

## Concerns about CEQA (California Environmental Quality Act) – Environmental Staff Report

Comment	Party	Page	Response
Statement of Overriding Considerations, and Unavoidable Significant Adverse Impacts discussions are inadequate.	City	118 - 119	These sections of the ESR have been supplemented with additional discussion and moved to the end of the ESR. However, the conclusions remain the same.
	La Paz (Cox)	432	
The environmental staff report contains a redundant section. It mistakenly refers to TMDLs.	City County	119	Redundancy acknowledged, which included a large section (Other Environmental Considerations) in two places of the July 31 <sup>st</sup> draft. Corrected in Oct 21 <sup>st</sup> draft. Also, the report did mistakenly refer to the supplement environmental report for a trash TMDL – this has been corrected in the Oct 21 <sup>st</sup> draft. However, discussion referring to TMDLs under Cumulative Impacts is correctly included, because the prohibition is a remedy to correct water quality impairments from OWDSs.
The ESR and checklist fail to adequately analyze potential environmental impacts of the compliance projects and identify mitigation measures.	City	119-120	Staff has analyzed the reasonably foreseeable environmental impacts of the potential compliance projects. Because the details of these projects do not exist, staff used its professional judgment in identifying the common foreseeable impacts, except in those cases where a foreseeable impact was discussed for a particular project. Contrary to the City's assertion, mitigation measures were set forth in most of the checklist narratives. The CEQA Guidelines require a public agency, when commenting to the lead agency, to provide either complete and detailed performance objectives for mitigation measures addressing the effects the public agency identifies or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures (Title 14, CCR, section 15086, subd (d)).
	County	192	
	Latham & Watkins	423	
	La Paz	417	
	Towing	499	
In the category for 'less than significant with mitigation incorporated,' the checklist fails to identify a single mitigation measure.	City	120	Not all impacts in this category were missing mitigation measures. For those that were missing mitigation measures, staff has added appropriate measures. (See following responses to checklist revisions.)
Cumulative impact analysis is inadequate.	City	129	The ESR contains a revised cumulative impact analysis beginning on page 43. Staff disagrees with the comment that no CEQA methodology was used as there is a list of the other projects considered in the original analysis. The conclusion is unchanged from the original.
	Towing	499	
The growth inducing impacts analysis is deficient.	City	129	The ESR contains a revised analysis beginning on page 45. The conclusion is unchanged from the original.

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The ESR fails to analyze a reasonable range of project alternatives.	City	130	The first project alternative is not “simply a restatement of the proposed project.” In the absence of the prohibition, a local agency could undertake the design, planning and construction of a centralized plant which would be an alternative to the prohibition. That alternative has been a potential project for several years and therefore is an alternative project. It is also a potential compliance project but the design of the project does not have sufficient detail to enable staff to make more than a preliminary analysis of potential impacts. Other possible project alternatives proposed included a partial prohibition. That alternative was rejected by staff because there is not sufficient data about the status of individual OWDSs to make it a reasonable alternative. A partial ban would not eliminate or reduce significant environmental impacts as there would still be the need for compliance projects. Enhanced enforcement of individual permits was not considered to be a viable alternative. An analysis of the compliance of dischargers with their respective Waste Discharge Requirements resulted in a conclusion that case-by-case enforcement would not achieve the project’s basic objective, i.e. restoration of the beneficial uses of water resources for the entire region. Therefore, staff concluded that the alternatives proposed were a reasonable range of feasible alternatives.
	County	193	
	School District	229	
	Hughes	318	
	La Paz	416	
	Towing	492	
Checklist #1.a (Earth – unstable earth conditions): What is nature of potential impacts, what is basis for conclusion? What mitigation measures will lessen impacts...?	City	121	Federal Emergency Management Agency’s Flood Insurance Rate maps, California Alquist-Priolo earthquake fault zone maps, and City and County designations in zoning codes, general plans, of geologic hazards were used, in general, to evaluate potential impacts. These potential impacts include slope instability (e.g. landslides, erosion) from construction of the projects. Mitigation measures, including shoring and soil stabilization, were identified on the July 31 <sup>st</sup> draft. Additional measures have been added to the Oct 21 <sup>st</sup> draft, among which include review of seismic/soil hazard maps, compaction, and storm water measures. These measures that are available to mitigate risks such as a pipeline rupture from geologic hazards.
Checklist #1.b (Earth – disruptions....): What mitigation measures will lessen impacts...?	City	121	As identified in the July 31 <sup>st</sup> draft, mitigation measures include geotechnical studies prior to construction, and standard constructions techniques including but not limited to shoring, piling, and soil stabilization.

