



# City of Malibu

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September 28, 2012

Sent via Email to [SUnger@waterboards.ca.gov](mailto:SUnger@waterboards.ca.gov)

Mr. Sam Unger, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> 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 July 1, 2012 and September 30, 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.

The City of Malibu has made steady progress on its design of a centralized wastewater treatment facility (CCWTF) for the City's Civic Center area. Work tasks required to determine the groundwater injection feasibility for the Malibu Civic Center area were divided into three phases. Phases 1 and 2 have been completed and included drilling test wells, groundwater extraction and testing, groundwater modeling, geochemistry, onshore and offshore geophysics and geotechnical assessments. 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.

In addition, the City emailed copies of the Plan to Heal the Bay and Santa Monica Baykeeper and met with the City stakeholders group to provide a verbal report on the Plan. The Plan was posted on the City's website for all to review and download. Although not a requirement in the MOU, the RWQCB placed the Plan out for public review. The comment period was extended in order to accommodate the environmental companies and an extension of time was granted for review of the document. To date, the City has received four comment letters (Attachment 1), all from individuals in the Malibu community, which were sent to the RWQCB and the City. To our knowledge, no comments were received by the RWQCB from any environmental organization nor has the City received any comments on the submittals by the RWQCB staff.



To date, the City has spent 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, in order to remain in compliance with the terms of the MOU, it is necessary to complete the Phase 3 portion the investigation work, which 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. Unfortunately, this remaining work requires an additional \$4 million of funding.

On June 7, 2012, I appeared before the Regional Board at its hearing in Simi Valley. At that time, I reported that the City has begun the process to form a Community Facilities District (CFD) that would be comprised of a portion of the property owners within the Prohibition boundaries. The CFD would be formed in anticipation that the property owners would pay for the remaining costs of the design, EIR, testing, etc., and they would also reimburse the City some of the general funds that were used to initiate the design. The Regional Board members seemed pleased that the City would include the property owners in the design process and also have them financially commit to the project. It was explained that the City did not have the financial resources to continue to fund the design and there could be a stoppage of work until such time the CFD formation was completed.

On June 25, 2012, the City Council initiated the formation of the CFD (Attachment 2). On August 13, 2012, the Council adopted Resolutions establishing the CFD (Attachment 3). It is anticipated that the final vote of the CFD will occur on November 20, 2012 and that bonds would be issued in late January 2013. This would allow the City to receive the necessary funds to complete the design, EIR, etc.

In July 2012, the City exhausted its previously allocated funds for Civic Center Wastewater Treatment Plant design and was forced to temporarily postpone the work of the design consultant until such time that the CFD was formed. It should be noted that, due to the time required to approve the CFD, some of the deadlines established in the MOU may not be met. However, the City continues to regularly communicate with RWQCB staff to apprise them on the status of the project.

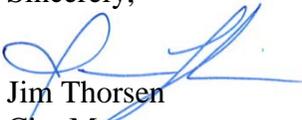
The City is still concerned about the Petition that was filed by Heal the Bay and Santa Monica Baykeeper and is currently being held in abeyance by the State Water Resources Control Board. It is our sincere hope that the Petition will be resolved by the State so that there will be no delays to the formation of the CFD.

Finally, the City continues to have monthly meetings with stakeholders about the CCWTF (August and September 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.

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 allowed for virtually no delays at all. Therefore, with the delay caused by funding and formation of the CFD, the City will diligently pursue trying to comply with the deadlines. However, the MOU allows very little room for time to be recouped and the City will need cooperation from the RWQCB if additional time is needed to complete the project.

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](mailto:jthorsen@malibucity.org).

Sincerely,



Jim Thorsen  
City Manager

Attachments:

1. Comment Letters: Hans Laetz, Joan Lavine, Sally Benjamin and Remy O'Neill
2. June 25, 2012 City Council Agenda Report, Item No. 6.A.
3. August 13, 2012 City Council Agenda Report, Item No. 4.A.

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

**hans laetz, j.d.**  
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Dr. Eric Wu  
Los Angeles Region, RWQCB  
320 W. Fourth St., Suite 200  
Los Angeles CA 90013  
Via email to [ewu@waterboards.ca.gov](mailto:ewu@waterboards.ca.gov) , [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov)

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July 19, 2012

**City Of Malibu – Groundwater Sewage Injection Proposal  
Malibu Civic Center Area  
Comments of Hans Laetz, Malibu Resident,  
On Sufficiency Of The City’s “Conceptual Groundwater Injection Plan”**

Dear gentlewomen and gentlemen,

This letter is from a Malibu resident and represents his own views, and I wish to thank the Regional Water Quality Control Board for this opportunity to express my opinions. While I support the Board’s goals of treating and removing effluent from the Malibu Canyon groundwater basin, I am extremely concerned with the Board’s decision to require the City of Malibu to inject highly treated effluent into the top of an active earthquake fault, with unexamined consequences.

I urge the Board to examine the wisdom of its new policy, and sustainability questions invoked by the proposed waste of up to 347,000 gallons per day of usable water in an area supplied by Sacramento Delta water imported at great expense and with a great greenhouse gas footprint.

At 8.35 pounds per gallon, the City proposes to inject up to 347,000 gallons (2,897,450 pounds or 1,448.73 tons) of water per day into the fault. At 365.25 days per year, and a 50-year life span, that is a maximum load of 26,457,340 tons of purified water to be injected into the aquifer bisected by the fault. As demonstrated here, the RWQCB, the City and its contractor have leaped headlong into injecting tons of water, at a moderate but not-insignificant pressure gradient, into the very top of this very-active earthquake fault. No study of any sort – not even a literature review -- has been done to gauge the effects of this. Nor has there been any study of alternate engineering possibilities to capture this valuable resource for beneficial use.

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Comments of Hans Laetz  
RWQCB Request for Comments on Malibu Groundwater Injection Proposal

**ATTACHMENT 1**

There is no question that building a sewer, or some other sort of treatment and reclaimed water collection system, is an obvious need at the Malibu Creek watershed. This letter expresses grave concerns about both the process, and the safety, of the current proposed method delineated in the Memorandum of Understanding between the City and the Board.

**1. The groundwater basin proposed for injection of up to 347,000 gallons per day is bisected by an active, dangerous fault that is given a 35 percent chance of creating a 6.5 magnitude quake within 30 years by the USGS.**

The Malibu Coastal Fault is a 37 kilometer-long compression fault with a creep of .3 millimeters per year in an almost 90 degree, east-west orientation.<sup>1</sup> It is described by the U.S. Geological Survey as a “high-angle sinistral-oblique reverse fault that has accommodated 80° of clockwise rotation of the western Transverse Ranges and perhaps as much as 60 km of sinistral slip (with other elements of the east-west frontal fault system) since early Miocene (citations omitted); more recently compression has been dominant and strike-slip has diminished to a very low rate in the Holocene.”<sup>2</sup> This fault exists both on and off-shore and may serve as a west-east link between the Anacapa-Dune Fault complex in the ocean south of Port Hueneme to the blind thrust and strike-slip faults under Beverly Hills and Los Angeles, known as the Santa Monica and Whittier Hills Fault complexes.

The Malibu Coast and Anacapa Dune Fault systems have periodically been studied academically, and reported on by local newspapers as to be capable of creating earthquakes of magnitude 6.7 or even 7.5, according to a USGS study of the combined Malibu Coastal and Anacapa Dune faults and their splays.<sup>3 4</sup>

This fault apparently crosses the Malibu Creek valley in an east-west direction just north of Pacific Coast Highway. It is identified in Cross Section D-D<sub>1</sub> at a location just north of Civic Center Way, north of the Ralphs market. It can reasonably be interpolated as to sit within a few feet of test well MCWP-MW01, a proposed injection site.

The Malibu Coastal Fault has also been examined in numerous State of California reports, including 1994’s “Areas Damaged by California Earthquakes, 1900-1949,” 1995’s “Special

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<sup>1</sup> California Department of Conservation, “2002 Fault Parameters,” Appendix B, page 3. Sacramento, 2002. [http://www.conservation.ca.gov/cgs/rghm/psha/fault\\_parameters/pdf/Documents/B\\_ft.pdf](http://www.conservation.ca.gov/cgs/rghm/psha/fault_parameters/pdf/Documents/B_ft.pdf)

<sup>2</sup> J. Jerome Treiman, compiler, 2000, “Fault Number 99, Malibu Coast Fault,” in Quaternary fault and fold database of the United States: U.S. Geological Survey website, [http://geohazards.usgs.gov/cfusion/qfault/qf\\_web\\_disp.cfm?disp\\_cd=C&qfault\\_or=1862&ims\\_cf\\_cd=cf](http://geohazards.usgs.gov/cfusion/qfault/qf_web_disp.cfm?disp_cd=C&qfault_or=1862&ims_cf_cd=cf) .

<sup>3</sup> Jeffrey L. Rabin, “Geologists Warn of Big Quake on Coast -- Danger: The Malibu fault zone was previously thought to be inactive. A temblor could trigger serious landslides, experts say.” *Los Angeles Times*, May 10, 1990. [http://articles.latimes.com/1990-05-10/local/me-1544\\_1\\_malibu-coast-fault](http://articles.latimes.com/1990-05-10/local/me-1544_1_malibu-coast-fault) .

<sup>4</sup> Hans Laetz, “Survey cites chance of 6.5 Malibu quake -- Critics say the possibility of a 6.5 magnitude Malibu earthquake and another 7.5 quake offshore should negate any proposals of offshore liquefied natural gas terminals.” *Malibu Surfside News*, May 18, 2005. [http://www.coastaladvocates.com/pdf/051805\\_article\\_Survey\\_cites\\_chance\\_of\\_6.5\\_Malibu\\_quake.pdf](http://www.coastaladvocates.com/pdf/051805_article_Survey_cites_chance_of_6.5_Malibu_quake.pdf) .

Studies Zones, State of California, Malibu Beach Quadrangle,” 1994’s “Fault-Rupture Hazard Zones in California, Special Publication 42,” 1995’s “The Northridge, California, Earthquake of 17 January 1994, Special Publication 116,” 1997’s “Probabilistic Seismic Hazard Assessment for the State of California, DMG Open-file Report 96-08,” 2001’s “Guidelines for Evaluating and Mitigating Seismic Hazards in California,” 2001’s “Seismic Hazard Zone Map, Malibu Beach 7.5-minute Quadrangle, Los Angeles County, California,” 2007’s “Earthquake Fault Zone Map, Malibu Beach Quadrangle,” and 2008’s “Guidelines for Evaluating and Mitigating Seismic Hazards in California.”<sup>5</sup>

**None of these studies are mentioned in any Water Board or City of Malibu geotechnical study of the MOU’s proposed injection scheme.** The City’s Conceptual Plan has not addressed any of these local geological features.

**2. The City has not examined the effect of injecting 347,000 gallons per day of water, with a cumulative weight of 226.5 million tons, into the top of an active compression/strike-slip fault.**

The City of Malibu has not examined if there is any aquitard preventing some or all of this massive flood of water from entering the fault itself. The draw-down tests performed by the City contractor do not examine how or where the groundwater shifts – it assumes it is all transported in the alluvium horizontally.

USGS scientists believe injections have triggered moderate earthquakes recently in Ohio, Oklahoma and other areas not commonly associated with faulting or earthquakes.<sup>6</sup> Although the proposed City of Malibu injection wells are not nearly as deep as injection wells known to have caused earthquakes those other states, it must be noted that those other earthquake faults lay deep below alluvium, whereas the Malibu Coastal Fault has surface traces. It is not necessary to use high pressure or deep wells to reach the top of the Malibu Coastal Fault, such as in the Midwest.

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<sup>5</sup> California Department of Conservation, Division of Mines and Geology, 1996, “Areas Damaged by California Earthquakes, 1900-1949;” California Department of Conservation Division of Mines and Geology, DMG Open File Report 82-17; California Department of Conservation, Division of Mines and Geology, 1996, “Special Studies Zones, State of California, Malibu Beach Quadrangle, official map, effective June 1, 1995;” California Department of Conservation, Division of Mines and Geology, 1994, “Fault-Rupture Hazard Zones in California, Special Publication 42;” California Department of Conservation, Division of Mines and Geology, 1994, “Malibu Coast Fault, Los Angeles County, California, Fault Evaluation Report FER-229,” October 3, 1994; California Department of Conservation, Division of Mines and Geology, 1995, “The Northridge, California, Earthquake of 17 January 1994, Special Publication 116;” California Department of Conservation, Division of Mines and Geology, 1996, “Probabilistic Seismic Hazard Assessment for the State of California, DMG Open-file Report 96-08;” California Department of Conservation, Division of Mines and Geology, 1997, “Guidelines for Evaluating and Mitigating Seismic Hazards in California;” California Department of Conservation, Division of Mines and Geology, 2001, “Seismic Hazard Zone Map, Malibu Beach 7.5-minute Quadrangle, Los Angeles County, California;” California Department of Conservation, California Geological Survey, 2007, “Earthquake Fault Zone Map, Malibu Beach Quadrangle, August 16, 2007;” and California Department of Conservation, California Geological Survey, 2008, “Guidelines for Evaluating and Mitigating Seismic Hazards in California.”

<sup>6</sup> Ellsworth, J.J., and others, U.S. Geological Survey, 2012, “Is the Recent Increase in Felt Earthquakes in the Central US Natural or Manmade?” abstract before the Seismological Society of America annual convention, 2012.

**3. The City has not examined whether localized liquefaction dangers will be exacerbated by the injection of 226.5 million tons of water into the aquifer.**

The State of California has determined that large areas of the Civic Center area susceptible to liquefaction in earthquakes of the magnitude that are predicted to strike the Malibu region. In a 2008 study, the State found that liquefaction dangers were most pronounced in “the prominent coastal embayment filled with floodplain deposits, upon which is situated the City of Malibu Civic Center. This floodplain appears to have received most of its detritus from flooding along Malibu Creek. The canyon of Malibu Creek is, for the most part, occupied by mappable active channel and floodplain deposits, or undifferentiated alluvium.”<sup>7</sup>

Neither the Water Board, the City, nor the consultants have considered whatsoever what the effect of introducing up to 347,000 gallons per day of water into this geologically-active structure. There is no analysis whatsoever on whether existing downward water migration from sources like the Legacy Park sump will be hindered by upward water movement (“mounding”) flowing from the injection of massive amounts of water in the basin.

There is insufficient data as to whether groundwater mounding could be contained by purported “aquitards” that exist at the proposed injection well. Nor is there any evidence that a continual shield exists to prevent the water from being forced by gravity and injection pressure, plus the weight of additional mounded water, into the underlying fault.

There is no evidence that these aquitards exist in a continuous fashion in all directions from the test wells, no evidence that they would prevent vertical water travel. In fact, the presence of Holocene movement in the Malibu Coastal Fault would suggest that rifts have been torn in the aquitards. There is no data to suggest that these aquitards are not ripped apart by the Malibu Coastal Fault, other undiscovered faults, or other subsurface structures in the alluvium and chaotic geostructures of the basin. There is no evidence from the City study that these aquitards, frankly, hold water.

**4. No analysis of exact fault location has been undertaken, or what the effect of the fault will be.**

The City’s Conceptual Groundwater Injection Plan mentions the Malibu Coastal Fault in precisely one place: a map of “Cross-Section D-D<sub>1</sub>” on page 18. There, the Malibu Coastal Fault is spotted at the north edge of Civic Center Way as it climbs the hill towards Winter Canyon, about 700 feet west of well MCWP-MW01, as designated on page 10 of the Study.

Nowhere in the Study’s maps or cross-sections is the fault delineated or even mentioned. It is very possible that MCWP-MW01 is actually directly over the fault. It is amazing that any geotechnical study of a groundwater basin would ignore such a basic landform, and it makes it impossible to take seriously any conclusion or argument made by such a deficient study.

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<sup>7</sup> California Department of Conservation, California Geological Survey, 2008, [http://www.conservation.ca.gov/cgs/geologic\\_hazards/Tsunami/Inundation\\_Maps/LosAngeles/Documents/Tsunami\\_Inundation\\_Malibu\\_Quad\\_LosAngeles.pdf](http://www.conservation.ca.gov/cgs/geologic_hazards/Tsunami/Inundation_Maps/LosAngeles/Documents/Tsunami_Inundation_Malibu_Quad_LosAngeles.pdf)

**5. No study of alternative disposal areas or potential water reuse or storage has been undertaken.**

The City has been instructed by the MOU to consider only one disposal method: injection at the Civic Center site. No other alternatives are on the table: transporting the highly-treated water to other local groundwater basins, disposing of it at sea as is done in every other city, or local storage of it for use on parks, greenbelts, fire breaks or landscaping are not examined.

It is not clear who at either the City or the Board conceived of this project as the sole disposal alternative. No examination of these issues was conducted prior to the solemnizing of the MOU. The city is now \$3 million invested into this path, both the Water Board and the City of Malibu are apparently content to postpone the safety issues raised by the undersigned until an Environmental Impact Report. Given the obvious (yet unexamined) dangers and expense of the injection scheme, and the compelling need for quick action to treat and dispose of effluent at the Malibu Civic Center, it is incredible that other alternatives are not being studied at this time.

**6. No independent study on the wisdom of the sole chosen alternative has been undertaken.**

It is unclear where the genesis of the injection scheme is. It appears that the contractor, RMC, may have been involved in the early stages of the formulation of this scheme. RMC is now assuring city officials that the preferred injection scheme is perfectly safe, and RMC scientists are conducting the studies. There is an inherent conflict of interest in this process. RMC now has a vested interest in finding an outcome that matches its original recommendations and preliminary findings, which the City of Malibu has relied on to the tune of \$3 million or so.

This is not to infer that RMC scientists have violated any fiduciary duty or been dishonest or unprofessional. But the lack of independent review and oversight here is alarming.

**7. Conclusion: this is a rushed, foolish path.**

The Water Board's action in forcing construction of a permanent solution to replace the septic tank and advanced OWTS patchwork at the Malibu Civic Center is overdue and worthy. But the City and the Water Board are rushing headlong into a potentially-dangerous and wasteful water disposal scheme.

The very concept of disposing of 347,000 gallons per day of highly-treated effluent into the ocean, via this injection scheme, is offensive in this era of water shortages and concern about the huge amounts of greenhouse gases generated by importing water to Southern California from sensitive distant wetlands.

Alternative disposal methods should be considered immediately. Such alternates include:  
-- using solar energy to pump the highly-treated effluent to adjacent, uninhabited watersheds (such as Latigo, Corral or Solstice canyons) for either groundwater recharge

- or for creation of running creeks that could sustain endangered fish, such as steelhead salmon.
- using the reclaimed water for “purple pipe” uses all along the Malibu coast, to replace State Water Project water that is imported at great expense and great energy consumption from Stockton.
  - building a reservoir above Malibu to store surplus water for firefighting needs or other local emergencies.
  - recharge of the highly-treated water into aquifers for recycling into domestic use, to replace State Water Project water.
  - piping highly-treated effluent (along with Tapia reclaimed water) to the San Fernando Valley for groundwater recharge there.

The MOU should be held in abeyance while the Water Board and City work together to rectify these egregious mistakes, faulty assumptions, and rushes to judgment.

Thank you for your consideration,

Hans Laetz

*From the Desk of Joan C. Lavine*

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August 9, 2012

TO: CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ITS BOARD CHAIRPERSON, AND ITS BOARD MEMBERS, AND STAFF

TO: DR. ERIC WU, CHIEF OF GROUNDWATER PERMITTING UNIT, CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

320 West Fourth Street, Suite 200

Los Angeles, Ca. 90013

Electronic filing and submission to: [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov)

And by filing hard copy duplicate original at the above address

Attention: Dr. Eric Wu, Chief of Groundwater Permitting Unit, California Regional Water Quality Control Board, Los Angeles Region

Re: COVER LETTER FOR JOAN LAVINE'S COMMENT IN RESPONSE TO NOTICE OF AVAILABILITY OF DOCUMENT FOR PUBLIC REVIEW – CONCEPTUAL GROUNDWATER INJECTION PLAN BY CITY OF MALIBU

Dear Dr. Wu:

This is a cover letter for my electronic transmission of my Comments regarding the above referenced Malibu Civic Center groundwater injection plan proposal, which has also been hand-delivered to your offices and filed there this morning. The attached comment is identical to the original above referenced hard-copy Comment, except that I have omitted my hand-written signature.

I request that my original signature NOT BE POSTED ON THE INTERNET for security reasons.

Thank you.

Very truly yours,  
Joan Lavine  
California State Bar No. 048169

*From the Desk of Joan C. Lavine*

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August 9, 2012

TO: CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ITS BOARD CHAIRPERSON, AND ITS BOARD MEMBERS

TO: MR. SAM UNGER, DIRECTOR OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION (REGION 4)

TO: DR. ERIC WU, CHIEF OF GROUNDWATER PERMITTING UNIT, CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

320 West Fourth Street, Suite 200

Los Angeles, Ca. 90013

Electronic filing and submission to: [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov)

And by filing hard copy duplicate original at the above address

Re: NOTICE OF AVAILABILITY OF DOCUMENT FOR PUBLIC REVIEW – CONCEPTUAL GROUNDWATER INJECTION PLAN BY CITY OF MALIBU

Dear Sirs and Madams:

I respectfully submit my comments on the Conceptual Groundwater Injection Plan of the City Of Malibu, submitted by the City of Malibu on June 29, 2012, to your agency, the California Regional Water Quality Control Board, Los Angeles Region, and pursuant your notice of a public comment period, dated July 9, 2012.

I own residential property in the Malibu Civic Center on Malibu Road on the beach side. The Fig. 21 on page 25 shows proposed injection under my property.

