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June 2, 2005

Mayor Beverly O'Neill and
Honorable Members of the Long Beach City Council
C/o Ms. Anita Garcia, Project Manager
Department of Planning and Building
City Hall, 5th floor
333 West Ocean Blvd.
Long Beach, CA 90802

**Re: Opposition to Certification of Long Beach Memorial Medical
Center Expansion Environmental Impact Report and Request for
Supplemental EIR.**

Honorable Mayor O'Neill and Honorable Members of the Long Beach City Council:

We are writing on behalf of the SEIU United Healthcare Workers – West (“SEIU”) with regard to the City’s Long Beach Memorial Medical Center Expansion (the “Project”) Environmental Impact Report (State Clearinghouse No. 2004081142) (“the EIR”). As explained more fully below, the EIR does not comply with the requirements of the California Environmental Quality Act (“CEQA”).¹ The City may not approve the Project or grant any permits for the Project until an adequate Environmental Impact Report (“EIR”) is prepared and circulated for public review and comment.

Many members of SEIU live and work in areas in and around Long Beach and in the immediate vicinity of the Project. They are concerned about sustainable land use and development in the City. Poorly planned and environmentally detrimental projects may jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live here. Continued

¹ Public Resources Code §§ 21000 *et seq.*



degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities. Additionally, the members live in the communities that suffer the impacts of environmentally detrimental projects. Union members breathe the same polluted air that others breathe and suffer the same health and safety impacts.

Finally, SEIU members are concerned about projects that carry serious environmental risks without providing countervailing employment and economic benefits to local workers and communities. CEQA's most fundamental mandate is that an agency may only approve a project having significant impacts if it finds that "specific overriding economic, legal social technological, or other benefits of the project outweigh the significant effects on the environment."² Our goal is consistent with the legislative purpose embodied in CEQA to maximize the Project's economic and other benefits, while minimizing its impacts to the environment.

Due to the deficiencies in the EIR, a supplemental EIR ("SEIR") should be prepared to analyze the Project's impacts and re-circulated for public review. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification.³ The Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that ... [a] new significant environmental impact would result from the project."⁴ Significant new information will be required to analyze and mitigate the deficiencies identified in the EIR. An SEIR is therefore required.⁵

² Pub. Res. Code § 21081(b)

³ Pub. Res. Code § 21092.1

⁴ CEQA Guidelines § 15088.5

⁵ We reserve the right to supplement these comments at any time prior to or through the date of final project approval by the City Council, and at any later hearings and proceedings for this Project. We incorporate by reference all comments that have been or will be submitted by any other entities, agencies, organizations or individuals concerning the Project and/or the EIR. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184; *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.

I. EXECUTIVE SUMMARY

CEQA requires the City of Long Beach to analyze the potential environmental impacts of its proposed actions in an environmental impact report (EIR). CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project, and directs public agencies to avoid or reduce environmental damage when possible by requiring mitigation measures of significant impacts and considering alternatives. The Project EIR for the Long Beach Memorial Hospital Project fails to fulfill these CEQA requirements. Thus, the City must prepare a Supplemental EIR (SEIR) that addresses the critical issues outlined below.

A. *The EIR illegally Ignores Impacts to Housing*

The Project calls for the demolition of 51 units of existing affordable housing units so that a surface-level parking lot can be constructed, while it simultaneously increases the demand for additional housing by generating new jobs and by destroying existing housing. Given the already severe shortage of affordable housing in the area, this loss of affordable housing is a significant impact that must be analyzed under CEQA. The EIR fails entirely to analyze impacts to affordable housing, erroneously concluding that the impact is insignificant. However, the court of appeal has held that the loss of affordable housing is an impact that must be analyzed under CEQA⁶, and it is customary for EIRs to analyze this impact and propose mitigation measures.⁷

The EIR contains absolutely no mitigation measures to address the significant housing and related growth inducing impacts. An SEIR must be prepared to consider and adopt feasible measures such as relocating the housing, requiring the payment of “linkage” fees, or requiring Memorial to refrain from destroying the affordable housing by constructing a parking structure rather than ground level parking. These types of mitigation measures are routinely required by other cities and have been upheld by the courts. For example, over 18 cities throughout California require developers to pay “linkage fees” of up to \$15 per square foot to fund affordable housing.⁸ The City of Sacramento has required commercial developers to build affordable housing for their workforce as a means to mitigate project impacts.⁹ An SEIR should be prepared to study these and other feasible measures.

⁶ *Concerned Citizens of South Central Los Angeles v. Los Angeles USD*, 24 Cal.App.4th 826, 837.

⁷ *See, Concerned Citizens of South Central, supra*; see EIRs attached to Watt Comment Letter as Exhibits C and D: Placer County - Northstar Highlands DEIR, Chapter 4.2, Population, Housing and Employment; Lassen County – Dyer Mountain Resort DEIR, Chapter 5, Population, Housing and Employment.

⁸ See list cities that regularly use Linkage Fees, Attachment G to Watt Comment Letter.

⁹ *Commercial Builders v. Sacramento* (1991) 941 F.2d 872.

B. The EIR Fails to Accurately Describe or Mitigate Toxic Contamination Impacts

The site on which this Project will be built, historically used for oil and gas wells, is heavily contaminated with toxic chemicals, such as arsenic, lead, benzene, toluene and many others. ***Benzene***, a known human carcinogen, is present on the site at levels ***over 2000 times above the US EPA standard for shallow soil***. The EIR fails to describe the location of the old wells and the extent of the contamination, and fails to provide sufficient mitigation measures to ensure the health and safety of construction workers, and future hospital employees and patients.

The EIR claims that the Department of Toxic Substance Control (DTSC), which is responsible for the mitigation of the soil contamination, will provide mitigation in its Remedial Action Workplan (RAW). However, ***DTSC*** submitted comments stating that the ***EIR should not be finalized until the RAW is completed*** so that the remediation measures themselves can be included in the final EIR. The EIR consultant ignored DTSC's comments. CEQA forbids such deferred mitigation and requires consideration and adoption of mitigation measures prior to EIR adoption.

The EIR fails entirely to mention the fact that the site is heavily contaminated with ***TCE*** (trichloroethylene), a human carcinogen, at ***136 times above the allowed US EPA level***. Despite this extremely high level of contamination, TCE was not even mentioned in the EIR. Toxic chemical vapors may be released into the air during site excavation for Project construction and during site remediation. Such vapors can pose a risk to construction workers, hospital employees and nearby residents.

The EIR also misrepresents methane contamination that has been identified on the Long Beach Memorial Medical Center ("LBMMC") site, which far exceeds the DTSC screening levels, creating a significant environmental impact. The ***EIR understates the extent of methane contamination by almost 300%***, failing its public disclosure function. The EIR also fails to disclose that an existing methane mitigation system has already been installed at the Miller Children's Hospital, which has measured methane contamination at 17 times above the DTSC screening level, 3 times above levels disclosed in the EIR.

The EIR also misrepresents the extent of benzene soil gas contamination that has been found on the LBMMC site. Dr. Clark calculated that the ***EIR underestimates the benzene soil gas contamination by almost half (forty-***

five percent), further misleading the public about the extent and nature of on site contamination.

The EIR fails entirely to describe the potential human health impacts of toxic chemicals on the LBMMC Site. Contaminated soil on the site will be disturbed during Project construction and site remediation, potentially exposing construction workers, hospital employees and nearby residents to toxic chemical vapors. Air quality expert Dr. James Clark and hazardous waste expert Matt Hagemann calculate that the toxic chemicals generated from disturbing the contaminated soil and diesel fumes from construction may be several times above CEQA significance thresholds. Despite the presence of extremely high levels of toxic chemicals and clear routes of exposure, the EIR fails entirely to analyze the potential human health impacts of such exposures to toxic chemicals. This renders the document legally inadequate.

C. EIR Fails to Adequately Describe or Mitigate Significant Air Quality Impacts from Project Construction and Operation, Including Highly Significant Increases in Cancer Risk to Workers and Nearby Residents

The EIR fails to analyze the health risks posed by diesel emissions at all, or to consider any feasible mitigation measures. Diesel exhaust is a serious public health concern, linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. Dr. Clark conducted a cancer risk assessment from the Project's diesel emissions and found that the LBMMC Project will create a *cancer risk* of 900 in a million for workers and 1000 in a million for nearby residents. This is *up to 1000 times above the CEQA significance threshold for cancer of one in a million*, and is almost equal to the overall cancer risk in the Long Beach area from all sources of 1200 in a million. There is clearly a fair argument that diesel emissions from the Project may have an adverse environmental and public health impact and must be analyzed in the EIR. Nevertheless, the EIR ignores the diesel emission health risk entirely. Feasible mitigation measures exist to reduce diesel impacts, including requiring the use of alternate diesel fuels, particulate traps, CARB-certified construction equipment, electric equipment where possible, natural-gas power equipment, and other measures. The EIR fails entirely to consider these feasible mitigation measures. Thus, a supplemental EIR must be prepared to analyze and mitigate this impact.

Additionally, The EIR admits that the Project will have significant operational and construction air quality impacts. The EIR admits that construction emissions will exceed applicable significance thresholds for carbon monoxide (CO) by over 300%, nitrogen oxides (NOx) by over 1700%, and reactive organic compounds (ROGs, also known as VOCs) by over 450%. The EIR admits that the

Project's operational emissions will combine with these construction emissions in 2010 to create cumulatively significant air impacts for CO, NOx and ROG. The EIR also admits that the Project's operational impacts a build-out will be significant for NOx and ROGs.

Despite these admissions of significant air quality impacts, the EIR fails to require implementation of all feasible mitigation measures, and admits that the Project's air quality impacts will remain significant even after implementation of all mitigation measures set forth in the EIR. The EIR fails to include many feasible construction emission mitigation measures that are routinely required by other agencies, and includes almost no mitigation measures for operational emissions other than to encourage carpooling. Many mitigation measures are feasible, are often required by other agencies, and must be considered according to CEQA requirements. Thus, an SEIR must also be prepared to mitigate the significant air quality impacts already admitted in the EIR to be significant.

D. The EIR Fails to Describe or Mitigate Significant Cumulative Impacts

An EIR must discuss significant "cumulative impacts," defined as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Courts have found that ignoring cumulative impacts from a project is legally fatal to an EIR because "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources . . . [which] appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact."

This EIR violates CEQA by failing to provide any cumulative impact analysis at all for air quality, aesthetics, geology, hazardous materials, land use planning and public services. Even after admitting that there are significant environmental impacts from air pollution, hazardous materials, and impacts to fire protection services, the EIR provides conclusory statements that there will be no cumulative impacts with no analysis to support the conclusions.