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Checklist #1.c (Earth – changes in topography): What is basis for concluding that infrastructure .... Could minimize impact to topography or relief?	City	121	Sewers are subsurface. Many treatment facilities – e.g. the Malibu Lumber treatment facility – require minimal grading, and have components placed subsurface.
Checklist #1.e (Earth – increase in wind or water erosion....): What is basis for conclusion? What are mitigation measures?	City	121	Standard construction techniques, including best management practices to prevent erosion and control sedimentation, have successfully controlled wind and water erosion at large construction sites throughout the region. Staff has no reason to assume a failure to control erosion in connection with these compliance projects. Mitigation measures include BMPs for controlling stockpiling, and standard BMPs, as noted in the July 31 <sup>st</sup> draft. Staff has added additional possible mitigation measures, such as minimizing the size and duration of exposed stockpiles and re-vegetation.
Checklist #1.f (Earth – ...changes in deposition or erosion of beach sand.....): Clarify impact category – is it ‘less than significant’ or ‘less than significant with mitigation incorporated’? What is basis for conclusion? What are mitigation measures?	City	121	The impact refers to potential erosion that could occur through construction in sandy soils along the coast (and has been clarified in the Oct 21 <sup>st</sup> draft). The impact is ‘less than significant,’ as indicated in the July 31 <sup>st</sup> draft. The basis for staff’s conclusion is our experience that conformance with existing and standard construction measures will prevent or limit impacts of erosion to beaches, rivers, streams or the ocean. In referring to mitigation measures, staff is using the term ‘mitigation’ in a broad sense, and referring to well established BMP techniques that would be expected to be used on standard construction sites.
Checklist #1.g (Earth – exposure of people/property to geologic hazards...): What is nature of potential impacts, and what is the basis for conclusions? What mitigation measures will lessen impacts...?	City	121	Federal Emergency Management Agency’s Flood Insurance Rate maps, California Alquist-Priolo earthquake fault zone maps, and City and County designations in zoning codes, general plans, of geologic hazards were used, in general, to evaluate potential impacts. These potential impacts include slope instability (e.g. landslides, erosion) from construction of the projects. Mitigation measures, including shoring and soil stabilization, were identified on the July 31 <sup>st</sup> draft. Additional measures have been added to the Oct 21 <sup>st</sup> draft, among which include review of seismic/soil hazard maps, compaction, and storm water measures. These measures that are available to mitigate risks such as a pipeline rupture from geologic hazards.

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Checklist #2.a (Air – substantial air emissions or deterioration of ambient air quality): Why is discussion limited to construction? What is nature of potential impacts, and what is the basis for the conclusion? What mitigation measures will lessen impacts...? Impact of idling cars is not anticipated. What are mitigation measures?	City	122	See Checklist 2.a for a discussion of air emissions during both the construction and operation phases. Staff assumed that emissions would not exceed screening levels for potential adverse construction and operation air quality impacts because air quality is highly regulated. Upon evaluation at a project level, proponents may use an emission calculation methodology specified in the SCAQMD guidance, or an SCAQMD model to estimate the construction and operational emissions. The model can be obtained at <a href="http://www.aqmd.gov/ceqa/models.html">www.aqmd.gov/ceqa/models.html</a> . Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.
	La Paz (Cox)	417	
	Latham & Watkins	460-464	
Checklist #2.b (Air – creation of objectionable odors): What are the impacts, including impacts during construction of a compliance project and abandonment of OWDSs? No mitigation measures are identified.	City	123	Odor impacts during construction, including those that would occur during de-commissioning of existing OWDSs, would be of a short-term nature. SCAQMD has established specific methodologies and thresholds of significance regarding odors that should be consulted during review of the compliance projects. As described in the Checklist #10.a, during abandonment of existing OWDSs, the risk of accidental release (including accidental release of raw sewage and sludge) can be lowered by complying with local codes for proper de-commissioning. Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.
Climate Change: The environmental analysis does not include impacts to climate change.	City	193	See Legal Response Matrix 2 <sup>nd</sup> page.
	La Paz (Cox)	417	
	Latham & Watkins	462	

