according to the report, and only 14% are classified as "quality jobs."[14] Low quality jobs create burdens on public services that the DEIR does not address.

According to an issue brief produced by the LAANE, "[G]overnment at all levels, from local to federal, faces increased costs because poverty-wage jobs without health care benefits lead to an increased need for anti-poverty programs and services. Ultimately, these increased costs are borne by taxpayers."[15] The brief goes onto calculate that the family of the typical Los Angeles County low-wage worker (who earns $7.50 per hour, works 1,900 hours per year, and supports a family of four) is eligible for anti-poverty programs which cost at least $8,209 per year (Appendix 8).

The final EIR needs to further study the possible impact of low-wage jobs on social services for the community around the proposed Project and explore ways to mitigate these impacts.

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[14] *"Quality job" is defined as a job that pays an annual salary over the Lower Living Standard Income Level applicable to the Los Angeles Metropolitan Statistical Area for a family of four, or $27,771 annually.*

[15] *LAANE, "We All Pay the Price: Anti-Poverty Subsidies for Low-Wage Workers in Santa Monica's Coastal Zone."*

RESPONSE 15.10

Within Pico Union and surrounding residential neighborhoods, there is an existing high percentage of unemployment and underemployment. As discussed in Response to Comment 15.9, the Project will provide residents with many opportunities for employment in a wide range of job types with a corresponding range in wage scales. Implementation of the job training programs described in Response to Comment 15.9 will provide the opportunity for advancement. As the employee's wages increase, there will be a corresponding decrease in the need for public services. Thus, Project employment of existing residents would reduce the demand on public services. However, the Project would also attract new job-seekers from elsewhere in the City which might result in a localized increase in the need for services. This potential increase in demand would be offset by the decrease in demand by existing residents and impacts on public services would be less than significant.

COMMENT 15.11

4. Strong Links Between Economic Development and Affordable Housing Must Be Developed and Maintained.

The negative impact on affordable housing, and particularly the disproportionate impact the Project will have on Latino families, also undermines the Project's purported consistency with other land use programs, including SCAG's guidelines for growth management which promote Social, Political and Cultural Equity."[16] The DEIR identifies the Project's relevance to the guideline that states, "encourage employment development in job-poor localities through support of labor force retraining programs and other economic development measures.[17] However, local residents have observed that even good wages will be offset by the costs of transportation from affordable housing in outlying areas, or by increased housing costs.[18]

We fully encourage a well planned and implemented local job training and placement program to be associated with this Project, as such a program, if successful, could reduce vehicle trips generated by employees during the construction and operating phases of the Project as well as providing employment opportunities to local residents. It is also important to assure that affordable housing not be sacrificed in order to meet the economic goals of this Project.

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[16] *DEIR., p.103*

[17] *DEIR, p.104.*

[18] *FCCEJ, Community Focus Group discussion 1/31/01.*

RESPONSE 15.11

Refer to Response to Comment 15.7 regarding affordable housing. Refer to Response to Comment 15.9 regarding employment opportunities and job training.

COMMENT 15.12

5. Conclusion

The DEIR states that the Project "would not result in any significant environmental impacts upon housing, population and employment and therefore no mitigation measures are required."[19] In actuality, there are numerous highly significant environmental impacts on housing, population and employment that require further analysis and mitigation.

The proposed Project is expected to create a significant number of retail, parking attendant, restaurant and hotel jobs, though the quality or wage level of these jobs is not discussed. Without wage standards and full-time hour requirements it is safe to assume that the Project's

retail and service sector jobs will be the low-wage, no-benefit, part-time work those sectors typically provide. If at the same time the Project causes surrounding rents and property values to rise, this further affects the demand and supply of affordable housing.

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[19] *DEIR, p.193.*

RESPONSE 15.12

Refer to Responses to Comments 15.7 through 15.11.

COMMENT 15.13

6. Recommendations

We list suggested mitigation measures and encourage further exploration of those as well as other ways to address the impacts. Beyond mitigating specific impacts, we also believe incorporating affordable housing, job quality and community access measures would contribute significantly to the cumulative benefit of the proposed Project. In a statement of overriding consideration, such community benefits would help outweigh negative Project impacts that cannot be fully mitigated.

Our proposed mitigation measures include the following:

Affordable Housing

- A fee of $10 per square foot of commercial development (non-housing development) should be paid into a Figueroa Corridor Housing Trust Fund. The Fund should be managed by a separate non-profit governed by community, labor and Staples representatives and offered to local non-profits that provide service-enriched housing.

- Establish mechanisms for neighborhood residents and non-profits to have the first right of refusal to purchase buildings with scheduled expiration of affordability requirements.

RESPONSE 15.13

Impacts on affordable housing would remain less than significant with the Project's Affordable Housing Program, which is described in Response to Comment 15.7.

COMMENT 15.14

- We request that in the final EIR the City use actual numbers rather than forecasted information to analyze the housing impacts of the Project. For example, the DEIR states that a total of 10,658 dwelling units were forecasted for the Central City Community Plan Area in 2000.[20] The actual number of total dwelling units constructed, which may well be considerably lower, is not stated.

[20] *DEIR, p.189.*

RESPONSE 15.14

The Southern California Association of Governments (SCAG), the region's federally designated metropolitan planning organization, is responsible for preparing the Regional Comprehensive Plan and Guide (RCPG) and the Regional Transportation Plan (RTP). Adopted in May 1998, the RTP contains a set of baseline socioeconomic projections that are used as the basis for SCAG's transportation planning. They include projections of total population, households, and employment at the regional, county, subregional, jurisdictional, census tract and transportation analysis zone levels. The RTP uses 1994 as the base year with projections for the years 2000, 2005, 2010, 2015, and 2020. Because 2000 Census data is not yet readily available, SCAG RTP projections are currently the most useful set of population, household, and employment forecasts for the type of analysis contained in this EIR. Refer to Section IV.C, Population, Housing and Employment, of the Draft EIR.

COMMENT 15.15

Employment

- The Project Applicant should extend application of the City's Living Wage and Service Worker Retention ordinances to commercial tenants, who are expected to produce most of the long-term jobs associated with the Project. Living Wage jobs will help mitigate the loss of affordable housing for local employees as well as contribute to the economic development of the City.

- The Project Applicant should agree to be neutral and to encourage others to be neutral when workers are considering unionization. Union jobs typically pay higher wages and carry more benefits than non-union jobs.

