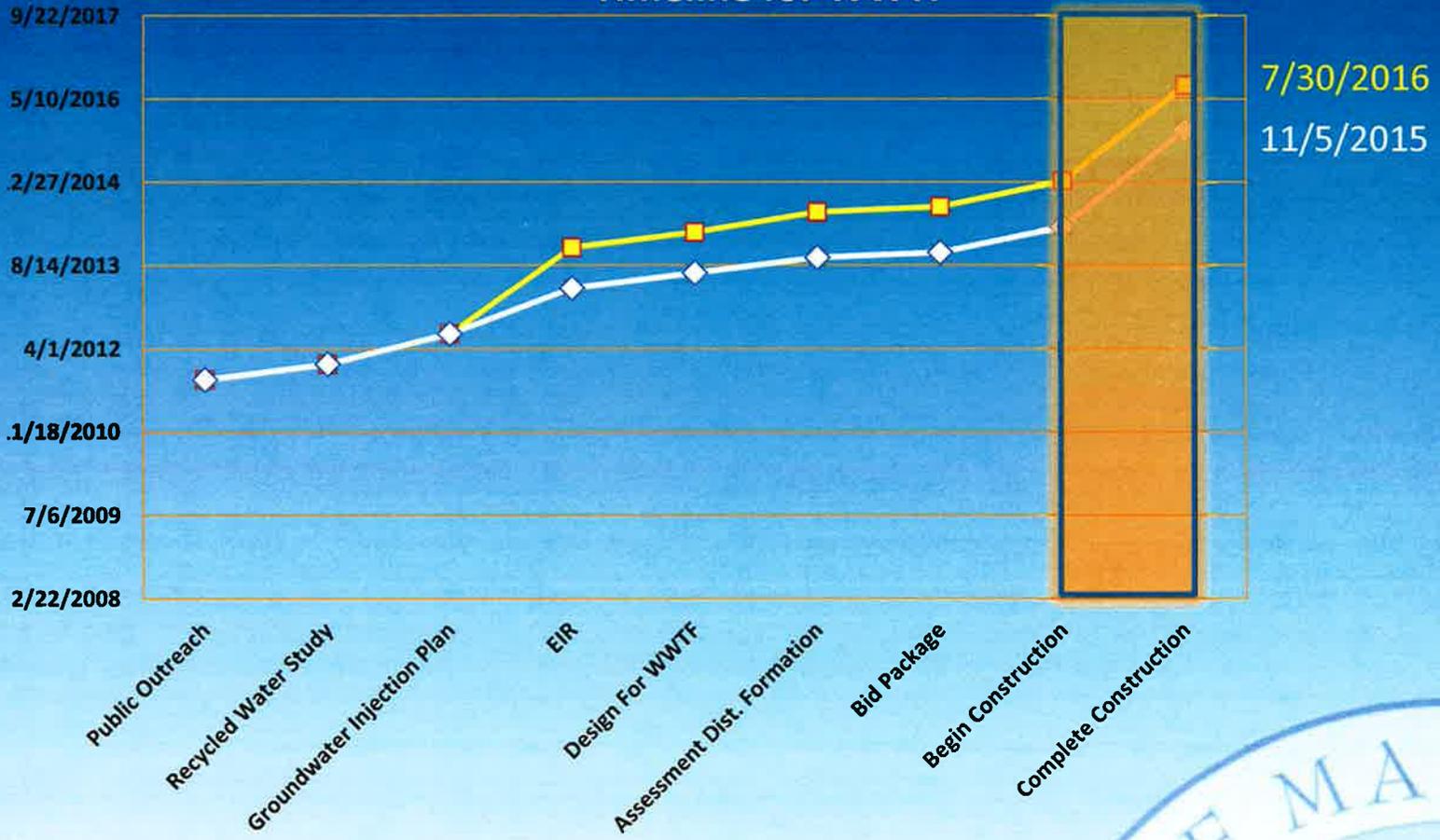
Oct 2013:
Bid Package

March 2014:
Begin Construction

Nov 2015:
Complete Construction



Timeline for WWTF



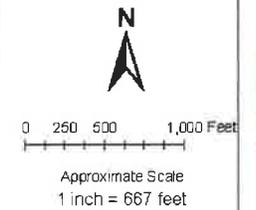
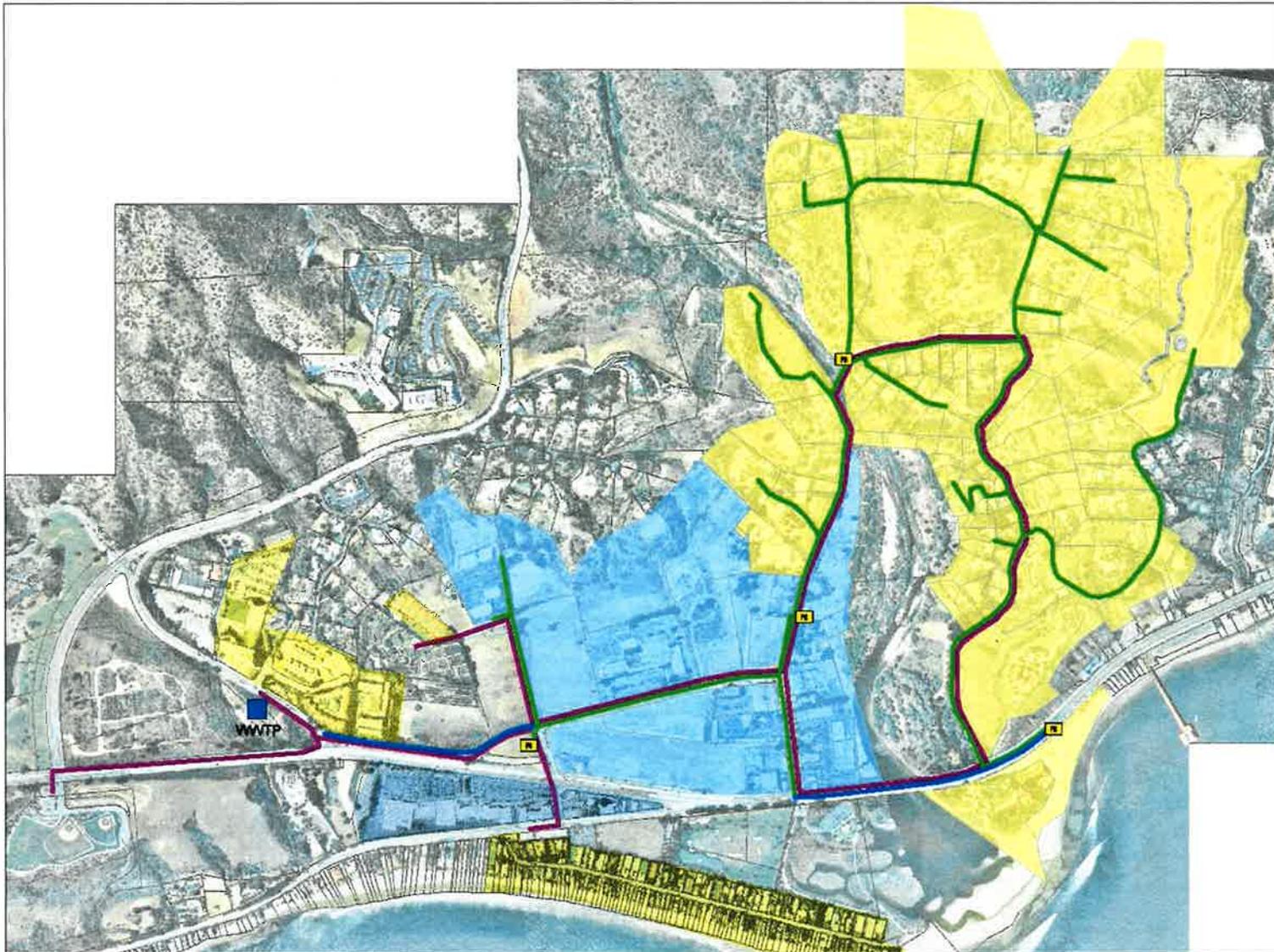
Collection and Return System