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<p>Checklist #3.e (Water – discharge into surface waters, or alteration of quality.....): Presumed flow of 300,000 gallons per day (gpd) is understated, because it does not account for undeveloped properties once developed. [Analysis of surface water impacts from discharges is inadequate.] No sites are identified for disposal of effluent. Does not analyze an ocean outfall.</p>	City	123	<p>Given estimates of current discharges totaling about 270,000 gpd (see Tech Memo #4), staff assumed compliance projects would be on the order of 300,000 gpd. As the prohibition is intended to be growth neutral, relying on the City’s “strategy” (as set forth in its General Plan that septic systems reduced the rate and intensity of growth) as an assumption of minimizing potential growth, staff did not feel it appropriate to assume the City would allow for significant additional development, and accordingly did not adjust for a significant future growth.</p>
	La Paz (Cox)	417	<p>Staff has added a description of surface water impacts from dewatering groundwater to 3.e, and included mitigation measures.</p>
	Latham & Watkins	463	<p>Staff acknowledges that we did not survey possible sites for disposal facilities because the location of the potential compliance projects are speculative right now. The survey would occur during local planning and feasibility studies, and at a project level CEQA analysis when there is a specific project tied to a specific location. As the regulatory agency potentially responsible for permitting a compliance project, the Regional Board would carefully analyze the location of the disposal sites in the future. Also, staff did not analyze impacts from a possible ocean outfall, as none of the compliance projects assumed this discharge mechanism would be selected (see the description of projects on page 17 of the Env Staff Report).</p>
<p>Checklist #3.f (Water – alteration of the direction or rate of flow of ground waters): No analysis of impacts. What is the basis for conclusion? What are the mitigation measures? The impact from possible salt water intrusion after groundwater discharge ceased has not been analyzed.</p>	City	123	<p>Based on staff’s experience and knowledge, impacts include localized changes to groundwater flows from termination of OWDS discharges (for all compliance projects), and larger scale changes resulting from new discharge facilities for the Integrated Facilities and Decentralized Facilities compliance projects (see Checklist #3.f). The long-term impact is expected to be an improvement in the quality of groundwater. Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.</p>
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	Towing	500	

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Checklist #3.g (Water – changes in the quantity or quality of groundwater...): No analysis of impacts. What is the basis for conclusion? What are the mitigation measures?	City	124	Among the goals of the prohibition is to improve pollution in groundwater. This analysis is covered by the Technical Memoranda produced by staff. The long-term impact is expected to be an improvement in the quality of groundwater. See the discussions in #3.f and #3.h of the Checklist.
Checklist #3.i (Water – exposure of people or property to water related hazards): No analysis of impacts. What is the basis for conclusion? What are the mitigation measures?	City	124	Staff revised the #3.i discussion to note a possibility of impacts from tsunamis and flooding. Based on an expectation that projects would be sited outside of flood hazard zones, as designated by Federal Emergency Management Agency’s Flood Insurance Rate maps, staff concluded that there would be a ‘less than significant impact’ (which is a revision of staff’s original conclusion of ‘no impact.’ Also, staff expanded the #3.i discussion to note measures (“mitigation” measures, intended in a broad sense) contained in the City’s building code, such as bulkheads or other protective barriers that would protect against such risks.
Checklist # 4 (Plant Life) and #5 (Animal Life): No recognition of environmentally sensitive areas	Latham & Watkins	464	See Environmental Staff Report, pages 27 to 29.
Checklist #6.a (Noise – increase in existing noise levels): What is nature of potential impacts, and what is the basis for conclusions? What mitigation measures will lessen impacts...?	City	124	Insignificant impacts are expected from decommissioning of the OWDSs, as most of the abandonment is expected to occur in place. However, impacts, including noise and/or vibration, would occur during installation of sewers and construction of treatment works. Based upon staff’s experience, the impacts from would be of a limited duration. During operation, no significant impacts are expected. The City has noise ordinances which will restrict the noise impacts. Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.
	Latham & Watkins	461	