- The Project Applicant should set local hiring targets and implement a local hiring/First Source hiring program. The DEIR states that "it is anticipated that the location of the

jobs created within the Central City Community Plan Area will improve the balance between jobs and housing and result in greater individual and group benefits."[21] However, it does not present any evidence to support this anticipation, nor detail concrete ways in which local hiring would be accomplished. Local hiring targets met through a First Source hiring program would help create a Live/Work Community, mitigating the loss of affordable housing for local employees. Additionally, as discussed in Section D below, increased local hiring would also mitigate traffic impacts by decreasing levels of peak hour traffic.

- The Project Applicant should invest in training to qualify local residents for these jobs, including jobs with the opportunity for advancement in the sports and entertainment industry into positions which pay higher wages, and should create incentives for their commercial tenants to do the same.

[21] *DEIR, p.193.*

RESPONSE 15.15

Refer to Response to Comment 15.7 regarding affordable housing. Refer to Response to Comment 15.9 regarding job quality and job training.

COMMENT 15.16

- In the final EIR, economic information may be required to support findings that certain mitigation measures or alternatives are not economically feasible. Under 14 California Code of Regulations section 15131 (c), agencies must consider economic and social factors, particularly housing needs, along with environmental, legal and technological factors, in determining whether mitigation measures and project alternatives are infeasible.[22]

[22] *See also 14 Cal. Code Regs. §§ 15091, 15364.*

RESPONSE 15.16

All recommended mitigation measures, as provided in Section III, Mitigation Monitoring and Reporting Program, of this Final EIR, have been determined to be feasible considering technological, environment, economic, social, and housing factors. Where mitigation measures

have been recommended in comments on the NOP and/or the Draft EIR, the responses to those comments indicate whether the recommended mitigation measures are infeasible and provide reasons why specific comments and suggestions were not accepted.

COMMENT 15.17

C. The Drainage and Surface Water Quality Sections of the DEIR Are Insufficient.

After reviewing the DEIR, we find that the water quality analysis is insufficient. Our concerns include the fact that the DEIR fails to analyze for compliance with water quality standards, requirements for new sources to impaired waterways, anti-degradation requirements and special needs of Ballona Creek as an area of biological significance. Because the Project stormwater runoff will ultimately impact the Ballona Creek, our concerns are highlighted by the fact that Ballona Creek is already severely impaired by a host of pollutants.

1. Characteristics of the Ballona Creek Watershed.

Presently, the Ballona Creek Watershed is identified by the Los Angeles Regional Water Quality Control Board ("LARWQCB") as having the following beneficial uses:

- Ballona Creek: Existing beneficial uses: Non-contact recreation, Wildlife habitat. Potential: drinking water, contact recreation, and warm freshwater habitat.

- Ballona Creek Estuary: Existing: Navigation, contact recreation, non-contact recreation, commercial and sport fishing, Estuarine Habitat, Marine Habitat, Wildlife Habitat, Rare, Threatened & Endangered Species, Migration of Aquatic Organisms, Spawning, Reproduction and/or Early Development, Shellfish Harvesting.

- Ballona Wetlands: Existing: Contact Recreation, Non-contact Recreation, Estuarine Habitat, Wildlife Habitat, Rare, Threatened & Endangered Species, Migration of Aquatic Organisms, Spawning, Reproduction and/or Early Development, Wetland Habitat.

Moreover, Ballona Creek is recognized as a Significant Ecological Area ("SEA") by the LARWQCB.[23] The SEAs designated by LARWQCB are analogous to "environmentally sensitive areas" under the California Coastal Act which are "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."[24]

Unfortunately, notwithstanding these beneficial uses and the Watershed's ecological importance, levels of the following toxic and other pollutants found in the Ballona Creek Watershed already exceed federal and state water quality standards: arsenic, cadmium, copper DDT, lead, PCBs, ChemA, chlordane, dieldrin, silver, tributylin, zinc, enteric viruses, and trash.[25] Many of these pollutants are toxic to aquatic life and harmful to humans.

2. The DEIR Fails to Adequately Analyze Impacts Associated with Potential Violations of Water Quality Standards.

The DEIR indicates that "[a] project would have a significant impact to drainage or surface water quality if development of the project were to result in any of the following: ... violate water quality standards …."[26]

We agree with this general conclusion. Despite this, however, the DEIR concludes there is no significant impact in terms of violations of water quality standards.[27] Yet, there is no analysis or description of how this conclusion was reached. This is a violation of CEQA.[28]

Section 303 of the Clean Water Act defines "water quality standard
uses of the surface (navigable) waters involved and the water quality criteria which are applied to protect those uses.[29] Under the Porter-Cologne Water Quality Control Act,[30] these concepts are separately considered as beneficial uses and water quality objectives.

Water quality standards consist of designated beneficial uses for state waters (like those identified above for Ballona Creek) and water quality criteria designed to protect those uses.[31] Under the Clean Water Act, the states are primarily responsible for the adoption, and periodic review of water, quality standards.[32] However, where a state does not act to adopt or update a standard, EPA can promulgate standards. Pursuant to this authority, in 1992, EPA promulgated the National Toxics Rule ("NTR"), to bring noncomplying states, such as California, into compliance with the Clean Water Act.[33]

The federal government also recently enacted the California Toxics Rule ("CTR") after California failed to do so.[34] Additional numeric water quality standards are also set forth in the Water Quality Control Plan, Ocean Waters of California.[35] Further, water quality criteria include those narrative and numeric objectives set forth in the Water Quality Control Plan for the Los Angeles Region.[36]

Notwithstanding the applicability of these water quality standards to Ballona Creek -- and the DEIR's conclusion that to exceed such standards would be an indication of significant impact -- no formal analysis of the water quality standards impact has been provided in the DEIR. Indeed,

there is no analysis as to whether the perceived levels of discharge exceed federal or state water quality standards. Instead, only conclusory statements are made to the effect that there is less than significant impact to violations of water quality standards. This violates CEQA.[37]

Without such an analysis in the DEIR, it is impossible for the public to know what water quality standards, if any, are being applied to reach the conclusions drawn. It is also impossible for the public to ascertain to which beneficial uses of Ballona Creek, Ballona Wetlands, and the Ballona Creek estuary, water quality standards have been applied, if any. It is also impossible to ascertain whether any toxicity analysis of the most sensitive species been conducted. Because the DEIR is silent as to what analysis was performed to reach its conclusions that no violations of water quality standards will occur, the DEIR is insufficient. Moreover, and as discussed below, existing information indicates that water quality standards will be violated.

3. Available Information Indicates Water Quality Standards Could Be Violated.

Based on information available, it seems clear that the Project could exceed water quality standards set forth in the Clean Water Act; the Ocean Plan; the Basin Plan, the National Toxics Rule, the California Toxics Rule, and federal and state Antidegradation Provisions for the Ballona Creek Watershed.[38] This is because the types and levels of pollutants that are likely to discharge from the Project will likely be above the numeric levels set forth in the Ocean Plan, the Basin Plan, the NTR, and the CTR, as well as above the narrative standards set forth in the Basin Plan. Moreover, as set forth more fully in the next section, the Project would likely violate federal and state Anti-degradation provisions.