Dr. James Clark calculates that the LBMMC Project will clearly have significant cumulative impacts in every category when considered together with emissions of other projects in the area, including proposed expansions of the Ports of Long Beach and Los Angeles, an expansion of the Paramount Refinery and other projects. The EIR fails entirely to consider these cumulative impacts, and fails to propose any feasible mitigation measures to reduce them. This omission is particularly significant since the LBMMC Project is located in one of the most highly polluted areas of the state, near the ports, major freeways, and downwind of

several refineries. CEQA requires an analysis of the public's exposure to such a "toxic soup," but the EIR makes absolutely no attempt to analyze the Project's cumulative impacts to human health. This is a clear violation of CEQA's requirement to prepare cumulative impacts analysis.

E. The EIR Fails to Adequately Consider Alternatives to the Proposed Project

CEQA requires that an EIR describe a range of reasonable alternatives to the project that would fulfill the objectives of the project while avoiding or lessening significant effects of the project. CEQA includes this requirement to ensure that decision makers and the public have more than one project option to consider when participating in the decision making process.

This EIR fails to meet the CEQA standards for a proper alternatives analysis because it fails to present a reasonable range of alternatives, fails to demonstrate or describe the process used to narrow down the alternatives considered, and fails to consider any alternative related to the five central parts for the LBMMC other than timing of construction. An SEIR must be prepared to consider reasonable alternatives the single build-out plan currently on the table.

Given that the impact to affordable housing is a significant environmental impact, logical alternatives to this Project would consider changes to the scope of the build-out of the Project, or alternative design configurations that would meet the goals of the Project without requiring the demolition of affordable housing. For example, an alternative design could include construction of a parking structure to accommodate parking needs with demolishing existing housing, or construction of a mixed use structure combining parking in combination with housing. Such alternative would clearly be feasible, and must be considered in a supplemental EIR.

F. The City Must Prepare a Supplemental EIR

The City of Long Beach must prepare a supplemental EIR because the previous EIR failed to address significant environmental effects and failed to discuss mitigation measures that would substantially reduce the impacts from this Project. An SEIR is necessary to address the critical environmental issues and to involve the public in the review and decision-making process once the EIR is complete.

II. INTRODUCTION: LEGAL STANDARDS

CEQA generally requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”).¹⁰ The EIR is the very *heart* of CEQA.¹¹ “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”¹²

CEQA has two basic purposes, neither of which the Long Beach Memorial Medical Center (“LBMMC”) EIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹³ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹⁴ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹⁵

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹⁶ The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁷ If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.¹⁸

Standard of Review: While the court is to review an EIR using an “abuse of

¹⁰ Pub. Res. Code § 21100

¹¹ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

¹² *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

¹³ 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1).

¹⁴ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

¹⁵ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁶ CEQA Guidelines § 15002(a)(2) and (3). *See also*, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

¹⁷ Guidelines §15002(a)(2)

¹⁸ Guidelines, § 15092, subd. (b)(2)(A) & (B)

discretion” standard, “*the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’*”¹⁹ As the court stated in *Berkeley Jets*²⁰:

A prejudicial abuse of discretion occurs “‘if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’ [Citation.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722 [32 Cal. Rptr. 2d 704]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117 [71 Cal. Rptr. 2d 1]; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946 [91 Cal. Rptr. 2d 66]). . . “Our role here, as a reviewing court, is not to decide whether the board acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision... [Citation.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal. App. 4th at p. 718.)

¹⁹ *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988).

²⁰ 91 Cal. App. 4th at 1355.

III. THE DEIR FAILS TO ANALYZE AND MITIGATE ALL POTENTIALLY SIGNIFICANT IMPACTS

An EIR must disclose all potentially significant adverse environmental impacts of a project.²¹ CEQA requires that an EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.”²² The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding.²³ The DEIR for this Project fails to do so.

As explained by a recent CEQA decision:

“The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.” (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to “afford the fullest possible protection to the environment.” (*Kings County Farm Bureau, supra*, 221 Cal. App. 3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible. (See also Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (10th ed. 1999), pp. 374-376.)²⁴

A. EIR Fails Entirely to Describe, Disclose, Analyze, Mitigate or Propose Alternative for the Project's Impacts to Housing, Population and Employment

Project development includes the demolition of 51 units of existing affordable rental housing units so that a surface parking lot can be constructed. The Project will increase the demand for additional housing by generating new jobs and by destroying existing housing. This is a significant adverse physical environmental impact that must be addressed in the EIR.

The EIR fails entirely to analyze, propose mitigation, or consider alternatives for the loss of 51 units of affordable housing and the increase in demand for housing caused by the Project. This impact is particularly severe given the extreme

²¹ Pub. Res. Code § 21100(b)(1). CEQA Guidelines section 15126(a); *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354.

²² *Santiago County Water Dist. v. County of Orange*, 118 Cal.App.3d 818, 831 (1981).

²³ *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990).

²⁴ *Friends of the Eel River v. Sonoma County Water Agency*, (2003) 108 Cal. App. 4th 859, 874.

shortage of affordable housing in the Long Beach area and the cumulative loss of affordable housing throughout the region. The Project proposes to destroy 51 units of affordable housing (with an unspecified number of residents) and to replace the housing with surface-level parking lots.

City and urban planning expert Terrell Watt reviewed the Project and its relationship to the housing environment in Long Beach and the region.²⁵ Based on conservative assumptions and excluding secondary growth, Ms. Watt projected the Project to generate a demand for approximately 300 new units, with the majority of those in the affordable range (51 rental units plus 250 units for ½ the new employees not currently residing in the area).²⁶ Ms. Watt concluded that this increase in demand is significant based on both the number of Lower-income units built in the City over the last five years (771 low income apartment units), as well as when compared with an estimated 231 new residential units of housing to be developed near the Project. (EIR, page 13-49.)

Thus, a conservative estimate of increased housing demand, considered with the destruction 51 housing units leads to one conclusion: this Project has significant impacts on housing that must be evaluated and mitigated in an SEIR.

EIRs routinely include an analysis of population, jobs and housing where the project will increase employment and the demand for housing or result in the loss of housing.²⁷ In addition to analyzing population, housing and employment-related impacts, an EIR must evaluate the consistency of a proposed project with applicable plans and policies. In this case, the Project is inconsistent with numerous policies of the City's General Plan and specific plans, which are not disclosed, analyzed or addressed.

The EIR here fails to provide any facts, evidence or analysis to support the conclusion that impacts related to population and housing will not be significant. To the contrary, the facts strongly support the conclusion that increased new jobs and related demand for housing affordable for those employees alone and in combination with the loss of affordable rental housing units in an area of acute lack of affordable housing is significant. Moreover, the housing impacts will lead to significant demand for new housing in the City but also likely elsewhere leading to longer commutes and air quality impacts that are not disclosed, analyzed or mitigated in the EIR.

²⁵ Comment Letter of Terrell Watt ("Watt Comment") (Attached as Exhibit 1).

²⁶ Watt Comment, p. 3.

²⁷ Id. at 4.

1. The Loss of Affordable Housing is a Significant Impact that Must Be Analyzed

The EIR consultant admitted at the May 5, 2005 Planning Commission hearing that the loss of housing was determined not to be a significant adverse environmental impact at the initial study phase, and therefore was not analyzed at all in the EIR. This was a legal error with severe environmental and public policy implications. An SEIR must be prepared to analyze the impacts of the loss of 51 units of affordable housing, to consider feasible mitigation and alternatives that could avoid this loss.

Contrary to the EIR consultant's assertions, CEQA plainly establishes that a project will have adverse environmental impacts that must be analyzed in an EIR if it will "displace substantial numbers of existing housing, " or if it will "displace substantial numbers of people."²⁸ The courts have held that the "loss of low income housing units [is] a significant cumulative environmental impact" that must be analyzed in an EIR.²⁹ The court held in the *Concerned Citizens of South Central* case held that:

"the impact of a reduction in 67 total dwelling units would be considered a significant adverse impact on housing in the local area. In fact given the shortage of vacant housing even a much smaller reduction in the current housing supply would be considered a significant adverse impact on housing resources in the local area."³⁰

Thus, the court held that the EIR was required to analyze the impacts of the loss of affordable housing, including "full disclosure of the project's impact on housing in the [project] area as well as in the larger community."³¹ The EIR must inform "the public of the housing conditions in the greater [project] area with sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."³² The *Concerned Citizens* court held that the EIR in that case was adequate because it contained an entire section devoted to the housing issue,

²⁸ CEQA Guidelines, Appendix G, Section XII. Population and Housing.

²⁹ *Concerned Citizens of South Central v. Los Angeles Unif. Sch. Dist.* (1994) 24 Cal.App.4th 826. Loss of affordable housing can cause urban decay by increasing the homeless population. (See, *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184. Loss of affordable housing can also have significant adverse impacts related to displacing people to different areas. (See, *Muzzy Ranch v. Solano County* (2005) 125 Cal. App. 4th 810 (project had significant impact because it caused the displacement of housing to other areas in the region).

³⁰ 24 Cal.App.4th 826, 837.

³¹ *Id.* at 840

³² *Id.* at 839

including “statistics as to housing availability and vacancy rates” in the area, “statistics on the availability and costs of housing” in the area, cumulative impacts caused by other projects in the area that would cause loss of affordable housing, numerous mitigation measures to reduce the impacts of the loss of housing, and an alternatives analysis.³³

The Long Beach Memorial Project will include the “demolition of 51 existing residential units to create surface parking (lots Q, R, S, and T).” (DEIR, p. ES-5, pp. 2-7, 2-21). Under *Concerned Citizens* and the CEQA Guidelines, this is a significant impact that must be analyzed in the EIR. However, since this impact was determined not to be significant, it was not analyzed at all in the EIR, nor were any mitigation measures or alternatives analyzed to reduce this impact. The EIR barely mentions the loss of housing at all, has no section on housing impacts, does not provide any housing statistics, does not analyze cumulative housing loss impacts, does not propose any mitigation measures, and does not consider any alternatives that might reduce this impact. In fact, in its response to comments, the final EIR states that “mitigation measures are not required for the loss of the 13 residential structure [containing 51 units] as the properties are owned by the LBMMC.” (FEIR, p. 13-49). There is no exception to CEQA review or mitigation for situations where the project proponent owns the subject property. In fact, it is precisely the opposite. When the project proponent owns the property, it has much greater control over the impact and over possible mitigation and alternatives. Thus, the final EIR’s conclusion is contrary to law.

Ms. Watt concluded that the loss of 51 housing units alone constitutes a significant environmental impact.³⁴ In addition to the significant impacts that will result from the loss of 51 housing units, the synergy of reducing housing to accommodate this Project with an increased in demand for housing as a result of the increase of around 500 new Project-related jobs will result in a significant demand for affordable housing in Long Beach and elsewhere that must be considered in the EIR.³⁵

Ms. Watt enumerated three key impacts that must be disclosed and analyzed by an SEIR related to housing and the growth inducing impacts from this Project:

- The loss of 51 housing units alone and in combination with an increased demand for housing as a result of the increase of approximately 500 net new jobs results in a significant demand for affordable housing in the City and elsewhere. To the extent the demand cannot be met in the City, longer commutes will result.

³³ Id. at 836-837

³⁴ Watt Comment, p. 8.

³⁵ Id.