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Checklist #6.b (Noise – exposure of people to severe noise levels): What is nature of potential impacts, and what is the basis for conclusions? What mitigation measures will lessen impacts...?	City	124	Insignificant impacts are expected from decommissioning of the OWDSs, as most of the abandonment is expected to occur in place. However, impacts, including noise and/or vibration, would occur during installation of sewers and construction of treatment works. Based upon staff's experience, the impacts from that would be of a limited duration. During operation, no significant impacts are expected to the public or employees. The City has noise ordinances which will restrict the noise impacts. Different California agencies, such as Cal OSHA, have regulations that address worker safety with respect to noise. Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.
Checklist #7.a (Light and Glare): Inconsistent with Traffic analysis, which includes night-time construction work as a traffic mitigation measure. Clarify impact category – is it 'less than significant' or 'less than significant with mitigation incorporated'? What mitigation measures will lessen impacts...?	City	124	Construction is not likely to produce new light or glare, unless construction is done at night. (Staff has added this clarification in the Oct 21 <sup>st</sup> draft.) Staff has revised the impact category to 'Less than significant with Mitigation Incorporated.' Regarding the mitigation comment, we have identified and added more specific mitigation in the revised ESR. Please look at the narrative for this checklist section.
Checklist #8.a (Land Use – substantial alteration of present or planned land use): Clarify conclusion about impact. Consider impact (e.g. commercial centers shutting down) if a compliance project is not completed within five years.	City	125	Staff affirms the 'Potentially Significant' impact noted in the July 31 <sup>st</sup> and Oct 21 <sup>st</sup> drafts. In setting the 2014 deadline for compliance, staff set a feasible time schedule, which considers significant planning and preliminary design work that the City has already completed (see Stone 2004 and Questa 2003 and 2005). Staff disagrees with contention (La Paz – Cox) that urban blight would result; rather, staff anticipates long-term positive economic impacts from improved water quality and visitor confidence in using Civic Center area beaches. See also discussion in the second page of the matrix for Legal Concerns.
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	Latham & Watkins	445	