The Los Angeles County 1998-99 Stormwater Monitoring Report, sets forth the types and levels of priority pollutants that are typically discharged from a multi-residential use site such as the Project.[39] The County Stormwater Report makes it clear that the levels of priority pollutants that would likely be discharged from the type of land use envisioned by the Project would exceed the numeric water quality standards set forth above. For example, the NTR sets forth a chronic toxicity limit of 2.5 ug/l for lead, while the county data indicates the commercial land use exceeds these standards with levels at 12 ug/l. Similarly, the NTR sets forth a limit of 11 ug/1 for copper chronic toxicity (and 17 ug/l for acute toxicity), while the county data reveals levels of 26 ug/1 for commercial use.[40]

Meanwhile the DEIR makes reference to the fact that compliance with the LARWQCB's new Standard Urban Stormwater Mitigation Plan (SUSMP) will serve as mitigation for any impacts. However, as the applicant undoubtedly is aware, the SUSMP itself was not design to guarantee compliance with water quality standards. It was merely designed to further the goals of reducing polluted runoff from new and re-development.

The applicant also states that in order to mitigate surface water quality impacts it will "construct catch basins, roof drains, surface parking drains connecting directly to the existing storm drain system…" Without further explanation it is impossible to ascertain how the mere connection of drains will mitigate water quality impacts (e.g., is there treatment in these drains?).

4. The DEIR Fails To Analyze The Project's Potential Violation of 40 CFR 122.4(i)

Regulatory section 40 C.F.R. section 122.4(i) prohibits discharges from new sources to waters listed as impaired under section 303(d) of the Clean Water Act ("CWA").[41] Ballona Creek and Ballona Estuary are listed as impaired for arsenic, cadmium, copper, DDT, lead, PCBs, ChemA, chlordane, dieldrin, silver, tributylin, zinc, enteric viruses, and trash.[42]

Meanwhile, the DEIR recognized that "[i]n urban areas, toxins such as zinc, copper and lead, which can cause toxic effects in high concentrations, are most commonly associated with surface runoff."[43] However, runoff from the Project is deemed acceptable in the DEIR because of broad conclusory statements about compliance with various permits and legal requirements. This, however, does not satisfy the legal requirements of § 122.4(i).

In particular, § 122.4(i) imposes a new source prohibition unless certain specific conditions are met. First, all necessary pollutant load allocations must be performed, i.e., Total Maximum Daily Loads ("TMDLs") must be established. Second, the regulations clearly state that no discharge may comnience unless there are "sufficient remaining pollution load allocations to [44] There are currently no TMDLs for Ballona Creek to indicate there is an available load allocation which would allow the new source. Based on the fact that most TMDLs for this waterway are years away,[45] it is disingenuous to even suggest that these legal conditions have been met.

Moreover, the DEIR fails to identify any calculations or equation that may have been used, and the documents that were relied upon, to calculate any water quality or pollution contributions from the Project to the Creek. Based on the information provided, it is impossible to tell what loading will occur. This violates CEQA, again because the Supreme Court has required that there must be a disclosure of "the analytic route the ... agency traveled from evidence to [46]

Further, the DEIR has failed to analyze the additional gross inputs for all CWA § 303(d) listed pollutants, including arsenic, cadmium, DDT, PCBs, ChemA, chlordane, dieldrin, silver, tributylin, enteric viruses, and trash. This is a significant oversight. For example, trash is a major problem in Ballona Creek.[47] Clearly, some trash will be generated from this Project and the new foot traffic and business activities located there. This has not been factored into the DEIR's analysis of impacts or even discussed.[48] Without such analysis, the Project cannot go

forward. Indeed, such an analysis must be conducted for all CWA § 303(d) listed pollutants and must demonstrate compliance with 40 C.F.R. § 122.4(i) before approval can be granted.

5. The DEIR Fails to Analyze the Project's Compliance with Antidegradation Requirements.

The Clean Water Act's entire purpose is to improve water quality, not simply to allow degradation until a point where beneficial uses are not achieved. For this reason, the CWA specifically states that (1) "Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected," and (2) "Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected, unless the state finds that lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located."[49] Based on the information in the DEIR, it seems clear that an analysis of whether the Project will violate these requirements has not been done.

Moreover, it seems clear that this type of an anti-degradation analysis has been entirely ignored for the types of pollutants that are typical for urban runoff, which admittedly include "toxins such as zinc, copper and lead." If these pollutants are increasing due to the proposed activity, the proposed activity is a violation of federal and state anti-degradation laws, without any analysis of whether the Project is "necessary to accommodate important economic or social development in the area."[50] Moreover, it appears that such an analysis has not been conducted for all pollutants identified on the State's 303(d) List of Impaired Waterways.

According to the DEIR, the Project will drain to current locations. Yet the DEIR contains no analysis of whether the pollution loading in these areas will remain unchanged due to the Project (i.e. as a result of the change in land use). Certainly, increased traffic will bring increased cars and increased pollution from those cars. Pollutants from vehicles include many heavy metals such as lead, copper, etc. Moreover, additional pedestrian traffic will also result in trash and other debris that would not otherwise be present. Yet the DEIR contains no analysis on the water quality impacts associated with additional vehicle and pedestrian traffic in the Project area. Nor does the DEIR contain any analysis of whether there will be any increase mass loading for any pollutants.

Finally, if the Project does not include mass limits for pollutants based on the current "mean -- from the Project area itself -- the permit will be in violation of the anti-degradation policy."[51]

6. The DEIR Fails to Analyze Impacts to the Ballona Creek Significant Ecological Area.

Ballona Creek is recognized as a Significant Ecological Area ("SEA") by the LARWQCB.[52] The SEAs designated by LARWQCB are analogous to "environmentally sensitive areas" under the California Coastal Act which are "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."[53] Despite the importance of the SEAs to the City and the state of California, the DEIR fails to present a clear picture of impacts to the significant ecological areas that could occur as a result of the Project. "[W]hen a project is approved that will significantly affect the environment, CEQA places the burden on the approving agency to affirmatively show that it has considered the identified means of lessening or avoiding the project's significant effects and to explain its decision allowing those adverse changes to occur."[54] The City has not met its burden of showing that it considered means to lessen or avoid the Project's significant impacts on the Ballona Creek SEA.

7. Recommendations

We believe further analysis of the Project's water quality and surface water drainage plans must be completed to satisfy CEQA requirements. The final EIR must address the deficiencies identified above, including compliance with SWRCB and LARWQCB regulations and orders, as well as applicable state and federal water requirements.