As I am an attorney, I consulted with scientists who are eminently qualified in hydrology, geology and geotechnical engineering, and who are board-certified, licensed and registered in their respective scientific areas of expertise by California licensing boards. I report to you their scientific evaluations and conclusions so that you may endeavor to obtain enough information to determine whether a permit should be issued for a groundwater injection plan.

First, I asked basic questions of my expert consults: Will the subject City of Malibu groundwater injection plan work? Is it feasible? The unanimous professional opinion that has been expressed to me is: NO.

In order to explain why it is not feasible and appears unworkable, a detailed report of the consults' discussions is needed.

The contents of the Conceptual Groundwater Injection Plan of the City Of Malibu, submitted by the City of Malibu on June 29, 2012, are significantly inadequate and incomplete. Without the relevant scientific calculations and studies, the Groundwater Plan cannot be reviewed for viability and safety or whether it is feasible and practical.

1. The Conceptual Groundwater Injection Plan of the City Of Malibu, submitted by the City of Malibu on June 29, 2012, lacks a discussion of the faults and fault zones in the Malibu Civic Center and at the injection sites, their nature(s) and/or their impact(s) on the modeling. My consults state that a thorough fault zone issue discussion should be done in depth, because their presence and impacts may cause the proposal to be unworkable.

Specifically, the presence of faults could be a barrier to the flow of injected groundwater, but whether this is so has not been discussed or presented in the studies, cross-sections and modeling.

The expected rise of the water table level so that it is much closer the surface can decrease the seismic stability factors dramatically. This needs to be evaluated carefully.

2. The faults are not included in or diagramed in some of the cross-sections. At pages 12-13, where the cross-sections are printed, faults are not shown on Cross-Sections A-A or B-B. A fault is shown on Cross-Section D-D. These diagrams are therefore significantly deficient.

3. The rise in water table levels is very likely to significantly increase earthquake hazards and the resulting safety issues. In particular, liquefaction due to shallow groundwater levels is of great concern. Liquefaction and possible decrease in structural stability will likely impact building codes and future development, as well as already developed properties.

The rise of the water table level so that it is much closer the surface can decrease the seismic stability factors dramatically. This needs to be evaluated carefully.

4. It is unclear whether the proposed hotel project apparently in the far left (northeast corner of the area) outlined in a lopsided triangle, at page 28, Figure 23, is included in this plan, and whether its effluent is included in the projected daily volumes of effluent that will be disposed of in this proposed Conceptual Groundwater Injection Plan of the City Of Malibu, submitted by the City of Malibu on June 29, 2012.

5. At a City of Malibu Civic Center stakeholders meeting on June 28, 2012, the speaker and city officials were asked what the added volume sizes and the estimated or modeling number of daily effluent discharge is likely projected to be from waste discharges of the six commercial and housing development projects that are in the pipelines and waiting for a municipal sewer system. They answered that they did not know. This Regional Water Quality Control Board needs this information, modeling and calculations in order to make a decision on whether to issue a permit, and on what conditions.

6. If Phase One facilities are up and running, and the levels of effluent injection have risen to their maximum acceptance levels, how will the City of Malibu deal with effluent from properties in Phases 2 and 3?

7. The report is inadequate in dealing with whether the subsurface seven layers are permeable. It lacks discussion of the relationship of the geology encountered in the borings within the seven layers used or identified in the models.

8. In light of the facts that the Malibu Civic Center basin is already mostly saturated, where is the injected water likely to go?

Although the Malibu area does not rely on naturally present groundwater to supply potable and safe water supplies, the SWRCB Resolution No. 88-63 does view it as such. Unless the perceived potential of drinking water is put aside, it appears to me that groundwater injection would probably de-grade and make this this potential source of drinking water unpotable.

To refresh your memories, the City of Malibu is supplied with water piped in by the Los Angeles County Waterworks, District 29. I believe the water is purchased from the Southern California Metropolitan Water District of Southern

California. It is a member of the West Basin Water District, which delivers recycled, reclaimed water to its customers.

The proposal has estimated waste volumes to be injected and modeling for rising groundwater levels to the maximum groundwater levels are too close, and therefore do not appear to show an acceptable, safe margin of error.

I report a consultant's observation that a likely outcome of using groundwater injection is to raise the water table level to zones already saturated with effluent from residential and other OWTS systems.

A forensic water analysis of the Malibu Civic Center has been recommended by one of my consultants before going ahead with this proposal.

From a legal point of view, a major issue exists of whether groundwater injection into the diagrammed areas along Malibu Road will interfere with and trespass on the underground water, mineral, oil and gas rights of the owner(s). My deed reserves the fee simple ownership rights to underground water, mineral, oil and gas rights to the Marblehead Land Company. Interference with those rights is subject to "Takings" and compensation by the governmental entities engaged in that interference under the California Constitution, Article I, Section 19, and the "Takings" and "Due Process" Clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments, U.S. Constitution. Pennsylvania Coal Co. v. Mahan, 260 U.S. 393, 43 S.Ct. 158 (1922).

Further, I am opposed to and object to the implementation of a sewer system. I view it as unnecessary, as exorbitantly costly, and as causing confiscatory taxation that the majority of Malibu residential property owners cannot afford. It will cause enormous disruption and interference with the residents' use of their properties.

I am opposed to sewerage and to this groundwater injection plan, because the SWRCB sewerage mandate is unfunded by the State of California, and the tax burden of implementing it is in the process of being attempted to be placed unfairly on the backs of local private property owners.

I am opposed to sewerage in the Malibu Civic Center, because it lays the infrastructure for hyper-development contrary to the choice of most Malibu area voters, residents and residential property owners.

We in Malibu specifically established the City of Malibu to stop hyper-development via the laying of sewers. A City of Malibu Local Coastal Plan and a

To: California Regional Water Quality                      August 9, 2012                      Page 5  
Control Board, Los Angeles Region,  
Attention: Dr. Eric Wu, Chief of Groundwater Permitting Unit

City of Malibu Land Use Plan call for restricted and limited growth, particularly in the Malibu Civic Center. They call for the maintenance of open-space, rural, residential and recreational levels of land use as much as possible. But, now six big projects, five of which are commercial, await the installation of these sewer facilities contrary to and in violation of those plans.

Thank you for giving me the opportunity to communicate my positions to you.

Very truly yours,

Joan Lavine  
California State Bar No. 048169  
Phone: 213-627-3241  
E-mails: [ADove@aol.com](mailto:ADove@aol.com), [JCLavine@aol.com](mailto:JCLavine@aol.com), [FoodieJoan@gmail.com](mailto:FoodieJoan@gmail.com)

Encls:

1. Geologist and hydrologist Don Michael letter to the editor, Malibu Surfside News, June 15, 2012
2. Los Angeles Metropolitan/West Basin Water District Map of piped water delivery to the Malibu area

# INJECTION BRAINSTORMING

Editor:

When I was in school, we frequently engaged in informal speculation about all sorts of technical stuff. It was called then—and still is, I imagine—"brainstorming" by verbal analogy to the barnstorming tours of early acting companies and 1920-30s Jenny flights. Now, as reported in the Malibu Surfside News (07/05/12, p. 2, et seq.), plans are afoot to inject as much as 500,000 gallons per day of treated waste water into a section of the Malibu Creek floodplain deposits called the "Civic Center gravels." After a little brainstorming, it seems that this is not such a good idea.

A useful way to brainstorm is by abstract modeling—simply an intellectual exercise. For example, the entire mass of the floodplain deposits, which are bounded at depth by relatively impermeable bedrock, can be considered a kind of model bottle open to the ocean—the holy grail of the injectioneers—their thought presumably being that the floodplain deposits, and especially the gravels, are a sort of pipe through which the wastewater could be pumped—in fact, a natural ocean outfall. And fie on you, Hyperion.

But there's a problem. It's called the "Ghyben-Herzberg principle," and it occurs along ocean shores where permeable masses, such as floodplain deposits containing low-salinity, or "fresh" ground water, are intruded by denser high-salinity sea water. In granular materials, ground waters of differing densities remain, except for minor diffusion, separated along a boundary commonly referred to as the "interface"—a condition Messrs. Ghyben and Herzberg independently discovered about 125 years ago. From the shore, this interface slopes down landward. Under such conditions, the only way fresh ground water can reach the ocean is by moving upward along the interface to seep into the ocean through a narrow zone in the ocean bottom near the shoreline. Model-wise, that zone acts as a leaky cork in our model bottle. However rapidly the fresh water moves along the interface, the rate of its disposal in the ocean is not nearly so great as if the flow were directly to the ocean through the Civic Center gravels. Water injected into those gravels could move through them laterally only to that pesky Ghyben-Herzberg interface—consider it the model bottleneck—which then directs the flow to the leaky cork at the shoreline. Unfortunately, there is no way to make this model leakier than it is, because the thickness of the cork is strictly a function of how high the fresh water is above sea level near the shore, an elevation that is essentially constant.

The Civic Center floodplain deposits are at all times saturated to within about 5–10 feet of the surface. Of course, water is incompressible, so carrying our leaky-bottle model one step further, what must happen during injection is that the injected water would displace the resident ground water. As a result, the surface of the saturated section—what commonly is referred to as the "ground-water table"—

## MALIBU SURFSIDE NEWS

would rise nearer the surface because it can't go anywhere else. Seismic shaking-wise, generally, and liquefaction-wise, especially, this is not good.

Of course, the model cries for quantification, so let's see. The proposed daily injected 500,000 gallons has a volume of 66,845 cubic feet. Assuming the floodplain deposits have an average model porosity of 15 percent, this means that each day 445,633 cubic feet of floodplain deposits in the immediate vicinity of the injection well would become saturated. Presumably, this volume would form a sort of mound around the injection well, but model-wise, let's assume that it spreads out laterally beneath the floodplain surface so that the water table is raised uniformly everywhere. Since 445,633 cubic feet is equivalent to 10.2 acre-feet, distributing it over the entire 180-acre floodplain area would result in a ground-water table rise rate everywhere of 0.057 feet per day. Allowing for a model leakage of 10 percent to the creek and ocean, which is reasonable brainstorming-wise, the ground-water table rate of rise would be 0.051 feet per day. Therefore, beginning with a floodplain water table of from 5 to 10 feet below the surface, ground water would reach the surface in some places in 98 days and in others in 196 days. Model-wise, call it three to six months.

Everything considered, I have three recommendations: (1) be sure earthquake insurance premiums for properties in the floodplain are paid up; (2) ask the injectioneers to brainstorm a little before spending any more tax dollars on the idea of injection disposal; (3) if (2) is rejected, get some investors together and try to corner the galoshes market.

Don Michael

Attachment (1)

p. 6

# LETTERS to the EDITOR

(Continued from page 4)

never experienced anything like this and also important as a means of holding the school district accountable. But the permanent poles disallow temporary usage permits in case we decide based on experience that 61 nights of these particular lights needs to be scaled back or in any way altered, and instead they necessitate giving the school vested rights. This is such a huge thing to do to western Malibu without any test experience and without any community discussion. Jeff Jennings argued that we shouldn't want Coastal controlling local decisions, but the same argument says we shouldn't give the school permanent irrevocable controls.

One council member said correspondence to the city was 3-to-1 in favor. But about 40 people wrote in favor and about 40 in opposition to the project at hand. There was also one letter saying 600 people wanted this project, but without providing evidence, such as names plus signatures to what they wanted. I called one donor named on the school's website and was told they were pressured by the school to donate and not proud to see their name there. I called another who said that sport lights were important but was happy with the temporary poles we had in the past and had no knowledge of the permanent poles, and their financial contribution didn't represent a vote favoring them.

Lynn Norton

## INJECTION BRAINSTORMING

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But there's a problem. It's called the "Ghyben-Herzberg principle," and it occurs along ocean shores where permeable masses, such as floodplain deposits containing low-salinity, or "fresh" ground water, are intruded by denser high-salinity sea water. In granular materials, ground waters of differing densities remain, except for minor diffusion, separated along a boundary commonly referred to as the "interface"—a condition Messrs. Ghyben and Herzberg independently discovered about 125 years ago. From the shore, this interface slopes down landward. Under such conditions, the only way fresh ground water can reach the ocean is by moving upward along the interface to seep into the ocean through a narrow zone in the ocean bottom near the shoreline. Model-wise, that zone acts as a leaky cork in our model bottle. However rapidly the fresh water moves along the interface, the rate of its disposal in the ocean is not nearly so great as if the flow were directly to the ocean through the Civic Center gravels. Water injected into those gravels could move through them laterally only to that pesky Ghyben-Herzberg interface—consider it the model bottleneck—which then directs the flow to the leaky cork at the shoreline. Unfortunately, there is no way to make this model leakier than it is, because the thickness of the cork is strictly a function of how high the fresh water is above sea level near the shore, an elevation that is essentially constant.

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Everything considered, I have three recommendations: (1) be sure earthquake insurance premiums for properties in the floodplain are paid up; (2) ask the injectioneers to brainstorm a little before spending any more tax dollars on the idea of injection disposal; (3) if (2) is rejected, get some investors together and try to corner the galoshes market.

Don Michael

# Alcohol CUP Appeal

(Continued from page 3) self-imposed conditions were then reiterated by the appellant in his presentation to the planning commission, however the commission determined that these measures were simply not enough to ensure that the sale of beer and wine would be compatible with the existing surrounding uses in the neighborhood."

The appellant also insists the planning commission's finding that the proposed use would be detrimental to the public interest, health, safety, convenience or welfare "was not supported by substantial evidence in the record."

The staff response is that the planning commission heard the matter twice and the commission "considered all evidence presented and concluded that the request would be detrimental to the public interest, health, safety, convenience and welfare."

"The planning commission determined, as it had previously in 2007 under the original CUP application, that an undue concentration existed and approval of the CUP would be detrimental to the public interest, health, safety, convenience and welfare of the City of Malibu."

The appellant also contends the planning commission's finding under Section 4 of the resolution (inconsistency with General Plan Land Use Plan Policy 4.1.5) and its basis for denial on such grounds is

(Continued on page 15)

## A Matter of PUBLIC RECORD

### PUBLIC NOTICE - FILE NO. PS014405 ORDER TO SHOW CAUSE FOR CHANGE OF NAME

TO ALL INTERESTED PERSONS:  
Michelle Goodwine filed a petition with this court for a decree changing names as follows:

Present name  
Grant William Goodwine  
Proposed name  
Grant William Joyce

2. THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed, the court may grant the petition without a hearing.

### NOTICE OF HEARING

Date: 8-16-12. Time: 8:30 a. m. Dept. F47  
Chatsworth Courthouse  
9425 Penfield Ave.  
Chatsworth, CA 91311

A copy of this Order to Show Cause shall be published at least once each week for four consecutive successive weeks prior to the date set for hearing on the petition in the following newspaper of general circulation, printed in this county.

JUDGE OF THE SUPERIOR COURT:  
Charlaene F. Olmedo  
May 7, 2012

Publish in The Malibu Surfside News, July 5, 12, 19, 26, 2012.

### PUBLIC NOTICE - FILE NO. 12134152 FICTITIOUS BUSINESS NAME STATEMENT

The following person is doing business as:  
Malibu Meditation Center  
5763 Busch Drive  
Malibu, CA 90265  
Jennifer W. Pietro  
5763 Busch Drive  
Malibu, CA 90265  
This business is conducted by an individual.

The Registrant commenced to transact business under the fictitious business name or names listed above on: June 24, 2012.

This statement was filed with the County Clerk of Los Angeles County on July 3, 2012.

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)  
s/Jennifer W. Pietro

NOTICE - In accordance with Subdivision (a) of Section 17920, a fictitious name statement generally expires at the end of five years from the date on which it was filed in the office of the county clerk, except, as provided in Subdivision (b) of Section 17920, where it expires 40 days after any change in the facts set forth in the statement pursuant to Section 17913 other than a change in the residence address of a registered owner. A new fictitious business name statement must be filed before the expiration.  
Publish date: July 19, 26 and August 2, 9, 2012.

### PUBLIC NOTICE - FILE NO. 12140882 FICTITIOUS BUSINESS NAME STATEMENT

The following person is doing business as:  
Bank of Books  
23169 Heatherdell # 109  
Malibu, CA 90265  
Clarence Rudd III  
2047 Altmanor  
Oxnard, CA 93096  
This business is conducted by an individual.

The Registrant commenced to transact business under the fictitious business name or names listed above on: N/A.

This statement was filed with the County Clerk of Los Angeles County on July 12, 2012.

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)  
s/Clarence Rudd III

NOTICE - In accordance with Subdivision (a) of Section 17920, a fictitious name statement generally expires at the end of five years from the date on which it was filed in the office of the county clerk, except, as provided in Subdivision (b) of Section 17920, where it expires 40 days after any change in the facts set forth in the statement pursuant to Section 17913 other than a change in the residence address of a registered owner. A new fictitious business name statement must be filed before the expiration.  
Publish date: July 19, 26 and August 2, 9, 2012.



### CITY OF MALIBU PUBLIC NOTICE INVITING APPLICATIONS FOR COUNCIL APPOINTMENT TO THE CULTURAL ARTS COMMISSION

PLEASE TAKE NOTICE THAT the City of Malibu is accepting applications for Council appointment to the following commissions and committees:

#### CULTURAL ARTS COMMISSION

The commission makes recommendations to the City Council with respect to matters concerning the cultural arts policy, facility rental fee policies for local cultural arts organizations, cultural arts related general fund grant applications, use of City parks for cultural arts related events, purchase of art by the City, cultural arts programs sponsored by the City, outreach to Malibu artists and cultural arts organizations, use of cultural spaces at Malibu City Hall, and such other matters as directed by the City Council.

The five member cultural arts commission shall consist of residents of the City. Members shall not be officers or employees of the City. The City Council may appoint one ex-officio member who lives outside the City limits but within the 90265 zip code area, who shall not have a vote on the commission and is appointed at large by the City Council.

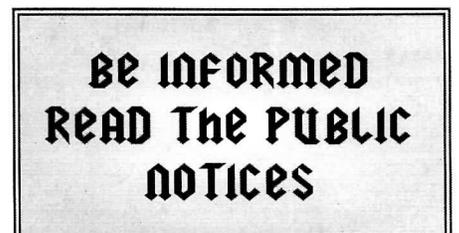
The deadline to submit a City Commission / Committee Member Application Form is Friday, August 17, 2012, by 4:30 p.m.

Application forms are on the City's website at [www.malibucity.org](http://www.malibucity.org) (on the City Clerk page) or by emailing Lisa Pope, City Clerk, at [lpope@malibucity.org](mailto:lpope@malibucity.org). Following an interview process, said applications will be presented to the City Council for consideration at a Regular City Council meeting.

Applications must be received by Lisa Pope, City Clerk, City of Malibu, 23825 Stuart Ranch Road, Malibu, CA 90265 or [lpope@malibucity.org](mailto:lpope@malibucity.org) by 4:30 p.m. on August 17, 2012. No late applications or postmarks will be accepted.

Publish: July 19, 2012

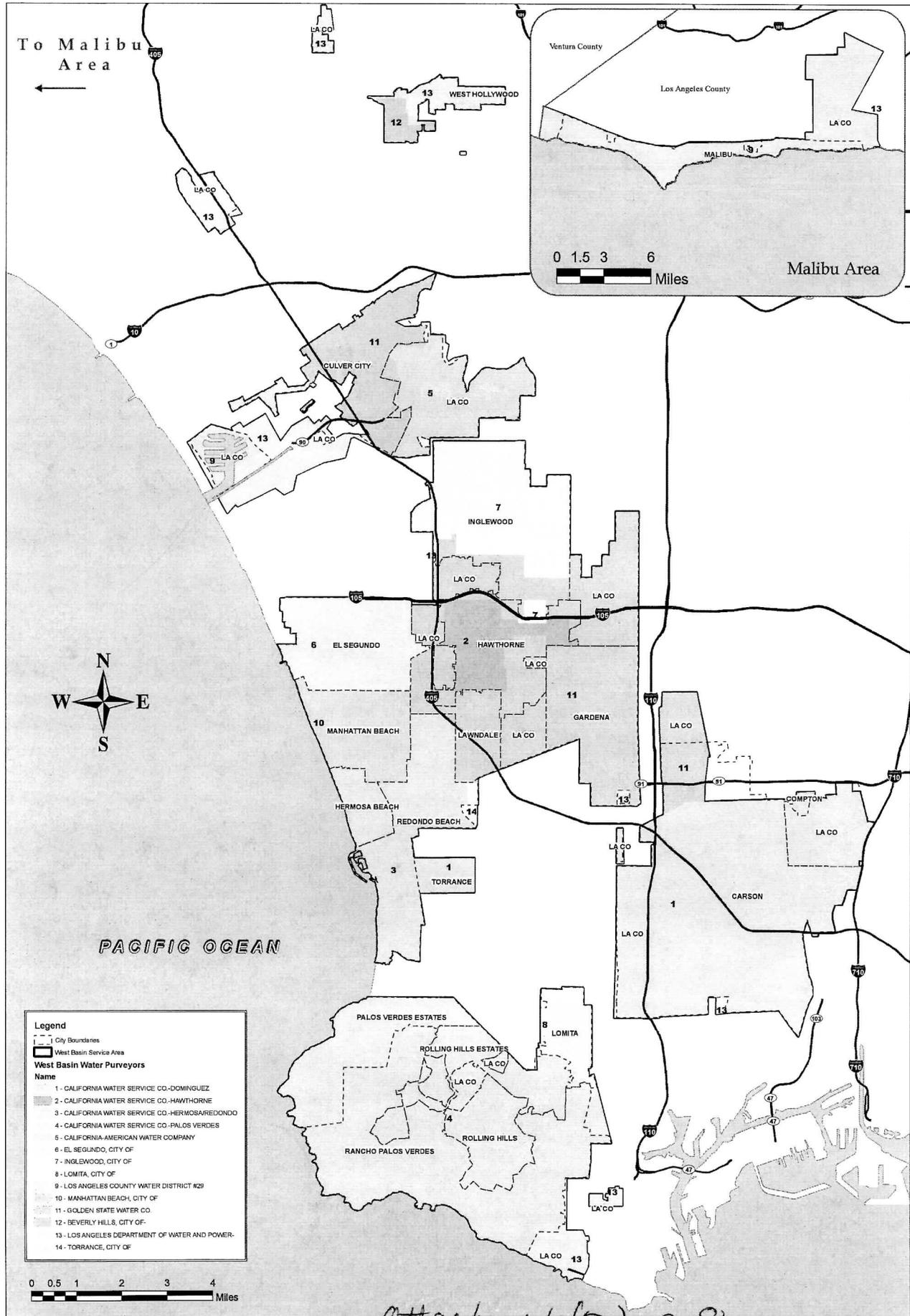
Joyce Parker-Bozylinski, AICP, Planning Director



Attachment (i) page 7



# West Basin Municipal Water District Purveyors



*Attachment (a) p. 8*



CHRIS & SALLY BENJAMIN

September 8, 2012

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

Subject: Conceptual Groundwater Injection Plan for City of Malibu

Executive Officer Mr. Unger, Chair Ms. Mehranian and Regional Board members:

My name is Sally Benjamin a resident of "The Knolls", 3216 Colony View Circle Malibu. I would like to address some concerns regarding the proposed groundwater injection plan in Malibu.