- The Project is likely to further reduce the jobs to housing balance in the City and immediate region, resulting in employees and displaced residents experiencing longer commutes, significant vehicle trips and air quality impacts not disclosed or analyzed in the EIR. Neither the air quality nor the traffic analysis include the impacts of the displaced residents, let alone consider the longer commutes of new employees unable to find housing in Long Beach.
- Cumulative impacts related to population, housing and employment, which, at a minimum, should be based on a study area related to where existing employees reside.³⁶

Thus, there is a fair argument that the loss of affordable housing and housing related impacts are significant. Thus, an SEIR must be prepared to address these critical issues that are ignored entirely in the EIR.

2. The Growth Inducing Impacts Related to the Loss of Housing and the Increased Demand in Housing is a Significant Impact that Must be Analyzed

The EIR must consider the growth inducing impacts of the Project. The EIR must “[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment” . . . as well as how the project may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.”³⁷

The DEIR concludes that the Project would have no growth inducing impacts because it is consistent with growth projections and would not extend services or provide service beyond the project boundaries. However, in the same paragraph, the DEIR states, “[t]his proposed project would create hundreds of jobs for Long Beach citizens and for those in neighboring communities during both the design and construction phase and for many years thereafter in new support staff and professional staff positions.” (DEIR, p. 12-59).

As Ms. Watt explained in her comment, “the Long Beach Memorial expansion, that creates hundreds of new jobs will by definition have a significant growth-inducing impact,”³⁸ and concluded that a “revised growth inducing analysis must be prepared, including the total demand for new housing and services

³⁶ Watt Comment, p. 8-9.

³⁷ CEQA Guidelines § 15126.2(d).

³⁸ Watt Comment § IV

generated by the hundreds of new jobs within Long Beach and surrounding communities generated by the Project.”³⁹ Thus, there is a fair argument that the Project will have significant growth inducing impacts that must be analyzed in a supplemental EIR.

3. The EIR Must Provide Feasible and Binding Mitigation Measures to Address Significant Housing and Employment Related Impacts

CEQA requires that mitigation measures be identified and analyzed. “The purpose of an environmental impact report is . . . to list ways in which the significant effects of such a project might be minimized”⁴⁰ The Supreme Court has described the mitigation and alternative sections of the EIR as the “core” of the document.⁴¹ *The EIR, however, fails to identify or analyze any mitigation measures for housing and employment related impacts.* As the court has explained, an agency may not use the inadequacy of its impacts review to avoid mitigation: “The agency should not be allowed to hide behind its own failure to collect data.”⁴² Nor may the agency use vague mitigation measures to avoid disclosing impacts.⁴³ Lastly, the formulation of mitigation measures may not properly be deferred until after Project approval; rather, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments.”⁴⁴ In the present case, the DEIR does not come close to satisfying these basic CEQA requirements regarding impact mitigation for housing related impacts.

Even though the Project proponents acknowledge the importance of housing for seniors and employees, the EIR fails to address these issues by improperly deferring the analysis of housing and employment related impacts and the determination of mitigation needed to address the impacts. On the one hand, the Project Master Plan directly addresses the need: “The City of Long Beach and the LBMMC recognize the value and importance of senior and worker housing in close proximity to major employment centers and public transit. The LBMMC will continue to work with the City of Long Beach to discuss opportunities for senior and worker housing.” (Master Plan, page 56.) Yet, the EIR fails to adequately address housing impacts with mitigation measures.

As the only attempt at mitigating the loss of affordable housing, the final EIR states that relocation assistance may or may not be provided to some residents of

³⁹ Id.

⁴⁰ Pub. Res. Code § 21061.

⁴¹ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553

⁴² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 361.

⁴³ See *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195.

⁴⁴ CEQA Guidelines § 15126.4(a)

the 51 units pursuant to a municipal ordinance. The EIR states, “In order for the City to assist the displaced tenants, existing tenant would need to fill out a ‘Tenant Relocation Program Application’ to see if any benefits would be applicable.” (Final EIR, p. 13-49). This is far from a binding mitigation measure subject to a mitigation monitoring program as required by CEQA.⁴⁵

As Ms. Watt outlines in her Comments, feasible mitigation measures exist for the loss of housing, are commonly required by other cities, and must be included in an SEIR.⁴⁶ Such measures range from preservation of existing housing, to construction of replacement housing, to relocation of the housing to payment of “linkage” fees. A mitigation “fee” can be legally imposed under CEQA.⁴⁷ Cities and counties throughout California commonly employ mitigation fees such as linkage fees.⁴⁸ A City may even require a developer to construct new housing to mitigate adverse impacts to affordable housing.⁴⁹ Of course, the City could simply require Memorial to refrain from destroying the affordable housing by constructing a parking structure rather than ground level parking. Below is a list of mitigations measures that planning expert Watt outlined in her comment:

- o Construction of a parking structure or structures to accommodate parking needs, while allowing retention of the existing housing (*see also* Alternatives);
- o Construction of a mixed-use structure; parking in combination with housing (*see also* Alternatives);
- o Purchase of housing off-site for rental to employees;
- o Construction of housing off-site within the City (for example, a developer in Sacramento was required to construct housing off-site to mitigate housing impacts of a commercial development project⁵⁰;
- o Payment of a “linkage” fee or fee to offset the cost of providing both replacement housing and new housing for employees (per Housing Objective 21). At least 19 California cities have imposed linkage fees requiring commercial developers to pay

⁴⁵ Pub. Res. Code §21081.6

⁴⁶ Watt Comment at 15-16.

⁴⁷ *Concerned Citizens of South Central v. Los Angeles USD*, 24 Cal.App.4th 826, 837.

⁴⁸ Watt Comment at 16

⁴⁹ *Commercial Builders v. Sacramento* (1991) 941 F.2d 872.

⁵⁰ *Id.*

into funds for the purpose of constructing affordable housing.⁵¹ Some cities impose housing linkage fees of up to \$15 per square foot. Such a fee would raise approximately \$2 million for the City in this case to construct affordable housing. The City of Long Beach Housing Element encourages imposition of a linkage fee on commercial development “to address the demand for affordable housing generated by commercial and office development. Funds received are deposited in a Housing Trust fund.” (Housing Element, Page V-22, Objective 21.) Nevertheless, this mitigation measure is not considered at all in the EIR.

An SEIR must be prepared that both analyzes the housing related impacts and includes feasible mitigation measures to address these impacts.

4. The EIR Fails to Analyze Project Consistency with Applicable Plans, Policies and Regulations of the City

The EIR is legally deficient because it fails to analyze and mitigate the Project’s inconsistencies with all applicable policies, including the Long Beach General Plan, the Long Beach Housing Element and Housing Action Plan, Long Beach City ordinances related to housing relocation assistance, and the Long Beach Redevelopment Plan. A Project’s inconsistencies with local plans and policies constitute significant impacts under CEQA.

a. Legal Requirements

CEQA requires an adequate description of the environmental setting and an assessment of any inconsistencies between the Project and applicable general plans and regional plans.⁵² A significant impact on land use and planning would occur if the Project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”⁵³ “Environmental effects” include direct and indirect impacts to land use and planning.⁵⁴ Thus, under CEQA, a project results in a significant effect on the environment if the project is inconsistent with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating one or more of these environmental effects.

⁵¹ See, Exhibit G to Watt Comment, List of California cities imposing housing linkage fees.

⁵² CEQA Guidelines § 15125(a), (d)

⁵³ CEQA Guidelines Appendix G, section IX(b).

⁵⁴ Id.

b. *The Project is inconsistent with the Long Beach General Plan*

The General Plan provides the blueprint for future land uses in the City of Long Beach. Under California law, a general plan serves as a “charter for future development,”⁵⁵ and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”⁵⁶ The General Plan has been aptly described as “the constitution for all future developments” within a city or county.⁵⁷ The “propriety of virtually any local decision affecting land use and development depends upon consistency with applicable general plan and its elements.”⁵⁸ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principal which infuses the concept of planned growth with the force of law.”⁵⁹

The removal of housing for construction of surface parking is inconsistent with specific policy objectives provided in the General Plan. The City’s General Plan designates the Project property for No. 7 Mixed-Use District in the Land Use Element, Figure 3.04, General Plan Land Use Designation. The EIR fails to adequately discuss the consistency with LUD No. 7, which provides:

- Combinations of land uses intended by this district are, for example, employment centers such as retail, offices, medical facilities, higher density residences, visitor-serving facilities, personal and professional services, or recreational facilities.
- Land is not intended for uses that may have a detrimental effect on the ambiance, environment, or social well-being of the area, such as industrial and manufacturing uses, warehousing activities, and outside storage.

The General Plan also states that tall buildings in this center would be very appropriate.

Ms. Watt concluded, “a revised consistency discussion must disclose that the removal of housing for construction of surface parking is not wholly consistent with

⁵⁵ *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531,54

⁵⁶ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521,532

⁵⁷ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.)

⁵⁸ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570

⁵⁹ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

the policy objectives of LUD No. 7.”⁶⁰ Additionally, Ms. Watt concluded, “the loss of housing sites and replacement with surface parking appears to be inconsistent with the higher intensity uses intended for this land use designation.”⁶¹ A revised consistency analysis in an SEIR must thoroughly review the project-policy consistency issues in all elements of the city’s General Plan. A consistency table should be developed which includes each relevant policy and a description of how the project is or is not consistent. This table should be the basis for project modification to attain consistency (e.g. a mixed Medical Center and Housing Project) or to amend the policies or land use designations to attain consistency.

c. The Project is Inconsistent with the Long Beach Housing Element and Housing Action Plan

The EIR is also faulty by failing to disclose several inconsistencies between the project and the policies and programs in the Long Beach Housing element, which is part of the General Plan, and Housing Action Plan. Ms. Watt concluded that such inconsistencies must be disclosed in a consistency table that evaluates the project as compared with each relevant goal, policy or program.⁶²

The Project is inconsistent with the following primary Goals of the City’s housing element:⁶³

- Goal #1: Maintain and Improve the Quality of Existing Housing Stock
- Goal #2: Provide Opportunity to Expand the Housing Stock with New Construction
- Goal #3: Protect and Preserve Housing Affordable to Low-Income Households
- Goal #6: Ensure Fair Treatment and Equal Opportunity for All Households

Ms. Watt concluded that the Project is not consistent with numerous other policies and programs in the Housing element and HAC, including, but not limited to policies which call for housing stock maintenance (Housing Element, page V-3); encouraging construction of new housing on appropriate sites (Id. Page V-4); protecting and preserving affordable housing (Id., Page V-5), housing and neighborhood conservation and related policies (Id. Page V-9); Policy 2.5 to

⁶⁰ Watt Comment p. 11.

⁶¹ Id.

⁶² Id. at 11-12.