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[23] *LARWQCB Basin Plan (1994) pages 1-17.*

[24] *Public Resources Code ("PRC") § 30107.5.*

[25] *LARWQCB 1998 303(d) List of Impaired Waterbodies, pags 67-68.*

[26] *DEIR, 202-203.*

[27] *DEIR, 205-206.*

[28] *See Topanga Assn. for a Scenic Community 11 Cal.3d 506, 515 (applied to the CEQA context in Laurel Heights Improvement Assn v. Regents of the University of California (1988) 47 Cal.3d 376, 404 ["Laurel Heights I"].) As stated by the Court in Laurel Heights I: The Regents miss the critical point that the public must be equally informed. Without meaningful analysis … in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. We do not impugn the integrity of the Regents, but neither can we countenance a result that would require blind trust by the public [emphasis added], especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials. "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.*

[29] *Basin Plan, p.3-1.*

[30] *California Water Code, Division 7, Chapter 2, Section 13050.*

[31] *33 U.S.C. § 1313; LARWQCB Basin Plan, at 3-1.*

[32] *33 U.S.C. § 1313.*

[33] *40 C.F.R. 131.36.*

[34] *65 Fed. Reg. 31682, 31683 (U.S. EPA, May 18, 2000) ("Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the States of California").*

[35] *State Water Resources Control Board Resolution No. 97-026 ("Ocean Plan").*

[36] *Basin Plan, Chapter 3.*

[37] *See Topanga Assn. For a Scenic Community, supra, 11 Cal.3d at 515 (applied to the CEQA context in Laurel Heights I, 47 Cal.3d at 4040) (there must be a disclosure of "the analytic route the … agency traveled from evidence to*

[38] *40 C.F.R. 131.12; State Board Order 68-16.*

[39] *See Los Angeles County 1998-1999 Stormwater Monitoring Report ("County Stormwater Report"), July 14, 1999, prepared by the Los Angeles County of Public Works, URS Greiner Woodward Clyde, and Southern California Coastal Research Project.*

[40] *If the applicant believes that the proposed treatment options will reduce this level to significantly below these criteria, the applicant must explain the basis for its conclusion as to all different water quality criteria.*

[41] *33 U.S.C. §1313.*

[42] *See 303(d) List of Impaired Waterways.*

[43] *DEIR, p.200.*

[44] *40 C.F.R. § 122.4(i)(1), see also Clean Water Act § 303(d) (describing requirements for TMDLs).*

[45] *See Consent Decree lodged in Heal the Bay and Santa Monica BayKeeper v. Browner, No. C 90-4825 SBA (on file with the LARWQCB and incorporated herein by reference).*

[46] *Topanga Assn. For a Scenic Community, supra, 11 Cal.3d 506, 515.*

[47] *See CWA §303(d) List; Santa Monica Bay Restoration Project, Taking the Pulse of the Bay State of the Bay 1998 at 6.*

[48] *As you may be aware, the Los Angeles Regional Water Quality Control Board recently adopted a trash TMDL for the Los Angeles River. Under the terms of this TMDL, discharges of trash must be eliminated over the course of the next ten to fourteen years. A similar TMDL for Ballona Creek trash is expected in the next few months. Yet, the DEIR makes no mention of this fact or of the Project's ability to comply with a long-term ZERO trash discharge requirement.*

[49] *40 CFR 131.12.*

[50] *See 40 CFR 131.12.*

[51] *See SWRCB Order No. 90-5.*

[52] *See LARWQCB Basin Plan (1994) page 1-17.*

[53] *PRC § 30107.5.*

[54] *Village of Laguna Beach, Inc. v. Board of Supervisors (1982) 134 Cal.App.3d 1022, 1035.*

RESPONSE 15.17

Water Quality Standards

The State Water Resources Control Board ("SWRCB") and the California Regional Water Quality Control Board, Los Angeles Region ("RWQCB") ensure compliance with applicable water quality standards by requiring developers of new or redevelopment projects to implement Best Management Practices ("BMPs") to control stormwater and urban runoff. Such BMPs are the effluent limits that apply to the Project.[4] The Project does not discharge to Ballona Creek; the Project discharges to the Los Angeles County separate storm sewer system. As such, the Project need not comply with water quality standards measured in Ballona Creek, except to the extent required by the NPDES permits applicable to the Project.

A. Stormwater Discharges From The Project Will Be Regulated Under Two NPDES Permits; The Project Will Be Required To Comply With All Applicable Water Quality Standards.

Two permits regulate the discharge of stormwater from the Project. During construction, the Project will be regulated by a NPDES permit issued by the SWRCB, known as the General Permit for Discharges of Stormwater Runoff Associated with Construction Activities ("Construction Permit").[5] Post construction, discharges of stormwater from the Project must comply with the City of Los Angeles' Municipal Storm Water and Urban Runoff Permit ("MS4 Permit").[6] The SWRCB and the RWQCB enforce water quality standards through the administration of these permits. Both of the permits applicable to the Project require implementation of BMPs so as to ensure that beneficial uses of the receiving waters are protected, there are no violations of water quality objectives, and there are no discharges which would cause or contribute to exceedances of any applicable water quality standard found in the Basin Plan. Construction Permit, §B(2); MS4 Permit, at 12. Therefore, the Draft EIR correctly stated that, with the implementation of BMPs, the Project would not result in a significant impact to surface water quality.

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[4] *BMPs may serve "as the necessary water quality-based limitations, where numeric water quality-based effluent limitations are . . . unnecessary or infeasible." U.S. EPA, Questions and Answers Regarding Implementation of an Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 Fed. Reg. 57425, 57426 (Nov. 6, 1996); see also, Santa Monica BayKeeper et al. v. SWRCB, No. 99CS01929, at 6 (Cal. Sup. Ct. July 24, 2000) (discussing BMPs as the appropriate form of effluent limitation for storm water discharges, which are subject to substantial variability, making numeric effluent limits infeasible). Neither the MS4 nor the Construction Permit contain numeric effluent limits; rather, the BMPs required by the permits are intended to ensure that the discharges from the project will not cause or contribute to the exceedance of any applicable water quality standards. See, e.g., Construction Permit, at Order §B(2).*

[5] *SWRCB, NPDES General Permit No. CA S000002, Order No. 99-08-DWQ.*

[6] *RWQCB, NPDES No. CA S614001 (CI 6948), Order No. 96-054.*

B. Water Quality Will Likely Improve As A Result Of The Project.

An analysis of the project pre- and post-construction revealed that water quality discharged from the project would likely improve after development of the Project.[7] Refer to the Draft EIR, Section IV.D., Drainage and Surface Water Quality, and Appendix A of this Final EIR. Levels of metals and nitrates are estimated to be lower post-construction due to the change in land-use and the implementation of BMPs.[8] The site is currently used primarily as surface parking lots, a potential source of oil, grease, hydrocarbons and other components from vehicles. When it rains on the site, such pollutants may be washed off the site and to the separate storm sewer system.