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<p>Checklist #11. Population. a.</p> <ol style="list-style-type: none"> <li>1. OWDSs act as a constraint on development. Without OWDSs, new development corresponding growth in population</li> <li>2. Staff fails to analyze the effect of prohibition on projects in the pipeline</li> <li>3. The compliance projects sized to replace existing OWDS flow without considering large undeveloped area for additional flow</li> </ol>	City	125	<p>The City could update its General Plan to develop a new strategy for reducing the rate and intensity of growth and further control the flow. The compliance projects will presumably be sized to provide capacity for existing wastewater flow rates or for whatever level of growth that the City decides. Without a specific compliance project to analyze, any discussion would be speculative. Staff’s assumption of a growth neutral project stems from the City’s General Plan statements about the restriction of growth from environmental hazards as well.</p>
<p>Checklist #12. Housing. a.</p> <p>City uses OWDS as a constraint on development. Without OWDS, compliance projects promote developments and affect the existing housing supply.</p>	City	126	<p>Staff has revised this narrative. The City could update its General Plan to develop a new strategy for reducing the rate and intensity of growth. The Malibu General plan section 7.3.3.1 states that the opportunity for development of housing is constrained by geologic hazards, flood hazards, and wildland and urban fire hazards. Also, slope instability and high groundwater are additional constraints on development. Therefore, it is unlikely that this project will create a demand for additional housing.</p> <p>Through the general planning process as well as zoning and other land use authorities, the City and the County have the tools to meet community goals, including housing goal.</p>
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<p>Checklist #13. Transportation/Circulation.</p> <p>a. define level of impact and mitigation</p> <p>b. no mitigation identified</p> <p>c. If City can't complete compliance project within 5 years, hauling will add additional traffic impact and need mitigations.</p> <p>d. There are impacts to present pattern of circulation, such as, lane closures.</p> <p>f. Need justification for level of impact and mitigation measures.</p>	City	126-127	<p>a. The level of impact is revised to “potentially significant impact”. Mitigation measures should be examined at a project level and could include development of a traffic mitigation plan and night-time construction schedules.</p> <p>b. Mitigation could include park-and-ride lots or temporary increased public transportation.</p> <p>c. Mitigations and impacts should be examined on a project level and potential mitigations are added in discussion on page 35 of Draft Environmental Staff Report (ESR), dated October 21, 2009.</p> <p>d. Checklist revised to “less than significant”. Additional discussion incorporated in page 35 of Draft ESR.</p> <p>f. Checklist revised to “Potential significant impact”. Discussion includes mitigation measures on page 35 of Draft ESR.</p>
	Latham & Watkins	459-460	
<p>Checklist #14. Public Service</p> <p>d. define basis for “potentially significant impact”</p> <p>e. Increase road maintenance if City can't comply in 5 years and will rely on hauling as a mitigation measure.</p>	City	127-128	<p>e. The integrated Facilities – a centralized integrated wastewater/recycled water plant – would require land for construction and operation of facility. Parks are usually used as wastewater subsurface disposal/recycle site and may have potentially significant impact. Lower road maintenance is expected after compliance project is complete. Overall, the demand for road maintenance is no impact.</p>
<p>Checklist #16 Utilities and Service System</p> <p>d. define basis for “potentially significant impact” and mitigations and analyze the potential impacts associated with the abandonment and removal of old septic systems</p> <p>f. Need discussion on disposal of solid waste generated by a wastewater treatment plant and disposal of old septic systems. Define basis for “less than significant”</p>	City	128	<p>d. Staff affirms its conclusion of “potentially significant impact” See added discussion under #16.d.</p> <p>f. Regarding other government services, staff affirms its conclusion of ‘no impact.’ See added discussion under #16.f.</p>
	La Paz (Cox)	417	

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Checklist #17.a (Human Health – creation of any health hazard...) and #17.b *exposure of people to any human health hazards): ...a plant may be located near residences. Health hazards could occur from rupture of a sewer. What are mitigation measures?	City	128-129	Staff has revised its conclusion to ‘less than significant with mitigation incorporated’(versus ‘less than significant,’ as concluded in the July 31 <sup>st</sup> draft). Regarding the mitigation comment, we have identified and added more specific mitigation for both construction and operation phases in the revised ESR. Please look at the narrative for this checklist section. Also, for human health impacts, please refer to Checklist # 10.a (Risk of Upset), which includes a discussion of impacts and possible mitigation measures during the design, construction, and operation phases.
	County (pg 4)	192	
Checklist #18.a and b (Aesthetics): Objection to the ‘less than significant’ conclusion.	County	192	Staff has revised its conclusion to a ‘less than significant with mitigation incorporated.’ Regarding the mitigation comment, we have identified and added mitigation measures in the revised ESR. Please look at the narrative for this checklist section.
Checklist #20.a (Archeological/Historical): A significant portion of the area adjacent to Malibu Lagoon has been identified as an archaeological site. What are potential impacts?	City	129	Staff has revised its conclusion to a ‘less than significant with mitigation incorporated,’ as compliance projects, such as sewers, are expected to be located in public streets and on public property that has already undergone significant disturbance. See revised discussion under Checklist #20.a.