⁶³ Id. at 12.

encourage housing development along transit corridors and in activity centers on infill sites (Id. Page V-10), and more.⁶⁴

The EIR also fails to address the objective of the Housing Element to evaluate establishing a commercial impact/linkage fee for non-residential development to fund housing services. (Housing Element, Page V-22, Objective 21.) The Housing Element states:

There is a clear relationship between new employment within a given area and the associated demand for new housing. Some jobs will be service occupations that earn more modest income, while other occupations will be higher-paying. If the demand for new housing exceeds the supply of housing, housing costs will increase accordingly – having its greatest impact upon low- and moderate-income households. Suitable housing will also need to be available in order to attract desired industries. An impact fee program can provide funding to address the demand for affordable housing generated by commercial and office development. Funds received are deposited in a Housing Trust fund. (*Id.*)

The EIR fails to identify the Project's inconsistencies with these policies. As Ms. Watt concluded, these inconsistencies are significant impacts within the meaning of CEQA and must be analyzed in an SEIR, and mitigation measures and alternatives must be considered.

d. *The Project is Inconsistent with the Long Beach Ordinances Related to Housing Relocation Assistance*

The City codes and redevelopment law contain requirements for mitigation relevant to the displacement of housing in Long Beach. Yet, the EIR fails to describe these requirements or the project's consistency with them at all. Ms. Watt concluded that this failure is a flaw requiring correction in an SEIR.⁶⁵

e. *The Project is Inconsistent with the Long Beach Redevelopment Plan*

The project is located in the Central Redevelopment Area of the City of Long Beach, governed in part by a Strategic Guide for Development of the Central Area. The Guide includes the following policy guidance:

- The revitalized Central Study Area will be a community with: residential neighborhoods that meet the needs of families, seniors

⁶⁴ Id.

⁶⁵ Id. at 13.

and individuals with an emphasis on affordable and accessible ownership opportunities; new or rehabilitated residential structures replacing deteriorated housing...

- Increasing the supply of housing stock, reducing overcrowding, preserving and enhancing existing neighborhoods, and enriching the livability of residential neighborhoods, are among the primary goals of the Central Study Area; among other policy guidance.

The EIR fails altogether to describe the policies of these plans and to analyze Project consistency with the Redevelopment Plan and strategic guide. Ms. Watt concluded that failure to describe and analyze consistency with these policies requires the preparation of an SEIR to be prepared which includes a detailed inventory of relevant goals, plans, policies and other requirements and describes how the project is or is not consistent with each of these.⁶⁶

Inconsistencies between the project and the City's General Plan and specific plans and policies must be resolved; overriding considerations cannot be used to overcome such inconsistencies. Given the inconsistencies with the General Plan and the City's specific plans, the current request for Project approval cannot be granted by the City under California land use planning law. The City must refrain from providing any approvals to the Project until the applicant can demonstrate consistency between its proposed use of the land and the City's operative General and Specific Plans.

5. There are No Takings or Nexus Issues.

At the Planning Commission hearing on May 5, 2005, the EIR consultant and city attorney asserted that mitigation measures of the loss of housing or alternatives that could avoid the loss of housing would be an illegal taking due to the "nexus" requirement. The consultant and City attorney plainly misunderstand the applicable law.

The "nexus" requirement merely requires that government may only impose restrictions on development if it: (1) substantially advances a legitimate governmental interest; (2) does not deny the owner of all economically viable use of the land; (3) there is a connection between the development and the fee or exaction imposed by the government; (4) and the fees or exaction must be roughly proportional to the project's impact.⁶⁷

⁶⁶ Id.

⁶⁷ *Nollan v. Calif. Coastal Comm.* (1987) 483 U.S. 825; *Dolan v. Tigard* (1994) 512 U.S. 374; *Agins v. Tiburon* (1980) 447 U.S. 255.

The courts have held that a city is well within its powers to require a developer to pay fees to provide low-income housing, and that such fees do not constitute a taking and do not violate any nexus requirements.⁶⁸ In the *Commercial Builders v. Sacramento* case, the court held that the City of Sacramento was within its rights to require a commercial developer to pay fees to help construct low-income housing. The court held that the required “nexus” was satisfied because the project would attract workers who would need housing. There was thus a nexus between the project and the fee.

The case is even clearer for the Long Beach Memorial Project. The Project will employ 630 workers. (DEIR, pp. ES-2 – ES 4). These workers will require housing, as in *Commercial Builders*. Furthermore, unlike in *Commercial Builders*, the Long Beach Memorial Project will directly destroy 51 units of affordable housing. It therefore will have a direct impact on reducing affordable housing. The required nexus between the project and impact on affordable housing could therefore not be clearer. A fee to address this impact would thus have no nexus issues.⁶⁹

Also, an alternative that would require the developer to preserve rather than to destroy affordable housing would raise no nexus or takings issues at all. The courts have held that there is no right to convert low-income housing to other uses, since such development is a “privilege,” not a right.⁷⁰ The courts therefore upheld an ordinance prohibiting developers from destroying affordable housing unless they provided one-for-one replacement housing and provided relocation assistance for residents.⁷¹ An alternative requiring the developer to preserve the 51 affordable housing units by constructing a parking structure rather than ground level parking would thus raise no nexus issues at all.

Requiring the developer to preserve the 51 units of low-income housing, to provide one-for-one replacement, and/or to provide mitigation fees for relocation or replacement housing meet all of the requirements of the nexus test. All of these measures have been affirmed by the courts. All of these mitigation measures and alternatives must be thoroughly analyzed for feasibility in an SEIR.

⁶⁸ *Commercial Builders v. Sacramento* (1991) 941 F.2d 872.

⁶⁹ Furthermore, the *Nollan* line of cases does not apply to the imposition of fees, but only to physical exactions of property. *Blue Jeans Equities v. San Francisco* (1992) 3 Cal.App.4th 164.

⁷⁰ *Terminal Plaza v. San Francisco* (1986) 177 Cal.App.3d 892 (no right to convert low-income residential hotel to other uses); see also, *Trent v. Meredith*, 114 Cal.App.3d at 317 (development is a privilege not a right); *Norsco v. Fremont* (1976) 54 Cal.App.3d 488; *Griffin v. Oxnard* (1985) 39 Cal.3d 256.

⁷¹ *Terminal Plaza v. San Francisco* (1986) 177 Cal.App.3d 892.

6. The EIR Failed to Adequately Respond to Comments Requesting that Housing Impacts be Analyzed

Numerous comment letters on the DEIR stated that the DEIR fails to address the affordable housing issues in the neighborhood. As planning expert Watt explained, responses to these comments were not adequate.⁷² For example the Response to Comment No. 1 by Rommel Poricuncula contains misleading and incorrect information. (FEIR, page 13-49.) The response implies that the units demolished and converted to parking is consistent with the City requirements, specifically zoning. This comment overlooks that fact that the General Plan land use designation for the area is mixed use, which provides for precisely the types of mixed uses currently in existence. The section continues to state that parking, and by implication not housing, is consistent with the City's zoning. This overlooks the General Plan land use designation for a mix of uses, including housing.

The Response continues on to state that:

“The LBMMC acquired these properties to accommodate the expansion. Without the acquisition of these properties, the Campus would not be able to expand and thus not be able to provide medical services to the community.” (EIR, page 13-49.)

This statement is patently false. It ignores the opportunity for parking in structures to either retain or rebuild the housing. (See Alternatives below.)

Moreover, the comments request an analysis of housing affordability issues. Such an analysis was not provided. An SEIR should be prepared which includes all the information and analysis suggested herein.

7. Since the EIR Fails Entirely to Analyze the Loss of Affordable Housing and the Project's Impacts to Housing, Population and Employment, the Impacts are Subject to the Fair Argument Standard.

Finally, since the EIR fails entirely to analyze the impact of the loss of affordable housing and the Project's impacts to housing, population and employment, these impact are subject to the fair argument, rather than the substantial evidence standard. Fair argument standard applies even to EIRs if the EIR fails entirely to analyze a particular impact.⁷³

⁷² Watt Comment p. 18.

⁷³ *Bakersfield Citizens* at 1208.

Under the fair argument standard, an impact must be analyzed in an EIR whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur.⁷⁴ Under the “fair argument” standard, an EIR must analyze an impact if *any* substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision.⁷⁵ The “fair argument” standard creates a “low threshold” favoring environmental review through analysis in an EIR.⁷⁶

In this case, there is clearly a “fair argument” that the loss of 51 units of affordable housing may have a significant adverse environmental impact. There is also a fair argument that the demand for new housing and the growth inducing impacts from this Project create significant environmental impacts. These impacts must be analyzed in an SEIR, and mitigation measures and feasible alternatives must be analyzed and subjected to public comment.

B. EIR Fails to Accurately Describe or Mitigate Toxic Contamination Impacts.

As discussed above, the site of the proposed Project is heavily contaminated with toxic chemicals. Environmental experts Dr. James Clark, Matt Hagemann, John Williams and DTSC have raised significant concerns about the unknown extent of the contamination, the potential risks posed by the contamination, and the lack of any adequate mitigation plan. Mr. Williams points out that it is possible that methane and other hazardous gases may migrate into buildings. In fact, at least one other building in the complex was required to install a methane gas mitigation system for this very reason. Dr. Clark and Mr. Hagemann explain that when soil is disturbed during the six-year construction phase of the Project, toxic soil vapors will be released into the air, potentially exposing construction workers, hospital employees and nearby residents to significant levels of toxic chemical vapors. The City violated CEQA by failing to accurately describe or mitigate toxic contamination impacts.

Among the toxic chemicals identified on the site are arsenic, lead, selenium, benzene, freon, xylene, ethylbenzene, toluene, methane, hydrogen sulfide and other VOCs. Many of these chemicals are known to be highly toxic to humans.

⁷⁴ CEQA’s unique “fair argument” standard also applies to a reviewing court’s examination of an agency’s decision concerning preparation of an EIR. *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1375-76; *Quail Botanical*, 29 Cal. App. 4th at 1602.

⁷⁵ CEQA Guidelines § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon v. Stanislaus* (1995) 33 Cal.App.4th 144, 150-151 (1995); *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602.

⁷⁶ *Pocket Protectors*, 124 Cal.App. 4th at 928.

- Benzene has been identified by the state as a chemical known to cause cancer in humans, and has been linked strongly to leukemia.⁷⁷ Benzene has been identified on the LBMMC site at levels of up to 6,800 micrograms per cubic meter (ug/m³) near the corner of Long Beach Boulevard and Spring Street.⁷⁸ This concentration is **2193 times higher than the US EPA guidance level** for benzene in shallow soils of 3.1 ug/m³, and **189 times the California EPA guidance level** for benzene in shallow soils of 36 ug/m³.⁷⁹
- Ethylbenzene can cause eye and throat irritation, dizziness and weakness.⁸⁰
- Xylene can cause irritation to the eyes, nose and throat, impaired memory, and dizziness. Xylene can damage the liver, kidneys, lungs, heart and nervous system, and can damage fetuses if pregnant women are exposed.⁸¹
- Lead has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity in humans.⁸² According to the United States Environmental Protection Agency (US EPA), lead can cause brain damage, learning deficits, hearing problems, headaches, difficulties during pregnancy, high blood pressure, memory and concentration problems, and muscle and joint pain.⁸³ Reduced IQ is one of the most common effects of lead poisoning in children. Each three-microgram increase in lead poisoning has been found to result in a one-point drop in IQ.⁸⁴ Adults can be exposed to lead in soil through gardening or other outdoor activities, but children are at much greater risk of lead poisoning due to the fact that they often place their hands, yard toys, soil, and other objects into their mouths.⁸⁵
- Arsenic is known to cause lung cancer, bladder cancer, skin lesions, and other ailments.⁸⁶

⁷⁷ Proposition 65 Status Report, (Attached as Exhibit 5); ATSDR, Public Health Statement for Benzene, (Attached as Exhibit 6).