Upon completion of the Project, a more extensive water quality treatment plan will be in place. The project will be required to select from a menu of BMPs to control pollution.[9] The most significant water quality enhancement is a new element of the MS4 Permit, known as the Standard Urban Stormwater Management Plan ("SUSMP"). The SUSMP requires redevelopment projects to construct stormwater treatment facilities to mitigate the effects of stormwater pollution by infiltration or treatment of the 85% percentile of a 24-hour storm event, or the first 0.75 inch storm event.[10] The SUSMP's requirements are designed to treat stormwater from the first part of a storm event, known as the "first flush," which typically carries the most pollution from a site. The idea behind to the SUSMP is to treat this first flush to improve water quality downstream.

The Project will meet or exceed the requirements of the MS4 Permit and the SUSMP. The new treatment requirements of the SUSMP do not apply to existing facilities. Without the Project, stormwater from the site will not receive first flush treatment, and the Los Angeles County separate storm sewer system will continue to receive stormwater from the site via the MS4 system without the added water quality treatment. Stormwater discharges from the site will therefore receive greater treatment upon completion of the Project.

Stormwater discharged from the site after completion of the Project will be either as clean or cleaner than stormwater that is currently discharged from the site.[11]

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[7] *See URS Greiner Corp., Analysis of Stormwater Quality Pre- and Post-Construction, March 23, 2001; the Draft EIR, Section IV.D., Drainage and Surface Water Quality, p. 206; and Appendix A of this Final EIR.*

[8] *Ibid.*

[9] *Draft EIR, Section IV.D., Drainage and Surface Water Quality, p. 205.*

[10] *Los Angeles County Urban Runoff and Stormwater NPDES Permit, Standard Urban Stormwater Mitigation Plan ("SUSMP"), at 10, and the Draft EIR, Section IV.D., Drainage and Surface Water Quality, p. 206.*

[11] *See URS Greiner Corp., Analysis of Stormwater Quality Pre- and Post-Construction, March 23, 2001; the Draft EIR, Section IV.D., Drainage and Surface Water Quality, p. 206; and Appendix A of this Final EIR.*

C. The CTR And NTR Do Not Apply To Stormwater Discharges.

The California Toxic Rule ("CTR")[12] and National Toxic Rule ("NTR")[13] do not apply to stormwater discharges from the Project. First, the CTR and NTR only apply to point source discharges into waters of the United States.[14] Stormwater from the Project will not discharge into a water of the United States, but will discharge into Los Angeles County's MS4 system. Thus, the CTR and NTR are not jurisdictional to the stormwater discharges from the Project.

Second, the CTR and NTR do not apply to stormwater whatsoever, whether or not the stormwater is discharged into a water of the United States. The SWRCB has made this point very clear in its plan to implement the CTR and the NTR, stating in pertinent part:

> "This Policy does not apply to regulation of storm water discharges. The SWRCB has adopted precedential decisions addressing regulation of municipal storm water discharges . . . The SWRCB has also adopted two statewide general permits regulating the discharge of pollutants contained in storm water from industrial and construction activities."[15]

Finally, no numeric effluent limitations apply to discharges of stormwater. The United States Environmental Protection Agency,[16] the SWRCB,[17] and California Superior Courts[18] have all held that it is infeasible to require stormwater discharges to comply with numeric effluent limitations, like the CTR and NTR. No case or administrative provision has applied the CTR to stormwater discharges.

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[12] *40 C.F.R. §131.38.*

[13] *40 C.F.R. §131.36.*

[14] *The CTR applies to "inland surface waters and enclosed bays and estuaries." 40 C.F.R. §131.38(a). Federal regulations of California's waters via the NTR is limited to point source discharges to waters of the United States. See Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. ___, at 5-6 (2001).*

[15] *SWRCB, Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, at 1 n.1 (2000) (citations omitted).*

[16] *64 Fed. Reg. 65722, 68733 (Dec. 8, 1999) ("EPA considers narrative [as opposed to numeric] effluent limitations requiring implementation of BMP's to be the most appropriate form of effluent limitations for MS4s").*

[17] *Waste Discharge Req. for City of Santa Rosa, Laguna Subreg. Wastewater Treatment, Reuse, and Disposal Fac., SWRCB WQ Order No. 2000-02 (March 3, 2000) (finding "it is not feasible at this time to establish numerical storm water discharge effluent limits for that facilities which are not covered in 40 CFR Subchapter N [non-industrial facilities]."); Natural Res. Defense Council, SWRCB Order WQ 91-04, at *20 (May 16, 1991), 1991 Cal. ENV LEXIS 14 ("There are no numeric objectives or numeric effluent limits required at this time, either in the Basin Plan or in any statewide plan that apply to storm water discharges").*

[18] *San Francisco Baykeeper v. California State Water Res. Control Bd., No. 99CS01929, Ruling on Submitted Matter (Sac. Sup. Ct. July 27, 2000) at 7, ("Given the regulatory and case law permitting narrative effluent limitations in the form of BMPs when numeric limitations are infeasible, the [SWRCB] can properly require BMPs instead of numeric limitations . . .").*

Thus, discharges of stormwater from the Project should not be measured against the CTR or NTR for compliance. These standards are simply inapplicable to discharges from the Project, and thus the DEIR was correct to not specifically address these standards.

D. The California Ocean Plan Does Not Apply To Discharges Of Stormwater From The Project.

The Project will not discharge stormwater to the ocean, and therefore, the California Ocean Plan[19] is not relevant to discharges of stormwater from the Project. The introduction to the California Ocean Plan states: "This plan is not applicable to discharges to enclosed bays and estuaries, or inland water . . . ."[20] In 1998, the SWRCB confirmed that "the Ocean Plan is not applicable to enclosed bays and estuaries . . . ."[21] Likewise, no California court or SWRCB opinion has ever held that the water quality objectives contained in the California Ocean Plan apply to stormwater discharges to inland waters.[22] Stormwater from the Project will discharge to the municipal separate storm system miles inland from the Pacific Ocean. The Ocean Plan does not apply to such discharges.

E. There Are No Requirements Placed On The Project As A Result Of Ballona Creek's TMDL Designation That Must Be Considered In The DEIR.