1. **Use the water by returning it to designated wetland areas in the Civic Center Area rather than injecting it below the ground.** Since the 1990's Santa Monica Baykeepers, Heal the Bay and several interested people in Malibu have attempted to restore areas in the Civic Center Area as wetlands. Several parcels in the Civic Center area perk and could be restored to wetlands. There are four (4) properties that could be utilized for this purpose: 1) Legacy Park during dry season, 2) area next to the Lumber Yard, 3) The Wave property and 4) the property below Malibu Villas.

Legacy Park was initially to be a wetlands area and diverted for managing storm water runoff. While in a dry season, some of the treated effluent could be placed into Legacy Park. This would increase the time the Park is utilized by wild life as wetlands.

Currently, The Lumber Yard is allowed to discharge a designated amount of effluent which RWQCB monitors in an area across from the Lumber Yard buildings; southeast corner of Legacy Park. Once the Lumber yard is connected to the sewer system they will not need the property for discharge purposes; therefore, turn it into a wetlands area. Place treated effluent from the new sewer plant on this property and allow nature to cleanse the ground water, and attract nature.

The property known as the "Wave" property was at one time selected by Heal the Bay for wetlands development purposes. It was part of their recommendation to obtain an additional 10 acres within the Civic Center for handling a 10 year flood and wetlands. Legacy Park isn't considered large enough to handle that situation. Santa Monica Baykeepers are also

interested in developing more wetlands in Civic Center to clean the water naturally and allow the birds and wild life of the wetlands to return.

The property just below the Malibu Villas was proposed for wetlands development by Heal the Bay in 2001. I remember watching the Egrets in that area and haven't seen them in years. It would be wonderful to provide the necessary wetlands for them to return.

Use the treated water to bring back nature and the wetlands rather than disposing of it into the ground. This water could be used in a productive manner rather than "disposing" of it. The City should first provide water to the wetlands as an area before disposing of the treated water by injecting it into the ground.

**2. The calculation of anticipated water injection is underestimated.**

There are 2 problems with the calculations: 1) not all of the properties in phase 1 are included, 2) the calculation is based on only 20% of the commercial property being an eating facility.

By the time phase 1 is completed only those properties currently operating an OWTS will be connected. Those are the properties in the calculation. There is 960,890 sq. ft. of additional commercial development in planning. These properties will not be built by the completion of phase 1; therefore, not in the projected water injection calculation. This projection only shows present need for injection. The calculation should project out the anticipated requirements based on what the City knows is in Planning and include projects The City is aware of, that might not even be in planning at this time (Santa Monica College and Law Enforcement building and resort complex).

The calculation is also based on only twenty percent (20%) of the commercial property being some type of eating facility (high water use). It appears that our eating needs aren't going down rather increasing and would propose that 20% is too low in terms of future needs. Also, eateries are not the only service utilizing allot of water. Personal services such a hair salons, spas, resort areas, hotels, gyms and medical facilities have high water requirements. These types of services can now flood the area as there will be a means to remove effluent. Presently development is minimized because of the requirement to dispose of effluent "onsite" and the water table is too high to accommodate this. Thirty to forty (30% - 40%) of commercial space dedicated to an eating facility, and personal services, (salons, spa, gym, hotels and resorts or medical facilities) would be more appropriate.

The calculation should project the "final" injection requirements for all properties in phase 1 (developed and to be developed). Not only what is going to be connected immediately with the construction a sewer plant. This would allow an adequate assess of the volume, and future osmotic gradient of the treated water to be injected. The calculation should be provided in two ways, phase 1 properties connecting initially using actual water usage numbers. Obtaining water bills over a period of time

from the property owners would provide part one of the calculation. Since tenant mix can change over time, adjust the number by 10%. Then properties connecting at a later date in phase 1 use a projection of 30-40% eateries and personal services of the developable property as high water usage. While the total injection volume per well is limited to 100 gallons/minute (as per the analysis) if the requirements are great enough additional injection wells would need to be created. More comprehensive computations are required on the "total" future volume, number of injection wells necessary, increasing pressure at injection areas underground and the effects of the osmotic gradient to completely assess the impact of this project.

- 3. The lower osmotic pressure of the treated effluent in relation to the higher osmolality of the ocean will not mix readily.** The analysis discusses the chloride, sulfate and dissolved solids as well as bicarbonates that the treated injected effluent will dilute the fresh water underground. There will be an osmotic gradient between the treated effluent and the fresh water also between the now diluted fresh water to the ocean. No discussion occurs regarding these gradients nor of sodium; treated water to fresh water and now diluted fresh water to the ocean. The spreadsheet shows that the treated effluent sodium levels will have 119 units while the injection wells (fresh water) range from 490 - 1100 units. From the spreadsheet we learn that the treated effluent water has a considerably lower osmotic pressure, particularly well MW03, than the fresh water where the effluent will be injected. An assumption can be made that gradient will be larger when compared to the ocean; diluted fresh water to ocean water. The discussion needs to continue with an analysis of the diluted fresh water to the ocean. These two waters (diluted fresh water and the ocean) coming together won't "blend/mix" for a period of time and/or distance due to the osmotic gradient.

This proposed situation reminds me of the Amazon River coming into the Atlantic Ocean, where for miles the fresh water from the river sits on top of the salt water of the ocean. In this case the separation would occur below grade and deeper in the ocean; therefore, not able to see the affects unless scuba diving. While situation in the Amazon has been going on for years, sea life developed as a result of these conditions. This proposed water injection in Malibu is just beginning. The treated Malibu water won't mix and blend immediately with the Pacific Ocean just like the Amazon; Malibu's case will occur at some depth in the ocean. What length of time and/or distance will be required for the "mixing" to occur? How will the sea life be affected? What sea life, animals and plants, will be affected? What animal(s) will be endangered or further endangered? How will this ultimately affect the water quality in Malibu lagoon, the Creek and wetlands?

There are some questions that are definitely unanswered in this process. Even the analysis mentions their concerns. Implementing this injection system should be done slowly, and cautiously. There will be a great deal

September 10, 2012

of underground erosion with this process and we won't know its effects right away. Nor will we fully understand the impact of injecting such large amounts of water below ground and the effects of the osmotic gradient on sea life, wetlands or water quality. With these concerns, think first about establishing wetlands areas and make that the priority of water dispersal.

Sincerely,

A handwritten signature in cursive script that reads "Sally Benjamin".

Sally Benjamin

**From:** [Remy O'Neill](mailto:Remy.O'Neill)  
**To:** [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov); [sunger@waterboards.ca.gov](mailto:sunger@waterboards.ca.gov)  
**Cc:** [ewu@waterboards.ca.gov](mailto:ewu@waterboards.ca.gov); [rhou@waterboards.ca.gov](mailto:rhou@waterboards.ca.gov); [Jim Thorsen](mailto:Jim.Thorsen)  
**Subject:** Malibu Regional Water Quality  
**Date:** Monday, September 10, 2012 1:09:58 PM

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

<!--[if !supportEmptyParas]--> <!--[endif]-->

Subject: Conceptual Groundwater Injection Plan for City of Malibu

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Executive Officer Mr. Unger, Chair Ms. Mehranian and Regional Board members:

My name is Remy O'Neill, 6135 Cavalleri Rd., Malibu, CA 90265. I have been a resident of Malibu for thirty-four years, and would like to express my concerns about the proposed Groundwater Injection Plan in the Civic Center area of Malibu.

My concerns center on a number of issues:

1) **Flawed Data** The numbers representing the amount of water to be injected, are grossly understated. Almost one million square feet of commercial development is in planning that is not reflected in the plan.

Additionally, the composition of that proposed commercial development and their inherent high water usages, is not correctly or adequately factored for the amount of wastewater they will generate. Where are the calculations for salons, any urgent care or physicians, food markets, spa, gym with showers? The current plans estimate of 20% is far below any common sense percentage of what the real outflow will be. Making these types of impactful decisions, need solid facts and science

2) **Wetlands** In 1993, I travelled to the City of Arcata and their City Manager took myself and a Malibu City Councilmember to tour Arcata's constructed wetlands which handles all their tertiary wastewater. This city's residents actually voted for this choice.

Arcata's water must meet very high standards, since it empties into Humboldt Bay, home to the commercial mollusk beds, which are particularly susceptible to pathogens. Additionally, the City Manager stated, they hadn't anticipated the secondary benefit, which is the migratory bird sanctuary their wetlands created, thereby generating tourism for Arcata and a delight for the residents.

In Nature, there is no such thing as waste. Everything is a resource for another species or process. Wetlands are a perfect example of that, yielding clean water with minimal infrastructure cost, creating aesthetic centers and wildlife habitat. Shame on us as humans (here for only 3 million years) if we don't learn lessons

from a Planet successfully experimenting for 3 billion years.

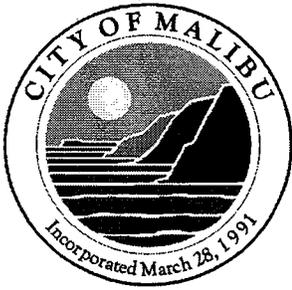
Malibu is conducting meetings right now about buying up the vacant land in this very Civic Center area, and what to do with it. The answer is sitting in front of all our faces - wetlands.

I ask that you encourage this direction, and, in your various capacities and liaisons with other agencies, that you might also help find funding to support this direction. This is a much less invasive solution, and would create aesthetic centers for the City, and an attraction for visitors, plus a haven for wildlife.

3) **Long Term Environmental Concerns** - look at the analysis itself. They have concerns, including erosion over the long haul, not to mention the ultimate effect on ocean and its marine life. Malibu's General Plan states that its residents choose to be stewards of our natural resources and our ecosystems. We are asking both the City and related agencies to choose the most natural, least invasive, and effective solution.

Sincerely,

Remy O'Neill



# Council Agenda Report

To: Mayor Rosenthal and the Honorable Members of the City Council

Prepared by: Reva Feldman, Assistant City Manager 

Approved by: Jim Thorsen, City Manager 

Date prepared: June 13, 2012

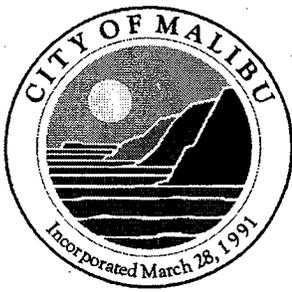
Meeting date: June 25, 2012

Subject: Adoption of Resolutions Declaring Intention to Establish Community Facilities District (CFD) No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) and to Incur Bonded Indebtednesses within such CFD

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**RECOMMENDED ACTION:** 1) Adopt Resolution No. 12-29 declaring the City Council's intention to establish CFD No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One); and 2) Adopt Resolution No. 12-30 to incur bonded indebtedness within such CFD to finance the design of the Civic Center Wastewater Treatment Plant Phase One.

This item will be distributed under separate cover.



# Supplemental Council Agenda Report

To: Mayor Rosenthal and the Honorable Members of the City Council

Prepared by: Reva Feldman, Assistant City Manager 

Approved by: Jim Thorsen, City Manager 

Date prepared: June 21, 2012 Meeting date: June 25, 2012

Subject: Adoption of Resolutions Declaring Intention to Establish Community Facilities District (CFD) No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) and to Incur Bonded Indebtednesses within such CFD

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**RECOMMENDED ACTION:** 1) Adopt Resolution No. 12-29 declaring the City Council's intention to establish CFD No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One); and 2) Adopt Resolution No. 12-30 to incur bonded indebtedness within such CFD to finance the design of the Civic Center Wastewater Treatment Plant Phase One.

**FISCAL IMPACT:** 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. 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.

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 1 properties and not just those who will become 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 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. By the end of June 2012, all existing funds for the wastewater design will have been utilized and additional funds will need to be allocated in order to keep the design team on pace to meet the MOU compliance requirements (Item 6B on tonight's agenda).

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.

All of the design and engineering work that has been completed to date indicates that the City will be able to proceed with a lower aquifer injection process. Exploratory test well drilling and groundwater extraction was successfully completed. The City is now proceeding with groundwater modeling, geochemistry, a geophysics assessment including off-shore marine testing and the preparation of a preliminary study report.

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.

The attached resolutions declare the Council's intent to form the CFD, to authorize the levy of a special tax on real property with the CFD to finance the costs of design, engineering and environmental analysis of the Wastewater Treatment Plant and to pay debt service on bonded indebtedness. Resolutions Nos. 12-29 and 12-30 will authorize the issuance of CFD Bonds in the maximum aggregate principal amount not to exceed \$6,500,000. The exact amount of bonds to be issued will be determined based on bond market conditions at the time of sale. The bonds, if issued, would be limited obligations of the CFD (not debt of the City) and would be payable solely from special taxes levied on the real property within the CFD. A boundary map of the proposed properties within the CFD is attached. The special taxes would be collected by the County as part of the property tax bill and then remitted to the City. The maximum tax rate as proposed in the Rate and Method of Apportionment of the Special Tax (attached as Attachment C to the Resolution of Intention to Establish) is \$19,707.33 per acre for commercial property and \$3,941.47 per acre for residential property. This is the maximum rate that would support \$6,500,000 in bonds based on conservative interest rate assumptions and assumes that some of the properties currently included in the boundaries of the CFD may drop out prior to the adoption of the Resolution of Formation in August. Should more than the baseline number of acres remain in the CFD, it is expected that the special tax rates needed to support the bonds could be significantly less than the proposed maximum rate.

The current expectation is that the CFD Bonds will be refunded 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.

Adoption of the attached resolutions is the initial step in the CFD formation process and would call for a public hearing to be held on August 13, 2012 regarding the formation of the CFD, the levy of the special tax and the necessity to issue bonds. Adopting the attached resolutions does not obligate the City Council to proceed with forming the CFD or issuing bonds. Following the public hearing, and assuming the Council decides to move forward, an election would be held within the proposed CFD on the issuance of Bonds and the levy of the special tax. Assuming the City is able to get the consent of each of the property owners in the CFD to sign a waiver of certain election law procedures, the election could be held shortly after the public hearing. If the City is not able to receive consents from 100% of the property owners, such election could not be held less than 90 days following the public hearing. The City could also choose to amend the boundaries of the CFD prior to the public hearing to exclude those property owners who do not consent.

If there are less than 12 registered voters within the CFD (which is the City's expectation), then the election will be a landowner election with each property owner having a vote for each acre or portion thereof. If there are more than 12 registered voters within the proposed CFD, a registered voter election will be required with each registered voter having a vote. This will require the City to wait 90 days to hold the election. The CFD Bonds and the special taxes will need to be approved by a 2/3rds vote.

Additionally, Resolution No. 12-29 amends the Local Goals and Policies for all Community Facilities Districts of the City of Malibu (the "CFD Goals and Policies") adopted on July 10, 2006, to conform to recent statutory requirements. Recent amendments to the Mello Roos Act require that CFD Goals and Policies provide a statement of priority for the various types of services that could be financed by a CFD. Such a requirement was not in effect in 2006 when the Goals and Policies were adopted. No services are planned to be finance by CFD 2012-1. However, amendments to the CFD Goals and Policies are required to comply with the Mello Roos Act. Amended and Restated CFD Goals and Policies are attached hereto reflecting these changes.

**ATTACHMENTS:**

1. Resolution No. 12-29
2. Resolution No. 12-30
3. CFD Boundary Map
4. Amended and Restated CFD Goals and Policies

RESOLUTION NO. 12-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE), TO AUTHORIZE THE LEVY OF SPECIAL TAXES TO PAY THE COSTS OF DESIGNING CERTAIN WASTEWATER TREATMENT FACILITIES AND EXPENSES OF THE DISTRICT AND TO PAY DEBT SERVICE ON BONDED INDEBTEDNESS

SECTION 1. Recitals.

A. The City Council of the City (the "City Council") desires to adopt this resolution of intention as provided in Section 53321 of the Government Code of the State of California to establish a community facilities district consisting of the territory described in Attachment "A" hereto and incorporated herein by this reference, which the City Council hereby determines shall be known as "Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One)" (the "Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code (the "Act") to finance (1) the design, engineering, planning and environmental evaluation (the "Plant Design") required to construct a wastewater treatment facility and related infrastructure serving the City of Malibu's (the "City") Civic Center Area (the "Facilities"), which Facilities have a useful life of five (5) years or longer; and (2) the incidental expenses to be incurred in connection with financing the Plant Design, forming and administering the District, including (a) all costs associated with the creation of the District, the issuance of bonds for the District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District; and (b) any other expenses incidental to the acquisition, modification and completion of the Plant Design (the "Incidental Expenses").

B. The City Council further intends to approve an estimate of the costs of the Plant Design and the Incidental Expenses for Community Facilities District No. 2012-1.

C. It is the intention of the City Council to consider financing the Plant Design and the Incidental Expenses through the formation of Community Facilities District No. 2012-1 and the sale of bonded indebtedness in an amount not to exceed \$6,500,000 and the levy of a special tax within the District to pay for the Plant Design and the Incidental Expenses and to pay debt service on the bonded indebtedness incurred by the District, provided that the bond sales and special tax levies are approved at an election to be held within the District.

D. The City on July 10, 2006 adopted "Local Goals and Policies for all Community Facilities Districts of the City of Malibu" (the "CFD Goals and Policies"). Subsequently, the Act has been amended to require that the CFD Goals and Policies include priorities for the financing of public services. An Amended and Restated Local Goals and Policies for all

Community Facilities Districts of the City of Malibu (the “Amended CFD Goals and Policies”) complying with statutory amendments is on file with the City Clerk.

SECTION 2. A community facilities district is proposed to be established under the terms of the Act. It is further proposed that the boundaries of the community facilities district shall be as described in Attachment “A” hereto, which boundaries shall, upon recordation of the boundary map for the District, include the entirety of any parcel subject to taxation by the District. The proposed boundaries of the District are depicted on the map of the proposed Community Facilities District No. 2012-1 which is on file with the City Clerk. The City Clerk is hereby directed to sign the original map of the District and record it with all proper endorsements thereon with the County Recorder of the County of Los Angeles within 15 days after the adoption of this resolution, all as required by Section 3111 of the Streets and Highways Code of the State of California.

SECTION 3. The name of the proposed community facilities district shall be “Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One).”

SECTION 4. The Facilities within Community Facilities District No. 2012-1 proposed to be designed as part of the Plant Design to be financed by the District are public facilities as defined in the Act, which the City is authorized by law to construct, acquire, own and operate. The City Council hereby finds and determines that the description of the Plant Design herein is sufficiently informative to allow taxpayers within the proposed District to understand what the funds of the District may be used to finance. The Incidental Expenses expected to be incurred include the costs of forming the District, issuing bonds and levying and collecting a special tax within the District. The City Council hereby determines that the commencement of the Plant Design are necessary to design the Facilities needed to comply with the State Water Resources Control Board (the “SWRCB”) Resolution No. 2010-0045 approving an amendment to Chapter IV of the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) to prohibit on-site wastewater disposal systems in the Malibu Civic Center Area as defined by Los Angeles Regional Water Quality Control Board (the “LARWQCB”) Resolution No. R4-2009-007 and the August 25, 2011 Memorandum of Understanding Between the City of Malibu on the one hand and the SWRCB and LARWQCB on the other regarding a phased implementation of the Basin Plan amendment prohibiting on-site wastewater disposal systems in the Malibu Civic Center Area. The Facilities may be acquired from one or more property owners as completed public improvements or may be constructed from bond or special tax proceeds. All or a portion of the Plant Design may be purchased with District funds pursuant to Section 53314.9 of the Act.

SECTION 5. Except where funds are otherwise available, it is the intention of the City Council to levy annually in accordance with the procedures contained in the Act a special tax, secured by recordation of a continuing lien against all nonexempt real property in the District, sufficient to pay for: (i) the Plant Design and Incidental Expenses; and (ii) the principal and interest and other periodic costs on bonds or other indebtedness issued for the District to finance the Plant Design and Incidental Expenses, including the establishment and replenishment of any reserve funds deemed necessary by the District, and any remarketing, credit enhancement and liquidity

facility fees (including such fees for instruments which serve as the basis of a reserve fund in lieu of cash). The rate and method of apportionment and manner of collection of the special tax within the District are described in detail in Attachment "C" attached hereto, which Attachment "C" is incorporated herein by this reference. Attachment "C" allows each landowner within the proposed District to estimate the maximum amount that may be levied against each parcel. In the first year in which such special tax is levied, the levy shall include an amount sufficient to repay to the District all amounts, if any, transferred to the District pursuant to Section 53314 of the Act and interest thereon.