City of Malibu Wastewater Treatment Design

Collection System
Service Areas 1 & 2

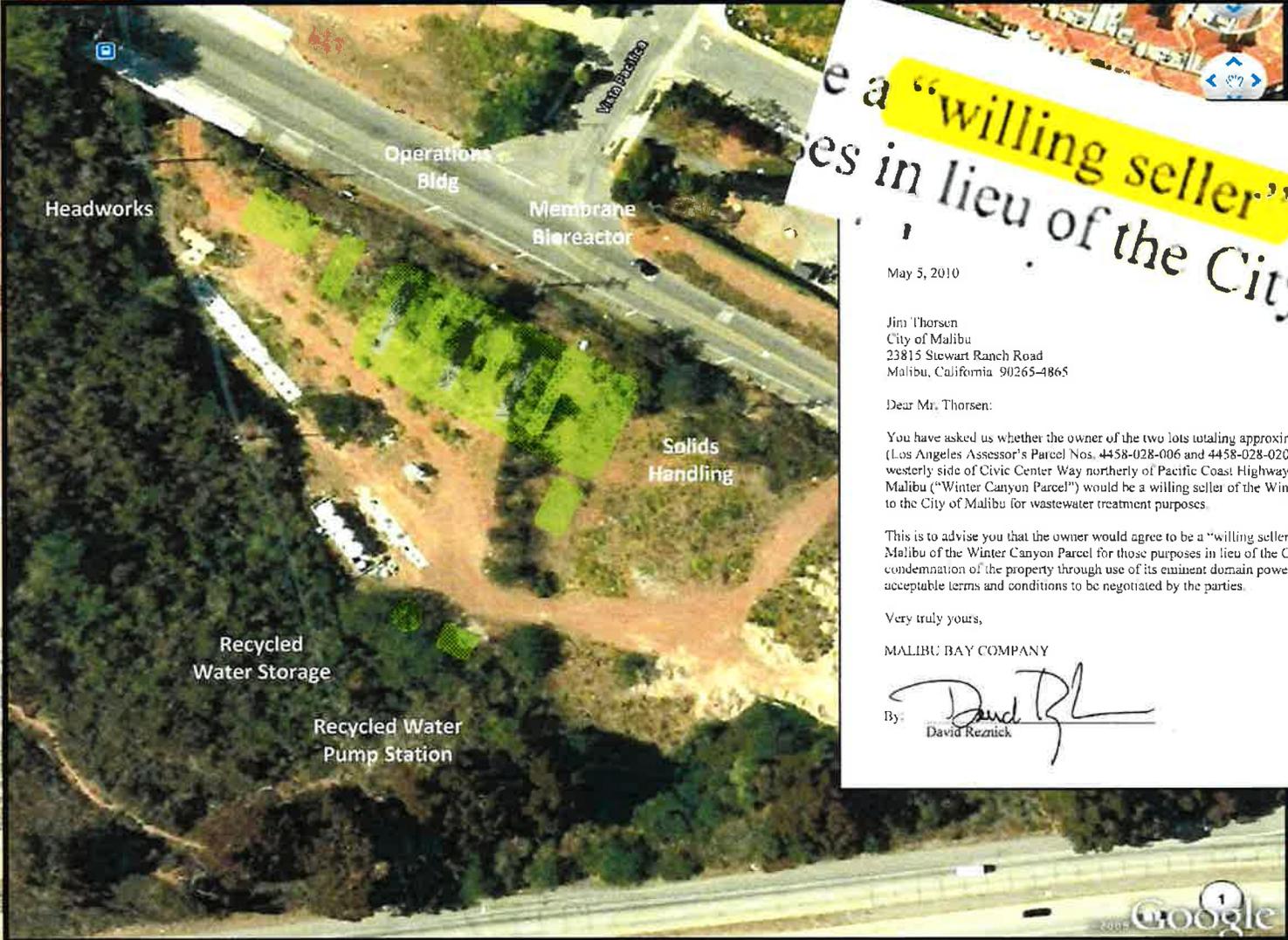
Legend

-  Pump Station
- Collection System**
-  Force Main
-  Gravity
-  Recycled Water
-  Phase 1
-  Phase 2