Ballona Creek is on the Clean Water Act's ("CWA") 303(d) list of impaired waters for various pollutants, including trash. However, this designation does not place any substance restrictions on the Project which would require review in the DEIR. No TMDLs currently exist for Ballona Creek, Ballona Estuary, or Ballona wetlands. Thus, although the waterbody is listed as impaired, the RWQCB has not taken any steps to impose substantive requirements on individual parties, or redevelopment projects in particular.

Even if TMDLs are eventually adopted for Ballona Creek, it is unlikely at this point to assume that specific restrictions will be placed on redevelopment projects in the future. Where TMDLs have been promulgated in Los Angeles, these TMDLs do not place substantive requirements on private developers; rather, the County and cities are responsible for implementation of the TMDL. For example, the Los Angeles River is on the 303(d) lst of impaired waters for trash—as is Ballona

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[19] *SWRCB, Water Quality Control Plan, Ocean Water of California (1997).*

[20] *Ibid. at Intro.*

[21] *SWRCB, Order No. WQ 98-07, at 16.*

[22] *Although the Construction Permit (at 3, para. 7) and Industrial Permit (SWRCB, General Industrial Activities Storm Water Permit, at 6, C(2)) require that discharges "not cause or contribute to an exceedance of any applicable water Ocean Plan, this clause does not extend the jurisdictional reach of the Ocean Plan. In other words, the terms of the Ocean Plan do not apply to discharges to inland waters. Thus, parties that are subject to these permits need not consider the Ocean Plan unless they discharge to the ocean. The discharge of stormwater from construction sites to inland waters or MS4 systems are simply outside the scope of the Ocean Plan's jurisdictional reach.*

Creek. The RWQCB has produced a draft TMDL for the Los Angeles River for trash, which regulates the County of Los Angeles and various cities.[23] If the RWQCB develops a TMDL for trash for Ballona Creek at some time in the future, any such TMDL would likely follow a similar compliance and enforcement regime. Given that there is no existing TMDL which would place substantive requirements on the Project, and that it is unlikely that any future TMDL will result in restrictions on the Project, the DEIR was correct to not consider these impacts.

Antidegradation Policies

An independent antidegradation analysis was not required for the Project, especially given that antidegradation analyses were done prior to granting the permits which govern stormwater discharges from the Project.

The State's antidegradation policy was established in 1968 and states in pertinent part:

> "1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in these policies.
>
> 2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained."[24]

Paragraph one of the policy refers to the beneficial uses and water quality goals that comprise water quality objectives; water quality objectives are contained in the basin plans developed in each region. By reference to the elements of water quality objectives, the antidegradation policy requires that basin plans respect the policy. Paragraph two of the policy, through reference to activities which may produce waste, requires that waste discharge requirements abide by the antidegradation policy. NPDES permits are equivalent to waste discharge requirements, Cal. Water Code §13374, and, therefore, must also comply with the antidegradation policy.

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[23] *RWQCB, Draft Trash Total Maximum Daily Loads for the Los Angeles River Watershed, January 22, 2001.*

[24] *SWRCB Res. 68-16. The federal antidegradation policy requires that the states adopt and implement their own antidegradation policies. 40 C.F.R. §131.12(a). California's antidegradation policy complies with the minimum federal requirements.*

The SWRCB and the RWQCB undertake an antidegradation analysis when issuing NPDES permits and drafting water quality control plans. The MS4 Permit and the Construction Permit were adopted in compliance with the antidegradation policy. The Basin Plan for the Los Angeles region has undergone an antidegradation analysis.[25] There is no requirement that the Project undergo an independent antidegradation analysis, given that the permits and Basin Plan governing discharges from the Project comply with the antidegradation policy. Compliance with these permits and Plan equates to compliance with the antidegradation policy.

40 C.F.R. §122.4(i) and CWA §303(d) Impaired Waters

The Project would not violate 40 C.F.R. §122.4 or CWA §303(d). First, §122.4(i) applies only in the context where a new CWA permit is being sought; the Project does not require such a permit. Second, the SWRCB and the Superior Court of California interpret the regulation to allow for new discharges to §303(d) waters. Third, U.S. EPA recognizes that new discharges to §303(d) listed waters are consistent with the CWA. Finally, the United States Supreme Court affirmatively has held that nothing in the CWA prohibits new discharges into waters already in violation of existing water quality standards.

1. 40 C.F.R. §122.4(i) Does Not Apply to the Project.

CWA permits are issued under the NPDES permitting program, administered by the RWQCB in the Los Angeles region. Section 122.4(i) states in pertinent part:

> "No permit may be issued . . . (i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards."[26]

Contrary to the Comment's characterization, this regulation is not a "new *source* prohibition." In reality, it is a new *permit* prohibition—not a prohibition on new *sources*. In other words, if a new project or development does not require the permitting agency—here the SWRCB and the RWQCB—to issue a new NPDES permit, §122.4(i) does not apply. The Applicant is not seeking, and is not required by law to seek, a new NPDES permit for the Project.

The NPDES permits that apply to the Project already exist. The applicable permits are the SWRCB's Construction Permit and the RWQCB's MS4 Permit. The SWRCB and the RWQCB issued these permits to address water quality issues related to construction projects and

[25] *RWQCB, Water Quality Control Plan, Los Angeles Region, at 3-2 (approved by SWRCB Nov. 17, 1994). RWQCB, Water Quality Control Plan, Los Angeles Region, at 3-2 (approved by SWRCB Nov. 17, 1994).*

[26] *40 C.F.R. §122.4.*

redevelopment, such as the Project. Since these existing permits cover the Project, and since no new NPDES permits need be issued in this instance, §122.4(i) is irrelevant.

This regulation places limits on the ability of the permitting agency (here, the SWRCB and RWQCB) to issue new permits where discharges will be to impaired waters. The United States Environmental Protection Agency described the regulatory program in 40 C.F.R. 124 as establishing "common procedures to be followed in making *permit decisions* under . . . NPDES programs."[27] The regulation places the burden of complying with this section on the permitting agency at the time it issues a permit. By issuing the permits, the SWRCB and RWQCB made an implied finding that discharges made pursuant to these permits will comply with §122.4(i).