If special taxes of the District are levied against any parcel used for private residential purposes, (i) the maximum special tax rate shall not be increased over time; (ii) such tax shall be levied for a period not to exceed Fiscal Year 2052-53, commencing with Fiscal Year 2012-13, as further described in Attachment "C" hereto; and (iii) under no circumstances will the special tax levied against any parcel used for private residential purposes be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the District by more than ten percent.

The special tax within the District shall be levied in equal percentages on each lot or parcel shown on the official map of the assessor of Los Angeles County up to the applicable Maximum Special Tax, to satisfy the Special Tax Requirement as defined in Attachment "C" hereto. The City Council hereby determines the rate and method of apportionment of the special tax set forth in Attachment "C" to be reasonable. The special tax is apportioned to each parcel on the foregoing basis pursuant to Section 53325. 3 of the Act and such special tax is not on or based upon the value or ownership of real property. In the event that a portion of the property within the District shall become for any reason exempt, wholly or partially, from the levy of the special tax specified on Attachment "C," the City Council shall, on behalf of the District, cause the levy to be increased, subject to the limitation of the maximum special tax for a parcel as set forth in Attachment "C," to the extent necessary upon the remaining property within the District which is not delinquent or exempt in order to yield the special tax revenues required for the purposes described in this Section 5. The obligation to pay special taxes may be prepaid in accordance with Section G of Attachment "C" hereto.

**SECTION 6.** A public hearing (the "Hearing") on the establishment of the proposed Community Facilities District No. 2012-1, the proposed rate and method of apportionment of the special tax and the proposed issuance of bonds by the District to finance the Plant Design and the Incidental Expenses shall be held at 7:00 p.m., or as soon thereafter as practicable, on August 13, 2012, at Malibu City Hall, 23825 Stuart Ranch Road, Malibu, California 90265. Should the City Council determine to form the District, a special election will be held within the District to authorize the issuance of the bonds and the levy of the special tax in accordance with the procedures contained in Government Code Section 53326. If held, the proposed voting procedure at the elections will be a landowner vote with each landowner who is the owner of record of land within the District at the close of the Hearing, or the authorized representative thereof, having one vote for each acre or portion thereof owned within the District. Ballots for the special elections may be distributed by mail or by personal service.

SECTION 7. At the time and place set forth above for the Hearing, the City Council will receive testimony as to whether the proposed Community Facilities District No. 2012-1 shall be established and as to the rate and method of apportionment of the special tax for the District and shall consider:

(a) if an *ad valorem* property tax is currently being levied on property within proposed Community Facilities District No. 2012-1 for the exclusive purpose of paying principal of or interest on bonds, lease payments or other indebtedness incurred to finance construction of capital facilities; and

(b) if the Plant Design to be financed by Community Facilities District No. 2012-1 and the Facilities ultimately planned thereby will provide the same services as were provided by the capital facilities mentioned in subsection (a) above; and

(c) if the City Council makes the findings specified in subsections (a) and (b) above, it will consider appropriate action to determine that the total annual amount of *ad valorem* property tax revenue due from parcels within Community Facilities District No. 2012-1, for purposes of paying principal and interest on the debt identified in subsection (a) above, shall not be increased after the date on which Community Facilities District No. 2012-1 is created, or after a later date determined by the City Council with the concurrence of the legislative body which levied the property tax in question.

SECTION 8. At the time and place set forth above for the Hearing, any interested person, including all persons owning land or registered to vote within proposed Community Facilities District No. 2012-1, may appear and be heard.

SECTION 9. Each City officer who is or will be responsible for providing the Plant Design within proposed Community Facilities District No. 2012-1, if it is established, is hereby directed to study the proposed District and, at or before the time of the above-mentioned Hearing, file a report with the City Council containing a brief description of the public facilities by type which will in his or her opinion be required to meet adequately the needs of Community Facilities District No. 2012-1 and an estimate of the cost of providing those public facilities, including the cost of environmental evaluations of such facilities and an estimate of the fair and reasonable cost of any Incidental Expenses to be incurred.

SECTION 10. The District may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, for any authorized purpose, including, but not limited to, paying any cost incurred in creating Community Facilities District No. 2012-1. The District may enter into an agreement with the person or entity advancing the funds or work-in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work-in-kind, as determined by the City Council, with or without interest. Additionally, the District may reimburse the City for costs contributed to the Plant Design.

SECTION 11. The City Clerk is hereby directed to publish a notice (the "Notice") of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general

Notice shall contain the text or a summary of this Resolution, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners in the proposed District and a description of the proposed voting procedure for the elections required by the Act. Such publication shall be completed at least seven (7) days prior to the date of the Hearing.

SECTION 12. Except to the extent limited in any bond resolution or trust indenture related to the issuance of bonds, the City Council hereby reserves to itself all rights and powers set forth in Section 53344. 1 of the Act (relating to tenders in full or partial payment).

SECTION 13. The Amended CFD Goals and Policies is hereby approved and amends and restates the CFD Goals and Policies in its entirety.

SECTION 14. 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 on this 25<sup>th</sup> day of June, 2012.

\_\_\_\_\_  
LAURA ROSENTHAL, Mayor

ATTEST:

\_\_\_\_\_  
LISA POPE, City Clerk  
(Seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
BRIAN FORBATH, Special Counsel

**ATTACHMENT A**  
**COMMUNITY FACILITIES DISTRICT NO. 2012-1 BOUNDARY**  
**LEGAL DESCRIPTION**

The following assessor's parcels shown on the secured tax rolls of Los Angeles County:

4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-018-004, 4458-018-019,  
4458-019-003, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015,  
4458-021-002, 4458-021-003, 4458-021-174, 4458-022-001, 4458-022-011, 4458-022-019,  
and 4458-022-022

**ATTACHMENT B**  
**TYPES OF FACILITIES**  
**TO BE FINANCED BY COMMUNITY**  
**FACILITIES DISTRICT NO. 2012-1**

The proposed public facilities and expenses to be financed by the District include planning and designing the proposed wastewater treatment facility and related infrastructure and appurtenant work serving the City's Civic Center Area including the cost of environmental evaluations of those facilities.

Facilities Incidental Expenses:

Incidental expenses proposed to be incurred include the following:

- (a) any other expenses incidental to the acquisition, completion and modification of the authorized work; and
- (b) the costs associated with the formation of the District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the District.

**ATTACHMENT C**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
OF THE CITY OF MALIBU  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)**

A Special Tax shall be levied and collected in Community Facilities District No. 2012-1 of the City of Malibu ("CFD No. 2012-1") each Fiscal Year, in an amount determined by the City Council of the City of Malibu acting in its capacity as the legislative body of CFD No. 2012-1 through the application of the procedures described below. All of the real property in CFD No. 2012-1 and interests in real property such as leasehold interests and possessory interests, unless exempted by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

**A. DEFINITIONS**

The terms used herein shall have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California.

**"Acres" or "Acreage"** means the gross land area of an Assessor's Parcel as shown on an Assessor's Parcel Map or as provided by the Assessor's office, or if the land area is not shown on an Assessor's Parcel Map and cannot otherwise be obtained from the Assessor's office, the land area shown on the applicable Final Subdivision. The Acres applicable to a Condominium shall be determined by allocating the Acres of the underlying lot or parcel on which the Condominiums are or are to be constructed in proportion to each such Condominium's building square footage as determined from the applicable building permit(s). An Acre means 43,560 square feet of land.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2012-1, including but limited to the following: (i) the costs of computing the Special Taxes and of preparing the annual Special Tax collection schedules (whether by the CFD Administrator or designee thereof, or both); (ii) the costs of collecting the Special Taxes (whether by the County, City, or otherwise); (iii) the costs of remitting the Special Taxes to the fiscal agent or trustee for any Bonds; (iv) the costs of commencing and pursuing to completion any foreclosure action arising from delinquent Special Taxes; (v) the costs of the fiscal agent or trustee (including its legal counsel) in the discharge of the duties required of it under any Indenture; (vi) the costs of the City or designee in complying with arbitrage rebate requirements and disclosure requirements of applicable federal and state securities laws and of the Act, including public inquiries regarding the Special Taxes or the Bonds; (vii) the fees and expenses of CFD No. 2012-1 associated with a prepayment as calculated by the CFD Administrator including, but not limited to, the costs of computing the prepayment, the costs of removing any Special Taxes from the Assessor's Roll, the costs of redeeming the Bonds, and the costs of recording and publishing any notices to evidence the prepayment and the redemption of Bonds; (viii)

the costs of the City or designee related to any appeal of the Special Tax; and (ix) an allocable share of the salaries of City staff and City overhead expense directly related to the foregoing. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of CFD No. 2012-1.

**“Assessor’s Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

**“Assessor’s Parcel Map”** means an official map of the Assessor of the County designating parcels by Assessor’s Parcel number.

**“Bonds”** means any bonds or other indebtedness (as defined in the Act), whether in one or more series, secured by the levy of Special Taxes within CFD No. 2012-1.

**“CFD Administrator”** means the City Manager of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of Special Taxes.

**“City”** means the City of Malibu, California.

**“Condominium”** means a separate interest or unit meeting the statutory definition of a condominium contained in the California Civil Code, Section 1351, and for which a condominium plan has been recorded pursuant to California Civil Code, Section 1352.

**“Council”** means the City Council of the City, acting as the legislative body of CFD No. 2012-1.

**“County”** means the County of Los Angeles, California.

**“Final Subdivision”** means a subdivision of property by recordation of (i) a final map or parcel map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.), (ii) lot line adjustment approved by the City, or (iii) a condominium plan pursuant to California Civil Code 1352 that creates an individual lot(s) for which a building permit(s) may be issued without further subdivision.

**“Fiscal Year”** means the period starting on each July 1 and ending on the following June 30.

**“Indenture”** means the indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Maximum Special Tax”** means the maximum Special Tax, determined in accordance with Section B that can be levied by the Council in any Fiscal Year on any Assessor’s Parcel.

**“Non-Residential Property”** means the following Assessor’s Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-019-009, 4458-019-010, 4458-020-010,

4458-020-014, 4458-020-015, 4458-021-002, 4458-021-003, 4458-021-174, 4458-022-001, 4458-022-011, 4458-022-019, and 4458-022-022.

**“Public Property”** means any Assessor’s Parcel within the boundaries of CFD No. 2012-1 owned by the federal government, the State, the County, the City, or any other public agency. Notwithstanding the preceding, any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be subject to the Special Tax.

**“Residential Property”** means the following Assessor’s Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4458-018-004, 4458-018-019, and 4458-019-003.

**“Special Tax”** means the Special Tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property to fund the Special Tax Requirement.

**“Special Tax Requirement”** means that amount required in any Fiscal Year to: (1) pay the Administrative Expenses, (2) pay debt service on any issued and outstanding Bonds, (3) replenish any reserve funds attributable to CFD No. 2012-1 and established in connection with Bonds, (4) pay the costs of remarketing, credit enhancement and liquidity facility fees (including such fees for instruments that serve as the basis of a reserve fund in lieu of cash related to any Bonds), (5) pay directly for acquisition or construction of facilities eligible under the Act in accordance with plans established at the time the Bonds are issued or its functional equivalent as modified, and less (6) available funds as provided under the Indenture.

**“State”** means the State of California.

**“Taxable Property”** means all Assessor’s Parcels within CFD No. 2012-1 which are not exempt from the Special Tax pursuant to Section E. The Fiscal Year 2011-12 Assessor’s Parcels of Taxable Property are as follows: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-018-004, 4458-018-019, 4458-019-003, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-021-002, 4458-021-003, 4458-021-174, 4458-022-001, 4458-022-011, 4458-022-019, and 4458-022-022.

**B. MAXIMUM SPECIAL TAX**

The Maximum Special Tax for Non-Residential Property is \$19,707.33 per Acre. The Maximum Special Tax for Residential Property is \$3,941.47 per Acre. The Maximum Special Tax for each Assessor’s Parcel of Taxable Property is set forth in Table 1 on the following page.

<b>TABLE 1</b> <b>CITY OF MALIBU</b> <b>CFD No. 2012-1</b> <b>MAXIMUM SPECIAL TAX RATES</b>		
ASSESSOR'S PARCELS	ACRES	MAXIMUM SPECIAL TAX
<b>Non-Residential Property</b>		
4452-011-029	1.8060	\$35,591.43
4452-011-039	0.9800	\$19,313.18
4452-011-042	2.3600	\$46,509.29
4452-011-043	2.2700	\$44,735.64
4458-019-009	1.8000	\$35,473.19
4458-019-010	14.6700	\$289,106.51
4458-020-010	2.1724	\$42,812.20
4458-020-014	2.6000	\$51,239.05
4458-020-015	1.1100	\$21,875.13
4458-022-001	2.4900	\$49,071.25
4458-022-011	9.6800	\$190,766.94
4458-021-002	2.8800	\$56,757.11
4458-021-003	6.9900	\$137,754.22
4458-021-174	2.8900	\$56,954.18
4458-022-019	8.4800	\$167,118.14
4458-022-022	3.5500	\$69,961.02
<b>Residential Property</b>		
4458-018-004	5.15000	\$20,298.55
4458-018-019	22.0000	\$86,712.24
4458-019-003	4.3200	\$17,027.13

**1. Subdivision of Assessor's Parcel**

In the event any Assessor's Parcel of Taxable Property is subdivided, the Maximum Special Tax applicable to an Assessor's Parcel created as a result of the subdivision shall be equal to Maximum Special Tax for the subdivided Assessor's Parcel multiplied by the quotient equal to the Acreage of such Assessor's Parcel created by the subdivision divided by the Acreage of all Assessor's Parcels created by the subdivision. Notwithstanding the preceding, no Special Tax shall be apportioned to any Assessor's Parcel that is exempt from the Special Tax pursuant to Section E herein.

**2. Consolidation of Assessor's Parcels**

The Maximum Special Tax for any Assessor's Parcel created by the consolidation of two or more Assessor's Parcels shall be equal to the sum of the Maximum Special Tax applicable to the Assessor's Parcels which were consolidated.

**C. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the Council shall determine the Special Tax Requirement and shall apportion and levy the Special Tax as set forth below until the amount of the Special Taxes equals the Special Tax Requirement. However, no Special Tax shall be levied until interest and/or principal on the Bonds is payable in the calendar year commencing in the Fiscal Year in which Special Taxes would be levied.

First: The Special Tax shall be levied proportionately on each Assessor's Parcel of Taxable Property that is not Public Property at up to 100% of the applicable Maximum Special Tax to satisfy the Special Tax Requirement; and

Second: If additional monies are needed to satisfy the Special Tax Requirement, the Special Tax shall be levied proportionately on each Assessor's Parcel of Public Property that is not exempt from the Special Tax pursuant to Section E herein at up to 100% of the applicable Maximum Special Tax.

Notwithstanding the preceding language in this Section C, under no circumstances will the Special Taxes levied against any Assessor's Parcel used as a private residence be increased as a consequence of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 2012-1 by more than ten percent (10.00%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

**D. TERM**

The Maximum Special Tax shall not be levied after Fiscal Year 2052-2053.

**E. EXEMPTIONS**

The Council shall not levy a Special Tax on Public Property except as otherwise provided in Sections 53317.3 and 53317.5 of the Act.

**F. APPEALS**

Any property owner who is current on any and all CFD No. 2012-1 Special Taxes and feels that the amount of the Special Tax levied on his Assessor's Parcel is in error may submit a written appeal to CFD No. 2012-1. The CFD Administrator shall review the appeal, and if he or she concurs, shall grant a credit to eliminate or reduce future Special Taxes on the appellant's Assessor's Parcel(s). No refunds of previously paid Special Taxes shall be made. The Council may interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner appeal. Any decision of the Council shall be final and binding as to all persons.

**G. MANNER OF COLLECTION**

The Special Tax will be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 2012-1 may collect Special Taxes at a different time or in a different manner as determined by the Council, if necessary to meet its financial obligations.

**H. PREPAYMENT OF SPECIAL TAX**

1. Prepayment in Full

The Maximum Special Tax for any Assessor's Parcel may be prepaid and permanently satisfied as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel. An owner of an Assessor's Parcel intending to prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which the amount any such prepayment shall be valid.

The "Prepayment" shall be an amount equal to the sum of (1) Principal, (2) Premium, (3) Defeasance, and (4) Fees minus the Reserve Fund Credit, where the terms "Principal," "Premium," "Defeasance," "Fees," and "Reserve Fund Credit" have the following meanings:

**"Principal"** means the principal amount of Bonds to be redeemed, along with accreted value if any, and equals the quotient derived by dividing (a) the applicable Maximum Special Tax for the Assessor's Parcel intending to prepay by (b) the aggregate Maximum Special Taxes on all Taxable Property within CFD No. 2012-1 (and excluding from (b) any Maximum Special Taxes which have previously been prepaid), and multiplying the quotient by the principal amount of Bonds issued and outstanding.

**"Premium"** means an amount equal to the Principal multiplied by the applicable redemption premium, if any, for the Bonds so redeemed with the proceeds of any such Prepayment.

**"Defeasance"** means an amount equal to the amount needed to pay interest, including accreted interest, on the Principal to be redeemed until the earliest redemption date for the outstanding Bonds. Credit shall be given for any Special Tax heretofore paid and which will not be needed for the Special Tax Requirement.

**"Fees"** equal the fees and expenses of CFD No. 2012-1 directly related to calculating the Prepayment and redeeming Bonds.

**“Reserve Fund Credit”** shall equal the lesser of (i) the expected reduction in the applicable reserve fund requirement (as defined in the Indenture), if any, following the redemption of Bonds from proceeds of the prepayment or (ii) the amount derived by subtracting the new reserve fund requirement in effect after the redemption of Bonds from the balance in the reserve fund (as such term is defined in the Indenture) on the prepayment date, but in no event shall such amount be less than zero.

The sum of the amounts calculated in the preceding steps shall be paid to CFD No. 2012-1 and shall be used to pay and redeem Bonds in accordance with the Indenture and to pay the Fees. Upon the payment of such Prepayment to CFD No. 2012-1, the obligation to pay the Special Tax for such Assessor’s Parcel shall be deemed to be permanently satisfied, the Special Tax shall not be levied thereafter on such Assessor’s Parcel, and the CFD Administrator shall cause notice of cessation of the Special Tax for such Assessor’s Parcel to be recorded within 30 working days of receipt of the Prepayment.

2. Prepayment in Part

The Maximum Special Tax for any Assessor’s Parcel may be prepaid in part as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor’s Parcel. An owner of an Assessor’s Parcel intending to partially prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor’s Parcel and the date through which the amount any such prepayment shall be valid.

The amount of the “Partial Prepayment” shall be computed pursuant to Section H.1 above substituting the portion of the Maximum Special Tax to be prepaid for the Maximum Special Tax applicable to the Parcel when computing Principal. Upon payment of the Partial Prepayment, the CFD Administrator shall cause a notice of reduction of the Special Tax for such Assessor’s Parcel to be recorded within 30 working days of receipt of such Partial Prepayment.

Notwithstanding the foregoing, no Prepayment or Partial Prepayment shall be allowed unless the amount of Maximum Special Taxes that may be levied in CFD No. 2012-1 pursuant to Section B after the proposed prepayment is at least the sum of (i) the estimated Administrative Expenses and (ii) one hundred ten percent (110%) of the annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such Prepayment or Partial Prepayment.

RESOLUTION NO. 12-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DECLARING ITS INTENTION TO INCUR BONDED INDEBTEDNESS WITHIN COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)

SECTION 1. Recitals.

A. The City Council of the City of Malibu (the "City Council") instituted proceedings to form Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) (the "Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, commencing with Section 53311 of the Government Code of the State of California (the "Act"), pursuant to Resolution No. 12-29 adopted by the City Council on the date hereof to finance (1) the design, engineering, planning and environmental evaluation (the "Plant Design") required to construct a wastewater treatment plant and related infrastructure improvements serving the City of Malibu's (the "City") Civic Center Area (the "Facilities"), which Facilities have a useful life of five (5) years or longer; and (2) the incidental expenses to be incurred, including: (a) all costs associated with the creation of the District, the issuance of bonds for the District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District; and (b) any other expenses incidental to the acquisition, modification and completion of the Plant Design (the "Incidental Expenses").

B. The City Council estimates that the amount required to finance the Plant Design and Incidental Expenses does not exceed \$6,500,000.

C. In order to finance the Plant Design and Incidental Expenses, the City Council intends to authorize the issuance of bonds by the District in a maximum aggregate principal amount not to exceed \$6,500,000.

D. The repayment of the bonds is to be secured by special taxes levied property in the District in accordance with Section 53328 of the Act, other than those properties exempted from taxation in the rate and method of apportionment set forth in Attachment "C" to Resolution No. 12-29.

SECTION 2. It is necessary to incur bonded indebtedness within the proposed boundaries of proposed Community Facilities District No. 2012-1 in an amount not to exceed [\$6,500,000] to finance the costs of the Plant Design and Incidental Expenses, as permitted by the Act.

SECTION 3. The bonds will be issued for the purpose of financing the costs of the Plant Design and the Incidental Expenses, including, but not limited to, the funding of reserve funds for the bonds, the financing of costs associated with the issuance of the bonds and all other costs and expenses necessary to finance the Plant Design which are permitted to be financed pursuant to the Act.

SECTION 4. It is the intent of the City Council to authorize the sale of bonds for the District in one or more series, in the maximum aggregate principal amount of [\$6,500,000] and at a maximum interest rate not in excess of 12 percent per annum, or a higher rate not in excess of the maximum rate permitted by law at the time that the bonds are issued. The term of the bonds of each series shall be determined pursuant to a resolution of this City Council acting in its capacity as the legislative body of the District authorizing the issuance of the bonds of such series, but such term shall in no event exceed 35 years from the date of issuance of the bonds of such series, or such longer term as is then permitted by law.