RMC

MBR Plant Location



be a "willing seller" to the
es in lieu of the City's

May 5, 2010

Jim Thorsen
City of Malibu
23815 Stewart Ranch Road
Malibu, California 90265-4865

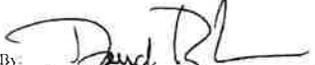
Dear Mr. Thorsen:

You have asked us whether the owner of the two lots totaling approximately 4.21 acres (Los Angeles Assessor's Parcel Nos. 4458-028-006 and 4458-028-020) located on the westerly side of Civic Center Way northerly of Pacific Coast Highway in the City of Malibu ("Winter Canyon Parcel") would be a willing seller of the Winter Canyon Parcel to the City of Malibu for wastewater treatment purposes.

This is to advise you that the owner would agree to be a "willing seller" to the City of Malibu of the Winter Canyon Parcel for those purposes in lieu of the City's condemnation of the property through use of its eminent domain power, upon mutually acceptable terms and conditions to be negotiated by the parties.

Very truly yours,

MALIBU BAY COMPANY

By: 
David Reznick

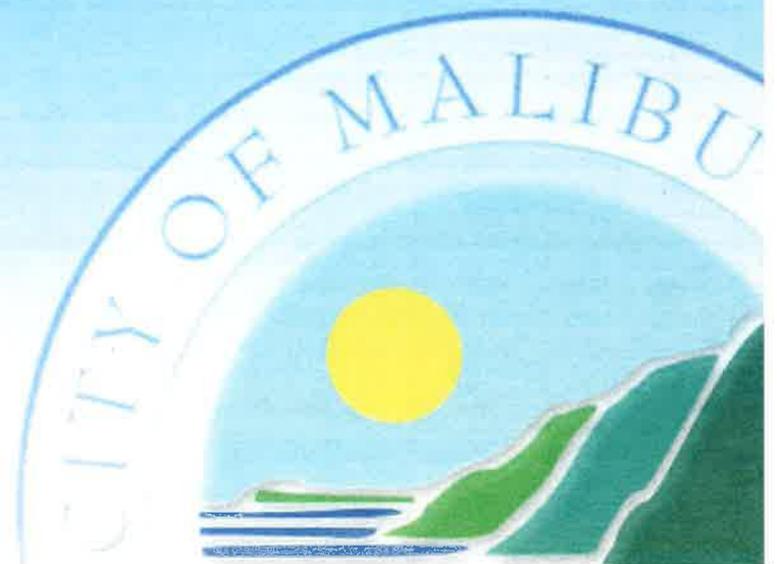
CHUM

Humakwa, "Sun-adult"
was a Chumash Indian
the high ground of the
Malibu Canyon where
narrow the ocean.

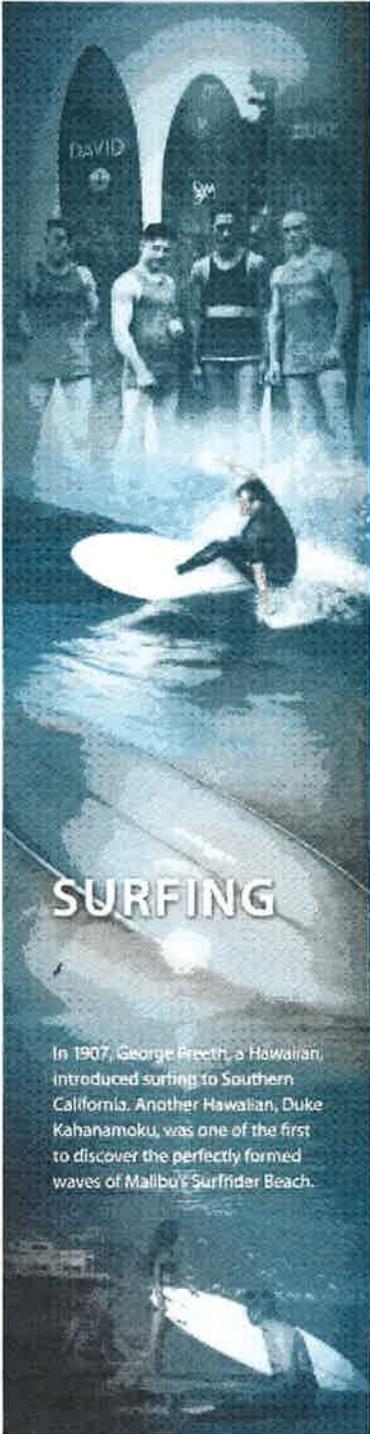
Google

Financing (Design)