⁷⁸ Comments of Matt Hagemann ("Hagemann Comments") at section 4 (Attached As Exhibit 2).

⁷⁹ Comments of Dr. James Clark ("Clark Comment") at Section 5 (Attached as Exhibit 3).

⁸⁰ ATSDR, Public Health Statement for Ethylbenzene, (Attached as Exhibit 7).

⁸¹ ATSDR, Public Health Statement for Xylene, (Attached as Exhibit 8).

⁸² Proposition 65 Status Report, Exhibit 5.

⁸³ US EPA Lead Fact Sheet, (Attached as Exhibits 9 and 10).

⁸⁴ Lead Health Effects and Sources of Exposure, (Attached as Exhibit 11).

⁸⁵ Exhibits 9-11.

⁸⁶ Univ. of Calif. Berkeley, Program in Arsenic Health Effects Research, (Attached as Exhibit 12).

1. The EIR Ignored Comments from DTSC That the EIR Should Not be Finalized Until After the Development of the RAW.

DTSC submitted comments on the project, concluding that the EIR “did not provide sufficient description of the extent and nature of contamination existing at the site, or analysis of the potential impacts associated with potential RAW [remedial action workplan] activities. This is primarily due to the fact that information related to the extent and nature of the contamination is still being acquired and evaluated for the development of a draft RAW.” (DTSC Comment, p. 2 (March 16, 2005)). DTSC also concludes that that “the specific impacts and mitigation measures associated with the removal/remediation of contaminated media that may be encountered during construction have not been outlined.” (Id.) Since the site has not been adequately characterized, it is unclear the extent to which the site exceeds applicable clean-up standards.⁸⁷

DTSC states that “elements of the clean-up requiring mitigation including, but not limited to, soil excavation, onsite storage, off-site transportation, and backfill need to be adequately addressed. *The actions that will be outlined in the draft RAW for the Project must be evaluated and incorporated in the final version of the EIR.*” (Id.). DTSC also states that “specific impacts associated with the removal of contaminated soil, and corresponding mitigation measures *must be outlined in the final EIR.*” (Id. at p.3). *However, the final EIR did not evaluate, incorporate, or even describe such remedial activities.*

Despite the extensive contamination, and clear routes of exposure to hospital workers, patients, construction workers and others, the EIR presents absolutely no mitigation proposal. Risks may be particularly pronounced given the certain presence of children on the site due to the children’s hospital.

Instead of proposing mitigation, the EIR states that the toxic contamination will be mitigated in the future pursuant to a plan that will be developed by various agencies including the DTSC, the Long Beach Health Department and the South Coast Air Quality Management District. (Mitigation measures 1-15, pp. 3.5-14 – 3.5-17).

CEQA prohibits deferring the formulation of mitigation measures to post-approval studies.⁸⁸ An agency may only defer the formulation of mitigation measures when it possesses “meaningful information’ reasonably justifying an

⁸⁷ Calif. Regional Water Quality Control Board, Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater. (Attached as Exhibit 13).

⁸⁸ CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.

expectation of compliance.”⁸⁹ A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁹⁰ This approach helps “insure the integrity of the process of decisionmaking by *precluding stubborn problems or serious criticism from being swept under the rug.*”⁹¹

Moreover, by deferring the development of specific mitigation measures, the Applicant has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the *Sundstrom* court:

An EIR ... [is] subject to review by the public and interested agencies. This requirement of “public and agency review” has been called “the strongest assurance of the adequacy of the EIR.” The final EIR must respond with specificity to the “significant environmental points raised in the review and consultation process.” . . . Here, the hydrological studies envisioned by the use permit would be exempt from this process of public and governmental scrutiny.⁹²

The EIR suffers from the same fatal flaw. The EIR recognizes significant toxic chemical-related impacts, but fails to describe the scope or severity of those impacts, and fails to identify any specific mitigation measures to protect public health and the environment. By proposing that mitigation for this very significant impact be deferred until after the close of the CEQA process, the City is sweeping a very stubborn problem “under the rug” in violation of CEQA.

Also, by proposing that mitigation measures be developed by other agencies, (DTSC, the Long Beach Health Department and the South Coast Air Quality Management District), the City is abdicating its responsibility as CEQA lead agency. As CEQA lead agency, the City has a duty to ensure that all impacts are fully analyzed and mitigated, and the City may not pass this responsibility onto another agency.⁹³

⁸⁹ *Sundstrom* at 308; see also *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”).

⁹⁰ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available).

⁹¹ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

⁹² *Sundstrom*, 202 Cal.App.3d at 308.

⁹³ *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892, 903; *Eller Media v. Community Redevel. Agency* (2003) 108 Cal.App.4th 25, 38.

2. The EIR Fails Entirely to Analyze Impacts Related to Very High Levels of TCE on the LBMMC Site.

The EIR fails entirely to mention the fact that the site is heavily contaminated with TCE (trichloroethylene). The International Agency for Research on Cancer (IARC) has determined that TCE is “probably carcinogenic to humans.” It also causes skin rashes, dizziness, lung irritation, breathing problems, and other ailments.⁹⁴ According to a 2004 report, TCE has been found on the site at levels from 20 to 30 ug/m³. This is *136 times above the US EPA screening level of 0.22 ug/m³. Despite this extremely high level of contamination, TCE was not even mentioned in the EIR.*⁹⁵

Mr. Hagemann and Dr. Clark explain that toxic chemical vapors may be released into the air during site excavation for Project construction and during site remediation. Such vapors can pose a risk to construction workers, hospital employees and nearby residents. Dr. Clark and Mr. Hagemann conclude that the Project may disturb contaminated soil, which may expose workers and nearby residents to significant levels of the toxic chemicals benzene and TCE. Dr. Clark concludes that given the high levels of toxic chemicals on the site, this is a potentially perilous situation for both construction workers and nearby neighbors who may be unwittingly exposed to contaminated oils and vapors through ingestion, inhalation, and dermal absorption.⁹⁶ Dr. Clark explains that winds may carry contaminated soil and vapors off-site, potentially exposing nearby residents to significant levels of hazardous chemicals. The EIR fails entirely to analyze such risks, or to develop mitigation measures to reduce such risks.

Mr. Hagemann also explains that toxic chemical vapors can migrate into LBMMC buildings, exposing workers and future patients. Since TCE is not mentioned at all in the EIR, the document fails entirely to analyze risks from TCE related to soil-vapor intrusion. This is despite the fact that TCE has been found on the site at levels 136 times higher than US EPA’s Subsurface Vapor Intrusion Guidance document.⁹⁷ Mr. Hagemann concludes that TCE and benzene soil vapor intrusion pose a potentially significant risk to LBMMC employees and patients that has not been analyzed in the EIR.⁹⁸

⁹⁴ ATSDR, Public Health Statement for TCE, (Attached as Exhibit 15).

⁹⁵ Since the EIR fails entirely to analyze impacts related to TCE, these impacts are subject to the fair argument, rather than the substantial evidence standard. *Bakersfield Citizens* at 1208.

⁹⁶ Clark Comment at section 5.

⁹⁷ Hagemann Comment at section 3.

⁹⁸ *Id.*

3. The EIR Mischaracterizes Methane Risks and LBMMC has Failed to Produce Methane Monitoring Reports to DTSC or Even to its own Consultants, Claiming that Such Data Has Been “Lost.”

The EIR misrepresents methane contamination that has been identified on the LBMMC site. The DEIR states that methane contamination is present at levels of 0.6% or 6000 ppmv. (DEIR p. 3.5-7). In fact, a test performed in November 2003 found methane at levels between 16,000 ppmv (1.6%) and 17,000 ppmv (1.7%). ***Thus, methane has been found in the site in recent tests at levels almost three times higher than disclosed in the EIR.***⁹⁹ The EIR is therefore failing to perform its basic public information function. These levels are ***far above DTSC screening levels of 1000 ppmv.*** Mr. Hagemann concludes that such high levels of methane gas and related hydrogen sulfide gas may pose significant health risks to construction workers, hospital workers and patients and nearby residents.¹⁰⁰

The EIR also fails to mention that an existing methane mitigation system has already been installed at the Miller Children’s Hospital. When DTSC requested test data for the methane recovery system, DTSC was informed “the records have been misplaced.”¹⁰¹ LBMMC hired the Kleinfelder consulting firm in 2003 to review methane contamination on the site. Kleinfelder was not informed of the presence of the existing methane system until it discovered the system during a site inspection. The consultant noted “during a site walk” Kleinfelder “identified two methane gas monitoring wells at the front door of the Miller Children’s Hospital.”¹⁰² The consultant stated:

“Kleinfelder was unable to obtain details regarding the circumstances surrounding the installation of the methane monitoring wells.”

It is truly astounding that a consultant retained to design a methane mitigation system was not informed that such a system was already installed, and it is also difficult to believe that all monitoring data from the system was “lost.” What is known is that despite the presence of the system, methane has been detected at levels 17 times above the DTSC screening level and 3 times above levels disclosed in the EIR. An SEIR is required to analyze this impact, analyze whether the existing methane mitigation system is operating properly, and propose mitigation measures to reduce this significant impact.

⁹⁹ Hagemann Comment at section 5.

¹⁰⁰ Id.

¹⁰¹ DTSC Letter to Brian Olney (May 20, 2005).

¹⁰² Hagemann Comment, section 6, citing, Kleinfelder, Limited Soil Gas Assessment Report, Proposed Addition to the Miller Children’s Hospital (Dec. 22, 2003).

4. The EIR Fails to Disclose or Analyze Risks Posed by Former Oil and Gas Wells.

Six abandoned oil and gas wells exist on the LBMMC site, but the locations of only three are known. None of the wells have been closed in accordance with modern standards of the Division of Oil, Gas and Geothermal Resources (DOGGR).¹⁰³ Mr. Hagemann concludes that the abandoned wells “may act as conduits for migration of methane and benzene and other toxic gasses.”¹⁰⁴ He also concludes that “here is at least a fair argument that the abandoned wells on the LBMMC site may pose a significant risk to public health and safety and that the construction of the Project may result in significant toxic chemical exposure to construction workers, hospital employees and/or nearby residents.”