SECTION 5. A public hearing (the "Hearing") on the proposed debt issue shall be held at 7:00 p.m. or as soon thereafter as practicable, on August 13, 2012, at the Malibu City Hall, 23825 Stuart Ranch Road, Malibu, California 90265.

SECTION 6. At the time and place set forth in this Resolution for the Hearing, any interested persons, including all persons owning land or registered to vote within the proposed Community Facilities District No. 2012-1, may appear and be heard

SECTION 7. The City Clerk is hereby directed to publish a notice (the "Notice") of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of the proposed Community Facilities District No. 2012-1. Such publication shall be completed at least seven days prior to the date of the Hearing. The City Clerk is further directed to mail a copy of the Notice to each of the registered voters and property owners within the boundaries of proposed Community Facilities District No. 2012-1 at least 15 days prior to the Hearing.

SECTION 8. 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 on this 25<sup>th</sup> day of June, 2012.

\_\_\_\_\_  
LAURA ROSENTHAL, Mayor

ATTEST:

\_\_\_\_\_  
LISA POPE, City Clerk  
(Seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
BRIAN FORBATH, Special Counsel

**ATTACHMENT A**  
**TYPES OF FACILITIES**  
**TO BE FINANCED BY COMMUNITY**  
**FACILITIES DISTRICT NO. 2012-1**

The proposed public facilities and expenses to be financed by the District include planning and designing the proposed wastewater treatment facility and related infrastructure and appurtenant work serving the City's Civic Center Area including the cost of environmental evaluations of those facilities.

Facilities Incidental Expenses:

Incidental expenses proposed to be incurred include the following:

- (a) any other expenses incidental to the acquisition, completion and modification of the authorized work; and
- (b) the costs associated with the formation of the District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the District.

**PROPOSED BOUNDARIES OF  
CITY OF MALIBU  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA**

(1) Filed in the office of the City Clerk of the City of Malibu this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lisa Pope  
City Clerk, City of Malibu

(2) I hereby certify that the within map showing the proposed boundaries of City of Malibu Community Facilities District No. 2012-1 (Civic Center Wastewater Treatment Plant Design Phase One), County of Los Angeles, State of California, was approved by the Council of the City of Malibu at a regular meeting thereof, held on this \_\_\_\_ day of \_\_\_\_\_, 2012, by its Resolution No. \_\_\_\_\_.

\_\_\_\_\_  
Lisa Pope  
City Clerk, City of Malibu

(3) Filed this \_\_\_\_ day of \_\_\_\_\_, 2012, at the hour of \_\_\_\_ o'clock \_\_\_\_ m, in Book \_\_\_\_\_ of Maps of Assessment and Community Facilities Districts at Page \_\_\_\_\_ and as Instrument No. \_\_\_\_\_ in the office of the County Recorder in the County of Los Angeles, State of California.

Dean C. Logan  
Registrar-Recorder/County Clerk,  
County of Los Angeles

By \_\_\_\_\_  
Deputy

Fee \_\_\_\_\_

Exempt recording requested,  
per CA Government Code §6103

**PROPOSED BOUNDARIES OF  
CITY OF MALIBU  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA**

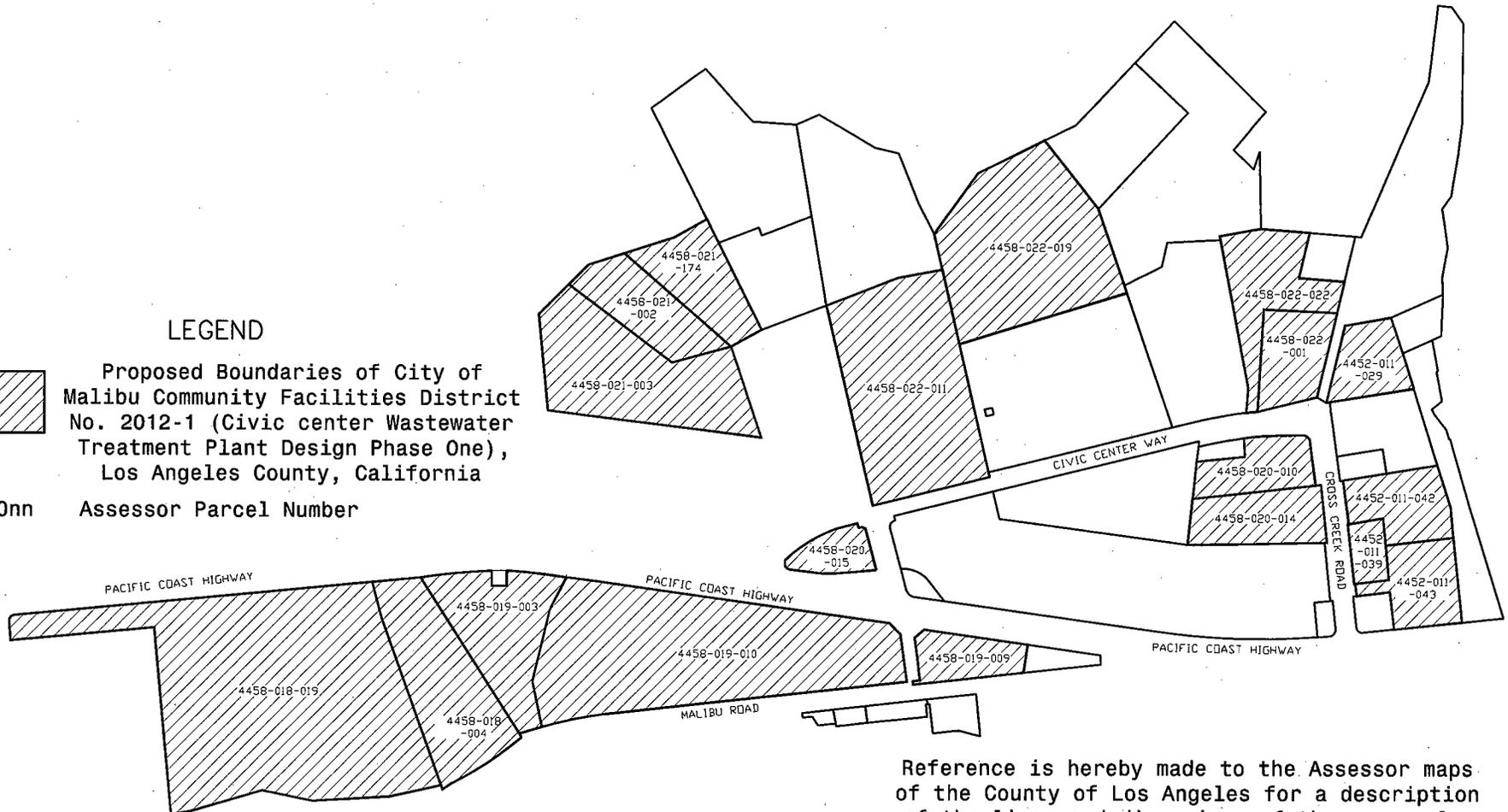


**LEGEND**



Proposed Boundaries of City of Malibu Community Facilities District No. 2012-1 (Civic Center Wastewater Treatment Plant Design Phase One), Los Angeles County, California

445n-0nn-0nn Assessor Parcel Number



Reference is hereby made to the Assessor maps of the County of Los Angeles for a description of the lines and dimensions of these parcels.

CITY OF MALIBU

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SUBJECT: Amended and Restated Local Goals and Policies for all Community Facilities Districts of the City of Malibu

AUTHORIZATION: Resolution No. 12-29

EFFECTIVE DATE: Originally July 10, 2006, amended and restated June 25, 2012

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I. INTRODUCTION. Pursuant to Section 53312.7 of the California Government Code, the City Council of the City of Malibu (hereafter the "City Council") hereby states its goals and policies concerning the use of Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (hereafter the "Act") in providing adequate public capital infrastructure, facilities and equipment for the residents of the City of Malibu (the "City"). The following goals and policies shall apply to all community facilities districts (each a "CFD") hereafter formed by the City. Any policy or goal stated herein may be supplemented or amended or deviated from upon a determination by the City Council that such supplement, amendment or deviation is necessary or desirable, and any policy or goal stated herein shall be deemed amended or supplemented in the event, and as of the date, if ever, that such amendment or supplement is required to ensure compliance with the Act or any other laws of the State of California or federal laws of the United States of America.

II. PRIORITIES FOR CFD FINANCING UNDER THE ACT. Priority for CFD financing shall be given to public facilities directly benefiting the City as well as those improvements identified by the City as the most necessary to serve the specific needs of the portion of the City in which the CFD will be located. The financing of public facilities to be owned and operated by public agencies other than the City shall be considered on a case by case basis. The list of eligible public facilities include but are not limited to the following:

- |  |  |
|--|--|
| Streets, highways and bridges          | Flood control facilities   |
| Street lighting                        | Libraries  |
| Traffic signals and safety lighting    | Public utilities   |
| Parks                                  | Police and fire protection facilities  |
| Governmental facilities                | Recreation facilities, including golf courses  |
| Sanitary sewer facilities              | Biological mitigation measures involving land acquisition, dedication and revegetation |
| Storm drain facilities                 | Landscaping  |
| Potable and reclaimed water facilities |  |

In general, none of the foregoing types of facilities will have priority over the others, however, the City has final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a financing district. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and bond counsel on a case-by-case basis.

It is secondarily the policy of the City to assist in the provision of other public facilities when to do so is necessary, in the sole discretion of the City Council acting as the legislative body of the affected CFD, to serve taxpayers residing within or owning property within the City boundaries.

Additionally, the City may finance any one or more of the types of services specified in Section 53313 of the Act. Priority for CFD financing shall be given to services provided by or directly benefiting the City and, if multiple services are to be financed, with no service having priority over another service; provided, however, the City has final determination as to any service's eligibility for financing. The City shall not finance services on behalf of other public agencies.

III. GOVERNMENT CREDIT QUALITY REQUIREMENTS FOR CFD BOND ISSUES. All CFD bond issues should have a value to public lien ratio in aggregate in an amount no less than that required by law (not less than 3:1) after calculating the value of the financed public improvements to be installed. It is the policy of the City to refrain from the issuance of any CFD bonds unless at the time of issuance of any CFD bonds, (i) maximum special tax revenues from the CFD are reasonably expected to provide at least one hundred ten percent (110%) debt service coverage for each year of the term of such bonds plus administrative expenses; and (ii) the bond issuance document establishes, and includes a covenant to cause special taxes to be levied in an amount sufficient to maintain, for the term of such bonds, a reserve fund securing such bonds in an amount equaling the lowest of (i) ten percent (10%) of the original proceeds of such bonds, or (ii) the largest amount, for any bond year during the term of such bonds, of principal and interest payable on such bonds, or (iii) one hundred twenty-five percent (125%) of the average amount payable, for any bond year, of principal and interest on the outstanding bonds of such bond issue (provided, however, that depletion may occur to pay debt service in the last two (2) years of such term). Further, it is the policy of the City to comply with all provisions of the Act including, but not limited to, Section 53345.8, as such Section may be amended from time to time. If the criteria set forth above are met, such bond issues need not be rated by nationally-recognized rating agencies.

Property value may be based on either an appraisal or on assessed values as indicated on the current assessor's tax roll. The appraiser shall be selected by the City, and the appraisal shall be based on standards promulgated by the State of California and otherwise determined applicable by the City. The public lien amount shall include the bond issue currently being sold plus any public indebtedness secured by a lien on real property currently existing against the properties to be taxed.

Less than the minimum required value to public lien ratio, excessive tax delinquencies, or projects of poor economic viability may cause the City to disallow the sale of bonds or require credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and which otherwise provide extraordinary public benefits.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in form and upon terms and conditions satisfactory to the City. The cost of the credit enhancement shall be the responsibility of the property owner.

IV. DISCLOSURE REQUIREMENTS FOR THE PROSPECTIVE PROPERTY PURCHASERS.

A. Disclosure Requirements for Developers. Developers who are selling lots or parcels that are within a CFD shall provide disclosure notice to prospective purchasers that complies with all of the requirements set forth in Section 53341.5 of the Government Code. The disclosure notice must be provided to prospective purchasers of property at or prior to the time the contract or deposit receipt for the purchase of property is executed. Developers shall keep an executed copy of each disclosure document as evidence that disclosure has been provided to all purchasers of property within a CFD.

B. Disclosure Requirements for the Resale of Lots. The City shall provide a notice of special taxes when requested to sellers of property (other than developers) which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Code. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

V. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES. Special tax formulas for CFD's shall provide for minimum special tax levels which satisfy the following expenses of all CFD's: (a) at least 110 percent debt service coverage for all CFD bonded indebtedness, (b) the reasonable and necessary administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on bonds of the CFD. Additionally, the special tax formula may provide for the following: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, and (h) any other costs or payments permitted by law, including, but not limited to, financing any one or more of the types of services specified in Section 53313 of the Act.

The special tax formula shall be reasonable and equitable in allocating public facilities' costs to parcels within the CFD. Unless the City determines that special circumstances warrant a change, the special tax formula originally accepted for the CFD shall remain the same in order to ensure equity as originally envisioned at the time of CFD formation. At the time of formation of the CFD, exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owner's association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

It is the goal of the City that maximum Mello-Roos special taxes on residential owner-occupied property, when taken together with *ad valorem* taxes, any other special taxes levied pursuant to the Act and assessments applicable to such property, do not exceed in any year two percent (2%) of the greater of the assessed value or appraised value of such property. Nevertheless, special taxes on residential owner-occupied property, when taken together with

*ad valorem* taxes, any other special taxes levied pursuant to the Act and assessments applicable to such property, may exceed in any year two percent (2%) of the greater of the assessed value or appraised value of such property if the City determines at the time of formation of a CFD that over the term of the bonds, the special taxes, *ad valorem* taxes and assessments are expected to average two percent (2%) or less per year of the greater of the assessed value or appraised value of such property. It is further the policy of the City to comply with the provisions of Section 53321 of the Act with respect to the escalation of maximum taxes.

Special taxes will only be levied on an entire County Assessor's parcel, and any allocation of special tax liability of a County Assessor's parcel to leasehold or possessory interest in the fee ownership of such County Assessor's parcel shall be the responsibility of the fee owner of such parcel (except where the City is the fee owner of the parcel and has, subsequent to the date of adoption of these goals and policies, leased the parcel pursuant to a lease with a term of at least 5 years, in which case the lessee shall have the responsibility for the special tax liability) and the City shall have no responsibility therefor and has no interest therein. Failure to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

The City shall have a report prepared which: (a) recommends special tax rates and methods of allocation among parcels in the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures.

VI. APPRAISALS. It is the goal of the City to conform, as nearly as practicable, to the California Debt and Investment Advisory Commission's Appraisal Standards for Land-Secured Financings, as such standards may be amended from time to time. In any event, the value-to-lien ratio, when based upon an appraisal, shall be determined based upon an appraisal by an independent MAI appraiser of the property proposed in the CFD. The appraisal shall be coordinated by and under the direction of the City. All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD.

VII. TERMS AND CONDITIONS OF BONDS. All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and special reserve. All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond document, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance. The applicant shall provide (and shall cause such consultants and representatives to provide) such information, certifications, and writings as may be requested from time-to-time by the City, its bond counsel, staff, appraiser and consultants, including, but not limited to, a federal securities law opinion of counsel to the applicant addressed to the City and the underwriter for the proposed bonds regarding the accuracy and completeness of the information contained in the offering document for the bonds relating to the applicant and its proposed development within the

CFD. The City may from time-to-time enact and amend procedures to implement the goals and policies herein set forth. In such event, the applicant shall comply with the requirements under such procedures.

- VIII. **CFD COST DEPOSITS AND REIMBURSEMENTS.** All City and consultant costs incurred in the evaluation and the establishment of CFD's will be the responsibility of the entity requesting the establishment of the CFD. Applicants will from time-to-time advance to City amounts for costs and expenses as estimated by City. The City shall not incur any non-reimbursable expenses for processing and administering CFD's proposed by applicants other than the City. Expenses not chargeable to the CFD shall be directly borne by the applicant. The City may charge an administrative fee as part of the bond issue in order to recover any costs incurred in the evaluation and formation of the CFD which has not been paid.
- IX. **EXCEPTIONS TO THESE POLICIES.** The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers will be granted only by action of the City Council.
- X. **USE OF CONSULTANTS.** The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, financial advisors, appraiser and the special tax consultant. Consultants shall provide evidence demonstrating that they are experienced in the formation of CFDs and the issuance of CFD bonds and that they do not have any legally disqualifying conflicts of interest (under the Political Reform Act and such other laws concerning such conflicts as may be applicable). Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.
- XI. **AMENDMENTS.** No amendments to these local goals and policies may be effected except by resolution of the City Council expressly amending these local goals and policies.



# Council Agenda Report

To: Mayor Rosenthal and the Honorable Members of the City Council

Prepared by: Reva Feldman, Assistant City Manager 

Approved by: Jim Thorsen, City Manager 

Date prepared: August 1, 2012

Meeting date: August 13, 2012

Subject: Adoption of Resolutions Establishing Community Facilities District (CFD) No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) and Determining Necessity to Incur Bonded Indebtednesses within such CFD

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**RECOMMENDED ACTION:** 1) Conduct the Public Hearing; and 2) Adopt Resolution No. 12-32 establishing CFD No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One); and 3) Adopt 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.

**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.

Additionally, it has been determined that the maximum special taxes set forth in the Rate and Method of Apportionment of the Special Tax could be reduced and still support \$6,500,000 in Bonds. Accordingly, a revised Rate and Method of Apportionment of the Special Tax is attached as Exhibit B to Resolution No. 12-32.

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.

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.

Adoption of the attached Resolutions No. 12-32 and 12-33 will formally establish the CFD and call an election to be held by the property owners within the CFD on whether the CFD shall issue Bonds in an amount not to exceed \$6,500,000, levy special taxes in accordance with the rates and method of apportionment of the special tax and establish an appropriation limit for the CFD.

The County Registrar of Voters has confirmed to the City that there are no registered voters with the boundaries of the CFD. Accordingly, pursuant to the Mello Roos Act, the election will be a landowner election rather than a registered voter election. The City has been working with the property owners in CFD to obtain waivers of certain election law requirements as permitted under the Mello Roos Act in order to have an expedited bond/special tax election. However, the City has been unable to obtain waivers from 100% of the property owners as required to have an expedited election. Accordingly, the election cannot be held until November 20, 2012. Only those property owners within the CFD as of the close of the public hearing shall be entitled to vote. Each property owner shall be entitled to one vote per acre of property (or portion thereof) within the District. The election will be conducted by City Clerk with the assistance of Bond Counsel and shall be done by mail. Property owners shall have until August 27, 2012 to file arguments for or against the proposed ballot proposition. The election is expected to be certified by the Council in December and bonds will be sold shortly thereafter.

**ATTACHMENTS:**

1. Resolution No. 12-32
2. Resolution No. 12-33
3. Registrar of Voters Certification
4. Community Facilities District Report
5. Public Hearing Notice

## RESOLUTION NO. 12-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ESTABLISHING COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE), AUTHORIZING THE LEVY OF SPECIAL TAXES AND CALLING AN ELECTION THEREIN

### SECTION 1. Recitals.

A. The City Council of the City of Malibu (the "Council") has heretofore adopted Resolution No. 12-29 stating its intention to form Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) ("Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Act") therein.

B. A copy of Resolution No. 12-29 setting forth a description of the proposed boundaries of Community Facilities District No. 2012-1, the design, engineering, planning and environmental evaluation (the "Plant Design") required to construct a wastewater treatment facility and related infrastructure serving the City of Malibu's (the "City") Civic Center Area (the "Facilities") and incidental expenses to be financed by the District (the "Incidental Expenses") and the rate and method of apportionment of the special tax proposed to be levied within the proposed District is on file with the City Clerk and except to the extent amended by this resolution is incorporated herein by reference.

C. A notice was published and mailed to all landowners of the land proposed to be included within the District and all registered voters within the District as required by law relative to the intention of the Council to form proposed Community Facilities District No. 2012-1 and to levy a special tax and to incur bonded indebtedness within the District.

D. On August 13, 2012, this Council opened a noticed public hearing (the "Public Hearing") as required by law relative to the proposed formation of Community Facilities District No. 2012-1, the levy of special taxes therein and the issuance of bonded indebtedness by the District.

E. At the Public Hearing there was filed with this Council a report containing a description of the Plant Design necessary to meet the needs of the District and an estimate of the cost of the Plant Design as required by Section 53321.5 of the Act (the "Facilities Report").

F. The boundaries of the proposed District have been shown on the map designated "Map of Proposed Boundaries of Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) which map is on file in the office of the City Clerk and was recorded pursuant to Sections 3111 and 3113

of the Streets and Highways Code in the County of Los Angeles Book of Maps of Assessment and Community Facilities Districts in the County Recorder's Office as Document No. 20120960931 on June 28, 2012 (the "Original Map").

G. The Council desires in accordance with Section 53325.5 of the Act to alter the boundaries of the proposed District to include less territory than depicted on the Original Map. The Council desires to remove the territory located within Assessor's Parcel Nos. 4458-022-019, 4458-021-002, 4458-021-174 and 4458-021-003 from the boundaries of the proposed District. A new boundary map is on file with the City Clerk entitled "Amended Map of Proposed Boundaries of Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One)" (the "Amended Map").

H. Based on the territory proposed to be included in the District as set forth in the Amended Map, the Council desires to reduce the proposed special tax rates set forth in the rate and method of apportionment of the special tax as set forth in Attachment "A" to Resolution No. 12-29. An amended rate and method of apportionment of the special tax is set forth in Exhibit B hereto which reflects such reduced special tax rates.

I. At the August 13, 2012 Public Hearing all persons desiring to be heard on all matters pertaining to the proposed formation of Community Facilities District No. 2012-1 and the levy of the special taxes and the issuance of bonded indebtedness with respect to the District were heard and a full and fair hearing was held.