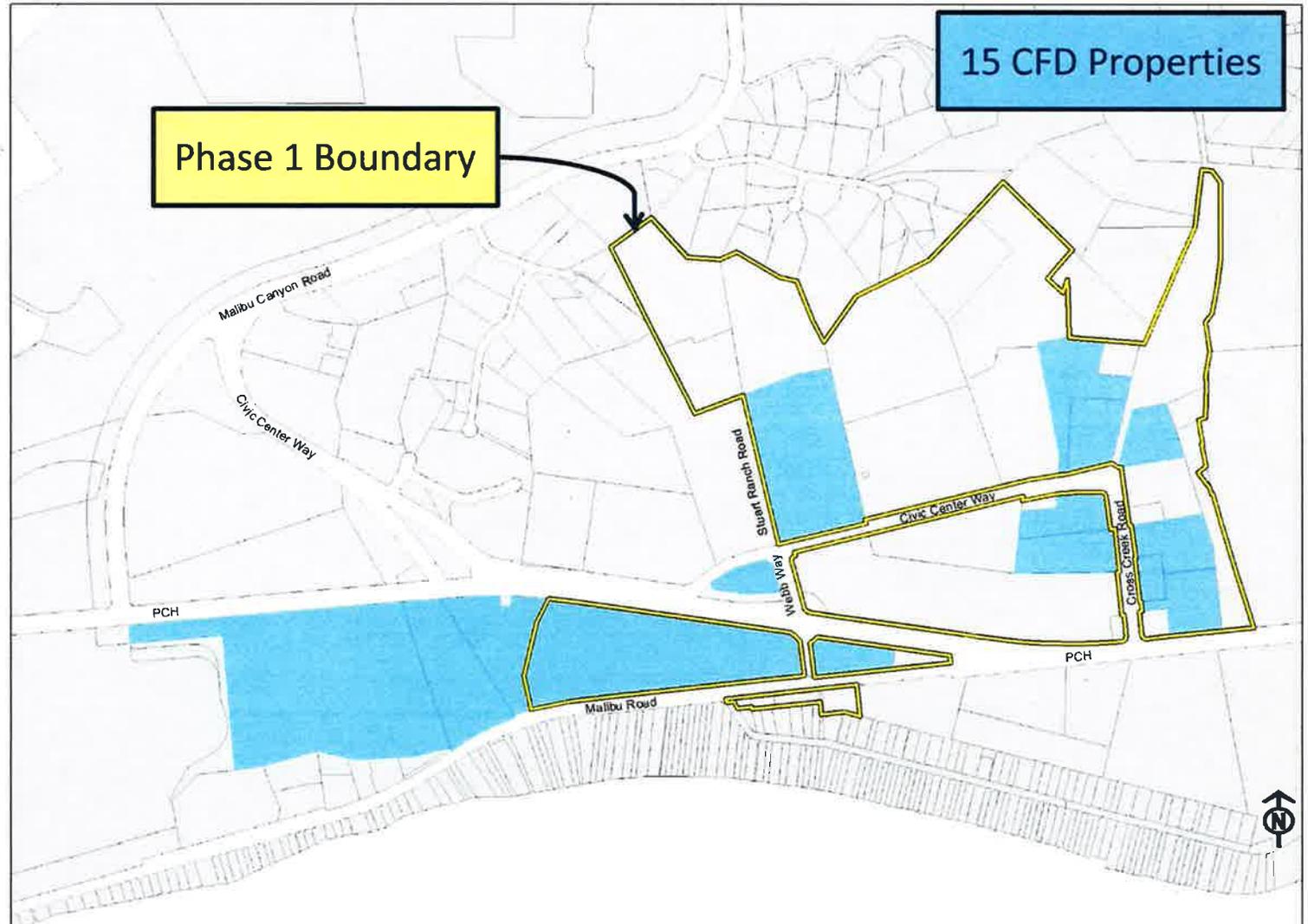
- Establish a Community Facilities Dist. (CFD for Design/EIR)
 - City will pay \$1.5M / CFD to pay \$5.0M
 - Formation by Jan 2013 (2nd reading of Ord)
 - Bond Proceeds Received ~ Feb 5th, 2013



Community Facilities District



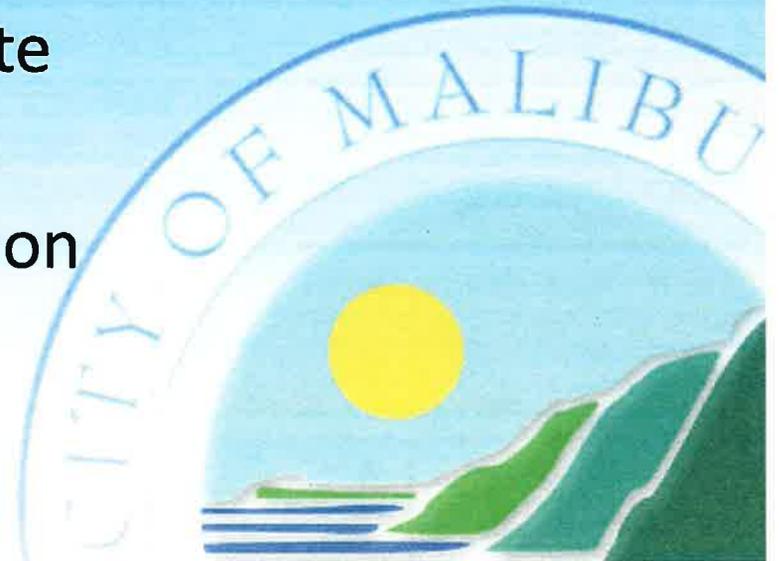
In 1907, George Preeth, a Hawaiian, introduced surfing to Southern California. Another Hawaiian, Duke Kahanamoku, was one of the first to discover the perfectly formed waves of Malibu's Surfer Beach.





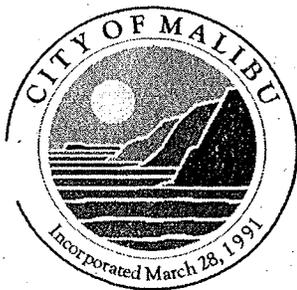
Financing (Construction)

- Establish an Assessment District (AD) For Phase 1
 - ❖ AD will pay for:
 - ✓ Design and EIR (CFD to be folded into AD)
 - ✓ Property purchase/treatment plant
 - ✓ Collection/return/Dispersal systems, O&M
 - ❖ Requires 50% +1 vote
 - ❖ Assessments will be weighted based upon benefit



Thank you





Supplemental Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Reva Feldman, Assistant City Manager *RF*

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: November 21, 2012

Meeting date: November 26, 2012

Subject: Community Facilities District (CFD) No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) Election Results and Ordinance Authorizing the Levy of CFD No. 2012-1

RECOMMENDED ACTION: 1) Adopt Resolution No. 12-41 certifying the results of the November 20, 2012 Special Tax and Bond Election for CFD No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) – Measure W; 2) After the City Attorney reads the title, introduce on first reading of Ordinance No. 371 authorizing the levy of a special tax within CFD No. 2012-1; and 3) Direct staff to schedule second reading and adoption of Ordinance No. 371 for the December 10, 2012 Regular City Council meeting.