Mr. Hagemann concludes that the precise location and re-abandonment of these wells (along with other wells possibly located on the site) is critical given potentially necessary mitigation measures for the project, including:

- soil gas venting;
- constructing impermeable barriers to interrupt gas migration pathways;
- subsurface indoor air monitoring; and
- indoor air venting and alarms.

A revised supplemental DEIR should incorporate an exhaustive review of historical oil and gas operations. Results of the review should be included in the SDEIR to identify all potential oil and gas wells at LBMMC. Maps showing the locations of all wells should be included as appendices. The LBMMC EIR should not be finalized until all wells have been located and abandoned according to current DOGGR standards.

Contrary to representations made in the EIR, the DTSC RAW will not ensure public safety from toxic chemicals on the site. The DTSC RAW will not include measures to mitigate risks posed by the abandoned oil and gas wells at all since those wells are under the jurisdiction of DOGGR, not DTSC.

5. The EIR Fails to Describe Potential Human Health Impacts of Toxic Chemicals on the LBMMC Site

The EIR fails entirely to describe the potential human health impacts of toxic chemicals on the LBMMC Site. As discussed by Dr. Clark, Mr. Hagemann, Mr. Williams, the LBMMC Site is heavily contaminated with toxic chemicals at

¹⁰³ Hagemann Comment, section 7.

¹⁰⁴ Id.

hundreds and even thousands of times above US EPA and state standards. Dr. Clark indicated that benzene contamination in the soil at the Project site in concentrations 2193 times higher than the US EPA guidance level, and 189 times the California EPA guidance level for benzene in shallow soils, should have been analyzed by the EIR for human health impacts. However, Despite this heavy contamination, the EIR makes no attempt to analyze the impacts of potentially contaminated soils on construction workers and nearby sensitive receptors and residents.¹⁰⁵

This soil will be disturbed during Project construction and site remediation, potentially exposing construction workers, hospital employees and nearby residents to toxic chemical vapors. Dr. Clark, Mr. Williams and Mr. Hagemann have concluded that such exposures may be highly significant.

Despite the presence of extremely high levels of toxic chemicals and clear routes of exposure, the EIR fails entirely to analyze the potential human health impacts of such exposures to toxic chemicals. This renders the document legally inadequate. As the court of appeal explained in a recent case, and EIR must "correlate the identified adverse air quality impacts to resultant adverse health effects." The court explained:

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, "health and safety problems caused by the physical changes" that the proposed project will precipitate. Both of the EIR's concluded that the projects would have significant and unavoidable adverse impacts on air quality. It is well known that air pollution adversely affects human respiratory health. (See, e.g., Bustillo, Smog Harms Children's Lungs for Life, Study Finds, L.A. Times (Sept. 9, 2004).) Emergency rooms crowded with wheezing sufferers are sad but common sights in the San Joaquin Valley and elsewhere. Air quality indexes are published daily in local newspapers, schools monitor air quality and restrict outdoor play when it is especially poor and the public is warned to limit their activities on days when air quality is particularly bad. Yet, neither EIR acknowledges the health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as "air pollution" are brief references to respiratory illnesses. However, there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting

¹⁰⁵ Clark Comment section 5.

from the adverse air quality impacts must be identified and analyzed in the new EIR's.¹⁰⁶

The LBMMC EIR makes absolutely no attempt to analyze the “health consequences” that may result from Project construction that will necessarily disturb highly contaminated soil. In fact, the EIR does not even mention the presence of extremely high levels of toxic TCE on the site, which will impact workers and nearby residents during Project construction. A supplemental EIR is required to analyze these impacts in terms of human health and to propose feasible mitigation measures.

6. A Supplemental EIR is Required to Analyze and Propose Mitigation for Toxic Chemical Impacts.

An SEIR is required to analyze significant toxic contamination impacts, and to propose mitigation measure. The SEIR must be circulated for full public review so that the public may review concrete mitigation measures to determine their adequacy.¹⁰⁷ As a leading CEQA treatise explains, “in *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, the court held that the public has a right to review a project described in a [CEQA document] in its final form and suggested that a [CEQA document] must be recirculated if mitigation measures are added.”¹⁰⁸

Mr. Hagemann and Dr. Clark explain that mitigation measures for toxic chemical contamination may themselves pose significant risks to the public and to workers if not designed properly. For example, they explain that excavation of contaminated soils may expose workers, nearby residents and hospital patients and employees to vapors released when the soil is disturbed. CEQA requires that such mitigation measures themselves must be analyzed in an EIR to consider measures and alternatives to reduce risks to the public and to the environment.¹⁰⁹ The EIR fails entirely to analyze the risks posed by site remediation and is therefore legally inadequate.

C. EIR Fails to Adequately Describe or Mitigate Significant Air Quality Impacts from Project Construction and Operation.

The EIR admits that the Project will have significant operational and construction air quality impacts. The EIR admits that construction emissions will

¹⁰⁶ *Bakersfield Citizens*, 124 Cal. App. 4th 1184, 1219-1220.

¹⁰⁷ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1391-2, 1411, 1417.

¹⁰⁸ *Kostka & Zishcke, Practice Under the Calif. Environ. Quality Act*, at §7.19.

¹⁰⁹ *Oceanview v. Montecito* (2004) 116 Cal. App. 4th 396; *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296.

exceed applicable significance thresholds for carbon monoxide (CO), nitrogen oxides (NO_x), and reactive organic compounds (ROGs, also known as VOCs). (EIR, p. 3.2-11). The EIR also admits that the Project's operational emissions will combine with these construction emissions in 2010 to create cumulatively significant air impacts for CO, NO_x and ROGs. (Id. p. 3.2-12). The EIR also admits that the Project's operational impacts a build-out will be significant for NO_x and ROGs. (Id., p. 3.2-15).

Despite these admissions of significant air quality impacts, the EIR fails to require implementation of all feasible mitigation measures, and admits that the Project's air quality impacts will remain significant even after implementation of all mitigation measures set forth in the EIR. (Id., p. 3.2-20). While the EIR includes several construction emission mitigation measures, the list fails to include many feasible measures that are routinely required by other agencies. The EIR includes almost no mitigation measures for operational emissions other than to encourage carpooling. Dr. Clark explains that many other mitigation measures are feasible and are often required by other agencies.

The EIR also fails assess any increase in the cancer risk associated with project air emissions. Dr. Clark concludes, however, that cancer risk from diesel emissions alone range from 900 to 1000 times above the applicable CEQA significance threshold. Failure to assess the highly significant environmental impact in the EIR is a fatal flaw that must be evaluated in an SEIR.

1. EIR Fails to Adequately Describe the Project's Environmental Setting.

The LBMMC Project is located in one of the most heavily polluted regions of the country. As explained by air quality expert Dr. James Clark, Ph.D., recent studies by the SCAQMD estimate the air-pollution-related cancer health risk in the area is 1,200 in 1,000,000, making Long Beach one of the most hazardous areas of the District based on the ambient levels of pollutants. By comparison, the SCAQMD considers any cancer risk in excess of 1 in 1,000,000 to be significant.¹¹⁰

Dr. Clark explains that the primary sources of the pollutants within this subregion of the District (greater than 90%) are mobile sources contained within the Ports of Los Angeles and Long Beach and mobile sources from surface streets (cars, trucks, etc.). The project will reside between the largest mobile sources of pollution within the subregion, the Ports of Los Angeles and Long Beach, Interstates 405 and 710, and the Long Beach Airport. Growth in traffic for each of these sources will

¹¹⁰ SCAQMD, *CEQA Air Quality Handbook*, p. 10-5 (1993).

continue to impact the sub-region, decreasing the air quality with the project area.¹¹¹

Although immediately bordered by commercial properties to the east and south, within a ½ mile radius of the project Site large tracts of residential properties exist around the project Site. The impacts of the project will therefore be felt by a large population, including sensitive subpopulations, such as children, pregnant women, the elderly, the infirm, on a continual basis during the construction (6 years) and operation phases of the proposed project. Within 1-mile of the proposed project site are a hospice (Long Beach Memorial Medical Center Home Health Hospice), two schools (Soldedad Enrichment Action and Oakwood Academy), and ten child daycare/pre-school centers. Nowhere in the Air Quality analysis is the impact to these sensitive receptors discussed or quantified. The project proponent should be required to model the actual ground level concentration of pollutants from the site at each of these receptors to ensure their protection.

As discussed above, CEQA requires that air pollution impacts of a Project must be described in an EIR in terms of human health impacts. The EIR must “correlate the identified adverse air quality impacts to resultant adverse health effects.” As with the EIR criticized in the *Bakersfield Citizens* case, “there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's.”¹¹²

While the EIR contains a health risk assessment analyzing the possible impacts of soil vapor intrusion into the building in the future, it performs absolutely no analysis of potentially significant impacts to human health from soil excavation and disturbance during construction and site remediation, diesel fumes, and toxic chemical vapors that will be generated during the six-year construction phase. Additionally, the EIR underestimates the benzene soil gas contamination by 45%, further misleading the public about the extent and nature of on site contamination.¹¹³ Dr. Clark concluded, “This miscalculation significantly affects the estimation of vapor concentrations migrating to the surface using various models

¹¹¹ Comments of Dr. James Clark (“Clark Comments”), Introduction.

¹¹² *Bakersfield Citizens*, 124 Cal. App. 4th 1184, 1219-1220.

¹¹³ Dr. Clark used a standard ProUCL statistical analysis to calculate that with 95% confidence that the benzene soil gas contamination level is 1.78 ug/L rather than the 1.23 ug/L reported by the project proponent. Clark Comment section 5.

for the site, and severely under estimates the potential cancer risk from benzene for workers, residents, staff and patients at the hospital.”¹¹⁴

A supplemental EIR is required to analyze these impacts in terms of human health and to proposed feasible mitigations.

2. EIR Fails to Adequately Mitigate Significant Air Quality Impacts from Project Operation.

The EIR admits that construction emissions will exceed applicable significance thresholds for carbon monoxide (CO) by over 300%, nitrogen oxides (NOx) by over 1700%, and reactive organic compounds (ROGs, also known as VOCs) by over 450%. (EIR, p. 3.2-11). The EIR also admits that the Project’s operational emissions will combine with these construction emissions in 2010 to create cumulatively significant air impacts for CO, NOx and ROGs. (Id. p. 3.2-12).

Since the Project’s construction impacts are admittedly significant, the City is required to impose all feasible mitigation measures. However, the EIR includes almost no mitigation for operational emissions other than to “encourage” carpooling and the use of public transportation. The EIR is silent on how the “encouragement” will be enforced or executed. Dr. Clark explains that possible operational emission mitigations could include shuttle service to public transit stations, use of energy efficient windows, insulations and appliances, preferential parking for hybrid and low-emission vehicles, and other measures. The EIR considers none of these.

The EIR fails to consider numerous feasible measures to reduce construction emissions. For example the Bay Area Air Quality Management District (BAAQMD) suggests the following construction mitigations:

- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Install wind- breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- Limit the area subject to excavation, grading and other construction activity at any one time.

¹¹⁴ Clark Comment section 5.