J. At the Public Hearing, evidence was presented to the Council on the matters before it, and the proposed formation of the District and the levy of special taxes within the District were not precluded by a majority protest of the type described in Section 53324 of the Act, and this Council at the conclusion of the hearing was fully advised as to all matters relating to the formation of the District, the levy of the special taxes and the issuance of bonded indebtedness.

K. The Council has determined that there have been less than 12 registered voters residing in the proposed boundaries of Community Facilities District No. 2012-1 for the period of 90 days prior to August 13, 2012 and that the qualified electors in Community Facilities District No. 2012-1 are the landowners within the District.

L. On the basis of all of the foregoing, the Council has determined at this time to proceed with the establishment of Community Facilities District No. 2012-1 and to call an election to authorize (i) the levy of special taxes pursuant to the rate and method of apportionment of the special tax, as set forth in Exhibit B hereto, (ii) the issuance of bonds to finance the Plant Design and Incidental Expenses, and (iii) the establishment of an appropriations limit for Community Facilities District No. 2012-1.

SECTION 2. The City Council finds that a community facilities district to be designated "Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center

Wastewater Treatment Plant Design Phase One)” is hereby established pursuant to the Act. The Council hereby finds and determines that all prior proceedings taken with respect to the establishment of the District, including the alteration of the boundaries of the proposed District and the reduction of the proposed special tax rate, were valid and in conformity with the requirements of law, including the Act. This finding is made in accordance with the provisions of Section 53325.1(b) of the Act.

SECTION 3. The City Council finds that the boundaries of Community Facilities District No. 2012-1 are established as shown on the map designated “Amended Map of Proposed Boundaries of Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One),” which map is on file in the office of the City Clerk. The City Clerk is hereby directed to sign the Amended Map and record it with all proper endorsements thereon with the County Recorder of the County of Los Angeles within 15 days after the adoption of this resolution, all as required by Section 3113 of the Streets and Highways Code of the State of California.

SECTION 4. The City Council finds that the Plant Design and Incidental Expenses authorized to be provided for Community Facilities District No. 2012-1 are those set forth in Resolution No. 12-29. The estimated cost of the Plant Design and Incidental Expenses to be financed is set forth in the Facilities Report, which estimates may change as the Plant Design is bid.

The City is authorized by the Act to contribute revenue to, and has previously contributed revenue to, the Plant Design, all in accordance with the Act. The City Council hereby determines that the commencement of the Plant Design is necessary to design the Facilities needed to comply with the State Water Resources Control Board (the “SWRCB”) Resolution No. 2010-0045 approving an amendment to Chapter IV of the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) to prohibit on-site wastewater disposal systems in the Malibu Civic Center Area as defined by Los Angeles Regional Water Quality Control Board (the “LARWQCB”) Resolution No. R4-2009-007 and the August 25, 2011 Memorandum of Understanding between the City of Malibu on the one hand and the SWRCB and LARWQCB on the other regarding a phased implementation of the Basin Plan amendment prohibiting on-site wastewater disposal systems in the Malibu Civic Center Area and benefits the property within the District.

SECTION 5. Except where funds are otherwise available, it is the intention of the Council, subject to the approval of the eligible voters within the District, to levy the proposed special taxes at the rates set forth in Exhibit B hereto on all non-exempt property within the District sufficient to pay for (i) the Plant Design; (ii) the principal and interest and other periodic costs on the bonds proposed to be issued by the District to finance the Plant Design and Incidental Expenses, including the establishment and replenishment of reserve funds, any remarketing, credit enhancement and liquidity facility fees and other expenses of the type permitted by Section 53345.3 of the Act; and (iii) the Incidental Expenses. The District expects to incur, and in certain cases has already incurred, Incidental Expenses in connection with the creation of the District, the issuance of bonds, the levying and collecting of the

special tax, the completion and inspection of the Plant Design and the annual administration of the bonds and the District. The rate and method of apportionment of the special tax is described in detail in Exhibit B hereto and incorporated herein by this reference, and the Council hereby finds that Exhibit B hereto contains sufficient detail to allow each landowner within the District to estimate the maximum amount that may be levied against each parcel. As described in greater detail in the Facilities Report, which is incorporated by reference herein, the special taxes are based on the expected demand that each parcel of real property within Community Facilities District No. 2012-1 will place on the Facilities and are generally proportionate to the relative benefit that each parcel will derive from the right to access the Facilities and, accordingly, is hereby determined to be reasonable. The special tax shall be levied on each assessor's parcel for a period not to exceed Fiscal Year 2052-53. The special tax is apportioned to each parcel on the foregoing basis pursuant to Section 53325.3 of the Act and such special tax is not on or based upon the ownership of real property.

The Public Works Department of the City of Malibu, 23825 Stuart Ranch Road, Malibu, California 90265, telephone number (310) 456-2489, will be responsible for preparing annually, or authorizing a designee to prepare, a current roll of special tax levy obligations by assessor's parcel number and will be responsible for estimating future special tax levies pursuant to Section 53340.2 of the Act.

SECTION 6. In the event that a portion of the property within Community Facilities District No. 2012-1 shall become for any reason exempt, wholly or partially, from the levy of the special tax specified in the applicable rate and method of apportionment contained in Exhibit B hereto, the Council shall, on behalf of Community Facilities District No. 2012-1, increase the levy to the extent necessary and permitted by law and these proceedings upon the remaining property within the District which is not delinquent or exempt in order to yield the required debt service payments on any outstanding bonds or to prevent the District from defaulting on any other obligations or liabilities. The amount of the special tax will be set in accordance with the rate and method of apportionment of the special tax attached as Exhibit B hereto.

SECTION 7. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all non-exempt real property in the District and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the special tax by the District ceases.

SECTION 8. It is hereby further determined that there is no *ad valorem* property tax currently being levied on property within proposed Community Facilities District No. 2012-1 for the exclusive purpose of paying the principal of or interest on bonds or other indebtedness incurred to finance the construction of capital facilities which provide the same services to the territory of Community Facilities District No. 2012-1 as are proposed to be provided by the Plant Design to be financed by Community Facilities District No. 2012-1.

SECTION 9. The City Council finds that written protests against the establishment of the District have not been filed by one-half or more of the registered voters within the boundaries of the District or by the property owners of one-half or more of the area of land within the boundaries of the District. The Council hereby finds that the proposed special tax has not been precluded by a majority protest pursuant to Section 53324 of the Act.

SECTION 10. An election is hereby called for Community Facilities District No. 2012-1 on the propositions of levying the special tax on the property within the District and establishing an appropriations limit for the District pursuant to Section 53325.7 of the Act and shall be consolidated with the election on the proposition of incurring bonded indebtedness for the District, pursuant to Section 53351 of the Act. The proposition to be placed on the ballot is attached hereto as Exhibit A.

SECTION 11. The date of the special election for Community Facilities District No. 2012-1 shall be on November 20, 2012, or such later date as is consented to by the City Clerk of the City of Malibu and the qualified voters within the District. The election shall be conducted by the City Clerk. Except as otherwise provided by the Act, the election shall be conducted in accordance with the provisions of law regulating elections of the City of Malibu insofar as such provisions are determined by the City Clerk to be applicable. The City Clerk is authorized to conduct the election following the adoption of this Resolution, and all ballots shall be received by, and the City Clerk shall close the election by, 5:30 p.m. on the election day; provided the election may be closed at such earlier time as all qualified electors have voted as provided in Section 53326(d) of the Act. It is hereby found based on information provided by the Registrar of Voters of the County of Los Angeles that there are less than 12 registered voters within the territory of Community Facilities District No. 2012-1. Accordingly, the qualified electors shall be the landowners of the District and each voter shall have one vote for each acre of land or portion thereof that the landowner owns within the District. Pursuant to Section 53326 of the Act, the ballots for the special election shall be distributed in person or by mail with return postage prepaid to the landowners of record within Community Facilities District No. 2012-1 as of the close of the August 13, 2012 hearing regarding the formation of the District. In accordance with Section 53326(b) of the Act, the City Council hereby finds that any facilities or services financed by Community Facilities District No. 2012-1 (including the Plant Design) are necessary to meet increased demands placed upon local agencies as a result of development or rehabilitation occurring within Community Facilities District No. 2012-1.

In accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California, the City Council requests the City Clerk to receive arguments in favor or against the ballot proposition and establish a deadline of August 27, 2012 as the date after which no arguments in favor or against the ballot propositions may be submitted to the City Clerk. The City Council hereby directs the City Clerk to transmit a copy of the foregoing measure to the City Attorney for the City, and directs the City Attorney to prepare and submit to the City Clerk an impartial analysis of the foregoing measure, all pursuant to California Elections Code Section 9280. The City Council adopts Subdivision (a) of Section 9285 of the

California Elections Code and hereby authorizes those persons filing the direct argument in favor of or against the foregoing ballot proposition to, if deemed advisable in their sole discretion, prepare and submit a rebuttal argument not exceeding 250 words and to file such rebuttal argument with the City Clerk not more than 10 days after the final date for filing direct arguments in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The City Council hereby directs the City Manager to prepare a tax rate statement in accordance with Section 9401 at the Elections Code of the State of California and to transmit such tax rate statement to the City Clerk for inclusion in the ballot materials.

SECTION 12. The preparation of the Facilities Report is hereby ratified. The Facilities Report, as submitted, is hereby approved and made a part of the record of the public hearing regarding the formation of Community Facilities District No. 2012-1, and is ordered to be kept on file with the transcript of these proceedings and open for public inspection.

PASSED, APPROVED AND ADOPTED on this 13<sup>th</sup> day of August, 2012.

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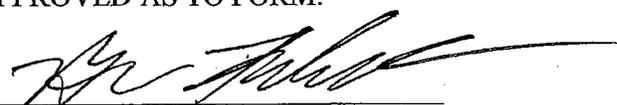
LAURA ROSENTHAL, Mayor

ATTEST:

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LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:



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BRIAN FORBATH, Special 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****RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
OF THE CITY OF MALIBU  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)**

A Special Tax shall be levied and collected in Community Facilities District No. 2012-1 of the City of Malibu ("CFD No. 2012-1") each Fiscal Year, in an amount determined by the City Council of the City of Malibu acting in its capacity as the legislative body of CFD No. 2012-1 through the application of the procedures described below. All of the real property in CFD No. 2012-1 and interests in real property such as leasehold interests and possessory interests, unless exempted by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

**A. DEFINITIONS**

The terms used herein shall have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California.

**"Acres"** or **"Acreage"** means the gross land area of an Assessor's Parcel as shown on an Assessor's Parcel Map or as provided by the Assessor's office, or if the land area is not shown on an Assessor's Parcel Map and cannot otherwise be obtained from the Assessor's office, the land area shown on the applicable Final Subdivision. The Acres applicable to a Condominium shall be determined by allocating the Acres of the underlying lot or parcel on which the Condominiums are or are to be constructed in proportion to each such Condominium's building square footage as determined from the applicable building permit(s). An Acre means 43,560 square feet of land.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2012-1, including but limited to the following: (i) the costs of computing the Special Taxes and of preparing the annual Special Tax collection schedules (whether by the CFD Administrator or designee thereof, or both); (ii) the costs of collecting the Special Taxes (whether by the County, City, or otherwise); (iii) the costs of remitting the Special Taxes to the fiscal agent or trustee for any Bonds; (iv) the costs of commencing and pursuing to completion any foreclosure action arising from delinquent Special Taxes; (v) the costs of the fiscal agent or trustee (including its legal counsel) in the discharge of the duties required of it under any Indenture; (vi) the costs of the City or designee in complying with arbitrage rebate requirements and disclosure requirements of applicable federal and state securities laws and of the Act, including public inquiries regarding the Special Taxes or the Bonds; (vii) the fees and expenses of CFD No. 2012-1 associated with a prepayment as calculated by the CFD Administrator including, but not limited to, the costs of computing the prepayment, the costs of removing any Special Taxes from the Assessor's Roll, the costs of redeeming the Bonds, and the costs of recording and publishing any notices to evidence the prepayment and the redemption of Bonds; (viii) the costs of the City or designee related to any appeal of the Special Tax; and (ix) an allocable share of the salaries of City staff and City overhead expense directly

related to the foregoing. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of CFD No. 2012-1.

**“Assessor’s Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

**“Assessor’s Parcel Map”** means an official map of the Assessor of the County designating parcels by Assessor’s Parcel number.

**“Bonds”** means any bonds or other indebtedness (as defined in the Act), whether in one or more series, secured by the levy of Special Taxes within CFD No. 2012-1.

**“CFD Administrator”** means the City Manager of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of Special Taxes.

**“City”** means the City of Malibu, California.

**“Condominium”** means a separate interest or unit meeting the statutory definition of a condominium contained in the California Civil Code, Section 1351, and for which a condominium plan has been recorded pursuant to California Civil Code, Section 1352.

**“Council”** means the City Council of the City, acting as the legislative body of CFD No. 2012-1.

**“County”** means the County of Los Angeles, California.

**“Final Subdivision”** means a subdivision of property by recordation of (i) a final map or parcel map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*), (ii) lot line adjustment approved by the City, or (iii) a condominium plan pursuant to California Civil Code 1352 that creates an individual lot(s) for which a building permit(s) may be issued without further subdivision.

**“Fiscal Year”** means the period starting on each July 1 and ending on the following June 30.

**“Indenture”** means the indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Maximum Special Tax”** means the maximum Special Tax, determined in accordance with Section B that can be levied by the Council in any Fiscal Year on any Assessor’s Parcel.

**“Non-Residential Property”** means the following Assessor’s Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-022-001, 4458-022-011, and 4458-022-022.

**“Public Property”** means any Assessor’s Parcel within the boundaries of CFD No. 2012-1 owned by the federal government, the State, the County, the City, or any other public agency.

Notwithstanding the preceding, any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be subject to the Special Tax.

**“Residential Property”** means the following Assessor’s Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4458-018-004, 4458-018-019, and 4458-019-003.

**“Special Tax”** means the Special Tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property to fund the Special Tax Requirement.

**“Special Tax Requirement”** means that amount required in any Fiscal Year to: (1) pay the Administrative Expenses, (2) pay debt service on any issued and outstanding Bonds, (3) replenish any reserve funds attributable to CFD No. 2012-1 and established in connection with Bonds, (4) pay the costs of remarketing, credit enhancement and liquidity facility fees (including such fees for instruments that serve as the basis of a reserve fund in lieu of cash related to any Bonds), (5) pay directly for acquisition or construction of facilities eligible under the Act in accordance with plans established at the time the Bonds are issued or its functional equivalent as modified, and less (6) available funds as provided under the Indenture.

**“State”** means the State of California.

**“Taxable Property”** means all Assessor’s Parcels within CFD No. 2012-1 which are not exempt from the Special Tax pursuant to Section E. The Fiscal Year 2011-12 Assessor’s Parcels of Taxable Property are as follows: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-018-004, 4458-018-019, 4458-019-003, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-022-001, 4458-022-011, and 4458-022-022.

**B. MAXIMUM SPECIAL TAX**

The Maximum Special Tax for Non-Residential Property is \$12,495.74 per Acre. The Maximum Special Tax for Residential Property is \$2,499.15 per Acre. The Maximum Special Tax for each Assessor’s Parcel of Taxable Property is set forth in Table 1 on the following page.

**TABLE 1**  
**CITY OF MALIBU**  
**CFD NO. 2012-1**  
**MAXIMUM SPECIAL TAX RATES**

<b>ASSESSOR'S PARCEL</b>	<b>ACRES</b>	<b>MAXIMUM SPECIAL TAX</b>
<b>Non-Residential Property</b>		
4452-011-029	1.8060	\$22,567.31
4452-011-039	0.9800	\$12,245.83
4452-011-042	2.3600	\$29,489.95
4452-011-043	2.2700	\$28,365.33
4458-019-009	1.8000	\$22,492.33
4458-019-010	14.6700	\$183,312.51
4458-020-010	2.1724	\$27,145.75
4458-020-014	2.6000	\$32,488.92
4458-020-015	1.1100	\$13,870.27
4458-022-001	2.4900	\$31,114.39
4458-022-011	9.6800	\$120,958.76
4458-022-022	3.5500	\$44,359.88
<b>Residential Property</b>		
4458-018-004	5.15000	\$12,870.61
4458-018-019	22.0000	\$54,981.26
4458-019-003	4.3200	\$10,796.32

**1. Subdivision of Assessor's Parcel**

In the event any Assessor's Parcel of Taxable Property is subdivided, the Maximum Special Tax applicable to an Assessor's Parcel created as a result of the subdivision shall be equal to Maximum Special Tax for the subdivided Assessor's Parcel multiplied by the quotient equal to the Acreage of such Assessor's Parcel created by the subdivision divided by the Acreage of all Assessor's Parcels created by the subdivision. Notwithstanding the preceding, no Special Tax shall be apportioned to any Assessor's Parcel that is exempt from the Special Tax pursuant to Section E herein.

**2. Consolidation of Assessor's Parcels**

The Maximum Special Tax for any Assessor's Parcel created by the consolidation of two or more Assessor's Parcels shall be equal to the sum of the Maximum Special Tax applicable to the Assessor's Parcels which were consolidated.

**C. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the Council shall determine the Special Tax Requirement and shall apportion and levy the Special Tax as set forth below until the amount of the Special Taxes equals the Special Tax Requirement. However, no

Special Tax shall be levied until interest and/or principal on the Bonds is payable in the calendar year commencing in the Fiscal Year in which Special Taxes would be levied.

First: The Special Tax shall be levied proportionately on each Assessor's Parcel of Taxable Property that is not Public Property at up to 100% of the applicable Maximum Special Tax to satisfy the Special Tax Requirement; and

Second: If additional monies are needed to satisfy the Special Tax Requirement, the Special Tax shall be levied proportionately on each Assessor's Parcel of Public Property that is not exempt from the Special Tax pursuant to Section E herein at up to 100% of the applicable Maximum Special Tax.

Notwithstanding the preceding language in this Section C, under no circumstances will the Special Taxes levied against any Assessor's Parcel used as a private residence be increased as a consequence of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 2012-1 by more than ten percent (10.00%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

**D. TERM**

The Maximum Special Tax shall not be levied after Fiscal Year 2052-2053.

**E. EXEMPTIONS**

The Council shall not levy a Special Tax on Public Property except as otherwise provided in Sections 53317.3 and 53317.5 of the Act.

**F. APPEALS**

Any property owner who is current on any and all CFD No. 2012-1 Special Taxes and feels that the amount of the Special Tax levied on his Assessor's Parcel is in error may submit a written appeal to CFD No. 2012-1. The CFD Administrator shall review the appeal, and if he or she concurs, shall grant a credit to eliminate or reduce future Special Taxes on the appellant's Assessor's Parcel(s). No refunds of previously paid Special Taxes shall be made. The Council may interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner appeal. Any decision of the Council shall be final and binding as to all persons.

**G. MANNER OF COLLECTION**

The Special Tax will be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 2012-1 may collect Special Taxes at a different time or in a different manner as determined by the Council, if necessary to meet its financial obligations.

## H. PREPAYMENT OF SPECIAL TAX

### 1. **Prepayment in Full**

The Maximum Special Tax for any Assessor's Parcel may be prepaid and permanently satisfied as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel. An owner of an Assessor's Parcel intending to prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which the amount any such prepayment shall be valid.

The "Prepayment" shall be an amount equal to the sum of (1) Principal, (2) Premium, (3) Defeasance, and (4) Fees minus the Reserve Fund Credit, where the terms "Principal," "Premium," "Defeasance," "Fees," and "Reserve Fund Credit" have the following meanings:

**"Principal"** means the principal amount of Bonds to be redeemed, along with accreted value if any, and equals the quotient derived by dividing (a) the applicable Maximum Special Tax for the Assessor's Parcel intending to prepay by (b) the aggregate Maximum Special Taxes on all Taxable Property within CFD No. 2012-1 (and excluding from (b) any Maximum Special Taxes which have previously been prepaid), and multiplying the quotient by the principal amount of Bonds issued and outstanding.

**"Premium"** means an amount equal to the Principal multiplied by the applicable redemption premium, if any, for the Bonds so redeemed with the proceeds of any such Prepayment.

**"Defeasance"** means an amount equal to the amount needed to pay interest, including accreted interest, on the Principal to be redeemed until the earliest redemption date for the outstanding Bonds. Credit shall be given for any Special Tax heretofore paid and which will not be needed for the Special Tax Requirement.

**"Fees"** equal the fees and expenses of CFD No. 2012-1 directly related to calculating the Prepayment and redeeming Bonds.

**"Reserve Fund Credit"** shall equal the lesser of (i) the expected reduction in the applicable reserve fund requirement (as defined in the Indenture), if any, following the redemption of Bonds from proceeds of the prepayment or (ii) the amount derived by subtracting the new reserve fund requirement in effect after the redemption of Bonds from the balance in the reserve fund (as such term is defined in the Indenture) on the prepayment date, but in no event shall such amount be less than zero.

The sum of the amounts calculated in the preceding steps shall be paid to CFD No. 2012-1 and shall be used to pay and redeem Bonds in accordance with the Indenture and to pay

the Fees. Upon the payment of such Prepayment to CFD No. 2012-1, the obligation to pay the Special Tax for such Assessor's Parcel shall be deemed to be permanently satisfied, the Special Tax shall not be levied thereafter on such Assessor's Parcel, and the CFD Administrator shall cause notice of cessation of the Special Tax for such Assessor's Parcel to be recorded within 30 working days of receipt of the Prepayment.

**2. Prepayment in Part**

The Maximum Special Tax for any Assessor's Parcel may be prepaid in part as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel. An owner of an Assessor's Parcel intending to partially prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which the amount any such prepayment shall be valid.