FISCAL IMPACT: The bonds that will be issued are a special obligation of the CFD and are payable and secured by a pledge of Special Taxes levied on property within the CFD. Neither the faith nor credit of the City is pledged to or responsible for the repayment of the Bonds. All consultant fees in connection with the formation and issuance of Bonds of the proposed CFD will be paid from proceeds of the bonds, provided, however that if the CFD is not formed or Bonds are not issued, the City will be responsible for paying consultant fees incurred in forming the CFD and submitting the special tax and bond measure to the voters in the CFD. The City will be responsible for the cost of the annual administration of the CFD, which is estimated not to exceed \$10,000 a year. The cost for the annual administration will be reimbursed by the CFD to the City each year.

The City has spent \$2,545,156 to date on the design of the Civic Center Wastewater Treatment Plant and anticipates that an additional \$4,000,000 will be needed to complete the final design, including the Environmental Impact Report (EIR),

construction documents, and to obtain permits. If the CFD is approved, it will provide a net amount of \$5,000,000. An estimated maximum \$6,500,000 aggregate principal amount of bond indebtedness is necessary to provide the net amount of \$5,000,000. The maximum principal amount includes all costs associated with the creation of the CFD, issuance of bonds and accrual of interest. The net funding amount will enable the City to complete the design effort and allow the City to be reimbursed up to \$1,000,000 for funds that have already been expended.

It is noted that a future assessment district is anticipated to be formed within the next 18 months to pay for the construction and design of the centralized wastewater system. The future assessment district will be comprised of those properties within Phase One of the State mandated septic prohibition and other properties that may choose to become part of a centralized treatment system. The future assessment district will include the costs for construction and will also include the "takeout" of this CFD. The future assessment district will equally distribute all design and construction costs between the Phase One properties and not just those that are part of this CFD. Should an assessment district not be formed, then the identified property owners that are within the CFD will be required to make the tax payments for the bonded indebtedness. The City-owned and County-owned parcels within the prohibition boundary are not included in this CFD as State law prohibits municipal owned parcels from being included in a CFD.

The City has contributed \$2.5 million for the design to date and anticipates that if the CFD is formed and funded, the City will be reimbursed for a portion of the costs incurred. The City's net contribution will be \$1.5 million toward the design. It is anticipated that the City parcels will be a part of the future assessment district.

DISCUSSION: On June 27, 2011, the Council approved a Memorandum of Understanding (MOU) between the City and the Regional Water Quality Control Board and the State Water Resources Control Board regarding the implementation of the Basin Plan Amendment for the Malibu Civic Center Area Prohibition. The MOU requires that commercial properties in the Civic Center Prohibition Area be connected to a centralized wastewater treatment facility by November 15, 2015. In addition, certain residential property owners within the prohibition boundary are required to connect to a centralized wastewater treatment facility by November 2019.

On January 12, 2009, the Council approved an appropriation of \$2,647,956 for an agreement with RMC Water and Environment to provide engineering and design services for the Malibu Civic Center Integrated Water Quality Management Plan project. Of the total approved, \$102,800 was used toward stormwater design and engineering services of Legacy Park, leaving \$2,545,156 available for the design and engineering of the Civic Center Wastewater Treatment Facility. All existing funds for the wastewater design have been utilized and additional funds need to be allocated in order to comply with the MOU compliance requirements.

The funding that was approved by the Council in 2009 did not contemplate the extensive design and engineering process that has now become necessary due to the requirements of the State mandated prohibition and the current MOU. To facilitate the design requirements for a centralized wastewater treatment system, a completely different collection and dispersal process (lower aquifer injection) is now required. In order for the City to remain in compliance with the terms of the MOU and to proceed with the design of the overall centralized wastewater treatment facility, additional funds are needed for design and engineering services, as well as an environmental study report and permits. Approval of this CFD will allow design funding in the net amount of \$5 million.

On June 25, 2012, the Council continued an item that would have appropriated an additional \$1.5 million for an amendment to the professional services agreement with RMC. The Council voted to postpone the appropriation until the CFD was formed. Due to the time required to approve the CFD, some of the deadlines established in the MOU may not be met.

The net funding from the proposed CFD will ensure completion of the final engineering of Phase One of the MOU, schematic engineering for all phases of the MOU, EIR completion for all phases of the MOU and permitting for Phase One of the MOU. Any unfunded design costs for future phases should be significantly less than the cost of this current design effort and can be paid from City funds, a separate CFD, private property funds, or other funding mechanisms.

On June 25, 2012, the Council also adopted Resolution No. 12-29 declaring the City's intent to establish CFD No. 2012-1 of the City of Malibu and Resolution No. 12-30 declaring the City's intent to incur bonded indebtedness. Since that meeting it has been determined that the boundary map of the CFD should be revised to remove 4 parcels of property and a revised boundary map of the properties (Exhibit B to Attachment 4) within the CFD is on file with the City Clerk.

On August 13, 2012, the Council adopted Resolution No. 12-32 establishing CFD No. 2012-1 of the City of Malibu and Resolution No. 12-33 declaring the necessity to incur bonded indebtedness within such CFD in a principal amount not to exceed \$6.5 million to finance the design of the Civic Center Wastewater Treatment Plant Phase One and calling a special bond and tax election on Measure W related to such matters. The ballots were mailed to all property owners in the CFD on October 30, 2012.

On November 20, 2012, the special bond and tax election was held. The City Clerk has canvassed the votes and certified the same.

Resolution No. 12-41 (Attachment 1) certifies the results of the election and directs the bond Counsel to prepare and the City Clerk to file a Notice of Special Tax Lien on the

property within the CFD. The Notice of Special Tax Lien will provide the security necessary for the eventual issuance of bonds by the CFD in accordance with the Mello Roos Act.

Ordinance No. 371 (Attachment 2) will authorize the levy of the special tax approved by the voters in Measure W to be levied on the property within the CFD for the purposes of paying debt service on bonds issued by the CFD. The Mello Roos Act requires such an ordinance to be adopted in order to levy the Special tax within the CFD. For as long as the CFD Bonds are outstanding, each year prior to August 10, the Council will be presented with a resolution setting the maximum tax rate for such fiscal year and directing that such information be conveyed to the County Assessor's Office to be placed on the secured property tax roll.