2. SWRCB and California Superior Court Authority.

In Santa Monica BayKeeper et al. v. SWRCB, the Santa Monica BayKeeper and other Keeper groups argued that the Construction Permit "will result in water quality exceedances that violate . . . the prohibition on new permits for new discharges, including storm water discharges from construction sites, which will cause or contribute to exceedances of water quality standards (40 C.F.R. §122.4(i))."[28] The SWRCB opposed the Keeper groups' argument, referring to their "error" in assuming that "contributing any amount of sediment whatsoever to an impaired body is necessarily synonymous with contributing to a violation of water quality standards."[29] The SWRCB pointed out that, "As long as there is no net increase, the construction cannot be said to be contributing to the violation of water quality standards."[30] Referring to the Keeper groups' position, the SWRCB reasoned that:

> "If, however, the requirement were that storm water discharged not contribute *any* sediment, construction would indeed be prohibited. Such absolute protection could only be attained by sealing the site from the environment, a measure clearly inconsistent with the conduct of construction activities."[31]

The California Superior Court rejected the Keeper groups' argument, holding that:

> ". . . the General Construction Permit meets the mandate of the CWA for effluent limitations designed to meet water quality standards. The permit may properly cover

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[27] *48 Federal Register 14146 (April 8, 1983).*

[28] *Santa Monica BayKeeper et al. v. SWRCB, No. 99CSO1929, at 2 (Cal. Sup. Ct. July 27, 2000).*

[29] *SWRCB, State Water Resources Control Board Memorandum of Points and Authorities in Opposition to Writ of Mandate, Feb. 29, 2000, at 5.*

[30] *Ibid.*

[31] *Ibid. (emphasis in original).*

> construction sites which qualify as new dischargers without contravening the prohibition on new dischargers which will cause or contribute to water quality exceedances."[32]

Thus, both the SWRCB and the California Superior Court interpret 40 C.F.R. Section 122.4(i) as *not* imposing a prohibition on new runoff to impaired waters, contrary to the Comment's assertion.

Additionally, the SWRCB also addressed this issue in Order No. 91-10 in which the SWRCB ruled that even if a receiving water is listed as impaired for a particular constituent, a party may discharge that constituent into the receiving water if the discharge is a level below the effluent limit. The SWRCB stated in pertinent part:

> "Petitioners allege that because the Bay is water quality impaired, all discharges to the Bay should be prohibited . . . Petitioners are not correct. Water quality impairment in San Diego Bay is caused by only four constituents.
>
> Discharges of [those constituents] will not contribute to violations of water quality objectives if they are discharged at levels which do not exceed those objectives . . . . In other words, if these discharges comply with water quality objectives, they will be cleaner than the receiving water.[33]

Although stormwater discharges from the Project are not governed by water quality standards measured in Ballona Creek, the SWRCB and the California Superior Court have recognized that discharges of pollutants into an impaired waterbody is permitted as long the discharge itself complies with water quality objectives.

3. EPA Authority.

In July 2000, U.S. EPA's Office of Water promulgated final regulations relating to waters listed on the 303(d) list, like Ballona Creek. In promulgating these regulations, EPA acknowledged and contemplated that there will be new discharges to 303(d) waters, even in the absence of TMDLs.

In the preamble to the regulations, EPA addressed the situation, such as Ballona Creek, where there is a "time lag . . . between the initial listing of a waterbody under CWA section 303(d) and the actual completion and approval of a TMDL."[34] EPA put considerable effort into addressing new discharges to impaired waters prior to TMDL promulgation, ultimately deferring to the states on this subject. EPA reviewed ". . . current practices for deriving water quality-based effluent limits for

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[32] *Santa Monica BayKeeper v. SWRCB, at 4, (citing 40 C.F.R. Section 122.4(i)).*

[33] *SWRCB, Environmental Health Coalition, WQ Order No. 91-10, at *9.*

[34] *65 Fed. Reg. 43639 (July 13, 2000).*

sources located on impaired waters and discharging the pollutant(s) for which the waterbody is impaired. EPA found a wide range of practices for deriving such limits with respect to both new dischargers and existing dischargers."[35] EPA was explicit that it was addressing ". . . all *dischargers* (new dischargers being permitted for the first time and expanding and existing dischargers undergoing permit reissuance) discharging pollutant(s) of concern to an impaired waterbody."[36] In deferring to the states, EPA decided not to impose any federal requirements as a national rule for new discharges to impaired waters.

4. United States Supreme Court Authority.

The United States Supreme Court has considered whether the CWA requires no new discharges to waters already in violation of existing water quality standards, and rejected any zero-discharge rule. Arkansas v. Oklahoma, 503 U.S. 91, 104 (1992). The Court of Appeals had "construed the Clean Water Act to prohibit any discharge of effluent that would reach waters already in violation of existing water quality standards."[37] In Arkansas, the Supreme Court held, "We find nothing in the [Clean Water] Act to support this reading."[38] The Court explained:

> "Although the Act contains several provisions directing compliance with state water quality standards, e.g., Section 1311(b)(1)(C), the parties have pointed to nothing than mandates a complete ban on discharges into a waterway that is in violation of those standards."[39]

The Court concluded that the CWA did not "establish[] the categorical ban announced by the Court of Appeals—which might frustrate the construction of new plants that would improve existing conditions . . . ."[40] Moreover, the Court did not find this result inconsistent with the subject EPA regulation, 40 C.F.R. Section 122.4(d), which requires NPDES permits to comply with state water quality standards.[41]

In short, contrary to the Comment's assertion, the Federal Regulation in C.F.R. section 122.4(i) does not apply to the Project, and does not categorically prohibit the discharge of new sources into water listed as impaired on the CWA Section 303(d) list. The DEIR therefore did not need to consider the effects of this provision.

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35 *Ibid. at 43640.*

36 *Ibid. (emphasis in original).*

37 *Arkansas v. Oklahoma, 503 U.S. at 107.*

38 *Ibid.*

39 *Ibid. at 108.*

40 *Ibid.*

41 *Ibid. at 110.*

Ballona Creek Significant Ecological Area

The Project is not located within a Significant Ecological Area ("SEA"). Nor does stormwater runoff from the Project discharge directly into an SEA. After stormwater is discharged into the County's separate storm sewer system, the County discharges that stormwater to Ballona Creek, several miles from the Project. Ballona Creek was designated as one of 61 SEA's throughout the County.[42] As the Project is not within an SEA, and does not discharge stormwater to an SEA, the DEIR was correct in not considering the Project's impacts on Ballona Creek.

The General Plan provides for certain review of projects that occur *within* an SEA, but does not contemplate that any special review take place for projects within the entire watershed of a SEA.[43] The General Plan sets forth a well-regulated system wherein projects located within an SEA receive special review. There is no requirement that projects located *outside* an SEA undergo review related to the SEA. No reported cases have ever suggested that projects outside a SEA should be subject to the same type of review under the General Plan as projects located within a SEA. Neither is there any indication that the General Plan will be revised to require such review. The SEA program is currently under review, and no mention has been made in the review process to suggest that projects located *outside* a SEA should be subject to the same type of review as projects located within an SEA.[44] The DEIR was therefore correct not to consider Ballona Creek's designation as a SEA when considering the environmental impacts of the Project.