The EIR requires some but not all of these measures. Dr. Clark explains that they are all feasible, and CEQA requires their implementation. (BAAQMD CEQA Guidelines 1999 p. 15).¹¹⁵

In addition, Dr. Clark explains that there are numerous additional relevant and reasonable measures contained in the CEQA guidelines and rules of air districts and other agencies that should be required for this Project. Some of the feasible mitigation measures identified by the SCAQMD and other agencies include:

- For backfilling during earthmoving operations, water backfill material or apply dust palliative to maintain material moisture or to form crust when not actively handling; cover or enclose backfill material when not actively handling; mix backfill soil with water prior to moving; dedicate water truck or large hose to backfilling equipment and apply water as needed; water to form crust on soil immediately following backfilling; and empty loader bucket slowly; minimize drop height from loader bucket. (CCHD)¹¹⁶
- During clearing and grubbing, pre-wet surface soils where equipment will be operated; for areas without continuing construction, maintain live perennial vegetation and desert pavement; stabilize surface soil with dust palliative unless immediate construction is to continue; and use water or dust palliative to form crust on soil immediately following clearing/grubbing. (CCHD)
- While clearing forms, use single stage pours where allowed; use water spray to clear forms; use sweeping and water spray to clear forms; use industrial shop vacuum to clear forms; and avoid use of high pressure air to blow soil and debris from the form. (CCHD)
- During cut and fill activities, pre-water with sprinklers or wobblers to allow time for penetration; pre-water with water trucks or water pulls to allow time for penetration; dig a test hole to depth of cut to determine if soils are moist at depth and continue to pre-water if not moist to depth of cut; use water truck/pull to water soils to depth of cut prior to subsequent

¹¹⁵ Clark Comments, section 3.

¹¹⁶ The following acronyms are used in this listing of mitigation measures: ADEQ = Arizona Department of Environmental Quality; BCAQMD = Butte County Air Quality Management District; CCHD = Clark County (Nevada) Health Department; MBUAPCD = Monterey Bay Unified Air Pollution Control District; SBCAPCD = Santa Barbara County Air Pollution Control District; SJVUAPCD = San Joaquin Valley Unified Air Pollution Control District; SLOCAPCD = San Luis Obispo County Air Pollution Control District.

cuts; and apply water or dust palliative to form crust on soil following fill and compaction. (CCHD)

- For large tracts of disturbed land, prevent access by fencing, ditches, vegetation, berms, or other barrier; install perimeter wind barriers 3 to 5 feet high with low porosity; plant perimeter vegetation early; and for long-term stabilization, stabilize disturbed soil with dust palliative or vegetation or pave or apply surface rock. (CCHD)
- In staging areas, limit size of area; apply water to surface soils where support equipment and vehicles are operated; limit vehicle speeds to 15 mph; and limit ingress and egress points. (CCHD)
- For stockpiles, maintain at optimum moisture content; remove material from downwind side; avoid steep sides or faces; and stabilize material following stockpile-related activity. (CCHD)
- To prevent track-out, pave construction roadways as early as possible; install gravel pads; install wheel shakers or wheel washers, and limit site access. (CCHD)
- When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained. (BAAQMD, SJVUAPCD, Rule 403 Handbook, ADEQ)
- Where feasible, use bed-liners in bottom-dumping haul vehicles. (Rule 403 Handbook)
- Grade each phase separately, timed to coincide with construction phase or grade entire project, but apply chemical stabilizers or ground cover to graded areas where construction phase begins more than 60 days after grading phase ends. (Rule 403 Handbook)
- All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. (BAAQMD) (*The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.*) (*Use of blower devices is expressly forbidden.*) (SJVUAPCD)
- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively

stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant. (SJVUAPCD, ADEQ)

- During initial grading, earth moving, or site preparation, projects 5 acres or greater may be required to construct a paved (or dust palliative treated) apron, at least 100 ft in length, onto the project site from the adjacent site if applicable. (BCAQMD)
- Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hrs. (BCAQMD, MBUAPCD, CCHD)
- Prior to final occupancy, the applicant demonstrates that all ground surfaces are covered or treated sufficiently to minimize fugitive dust emissions. (BCAQMD)
- Gravel pads must be installed at all access points to prevent tracking of mud on to public roads. (SBCAPCD)
- The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. (SBCAPCD, SLOCAPCD)
- Prior to land use clearance, the applicant shall include, as a note on a separate informational sheet to be recorded with map, these dust control requirements. All requirements shall be shown on grading and building plans. (SBCAPCD, SLOCAPCD)
- All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used. (SLOCAPCD)
- Barriers with 50% or less porosity located adjacent to roadways to reduce windblown material leaving a site. (Rule 403 Handbook)
- Limit fugitive dust sources to 20% opacity. (ADEQ)
- Require a dust control plan for earthmoving operations. (ADEQ)

All of these measures are feasible and various combinations of them are routinely required elsewhere to reduce fugitive PM10 emissions. See the fugitive

dust control program for the Big Dig (Kasprak and Stakutis 2000¹¹⁷), for the El Toro Reuse Draft EIR¹¹⁸, and for the Padres Ballpark Final EIR.¹¹⁹

The EIR requires implementation of some, but not all of these measures. Dr. Clark concludes that they are all feasible, and so must all be required under CEQA. The City must prepare a SEIR that includes all the above feasible measures to mitigate the significant adverse impact caused by fugitive PM10 pollution.

3. EIR Fails to Fully Assess Impacts of Diesel Emission from Construction Activities and to Include All Feasible Measures.

Dr. Clark explains that in 1998, the California Air Resource Board (CARB) formally identified particulate emissions from diesel-fueled engines as a toxic air contaminant (“TAC”). Diesel exhaust is a serious public health concern. Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. Fine diesel particles are deposited deep in the lungs and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death. (CARB 6/98.¹²⁰)

The EIR fails to analyze the health risks posed by diesel emissions at all, or to consider any feasible mitigation measures. There is certainly a fair argument that diesel emission from Project construction may pose a significant risk to hospital employees, construction workers and nearby residents. A supplemental EIR must be prepared to analyze and mitigate this impact.

a. *The EIR Fails to Assess the Impact of Diesel Emissions From Construction Activities on the Surrounding Community*

¹¹⁷ A. Kasprak and P.A. Stakutis, A Comprehensive Air Quality Control Program for a Large Roadway Tunnel Project, *Proceedings of the Air & Waste Management Association's 93rd Annual Conference 7 Exhibition*, June 18-22, 2000.

¹¹⁸ County of Orange, *Draft Environmental Impact Report No. 573 for the Civilian Reuse of MCAS El Toro and the Airport System Master Plan for John Wayne Airport and Proposed Orange County International Airport, Draft Supplemental Analysis*, Volume 1, April 2001, pp. 2-121 to 2-123.

¹¹⁹ City of San Diego, *Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments*, V. IV. Responses to Comments, September 13, 1999, pp. IV-254 to IV-256.

¹²⁰ California Air Resources Board (CARB), Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

Dr. Clark explains that within the sub-region of the District in which the project resides, diesel emissions account for over 76% of the estimated cancer risk from air pollution. According to SCAQMD's MATES II Study the pre-Project risk in Long Beach from the primary cancer risk drivers is 1,204 in one million. Removing the diesel emissions from the area would significantly lower the cancer risk from 1,204 to 284 in one million.

Table 1. Comparison of the Network Averaged Modeled Risk to Measured Risk at the MATES-II Sites¹²¹

City	Benzen e	1,3- Butadiene	Other	Diesel	Total
Compton	96	65	147	994	1302
Downtown L.A.	94	65	170	1176	1505
Long Beach	88	58	138	920	1204
Wilmington	81	46	222	1182	1531
Monitored Average*	92	118	187	1017	1414

The sources of these diesel emissions include mobile sources contained within the Ports of Los Angeles and Long Beach (including trucks, trains, cranes, and ships) and mobile sources from surface streets (cars and trucks). The project as outlined will reside between the largest mobile sources of pollution within the subregion, the Ports of Los Angeles and Long Beach, Interstates 405 and 710, and the Long Beach Airport. Growth in traffic for each of these sources will continue to impact the sub-region, decreasing the air quality with the project area.

While the proponent calculates that during the construction phase of the project the maximum PM₁₀ loading (which can be used as a partial surrogate for diesel emissions) is 86.94 lbs per day, below the 150 lbs per day CEQA threshold, the addition of the nearly 100 lbs per day of diesel exhaust to the already impaired sub-region from construction vehicles will only aggravate the existing health issues in the City, and will constitute a cumulatively significant impact according to Dr. Clark. The EIR ignores this cumulative impact entirely.

b. The EIR Does Not Qualitatively or Quantitatively Evaluate the Risk From Diesel Emissions From Construction Activities on the Surrounding Community

¹²¹ SCAQMD, 2005. Summary of MATES II Results

Page 3.2-13 of the EIR incorrectly states that the “Risks associated with diesel particulate from the proposed project are qualitatively evaluated in the risk assessment (Appendix C).” Appendix C is the Air Quality Technical Report and does not contain a qualitative or quantitative risk assessment for diesel. A risk assessment was prepared for soil contamination at the site in Appendix F, but the risks associated with diesel particulates are not discussed. Given that diesel exhaust accounts for over 76% of the potential risk to residents from ambient air pollution within the sub-region and the extended duration of the construction (6 years) will insure that the community surrounding the project will continue to be impacted by diesel emissions on a daily basis, the proponent should be required to quantify the risk from the exposure to diesel emissions for the project in a SEIR. Dr. Clark concludes that there is at least a fair argument that the Project will have significant diesel emissions, and the cumulative diesel emissions impact will certainly be significant. As the court held in the *Bakersfield Citizens* case, a new EIR is required to analyze the human health impacts of this air pollution impact.

c. Cancer Risk Increase to Workers and Residents from Project Diesel Emissions is Highly Significant

In the absence of any cancer risk assessment whatsoever, Dr. Clark conducted a preliminary cancer risk assessment from the Project’s diesel emissions and found highly significant cancer risk increases associated with Project diesel emissions. Using a U.S. EPA approved dispersion model, Dr. Clark found that ***cancer risk of workers and nearby residents will exceed the CEQA significance threshold of 1 in 1,000,000 by 900 to 1000 times.*** Dr. Clark concludes, “the cancer risk created by diesel emissions from the LBMMC Project exceeds the SCAQMD significance threshold of one in a million by between 900 and 1000 times. There is clearly a fair argument that diesel emissions from the Project may have an adverse environmental and public health impact and must be analyzed in the EIR.”¹²² Shockingly, the EIR ignores the diesel emission health risk entirely. Thus, an SEIR must be prepared to disclose analyze and mitigate this significant environmental impact.

Cumulative effect of the diesel emissions from construction equipment must be assessed given that even in the worst case scenario, the Project proponent is estimating that 5 times more diesel exhaust will be emitted when all phases of construction are considered together, exceeding any acceptable regulatory guideline. Dr. Clark concluded that “risk to the community and workers at the site, as well as patients and staff at the existing hospital, will exceed any acceptable regulatory guideline. An SEIR should be prepared to analyze the potential health impacts from diesel emissions at the Site.”¹²³

¹²² Clark Comment section 4.