The exact amount of bonds to be issued will be determined based on bond market conditions at the time of sale. The bonds will be limited obligations of the CFD (not debt of the City) and will be payable solely from special taxes levied on the real property within the CFD. The special taxes would be collected by the County as part of the property tax bill and then remitted to the City. It is expected that Bonds will be issued in late January 2013 in a principal amount not to exceed \$6,500,000.

The maximum annual tax rate as proposed in the Rate and Method of Apportionment of the Special Tax is \$12,495.74 per acre for commercial property and \$2,499.15 per acre for residential property. These are the maximum rates that would support \$6,500,000 in bonds based on conservative interest rate assumptions.

The current expectation is that the CFD Bonds will be taken out with proceeds from a future assessment district consisting of all the property in Phase One benefited by the Wastewater Treatment Plant and that special taxes will not be needed to be levied by the CFD. There are several ways to accomplish this, including funding capitalized interest on the bonds until the assessment district is formed or through the issuance of capital appreciation notes which would not pay current interest and would mature at a time in the future when the assessment district would be formed. Either structure assumes a takeout financing by a larger assessment district that would refund the CFD bonds and pay for the construction of the Wastewater Treatment Plant.

ATTACHMENTS:

1. Resolution No. 12-41
2. Ordinance No. 371

RESOLUTION NO. 12-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT PHASE ONE) CERTIFYING THE RESULTS OF THE NOVEMBER 20, 2012 SPECIAL TAX AND BOND ELECTION

SECTION 1. Recitals.

- A. The City Council of the City of Malibu called and duly held an election on November 20, 2012 for Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Phase One) ("Community Facilities District No. 2012-1" or the "District") pursuant to Resolution Nos. 12-32 and 12-33 for the purpose of presenting to the qualified electors within the District the proposition attached hereto as Exhibit A.
- B. There has been presented to this Council a certificate of the City Clerk canvassing the results of the election, a copy of which is attached hereto as Exhibit B.

SECTION 2. The City Council finds that each of the above recitals is true and correct and is adopted by the legislative body of the District.

SECTION 3. The City Council finds that Measure W presented to the qualified electors of the District on November 20, 2012 was approved by more than two-thirds of the votes cast at the election held and Measure W has carried. The City Council, acting as the legislative body of the District, is hereby authorized to levy on the land within the District the special tax described in Measure W for the purposes described therein and to take the necessary steps to levy the special tax authorized by Measure W and to issue bonds in an amount not to exceed \$6,500,000 specified in Measure W.

SECTION 4. The City Council finds that the City Clerk is hereby directed to record in the Office of the County Recorder within fifteen days of the date hereof a notice of special tax lien for the District which Bond Counsel to the District shall prepare in the form required by Streets and Highways Code Section 3114.5.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 26th day of November, 2012.

LOU LA MONTE, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:



BRIAN FORBATH, Bond Counsel

EXHIBIT A

BALLOT PROPOSITION

**COMMUNITY FACILITIES DISTRICT NO. 2012-1
OF THE CITY OF MALIBU
(MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)**

SPECIAL TAX AND SPECIAL BOND ELECTION

November 20, 2012

**MEASURE W — Malibu Civic Center Wastewater
Treatment Plant Design Phase One:**

YES _____

NO _____

To finance the design and environmental analysis required to construct the Malibu Civic Center Wastewater Treatment Plant, shall Community Facilities District No. 2012-1 of the City of Malibu issue not to exceed \$6,500,000 of bonds at legal rates and levy special taxes to finance debt service on the bonds and incidental expenses, and establish an annual appropriations limit of \$700,000?

EXHIBIT B

**CERTIFICATE OF CITY CLERK
AS TO THE RESULTS OF THE CANVASS OF THE ELECTION RETURNS**

I, Lisa Pope, City Clerk of the City of Malibu, do hereby certify that I have examined the returns of the Special Tax and Special Bond Election for Community Facilities District No. 2012-1. The election was held on November 20, 2012. Ten (10) ballots were returned.

I further certify that the results of said election and the number of votes cast for and against the Proposition are as follows:

MEASURE W

YES: 64

NO: 0

TOTAL: 64

Dated this 20th day of November, 2012.



Lisa Pope, City Clerk
City of Malibu

ORDINANCE NO. 371

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU, STATE OF CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT PHASE ONE) AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN SUCH DISTRICT

SECTION 1. Recitals.

- A. On June 25, 2012, the City Council of the City of Malibu (the "Council") adopted Resolution No. 12-29 declaring its intention to form Community Facilities District No. 2012-1 of the City of Malibu ("Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, comprising Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Act"), and adopted Resolution No. 12-30 declaring its intention to incur bonded indebtedness within the District.
- B. On August 13, 2012, after providing all notices required by the Act, the Council held a noticed public hearing required by the Act relative to the formation of Community Facilities District No. 2012-1, the proposed levy of a special tax within the District to finance the design, engineering, planning and environmental evaluation of certain public facilities described in Resolution No. 12-29, and to secure the payment of any bonded indebtedness of the District, and the proposed issuance of up to \$6,500,000 of bonded indebtedness for the District.
- C. At the August 13, 2012, public hearing, all persons desiring to be heard on all matters pertaining to the formation of Community Facilities District No. 2012-1, the proposed levy of the special tax within the District to finance the facilities described in Resolution No. 12-29 and the proposed issuance of bonded indebtedness within the District, were heard and a full and fair hearing was held.
- D. On August 13, 2012, following the close of the public hearing, the Council adopted Resolution Nos. 12-32 (the "Resolution of Formation") and 12-33 (the "Resolution to Incur Bonded Indebtedness") which called a special election that was held on November 20, 2012 within Community Facilities District No. 2012-1 on a proposition relating to the levying of a special tax, the incurring of bonded indebtedness, and the establishment of an appropriations limit for the District.
- E. On November 20, 2012, a special election was held for the District at which the qualified electors approved by more than a two-thirds vote Measure W authorizing the levy of a special tax within the District for the purposes described

in the Resolution of Formation and the issuance of bonded indebtedness for the District as described in the Resolution to Incur Bonded Indebtedness.