As shown by the information above, and the analysis included in Section IV.D., Drainage and Surface Water Quality, in the Draft EIR and Appendix A of this Final EIR, impacts to surface water quality would be less than significant. Mitigation measures for the Project have already been included in Section IV.D., Drainage and Surface Water Quality, in the Draft EIR and, therefore, additional mitigation would not be required.

COMMENT 15.18

D. The Air Quality Section of the DEIR Is Inadequate Because of the Increased Danger to Local Children.

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[42] *The comment states that the RWQCB designated Ballona Creek as an SEA. As stated, Ballona Creek received this designation from the County of Los Angeles. See Los Angeles County General Plan (1976).*

[43] *Los Angeles County General Plan, at LU-A12 to LU-A14. For example, "development proposed within a designated SEA will be reviewed for the following design criteria . . . ." Ibid. at LU-A13. Nowhere in the General Plan is there a requirement that developments outside an SEA are subject to any SEA-related regulation.*

[44] *PCR Services Corp., Los Angeles County Significant Ecological Area Update Study 2000, Background Report (Nov. 2000).*

We find the Air Quality mitigation proposed in the DEIR completely inadequate because of the increased dangers that the proposed Project presents to the health of local residents, particularly children.

1. Air Quality Is Directly Linked to Children's Health.

The population surrounding the proposed Project includes a large number of children. At least 50,000 children live within a mile of the Staples Center -- and 44% of those children live below the federal poverty line."[55] Children are most vulnerable to the impacts of air quality, and children with asthma and other existing respiratory illnesses have been shown to actually suffer from reduced lung capacity.

According to the DEIR, "Construction-related daily emissions would exceed SCAQMD significance thresholds for NO_X, CO, ROC, and PM_{10}."[56] The construction period has been estimated to last for seven years.[57] Thus a neighborhood child entering kindergarten at the onset of the construction period would be exposed to these "temporary" impacts until she graduated from the sixth grade.

For health planning purposes, the County of Los Angeles has established eight Service Planning Areas ("SPAs"). The proposed Project is located in SPA 4 and borders SPA 6. SPA 4 is estimated to have more than 11,000 children ages 5-11 with asthma and SPA 6 has approximately 9,200 children with asthma. However, these estimates were derived from self-report in a household survey conducted in Los Angeles, and do not account for undiagnosed asthma. Research studies have found a prevalence of 10% to 30% undiagnosed asthma and asthma-related symptoms in children in urban communities.[58]

A recent joint study by scientists from the Department of Preventative Medicine, University of Southern California School of Medicine, Sonoma Technology Inc., Air Resources Board of the State of California, and the National Institute of Environmental Health Sciences shows that common air pollutants particularly NO_2 and PM_{10} slow asthmatic children's lung development over time. The ten-year-long study, is considered one of the nation's most comprehensive studies to date of the long-term effects of air pollutants on children."[59] The study period is not that much longer than the proposed construction period for this Project.

The study's findings are based on research in 12 Southern California communities, including Upland and San Dimas, which had the highest levels of NO_2 and PM_{10} and which are similar to those provided by the Central Los Angeles monitor, located in downtown Los Angeles. Charts comparing the pollutant levels for the area surrounding the proposed Project and those in the study are provided in Appendix 9, along with a copy of the study's results published in Environmental Health Perspectives, September 1999.

These problems and figures relate to existing problems with existing levels of air pollutants without those contributed by the construction period of the Project. The South Coast Air Quality Management District recently found that 90% of the carcinogenic risk in the Basin is due to mobile source emissions (cars, trucks, etc.), including 70% attributable to diesel particulate emissions, or PM_{10}.[60] It has been estimated that out of 125,000 cancer cases nationwide based on a lifetime exposure to diesel exhaust, Los Angeles ranks first with over 16,000.[61] As we know from the DEIR, NO_X, CO, ROC, and PM_{10} will be present in large measure throughout the long construction process, adding to an already heavily polluted environment. These cumulative impacts, and their severe impacts on the health of low-income children in the Project area, make it essential that adequate mitigation measures are developed and implemented.

2. Recommendations

We propose the following mitigation measures:

- The Project Applicant should provide air filters in all local schools within a mile of the Project site.
- The Project Applicant should identify day care centers within a mile of the Project site and provide air filters for those centers.
- Provide supplemental funding to local health clinics to offset the increased loads from increased asthma and respiratory problems in the community.
- During construction, all vehicles used on-site must be clean fuel vehicles no diesel vehicles should be used.
- All non-road equipment required on site during construction should be retrofitted to minimize diesel emissions into the environment, including NO_X, CO, ROC, and PM_{1O}. This includes adding particulate traps where necessary.
- The Project Applicant should comply with applicable Proposition 65 notice requirements in the event that construction activities utilize toxic materials, or cause toxic materials to be released into the air, including fugitive dust.
- Because of the health risks involved and heavy cumulative impacts experienced by local residents, the Project Applicant should be required to water, enclose, cover or treat greater silt content more than that required by manufacturer specifications during construction.

- To ensure these measures are followed, we request that regular meetings be convened with community residents and the appointed construction relations officer so that resident concerns can be addressed on an ongoing basis.

- Beyond the construction period, and during the proposed operations stage of the Project, we request that clean fuel shuttles be provided by the applicant or appropriate city agencies from blue and red line Metro stations and Union Station to the Project site. Such a service will ease both air quality impacts as well as traffic and parking congestion.

- Implement the Commuter Choice Program, which provides employers and employees with federal pre-tax transportation benefits, at the Project Site (explained in more detail below, in section E).

- Provide alternative-fuel refueling stations (electric, natural gas, etc.) for 5% of total parking capacity as an added incentive for both employees and visitors to the Project site.

3. Conclusion

The air quality impacts of the construction period of the Project will have a deleterious impact on the health of low-income minority children who live near the Project area, particularly the 20,000 plus who have asthma. We hope that the mitigation measures outlined above will be appropriately addressed in the final EIR.

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[55] *1990 Census Data.*

[56] *DEIR, p.219.*

[57] *See, e.g., DEIR p.113, Table 3.03.*

[58] *Source: St. John's Well Child Center.*

[59] *W. James Gauderman, Rob McConnell, Frank Gilliland, Sephaie London, Duncan Thomas, Edward Avol, Hita Vora, Kiros Berhane, Edward B. rappaport, Fred Lurmann, Helene G. Margolis, and John Peters, "Association between Air Pollution and Lung Function Growth in Southern California Children," received in original form September 23, 1999 and in revised form May 2, 2000.*

[60] *Mobile Air Toxic Emissions Study II, March 2000, p.ES-3.*

[61] *See State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials, Cancer Risk from Diesel Particulate: National and Metropolitan Area Estimates for the United Stats (March 15, 2000).*