The amount of the "Partial Prepayment" shall be computed pursuant to Section H.1 above substituting the portion of the Maximum Special Tax to be prepaid for the Maximum Special Tax applicable to the Parcel when computing Principal. Upon payment of the Partial Prepayment, the CFD Administrator shall cause a notice of reduction of the Special Tax for such Assessor's Parcel to be recorded within 30 working days of receipt of such Partial Prepayment.

Notwithstanding the foregoing, no Prepayment or Partial Prepayment shall be allowed unless the amount of Maximum Special Taxes that may be levied in CFD No. 2012-1 pursuant to Section B after the proposed prepayment is at least the sum of (i) the estimated Administrative Expenses and (ii) one hundred ten percent (110%) of the annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such Prepayment or Partial Prepayment.

RESOLUTION NO. 12-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE) DETERMINING THE NECESSITY TO INCUR BONDED INDEBTEDNESS WITHIN COMMUNITY FACILITIES DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE) AND CALLING AN ELECTION THEREIN

SECTION 1. Recitals.

A. On June 25, 2012, the City Council of the City of Malibu ("Council") adopted Resolution No. 12-29 stating its intention to form Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) ("Community Facilities District No. 2012-1" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended ("Act").

B. On June 25, 2012, the Council also adopted Resolution No. 12-30 stating its intention to incur bonded indebtedness within proposed Community Facilities District No. 2012-1 in the amount of up to \$6,500,000 for the proposed District to finance (1) the design, engineering, planning and environmental evaluation (the "Plant Design") required to construct a wastewater treatment plant and related infrastructure improvements serving the City of Malibu's Civic Center Area (the "Facilities"), which Facilities have a useful life of 5 years or longer; and (2) the incidental expenses to be incurred in connection with financing the Facilities, forming and administering the District, including (a) all costs associated with the creation of the District, the issuance of bonds for the District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District; and (b) any other expenses incidental to the Plant Design (the "Incidental Expenses").

C. A notice was published and mailed as required by law relative to the intention of the Council to form Community Facilities District No. 2012-1 and to incur bonded indebtedness within the District.

D. On August 13, 2012, this Council held a noticed public hearing to determine whether it should proceed with the formation of Community Facilities District No. 2012-1, issue bonds to pay for the Plant Design and Incidental Expenses and authorize the rate and method of apportionment of a special tax to be levied within the District for the purposes described in Resolution No. 12-29.

E. At said hearing all persons desiring to be heard on all matters pertaining to the formation of Community Facilities District No. 2012-1, the levy of a special tax and the issuance of bonds to pay for the cost of the proposed Plant Design and Incidental Expenses were heard and a full and fair hearing was held.

F. The Council, subsequent to such hearing, adopted Resolution No. 12-32 establishing Community Facilities District No. 2012-1 (the "Resolution of Formation").

G. The Council desires to make the necessary findings to incur bonded indebtedness within the District, to declare the purpose for said debt, and to authorize the submittal of a proposition to the voters of the District, being the landowners within the District, all as authorized and required by law.

SECTION 2. The City Council finds that it is necessary to incur bonded indebtedness for Community Facilities District No. 2012-1 in a maximum aggregate principal amount not to exceed \$6,500,000.

SECTION 3. The City Council finds that the indebtedness is to be incurred for the purpose of financing the costs of the Plant Design, as described in Resolution No. 12-29 and the Resolution of Formation, financing the Incidental Expenses, and carrying out the powers and purposes of Community Facilities District No. 2012-1, including, but not limited to, financing the costs of selling the bonds, establishing and replenishing bond reserve funds and paying remarketing, credit enhancement and liquidity facility fees and other expenses of the type authorized by Section 53345.3 of the Act.

SECTION 4. The City Council finds that the whole of the property within the District, other than property exempted from the special tax pursuant to the provisions of the rate and method of apportionment attached to the Resolution of Formation as Exhibit B, shall pay for the bonded indebtedness of the District pursuant to the levy of the special tax authorized by the Resolution of Formation.

SECTION 5. The maximum term of the bonds to be issued shall in no event exceed 35 years.

SECTION 6. The bonds shall bear interest at the rate or rates not to exceed the maximum interest rate permitted by law, payable annually or semiannually (unless such bonds are issued as capital appreciation bonds, in which case interest shall be payable at maturity or conversion to current interest bonds), or in part annually and in part semiannually, except the first interest payment may be for a period of less than six months, with the actual rate or rates and times of payment to be determined at the time or times of sale thereof.

SECTION 7. The bonds may bear a variable or fixed interest rate, provided that such variable rate or the fixed rate shall not exceed the maximum rate permitted by Section 53351 of the Act, or any other applicable provision of law limiting the maximum interest rate on the bonds.

SECTION 8. Pursuant to Section 53351 of the Act, a special election is hereby called for Community Facilities District No. 2012-1 on the proposition of incurring the bonded indebtedness for the District. The proposition relative to incurring bonded indebtedness shall be in the form set forth in Exhibit "A" of the Resolution of Formation. The election on the proposition of incurring bonded indebtedness shall be consolidated with the

election on the proposition to levy a special tax and to establish an appropriations limit for the District, which proposition shall be in the form set forth in Exhibit "A" of the Resolution of Formation.

SECTION 9. The date of the special election for Community Facilities District No. 2012-1 shall be on November 20, 2012, or such later date as is consented to by the City Clerk of the City of Malibu and the landowners within the District. The election shall be conducted by the City Clerk. Except as otherwise provided by the Act, the election shall be conducted in accordance with the provisions of law regulating elections of the City of Malibu insofar as such provisions are determined by the City Clerk to be applicable. The City Clerk is authorized to conduct the election following the adoption of the Resolution of Formation and this resolution, and all ballots shall be received by, and the City Clerk shall close the election by, 5:30 p.m. on the election day; provided the election may be closed at such earlier time as all qualified electors have voted as provided in Section 53326(d) of the Act. It is hereby found based on information provided by the Registrar of Voters of the County of Los Angeles that there are less than 12 registered voters within the territory of Community Facilities District No. 2012-1. Accordingly, the qualified electors shall be the landowners within the District and each landowner shall have one vote for each acre or portion thereof which such landowner owns within the District. Pursuant to Section 53326 of the Act, the ballots for the special election shall be distributed in person or by mail with return postage prepaid to the landowners of record within Community Facilities District No. 2012-1 as of the close of the August 13, 2012 hearing regarding the formation of the District.

PASSED, APPROVED AND ADOPTED on this 13<sup>th</sup> day of August, 2012.

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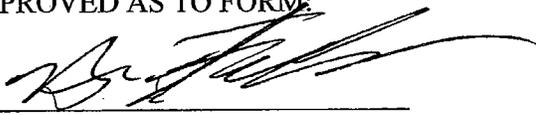
LAURA ROSENTHAL, Mayor

ATTEST:

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LISA POPE, City Clerk  
(Seal)

APPROVED AS TO FORM:



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BRIAN FORBATH, Special Counsel



COUNTY OF LOS ANGELES  
**REGISTRAR-RECORDER/COUNTY CLERK**

12400 IMPERIAL HWY. - P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024/(562) 462-2473

**DEAN C. LOGAN**

REGISTRAR-RECORDER/COUNTY CLERK

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF LOS ANGELES)

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk, in and for the County of Los Angeles, do hereby certify that I have examined the records of registration on file in my office, and as nearly as can be determined, there are NO active voters residing within the area known as: Proposed Boundaries of City of Malibu, Community Facilities District No. 2012-1 (Civic Center Wastewater Treatment Plant Design - Phase 1)

Dated: 06/29/12

**DEAN C. LOGAN**  
Registrar-Recorder/County Clerk

Elio Salazar, Head  
GIS Section

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

**AUGUST 13, 2012**

**COMMUNITY FACILITIES DISTRICT REPORT  
MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982**

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

**Prepared for**

**CITY OF MALIBU  
23815 Stuart Ranch Road  
Malibu, California 90265**

**Prepared by**

**DAVID TAUSSIG & ASSOCIATES, INC.  
5000 Birch Street, Suite 6000  
Newport Beach, CA 92660**

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**EXHIBITS**

- Exhibit A Rate and Method of Apportionment
- Exhibit B Boundary Map

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## **I. INTRODUCTION**

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WHEREAS, the City Council (the "City Council") of the City of Malibu (the "City") did, pursuant to the provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (hereinafter referred to as the "Act"), and specifically Section 53321.5 thereof, expressly order the filing of a written "Report" with the City Council. This community facilities district being City of Malibu Community Facilities District No. 2012-1 (Civic Center Wastewater Treatment Plant Design Phase One) shall hereinafter be referred to as:

"CFD No. 2012-1"; and

WHEREAS, A Resolution of the City Council of the City of Malibu Declaring Its Intention to Establish Community Facilities District No. 2012-1 of the City of Malibu (Civic Center Wastewater Treatment Plant Design Phase One), to Authorize the Levy of Special Taxes to Pay the Costs of Designing Certain Wastewater Treatment Facilities and Expenses of the District and to Pay Debt Service on Bonded Indebtedness (hereinafter referred to as "Resolution of Intention") did direct that said Report generally contain the following:

1. A brief description of the public facilities by type which will be required to adequately meet the needs of CFD No. 2012-1; and
2. An estimate of the cost of providing these public facilities, including the cost of environmental evaluations of such facilities; and
3. An estimate of the fair and reasonable cost of any incidental expenses proposed to be incurred.

NOW, THEREFORE, David Taussig & Associates, Inc. does hereby submit this Report.

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## **II. CFD BOUNDARIES**

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As provided in Resolution No. 12-32 submitted to the City Council for approval on August 13, 2012, CFD No. 2012-1 includes fifteen (15) parcels located in the City's civic center area. A map of CFD No. 2012-1, submitted for approval by the City Council on August 13, 2012, is attached as Exhibit B.

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### **III. DESCRIPTION AND ESTIMATED COST OF PROPOSED FACILITIES**

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#### **A. Description of Proposed Public Improvements**

A community facilities district may provide for the purchase, construction, expansion or rehabilitation of any real or tangible property, including public facilities and infrastructure improvements, with an estimated useful life of five (5) years or longer, which is necessary to meet increased demands placed upon local agencies as a result of development or rehabilitation occurring within the community facilities district. In addition to public facilities, a community facilities district may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities to be constructed based upon such planning and design work need not be physically located within the district.

Community Facilities District No. 2012-1 is anticipated to finance planning and design work for a wastewater treatment facility and related infrastructure required pursuant to the June 27, 2011 Memorandum of Understanding between the City, Regional Water Quality Control Board, and State Water Resources Control Board. These facilities are public facilities as defined in the Act, which the City is authorized by law to construct, acquire, own and operate. The Special Taxes<sup>1</sup> required from CFD No. 2012-1 to pay for the planning and design of said facilities will be apportioned as described in the Rate and Method of Apportionment of Special Tax for CFD No. 2012-1.

#### **B. Estimated Cost of the Civic Center Area Wastewater Treatment Plant Design**

The costs listed in Table 1 on the following page are estimates only, based upon current order of magnitude estimates. Actual costs may differ from those estimates herein.

<b>TABLE 1</b>	
<b>CIVIC CENTER AREA WASTEWATER TREATMENT PLANT DESIGN</b>	
<b>DESCRIPTION</b>	<b>ESTIMATED COST</b>
Design	\$6,545,156
Less City Contribution	\$1,545,156
Net Cost to CFD 2012-1	\$5,000,000

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<sup>1</sup> All capitalized terms used herein, unless otherwise indicated, shall have the meanings defined in the Rate and Method of Apportionment of Special Tax for CFD No. 2006-1.

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#### **IV. BONDED INDEBTEDNESS AND INCIDENTAL EXPENSES**

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##### **A. Projected Bonded Indebtedness**

The maximum authorized bonded indebtedness for CFD No. 2012-1 is \$6,500,000. It is currently anticipated that CFD No. 2012-1 will sell a single series of bonds that will be refunded with the proceeds of bonds issued by a subsequent assessment district or districts of the benefitted property.

##### **B. Incidental Bond Issuance Expenses to be Included in the Proposed Bonded Indebtedness**

Pursuant to Section 53345.3 of the Act, bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the costs of administrative, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district due and payable within one year of the issuance of the bonds; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond and disclosure counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancement costs, and printing costs. For purposes of determining the special tax rates for CFD No. 2012-1, bonded indebtedness estimates include a reserve fund equal to maximum annual debt service and other incidental bond issuance expenses equal to approximately three and nine-tenth percent (3.9%) of the principal amount of the bonds. Capitalized interest, if any, reserve funds, and issuance costs will vary from the above estimates based on market conditions and other factors.

##### **C. Incidental Expenses to be Included in the Annual Levy of Special Taxes**

Incidental expenses which may be included in the annual levy of special taxes are the costs associated with the formation of CFD No. 2012-1, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of CFD No. 2012-1. While the actual costs associated with the determination and collection of taxes and other annual administrative costs may vary, it is anticipated that the amount of special taxes which can be collected will be sufficient to fund at least \$10,000 in annual administrative expenses.

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**V. RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

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As shown in Exhibit A, the Rate and Method of Apportionment provides information sufficient to allow an owner of property within CFD No. 2012-1 to estimate the maximum annual Special Tax that may be levied on such property. The Special Tax is apportioned on an acreage basis. The Maximum Special Tax rate that may be levied against Non-Residential Property and Residential Property is \$12,495.74 and \$2,499.15 per Acre, respectively.

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## **VI. GENERAL TERMS AND CONDITIONS**

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### **A. Substitution Facilities**

The description of the planning and design work, as set forth herein, is general in nature. The final nature, location, and costs of the wastewater improvements and facilities will be determined upon the preparation of final plans and specifications. The final plans may show substitutes, in lieu or modifications to the proposed work in order to accomplish the work of improvement, and any such substitution shall not be a change or modification in the proceedings as long as the facilities provide a service substantially similar to that as set forth in this Report.

### **B. Appeals**

Any property owner who is current on any and all CFD No. 2012-1 Special Taxes and feels that the amount of the Special Tax levied on his Assessor's Parcel is in error may submit a written appeal to CFD No. 2012-1. The CFD Administrator shall review the appeal, and if he or she concurs, shall grant a credit to eliminate or reduce future Special Taxes on the appellant's Assessor's Parcel(s). No refunds of previously paid Special Taxes shall be made. The Council may interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner appeal. Any decision of the Council shall be final and binding as to all persons.

### **C. Prepayment of Special Tax**

The Special Tax may be prepaid in whole or in part according to the prepayment provisions in the Rate and Method of Apportionment for CFD No. 2012-1.

<http://127.0.0.1/resources/Clients/Malibu/AD/City Center WWTP/CFD Report/Malibu CFD 2012-1 Civic Center CFD RPT 7.30.12.docx>

**EXHIBIT A**

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

**RATE AND METHOD OF APPORTIONMENT**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
OF THE CITY OF MALIBU  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)**

A Special Tax shall be levied and collected in Community Facilities District No. 2012-1 of the City of Malibu ("CFD No. 2012-1") each Fiscal Year, in an amount determined by the City Council of the City of Malibu acting in its capacity as the legislative body of CFD No. 2012-1 through the application of the procedures described below. All of the real property in CFD No. 2012-1 and interests in real property such as leasehold interests and possessory interests, unless exempted by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

**A. DEFINITIONS**

The terms used herein shall have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California.

**"Acres" or "Acreage"** means the gross land area of an Assessor's Parcel as shown on an Assessor's Parcel Map or as provided by the Assessor's office, or if the land area is not shown on an Assessor's Parcel Map and cannot otherwise be obtained from the Assessor's office, the land area shown on the applicable Final Subdivision. The Acres applicable to a Condominium shall be determined by allocating the Acres of the underlying lot or parcel on which the Condominiums are or are to be constructed in proportion to each such Condominium's building square footage as determined from the applicable building permit(s). An Acre means 43,560 square feet of land.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2012-1, including but limited to the following: (i) the costs of computing the Special Taxes and of preparing the annual Special Tax collection schedules (whether by the CFD Administrator or designee thereof, or both); (ii) the costs of collecting the Special Taxes (whether by the County, City, or otherwise); (iii) the costs of remitting the Special Taxes to the fiscal agent or trustee for any Bonds; (iv) the costs of commencing and pursuing to completion any foreclosure action arising from delinquent Special Taxes; (v) the costs of the fiscal agent or trustee (including its legal counsel) in the discharge of the duties required of it under any Indenture; (vi) the costs of the City or designee in complying with arbitrage rebate requirements and disclosure requirements of applicable federal and state securities laws and of the Act, including public inquiries regarding the Special Taxes or the Bonds; (vii) the fees and expenses of CFD No. 2012-1 associated with a prepayment as calculated by the CFD Administrator including, but not limited to, the costs of computing the prepayment, the costs of removing any Special Taxes from the Assessor's Roll, the costs of redeeming the Bonds, and the costs of recording and publishing any notices to evidence the prepayment and the redemption of Bonds; (viii) the costs of the City or

designee related to any appeal of the Special Tax; and (ix) an allocable share of the salaries of City staff and City overhead expense directly related to the foregoing. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of CFD No. 2012-1.

**"Assessor's Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

**"Bonds"** means any bonds or other indebtedness (as defined in the Act), whether in one or more series, secured by the levy of Special Taxes within CFD No. 2012-1.

**"CFD Administrator"** means the City Manager of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of Special Taxes.

**"City"** means the City of Malibu, California.

**"Condominium"** means a separate interest or unit meeting the statutory definition of a condominium contained in the California Civil Code, Section 1351, and for which a condominium plan has been recorded pursuant to California Civil Code, Section 1352.

**"Council"** means the City Council of the City, acting as the legislative body of CFD No. 2012-1.

**"County"** means the County of Los Angeles, California.

**"Final Subdivision"** means a subdivision of property by recordation of (i) a final map or parcel map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.), (ii) lot line adjustment approved by the City, or (iii) a condominium plan pursuant to California Civil Code 1352 that creates an individual lot(s) for which a building permit(s) may be issued without further subdivision.

**"Fiscal Year"** means the period starting on each July 1 and ending on the following June 30.

**"Indenture"** means the indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**"Maximum Special Tax"** means the maximum Special Tax, determined in accordance with Section B that can be levied by the Council in any Fiscal Year on any Assessor's Parcel.

**"Non-Residential Property"** means the following Assessor's Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-022-001, 4458-022-011, and 4458-022-022.

**"Public Property"** means any Assessor's Parcel within the boundaries of CFD No. 2012-1 owned by the federal government, the State, the County, the City, or any other public agency. Notwithstanding the preceding, any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be subject to the Special Tax.

**"Residential Property"** means the following Assessor's Parcels of Taxable Property including their successors in the event of a subdivision or consolidation: 4458-018-004, 4458-018-019, and 4458-019-003.

**"Special Tax"** means the Special Tax to be levied in each Fiscal Year on each Assessor's Parcel of Taxable Property to fund the Special Tax Requirement.

**"Special Tax Requirement"** means that amount required in any Fiscal Year to: (1) pay the Administrative Expenses, (2) pay debt service on any issued and outstanding Bonds, (3) replenish any reserve funds attributable to CFD No. 2012-1 and established in connection with Bonds, (4) pay the costs of remarketing, credit enhancement and liquidity facility fees (including such fees for instruments that serve as the basis of a reserve fund in lieu of cash related to any Bonds), (5) pay directly for acquisition or construction of facilities eligible under the Act in accordance with plans established at the time the Bonds are issued or its functional equivalent as modified, and less (6) available funds as provided under the Indenture.

**"State"** means the State of California.

**"Taxable Property"** means all Assessor's Parcels within CFD No. 2012-1 which are not exempt from the Special Tax pursuant to Section E. The Fiscal Year 2011-12 Assessor's Parcels of Taxable Property are as follows: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-018-004, 4458-018-019, 4458-019-003, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-022-001, 4458-022-011, and 4458-022-022.

**B. MAXIMUM SPECIAL TAX**

The Maximum Special Tax for Non-Residential Property is \$12,495.74 per Acre. The Maximum Special Tax for Residential Property is \$2,499.15 per Acre. The Maximum Special Tax for each Assessor's Parcel of Taxable Property is set forth in Table 1 on the following page.

<b>TABLE 1</b> <b>CITY OF MALIBU</b> <b>CFD No. 2012-1</b> <b>MAXIMUM SPECIAL TAX RATES</b>		
<b>ASSESSOR'S PARCEL</b>	<b>ACRES</b>	<b>MAXIMUM SPECIAL TAX</b>
<b>Non-Residential Property</b>		
4452-011-029	1.8060	\$22,567.31
4452-011-039	0.9800	\$12,245.83
4452-011-042	2.3600	\$29,489.95
4452-011-043	2.2700	\$28,365.33
4458-019-009	1.8000	\$22,492.33
4458-019-010	14.6700	\$183,312.51
4458-020-010	2.1724	\$27,145.75
4458-020-014	2.6000	\$32,488.92
4458-020-015	1.1100	\$13,870.27
4458-022-001	2.4900	\$31,114.39
4458-022-011	9.6800	\$120,958.76
4458-022-022	3.5500	\$44,359.88
<b>Residential Property</b>		
4458-018-004	5.15000	\$12,870.61
4458-018-019	22.0000	\$54,981.26
4458-019-003	4.3200	\$10,796.32

**1. Subdivision of Assessor's Parcel**

In the event any Assessor's Parcel of Taxable Property is subdivided, the Maximum Special Tax applicable to an Assessor's Parcel created as a result of the subdivision shall be equal to Maximum Special Tax for the subdivided Assessor's Parcel multiplied by the quotient equal to the Acreage of such Assessor's Parcel created by the subdivision divided by the Acreage of all Assessor's Parcels created by the subdivision. Notwithstanding the preceding, no Special Tax shall be apportioned to any Assessor's Parcel that is exempt from the Special Tax pursuant to Section E herein.