SECTION 2. The Council finds the above recitals are all true and correct.

SECTION 3. By the passage of this Ordinance, the Council authorizes the levy of a special tax within Community Facilities District No. 2012-1 at the maximum rates and in accordance with the rate and method of apportionment set forth in Exhibit "B" to Resolution No. 12-32, which rate and method of apportionment is incorporated by reference herein (the "Rate and Method").

SECTION 4. The Council is hereby further authorized to determine in each subsequent fiscal year, by ordinance, or by resolution if permitted by then applicable law, on or before August 10 of each year, or such later date as is permitted by law, the specific special tax rate and amount to be levied on each parcel of land in Community Facilities District No. 2012-1 pursuant to the Rate and Method. The special tax rate to be levied pursuant to the Rate and Method shall not exceed the applicable maximum rates set forth therein, but the special tax may be levied at a lower rate.

SECTION 5. Properties or entities of the state, federal or other local governments shall be exempt from the special tax, except as otherwise provided in Sections 53317.3 and 53317.5 of the Act and the Rate and Method, as applicable. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation, or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 53334 of the Act.

SECTION 6. All of the collections of the special tax pursuant to the Rate and Method shall be used as provided for in the Act and the Resolution of Formation. The special tax shall be levied within the District only so long as needed for the purposes described in the Resolution of Formation.

SECTION 7. The special tax levied pursuant to the Rate and Method shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for *ad valorem* taxes (which such procedures include the exercise of all rights and remedies permitted by law to make corrections, including, but not limited to, the issuance of amended or supplemental tax bills), as such procedure may be modified by law or by this Council from time to time.

SECTION 8. As a cumulative remedy, if any amount levied as a special tax for payment of the interest or principal of any bonded indebtedness of the District, together with any penalties and other charges accruing under this Ordinance, are not paid when due, the Council may, not later than four years after the due date of the last installment of principal on the Bonds, order that the same be collected by an action brought in the superior court to foreclose the lien of such special tax.

SECTION 9. This Ordinance relating to the levy of the special tax within the District shall take effect 30 days following its final passage, and the specific authorization for adoption is pursuant to the provisions of Section 53340 of the Act.

SECTION 10. The City Clerk is hereby authorized to transmit a certified copy of this Ordinance to the Los Angeles County Assessor and Treasurer-Tax Collector, and to perform all other acts, including publication of this Ordinance or a summary thereof, which are required by the Act, this Ordinance or by law in order to accomplish the purpose of this Ordinance.

SECTION 11. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public a day prior to its final passage.

SECTION 12. This Ordinance shall not be codified.

SECTION 13. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 26th day of November, 2012.

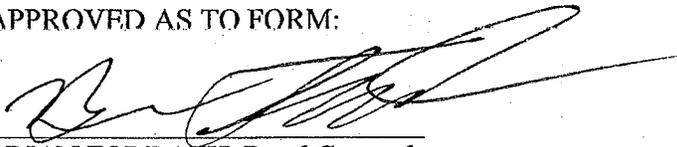
LOU LA MONTE, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:



BRIAN FORBATH, Bond Counsel



City Council Meeting

12-10-12

Item

3.A.1.

Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Reva Feldman, Assistant City Manager *[Signature]*

Approved by: Jim Thorsen, City Manager *[Signature]*

Date prepared: November 27, 2012

Meeting date: December 10, 2012

Subject: Second Reading and Adoption of Ordinance No. 371

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 371, an ordinance of the City Council of the City of Malibu authorizing the levy of a special tax within Community Facilities District (CFD) No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One).

FISCAL IMPACT: None.

DISCUSSION: At the regular City Council meeting on November 26, 2012, the City Council introduced on first reading Ordinance No. 371.

Ordinance No. 371 is presented to the City Council for adoption.

ATTACHMENTS: Ordinance No. 371

ORDINANCE NO. 371

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU, STATE OF CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT PHASE ONE) AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN SUCH DISTRICT

SECTION 1. Recitals.

- A. On June 25, 2012, the City Council of the City of Malibu (the "Council") adopted Resolution No. 12-29 declaring its intention to form Community Facilities District No. 2012-1 of the City of Malibu ("Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, comprising Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Act"), and adopted Resolution No. 12-30 declaring its intention to incur bonded indebtedness within the District.
- B. On August 13, 2012, after providing all notices required by the Act, the Council held a noticed public hearing required by the Act relative to the formation of Community Facilities District No. 2012-1, the proposed levy of a special tax within the District to finance the design, engineering, planning and environmental evaluation of certain public facilities described in Resolution No. 12-29, and to secure the payment of any bonded indebtedness of the District, and the proposed issuance of up to \$6,500,000 of bonded indebtedness for the District.
- C. At the August 13, 2012, public hearing, all persons desiring to be heard on all matters pertaining to the formation of Community Facilities District No. 2012-1, the proposed levy of the special tax within the District to finance the facilities described in Resolution No. 12-29 and the proposed issuance of bonded indebtedness within the District, were heard and a full and fair hearing was held.
- D. On August 13, 2012, following the close of the public hearing, the Council adopted Resolution Nos. 12-32 (the "Resolution of Formation") and 12-33 (the "Resolution to Incur Bonded Indebtedness") which called a special election that was held on November 20, 2012 within Community Facilities District No. 2012-1 on a proposition relating to the levying of a special tax, the incurring of bonded indebtedness, and the establishment of an appropriations limit for the District.
- E. On November 20, 2012, a special election was held for the District at which the qualified electors approved by more than a two-thirds vote Measure W authorizing the levy of a special tax within the District for the purposes described

in the Resolution of Formation and the issuance of bonded indebtedness for the District as described in the Resolution to Incur Bonded Indebtedness.

SECTION 2. The Council finds the above recitals are all true and correct.

SECTION 3. By the passage of this Ordinance, the Council authorizes the levy of a special tax within Community Facilities District No. 2012-1 at the maximum rates and in accordance with the rate and method of apportionment set forth in Exhibit "B" to Resolution No. 12-32, which rate and method of apportionment is incorporated by reference herein (the "Rate and Method").

SECTION 4. The Council is hereby further authorized to determine in each subsequent fiscal year, by ordinance, or by resolution if permitted by then applicable law, on or before August 10 of each year, or such later date as is permitted by law, the specific special tax rate and amount to be levied on each parcel of land in Community Facilities District No. 2012-1 pursuant to the Rate and Method. The special tax rate to be levied pursuant to the Rate and Method shall not exceed the applicable maximum rates set forth therein, but the special tax may be levied at a lower rate.

SECTION 5. Properties or entities of the state, federal or other local governments shall be exempt from the special tax, except as otherwise provided in Sections 53317.3 and 53317.5 of the Act and the Rate and Method, as applicable. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation, or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 53334 of the Act.

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SECTION 9. This Ordinance relating to the levy of the special tax within the District shall take effect 30 days following its final passage, and the specific authorization for adoption is pursuant to the provisions of Section 53340 of the Act.

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SECTION 11. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public a day prior to its final passage.

SECTION 12. This Ordinance shall not be codified.

SECTION 13. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 10th day of December, 2012.

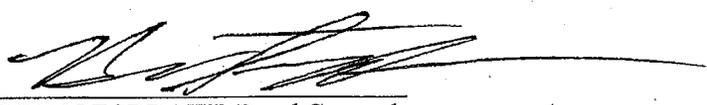
LOU LA MONTE, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:



BRIAN FORBATH, Bond Counsel



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 16, 2012

[Via U.S. Mail and email]

Tatiana Gaur, Esq.
Los Angeles Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401
tgaur@smbaykeeper.org

Dear Ms. Gaur:

**PETITION OF SANTA MONICA BAYKEEPER AND HEAL THE BAY (RESOLUTION NO. R11-010 AUTHORIZING THE EXECUTIVE OFFICER TO SIGN A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF MALIBU AND THE STATE WATER RESOURCES CONTROL BOARD REGARDING THE MALIBU CIVIC CENTER AREA PROHIBITION; AND MEMORANDUM OF UNDERSTANDING), LOS ANGELES WATER BOARD: NO REVIEW OF PETITION
SWRCB/OCC FILE A-2175**

The State Water Resources Control Board (State Water Board) received the above petition for review on August 12, 2011. You requested that the State Water Board hold the matter in abeyance, and that request was granted on November 23, 2011. On March 2, 2012, the City of Malibu requested that the petition be reviewed for the purpose of determining whether it was the proper subject of a petition for review in accordance with Water Code section 13320. On April 6, 2012, the Los Angeles Regional Water Quality Control Board (Regional Water Board) requested that the petition be removed from abeyance and asserted that the Memorandum of Understanding (MOU) is not subject to Water Code section 13320. On June 4, 2012, the Regional Water Board submitted an amendment to the MOU that clarifies that the Regional Water Board did not enter into the MOU in accordance with Water Code section 13225, subdivision (c). In addition, on August 23, 2011, in response to a request for a hearing by the State Water Board regarding the MOU, the Executive Director of the State Water Board informed petitioner Santa Monica Baykeeper that the MOU did not warrant a hearing or further consideration by the State Water Board.

Resolution No. R11-010 was not a final action by the Regional Water Board, in that it merely authorized its Executive Officer to take an action. The subsequent action taken by the Executive Officer of the Regional Water Board was to enter into the MOU. Water Code section 13320, subdivision (a), authorizes petitions for review by the State Water Board of certain types of action or failures to act by a regional water quality control board. The only type

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

of action that gives rise to a petition for review that is relevant to the MOU is an action pursuant to Water Code section 13225, subdivision (c). Water Code section 13225, subdivision (c), authorizes a regional water quality control board to require a local agency to conduct water quality monitoring and submit water quality reports, subject to specified limitations. It is correct that the City of Malibu has agreed in the MOU to conduct water quality monitoring and submit water quality reports, and that the Regional Water Board may have had, subject to the specified limitations, the authority to require the City of Malibu to conduct the same water quality monitoring and submit the same water quality reports pursuant to Water Code section 13225, subdivision (c). The MOU is not, however, an order or requirement issued by the Regional Water Board pursuant to Water Code section 13225, subdivision (c). The agreement by the City of Malibu to take these actions is not independently enforceable by the Regional Water Board, and there is no direct enforcement mechanism in the MOU itself if the City of Malibu fails to conduct the water quality monitoring or submit the water quality reports. Rather, as stated by the Regional Water Board in its June 4, 2012 letter, the Regional Water Board entered into the MOU pursuant to its general, non-regulatory authority to coordinate, assist, and encourage actions by others to protect water quality, as described in subdivisions (a), (b), and (j) of Water Code section 13225.

After careful review, I have determined that neither Resolution No. R11-010 nor the MOU are actions that are reviewable under section 13320 of the Water Code. Therefore, as of the date of this letter, the State Water Board will take no further action with respect to this petition.

If you have any questions, please call me at (916) 341-5178.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip G. Wyels", with a long horizontal flourish extending to the right.

Philip G. Wyels
Assistant Chief Counsel

cc: See next page

cc: **[Via U.S. Mail and email]**
Ms. Liz Crosson
Executive Director
Los Angeles Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401
liz@smbaykeeper.org

[Via U.S. Mail and email]
Kirsten James
Director of Water Quality
Heal the Bay
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Santa Monica, CA 90401
kjames@healthebay.org

[Via U.S. Mail and email]
Christi Hogin, Esq.
Malibu City Attorney
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[Via U.S. Mail and email]
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Malibu, CA 90265
jthorsen@malibucity.org

Mr. Samuel Unger **[Via email only]**
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Lori T. Okun, Esq. **[Via email only]**
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Philip G. Wyels, Esq. **[Via email only]**
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pwyels@waterboards.ca.gov