**2. Consolidation of Assessor's Parcels**

The Maximum Special Tax for any Assessor's Parcel created by the consolidation of two or more Assessor's Parcels shall be equal to the sum of the Maximum Special Tax applicable to the Assessor's Parcels which were consolidated.

**C. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the Council shall determine the Special Tax Requirement and shall apportion and levy the Special Tax as set forth below until the amount of the Special Taxes equals the Special Tax Requirement. However, no Special Tax shall be levied until interest and/or principal on the Bonds is payable in the calendar year commencing in the Fiscal Year in which Special Taxes would be levied.

First: The Special Tax shall be levied proportionately on each Assessor's Parcel of Taxable Property that is not Public Property at up to 100% of the applicable Maximum Special Tax to satisfy the Special Tax Requirement; and

Second: If additional monies are needed to satisfy the Special Tax Requirement, the Special Tax shall be levied proportionately on each Assessor's Parcel of Public Property that is not exempt from the Special Tax pursuant to Section E herein at up to 100% of the applicable Maximum Special Tax.

Notwithstanding the preceding language in this Section C, under no circumstances will the Special Taxes levied against any Assessor's Parcel used as a private residence be increased as a consequence of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 2012-1 by more than ten percent (10.00%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

**D. TERM**

The Maximum Special Tax shall not be levied after Fiscal Year 2052-2053.

**E. EXEMPTIONS**

The Council shall not levy a Special Tax on Public Property except as otherwise provided in Sections 53317.3 and 53317.5 of the Act.

**F. APPEALS**

Any property owner who is current on any and all CFD No. 2012-1 Special Taxes and feels that the amount of the Special Tax levied on his Assessor's Parcel is in error may submit a written appeal to CFD No. 2012-1. The CFD Administrator shall review the appeal, and if he or she concurs, shall grant a credit to eliminate or reduce future Special Taxes on the appellant's Assessor's Parcel(s). No refunds of previously paid Special Taxes shall be made. The Council may interpret this Rate and Method of Apportionment of Special Tax for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner appeal. Any decision of the Council shall be final and binding as to all persons.

**G. MANNER OF COLLECTION**

The Special Tax will be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 2012-1 may collect Special Taxes at a different time or in a different manner as determined by the Council, if necessary to meet its financial obligations.

**H. PREPAYMENT OF SPECIAL TAX**

1. Prepayment in Full

The Maximum Special Tax for any Assessor's Parcel may be prepaid and permanently satisfied as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel. An owner of an Assessor's Parcel intending to prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which the amount any such prepayment shall be valid.

The "Prepayment" shall be an amount equal to the sum of (1) Principal, (2) Premium, (3) Defeasance, and (4) Fees minus the Reserve Fund Credit, where the terms "Principal," "Premium," "Defeasance," "Fees," and "Reserve Fund Credit" have the following meanings:

**"Principal"** means the principal amount of Bonds to be redeemed, along with accreted value if any, and equals the quotient derived by dividing (a) the applicable Maximum Special Tax for the Assessor's Parcel intending to prepay by (b) the aggregate Maximum Special Taxes on all Taxable Property within CFD No. 2012-1 (and excluding from (b) any Maximum Special Taxes which have previously been prepaid), and multiplying the quotient by the principal amount of Bonds issued and outstanding.

**"Premium"** means an amount equal to the Principal multiplied by the applicable redemption premium, if any, for the Bonds so redeemed with the proceeds of any such Prepayment.

**"Defeasance"** means an amount equal to the amount needed to pay interest, including accreted interest, on the Principal to be redeemed until the earliest redemption date for the outstanding Bonds. Credit shall be given for any Special Tax heretofore paid and which will not be needed for the Special Tax Requirement.

**"Fees"** equal the fees and expenses of CFD No. 2012-1 directly related to calculating the Prepayment and redeeming Bonds.

**"Reserve Fund Credit"** shall equal the lesser of (i) the expected reduction in the applicable reserve fund requirement (as defined in the

Indenture), if any, following the redemption of Bonds from proceeds of the prepayment or (ii) the amount derived by subtracting the new reserve fund requirement in effect after the redemption of Bonds from the balance in the reserve fund (as such term is defined in the Indenture) on the prepayment date, but in no event shall such amount be less than zero.

The sum of the amounts calculated in the preceding steps shall be paid to CFD No. 2012-1 and shall be used to pay and redeem Bonds in accordance with the Indenture and to pay the Fees. Upon the payment of such Prepayment to CFD No. 2012-1, the obligation to pay the Special Tax for such Assessor's Parcel shall be deemed to be permanently satisfied, the Special Tax shall not be levied thereafter on such Assessor's Parcel, and the CFD Administrator shall cause notice of cessation of the Special Tax for such Assessor's Parcel to be recorded within 30 working days of receipt of the Prepayment.

## 2. Prepayment in Part

The Maximum Special Tax for any Assessor's Parcel may be prepaid in part as described herein, provided that (i) Bonds have been issued, (ii) interest on the Bonds is payable on a current basis, and (iii) at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel. An owner of an Assessor's Parcel intending to partially prepay the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel and the date through which the amount any such prepayment shall be valid.

The amount of the "Partial Prepayment" shall be computed pursuant to Section H.1 above substituting the portion of the Maximum Special Tax to be prepaid for the Maximum Special Tax applicable to the Parcel when computing Principal. Upon payment of the Partial Prepayment, the CFD Administrator shall cause a notice of reduction of the Special Tax for such Assessor's Parcel to be recorded within 30 working days of receipt of such Partial Prepayment.

Notwithstanding the foregoing, no Prepayment or Partial Prepayment shall be allowed unless the amount of Maximum Special Taxes that may be levied in CFD No. 2012-1 pursuant to Section B after the proposed prepayment is at least the sum of (i) the estimated Administrative Expenses and (ii) one hundred ten percent (110%) of the annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such Prepayment or Partial Prepayment.

**EXHIBIT B**

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

**BOUNDARY MAP**

**AMENDED BOUNDARIES OF  
CITY OF MALIBU  
COMMUNITY FACILITIES DISTRICT NO. 2012-1  
(CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA**

(1) Filed in the office of the City Clerk of the City of Malibu this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lisa Pope  
City Clerk, City of Malibu

(2) I hereby certify that the within map showing the amended boundaries of City of Malibu Community Facilities District No. 2012-1 (Civic Center Wastewater Treatment Plant Design Phase One), County of Los Angeles, State of California, was approved by the Council of the City of Malibu at a regular meeting thereof, held on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by its Resolution No. \_\_\_\_\_.

\_\_\_\_\_  
Lisa Pope  
City Clerk, City of Malibu

(3) Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2012, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_m, in Book \_\_\_\_\_ of Maps of Assessment and Community Facilities Districts at Page \_\_\_\_\_ and as Instrument No. \_\_\_\_\_ in \_\_\_\_\_ in the office of the County Recorder in the County of Los Angeles, State of California.

Dean C. Logan  
Registrar-Recorder/County Clerk,  
County of Los Angeles

By \_\_\_\_\_ Deputy

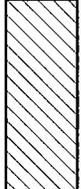
Fee \_\_\_\_\_

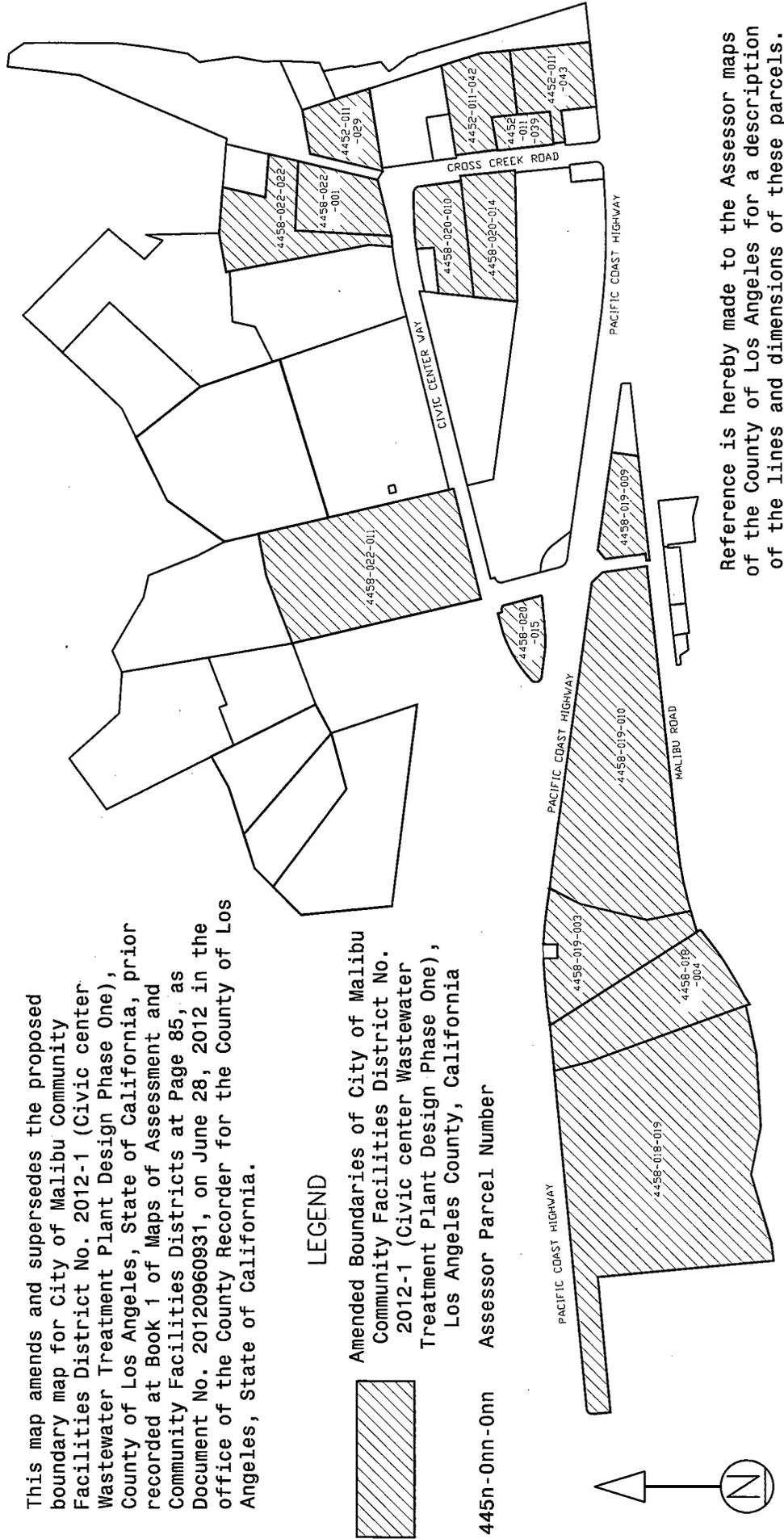
Exempt recording requested,  
per CA Government Code §6103

**AMENDED BOUNDARIES OF  
 CITY OF MALIBU  
 COMMUNITY FACILITIES DISTRICT NO. 2012-1  
 (CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN PHASE ONE)  
 COUNTY OF LOS ANGELES  
 STATE OF CALIFORNIA**

This map amends and supersedes the proposed boundary map for City of Malibu Community Facilities District No. 2012-1 (Civic center Wastewater Treatment Plant Design Phase One), County of Los Angeles, State of California, prior recorded at Book 1 of Maps of Assessment and Community Facilities Districts at Page 85, as Document No. 20120960931, on June 28, 2012 in the office of the County Recorder for the County of Los Angeles, State of California.

**LEGEND**

-  Amended Boundaries of City of Malibu Community Facilities District No. 2012-1 (Civic center Wastewater Treatment Plant Design Phase One), Los Angeles County, California
- 445n-0nn-0nn** Assessor Parcel Number



Reference is hereby made to the Assessor maps of the County of Los Angeles for a description of the lines and dimensions of these parcels.

**NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, August 13, 2012, at 6:30 p.m. at Malibu City Hall**, located at 23825 Stuart Ranch Road, Malibu, CA, to consider:

**NOTICE OF PUBLIC HEARING ON INTENTION TO LEVY  
SPECIAL TAXES WITHIN COMMUNITY FACILITIES  
DISTRICT NO. 2012-1 OF THE CITY OF MALIBU (MALIBU  
CIVIC CENTER WASTEWATER TREATMENT PLANT DESIGN  
PHASE ONE) AND TO ISSUE BONDED INDEBTEDNESS**

NOTICE IS HEREBY GIVEN that the City Council of the City of Malibu (the "City Council") has adopted its Resolution No. 12-29 and its Resolution No. 12-30 on June 25, 2012, declaring its intention to form Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) (the "District" or "Community Facilities District No. 2012-1") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), to levy special taxes within the District and to authorize bonded indebtedness for the District. The District is proposed to have the boundaries depicted on the map for the proposed District on file with the City Clerk. The boundaries of the proposed District include the following Assessor Parcel Numbers located within the City of Malibu's Civic Center Area: 4452-011-029, 4452-011-039, 4452-011-042, 4452-011-043, 4458-018-004, 4458-018-019, 4458-019-003, 4458-019-009, 4458-019-010, 4458-020-010, 4458-020-014, 4458-020-015, 4458-022-001, 4458-022-011 and 4458-022-022. Resolution Nos. 12-29 and 12-30 are collectively referred to herein as the "Resolution of Intention." Capitalized terms not otherwise defined herein have the meanings set forth in the Resolution of Intention.

In the Resolution of Intention, the City Council has declared its intention to levy special taxes within the proposed District and to authorize bonded indebtedness to be issued by the proposed District in an amount not to exceed \$6,500,000. The Special taxes are proposed to be levied and the bonds are proposed to be issued for the purpose of (1) the design, engineering, planning and environmental evaluation (the "Plant Design") required to construct a wastewater treatment facility and related infrastructure serving the City of Malibu's Civic Center Area (the "Facilities"), which Facilities have a useful life of 5 years or longer; and (2) the incidental expenses to be incurred in connection with financing the Plant Design, forming and administering the District, including (a) all costs associated with the creation of the District, the issuance of bonds for the District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District; and (b) any other expenses incidental to the construction, acquisition, modification, completion and inspection of the Facilities (the "Incidental Expenses").

The Resolution of Intention sets forth the rate and method of apportionment of special tax for the District. The Resolution of Intention proposes the special tax to finance the Plant Design and the Incidental Expenses (the "Special Tax") as summarized below. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Rate and Method of Apportionment, attached to the Resolution of Intention.

- ❑ *Maximum Special Tax.* The Maximum Special Tax for each Assessor's Parcel of Non-Residential Property shall be \$19,707.33 per Acre and for each Assessor's Parcel of Residential Property shall be \$3,941.47 per Acre.
- ❑ *Method of Apportionment of the Special Tax.* Commencing with Fiscal Year 2012-2013 and for each following Fiscal Year, the Special Tax shall be levied in equal percentages on each Assessor's Parcel of Taxable Property, up to the applicable Maximum Special Tax, to satisfy the Special Tax Requirement. Notwithstanding the preceding, under no circumstances will the Special Taxes levied against any Assessor's Parcel used as a private residence be increased as a consequence of delinquency or default by the owner of any other Assessor's Parcel or Assessor's Parcels within the District by more than ten percent (10%) per Fiscal Year.
- ❑ *Term.* The Maximum Special Tax shall not be levied after Fiscal Year 2052-2053.
- ❑ *Manner of Collection.* The Special Tax will be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that Community Facilities District No. 2012-1 may collect Special Taxes at a different time or in a different manner as determined by the Council, if necessary to meet its financial obligations.
- ❑ *Prepayment of Special Tax.*
  - *Prepayment in Full.* Following the issuance of the Bonds, the Maximum Special Tax for any Assessor's Parcel may be prepaid and permanently satisfied in accordance with the Rate and Method of Apportionment of Special Tax, provided that a prepayment may be made only if at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel.
  - *Prepayment in Part.* Following the issuance of the Bonds, the Maximum Special Tax for any Assessor's Parcel may be prepaid in part in accordance with the Rate and Method of Apportionment of Special Tax, provided that a prepayment may be made only if at the time of the prepayment there are no delinquent Special Taxes with respect to such Assessor's Parcel.
  - Notwithstanding the foregoing, no Prepayment or Partial Prepayment shall be allowed unless the amount of Maximum Special Taxes that may be levied in Community Facilities District No. 2012-1 after the proposed prepayment is at least the sum of (i) the estimated Administrative Expenses and (ii) one hundred ten percent (110%) of the annual debt service for the Bonds, taking into account the Bonds to remain outstanding after such Prepayment or Partial Prepayment.

The foregoing is only a summary of the Resolution of Intention which is on file with the City Clerk. The full text of the Resolution of Intention should be referred to by any interested party for greater detail.

## PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD ON AUGUST 13, 2012, AT THE HOUR OF 6:30 P.M., OR AS SOON THEREAFTER AS SUCH MATTER CAN BE HEARD, AT A REGULAR MEETING OF THE CITY COUNCIL TO BE HELD IN THE CITY COUNCIL CHAMBERS LOCATED AT MALIBU CITY HALL, 23825 STUART RANCH ROAD, MALIBU, CALIFORNIA 90265, AT WHICH TIME THE CITY COUNCIL WILL HEAR ALL EVIDENCE AND TESTIMONY BY ALL INTERESTED PERSONS, PROPERTY OWNERS, VOTERS AND TAXPAYERS FOR OR AGAINST (1) THE ESTABLISHMENT OF THE DISTRICT, (2) THE EXTENT OF THE DISTRICT, (3) THE LEVY OF THE SPECIAL TAXES WITHIN THE DISTRICT, (4) THE ISSUANCE OF BONDED INDEBTEDNESS BY THE DISTRICT, (5) THE FURNISHING OF THE PLANT DESIGN, AND (6) ANY OTHER MATTERS AS SET FORTH IN THE RESOLUTION OF INTENTION.

ALL PERSONS INTERESTED, INCLUDING PROPERTY OWNERS, TAXPAYERS AND REGISTERED VOTERS, MAY APPEAR AT THE HEARING AND PRESENT EVIDENCE AND TESTIMONY ORALLY OR IN WRITING FOR OR AGAINST ITEMS (1) THROUGH (6) ABOVE. EACH INDIVIDUAL WISHING TO SPEAK WILL BE LIMITED TO A THREE MINUTE ORAL PRESENTATION. ANY PROTEST PERTAINING TO THE REGULARITY OR SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE PROPOSED ISSUES DESCRIBED IN ITEMS (1) THROUGH (6) ABOVE MUST BE IN WRITING AND SHALL CLEARLY STATE THE IRREGULARITIES OR DEFECTS TO WHICH OBJECTION IS MADE, AND SHALL BE FILED WITH THE CITY CLERK ON OR BEFORE THE TIME SET FOR THE HEARING. IF MORE THAN ONE-HALF (1/2) OF THE REGISTERED VOTERS WITHIN COMMUNITY FACILITIES DISTRICT NO. 2012-1 OR THE OWNERS OF ONE-HALF (1/2) OR MORE OF THE AREA OF THE LAND IN THE DISTRICT FILE WRITTEN PROTESTS AGAINST ANY OF ITEMS (1) THROUGH (6) ABOVE, AND PROTESTS ARE NOT WITHDRAWN SO AS TO REDUCE THE NUMBER OF THE PROTESTS TO LESS THAN A MAJORITY, THE CITY COUNCIL SHALL ABANDON THAT PORTION OF THE PROCEEDINGS PERTAINING TO SUCH ITEM(S) AND NO FURTHER PROCEEDINGS WITH RESPECT TO SUCH ITEM(S) SHALL BE TAKEN FOR A PERIOD OF ONE YEAR FROM THE DATE OF THE DETERMINATION BY THE CITY COUNCIL. THE CITY COUNCIL MAY MODIFY THE PROCEEDINGS IF SUCH MAJORITY PROTESTS ARE ONLY AGAINST A SPECIFIED ISSUE.

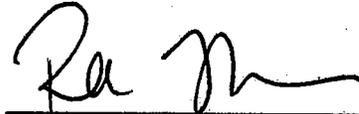
UNDER THE ACT, THE CITY COUNCIL MAY EITHER CONCLUDE THE PUBLIC HEARING ON AUGUST 13, 2012 OR MAY CONTINUE THE PUBLIC HEARING TO A LATER DATE IF THE COMPLEXITY OF THE PROPOSED DISTRICT OR THE NEED FOR PUBLIC PARTICIPATION REQUIRES ADDITIONAL TIME. IF THE CITY COUNCIL DETERMINES TO SUBMIT FOR A VOTE THE QUESTION OF LEVYING THE SPECIAL TAXES WITHIN AND AUTHORIZING BONDED INDEBTEDNESS OF COMMUNITY FACILITIES DISTRICT NO. 2012-1, AN ELECTION WILL BE HELD FOR COMMUNITY FACILITIES DISTRICT NO. 2012-1 TO APPROVE THE LEVY OF THE SPECIAL TAXES AND THE ISSUANCE OF BONDS. AT THE ELECTION, EACH LANDOWNER WITHIN THE COMMUNITY FACILITIES DISTRICT NO. 2012-1 SHALL BE ENTITLED TO CAST ONE VOTE FOR EACH ACRE OF LAND OR PORTION THEREOF THAT IT OWNS WITHIN COMMUNITY FACILITIES DISTRICT NO. 2012-1. FOR A PROPOSITION TO BE ADOPTED, TWO-THIRDS OF THE VOTES CAST AT THE ELECTION MUST FAVOR PASSAGE.

INQUIRIES

The full text of the Resolution of Intention, which includes the proposed Rate and Method of Apportionment of Special Tax and a more detailed description of the Plant Design to be financed, and a copy of the map of the proposed District may be obtained from the person specified below.

For any questions relating to the proceedings, or any particulars, please contact Reva Feldman, Assistant City Manager, at (310) 456-2489, ext. 224.

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REVA FELDMAN, Assistant City Manager