¹²³ Id.

d. The EIR Fails To Include Any Significant Measures To Reduce Diesel Emissions During Construction

The EIR fails to include any significant measures to reduce diesel emissions during construction. Measure Air-12 (page 3.2-20) focuses on using smaller CARB certified diesel construction equipment rather than advocating procedural changes which would have a direct impact on emissions such as:

- Use of alternative fueled construction equipment
- Minimizing idling time
- Maintaining properly tuned equipment
- Limiting the hours of operation of heavy duty equipment and/or the amount of equipment in use

These approaches are outlined in the BAAQMD's CEQA Guidelines. The BAAQMD guidelines recommend that "[if] a project may result in public exposure to high levels of diesel exhaust, the Lead Agency should propose mitigation measures to reduce this impact" and recommend the following measures for construction equipment (*Id.*, p. 60.):

- Conversion to cleaner engines
- Use of cleaner (reduced sulfur) fuel
- Regular maintenance – keep equipment well tuned
- Add-on control devices, *e.g.*, particulate traps, catalytic oxidizers
- Buffer zone between facility and sensitive receptors

In addition, other feasible measures to reduce diesel emissions include:

- Requiring Aqueous Diesel Fuels
- Requiring Diesel Particulate Filters
- Requiring Cooled Exhaust Gas Recirculation (EGR)
- Requiring ultra low sulfur diesel
- Requiring the use of electric-powered equipment where possible
- Requiring alternative diesel formulations
- Requiring post-combustion controls

Dr. Clark concludes that these measures are achievable and would have a significant impact on the potential emissions from the project and should be required of the proponent. An SEIR should be prepared to analyze and implement such measures.

4. EIR Fails to Address Odor Issues From the Construction and Operation Phases of the Project.

On page 3.2-13 the proponent states that “potential sources of odors during the construction phase include the use of architectural coating and solvents.” The proponent ends with the statement that since the VOCs in the architectural coatings and solvents will be limited by SCAQMD Rule 1113, no odor impacts are expected.

Dr. Clark explains that the EIR entirely ignores the substantial odor issues associated with the use of diesel powered engines and the remedial efforts that will need to be undertaken to excavate and treat the hydrocarbon impacted soils in the Ravine area.¹²⁴ Nitrogen dioxide and various aldehydes formed during incomplete combustion of diesel fuels produce an acrid smell that are perceptible at concentrations as low as 2 mg/m³ (NO₂) to 0.0002 mg/m³ (acetaldehyde) (Ruth, 1986). The proponent estimates from URBEMIS 2002 show continuous excess levels of NOx and ROG during the construction and operational phases of the project. The proponent should be required to model the ground level concentrations of odorants in the surrounding neighborhood prior to the initiation of work to ensure that the project will not adversely impact the community with unwanted odors. If the ground level concentrations of odorants exceed the odor threshold, control measures should be implanted prior to the initiation of any field work.

As discussed above, TCE is present on the site in high concentrations, but is ignored entirely in the EIR. TCE has a strong, sickeningly sweet odor similar to chloroform. In addition to being highly toxic, TCE may cause significant adverse odor impacts when the soil is disturbed during site excavation for construction or remediation. There is at least a fair argument that the Project may result in significant odor impacts that have not been analyzed in the EIR. An SEIR should be prepared to analyze such impacts.

D. EIR Fails to Accurately Describe or Mitigate Traffic Impacts.

Registered Professional Engineer Tom Brohard explains that the EIR vastly underestimates traffic impacts that will be generated by the Project. Mr. Brohard uses up-to-date traffic models to conclude that the Project will generate 12,520 daily trips, which is 33% higher than calculated in the EIR. As explained by Dr. Clark, the underestimation of traffic impacts results in an underestimation of operational air pollutant emissions as well.¹²⁵

Despite acknowledging significant traffic impacts at eleven intersections (page 3.11-25), the EIR later omits one of the intersections (Pasadena Ave./ Willow Street) entirely from its mitigation measure discussion. (Brohard Comments, p.8).

¹²⁴ Clark Comment, section 6.

¹²⁵ Clark Comment, section 1.

The EIR concludes that the impacts at five of ten intersections would not be mitigated below the level of significance for the year 2014. (Brohard Comments, p. 8-9).

The EIR concludes that no feasible mitigation measures are available to mitigate significant traffic impacts at Atlantic Ave./Willow Street, Long Beach Blvd./Willow Street, or Long Beach Blvd./Wardlow Road. The EIR states, “No physical mitigation measure is feasible; any additional turn lanes would require widening and additional right of way.” However, as Mr. Brohard explains, there is nothing inherently infeasible about the purchase of additional right of way or the creation of additional turn lanes, and such measures are often required to mitigate traffic impacts. (Brohard Comment, p. 9).

An SEIR must be prepared to properly analyze and disclose the Project’s traffic impacts and to propose feasible mitigation measures.

IV. EIR FAILS TO DESCRIBE OR MITIGATE THE PROJECT’S CUMULATIVE IMPACTS.

An EIR must discuss significant “cumulative impacts.” CEQA Guidelines § 15130(a). This requirement flows from CEQA Section 21083, which requires a finding that a project may have a significant effect on the environment if,

the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.¹²⁶

As the court stated in *Communities for a Better Environment v. Cal. Resources Agency* (“*CBE v. CRA*”)¹²⁷:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening

¹²⁶ Public Resources Code § 21083.

¹²⁷ (2002) 103 Cal.App.4th 98, 114

dimensions when considered collectively with other sources with which they interact.

Cumulative impacts are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines § 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” *Id.*

As set forth by the court in *CBE v. CRA*, 103 Cal.App.4th at 117:

The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

A legally adequate “cumulative impacts analysis” views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” CEQA Guidelines § 15355(b).

To comply with CEQA, an EIR must contain either “a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency,” or “a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.”¹²⁸

Here, the EIR violates CEQA by failing to provide any cumulative impact analysis at all for most subject areas, including air quality, aesthetics, geology, hazardous materials, land use planning and public services. However, the EIR admits that there are significant environmental impacts from air pollution, hazardous materials, and impacts to fire protection services. Instead of analyzing these and other potential environmental impacts, the EIR provides conclusory statements that there will be no cumulative impacts, contradicting its conclusions

¹²⁸ CEQA Guidelines § 15130(b)(1); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740.

that there will be significant impacts, impermissibly limits the geographic scope of the cumulative impacts, and impermissibly relying on planning documents.

A. The Cumulative Impacts Analyses Are Impermissibly Conclusory, Contradictory, and Incomplete

Mere conclusory statements are not sufficient to satisfy the cumulative impacts analysis requirement.¹²⁹ A proper cumulative impact analysis must be supported by references to specific evidence. *Id.* As the Court in *Mountain Lion Coalition* explained, “it is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.” *Id.* at 1051. “A cumulative impacts analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” *Id.*

This EIR fails to support its conclusions with any evidence that there will be no cumulative impacts for almost every category of impact analyzed.

• Air Quality

The EIR clearly states that “proposed project would be anticipated to have significant impacts to air quality during operations due to the exceedance of the SCACMD significance threshold for NOx.” (EIR at 3.2-13). However, the City then makes the contradictory claim that the project would not have significant cumulative air impacts because “the operational emissions from the proposed project are individually insignificant.” (*Id.* at 3.2-16). The City, however, admits that the project’s air emissions would be significant, leading to the conclusion that the cumulative impacts will also be significant. The City cannot now ‘unring that bell.’¹³⁰

Furthermore, the air quality cumulative impacts analysis is deficient because it fails to provide the necessary quantitative analysis, impermissibly limits the geographic scope considered and impermissibly relies on planning documents to obviate the proper study of the cumulative air quality impacts. These issues are addressed in Section B below.

• Aesthetics

¹²⁹ *Mountain Lion Coalition v. Fish & Game Comm’n* (1989) 214 Cal.App.3d 1043, 1047.

¹³⁰ *Stanislaus Audubon v. Stanislaus* (1995) 33 Cal.App.4th 144, 154.

The EIR makes the bald conclusion that “due to the vicinity of the other development projects to the proposed project area, the proposed project would not result in cumulative impacts.” (EIR at 3.1-8). However, the EIR does not provide any evidence, analysis or detail to substantiate this conclusion.

- **Geology and Soils**

EIR makes the bald conclusion that “[b]ecause the geology and soils impacts expected from the implementation of the proposed project do not affect lands outside the boundaries of the proposed project site, these impacts do not create any cumulative impacts on the environment outside of the proposed project boundaries.” (*Id.* 3.4-15). However, the EIR does not provide any evidence, analysis or detail to substantiate this conclusion. Furthermore, while it may be true that no cumulative impacts will result “outside of the proposed project boundaries,” the EIR failed to consider if there may be any cumulative impacts within the project boundaries as a result of this project. (*Id.*).

- **Hazardous Materials**

The EIR first admits that the Project may have significant environmental impacts: “the proposed project has the potential to result in significant impacts to the public or the environment related to the routine transport, use, or disposal of hazardous materials,” (*Id.* at 3.5-9), and that “[o]ff-site transport and disposal routes for biomedical, radiological, hazardous, and nonhazardous may include the route . . . within 0.25 miles of the [Jackie Robinson Elementary] school.” (*Id.* 3.5-11). The cumulative impacts analysis, however, contradicts this conclusion two pages later the bald conclusion that “[b]ecause the hazards and hazardous materials impacts expected from the implementation of the proposed project do no affect lands outside the boundaries of the proposed project site, these impacts do not create any cumulative impacts on the environment outside the proposed project boundaries.” (*Id.* 3.5-13). Here the EIR not only fails to substantiate its conclusion that there will be no cumulative impacts, but it contradicts its own conclusion that there may be significant off-site impacts. Furthermore, the EIR fails to even consider any on-site cumulative impacts that may result from the use, transport and disposal of hazardous materials.

- **Land Use Planning**

The EIR makes the bald conclusion that the Project “would not cause significant impact to land use planning” because “[a]ll of the related projects occur outside of the Campus.” (*Id.* at 3.7-8). However, the EIR does not provide any evidence, analysis or detail to substantiate this conclusion. Furthermore, the EIR explains that the Project will require a zoning amendment that “anticipates the

likely increased future demand for expansion in the capacity of the region's medical service facilities." (*Id.* at 3.7-7). By its terms, this zoning amendment anticipates reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. This EIR violates CEQA by failing to consider these anticipated future impacts.

- **Public Services**

The EIR draws the conclusion that there will be no cumulative impacts in part because the "proposed project would not require the provision of, or need for, new or physically altered fire protection." (*Id.* 3.10-8). However, the EIR does not provide any evidence, analysis or detail to substantiate this conclusion. In fact, the EIR stated two pages previously that the "proposed project would have a significant effect on fire protection and would require mitigation." (*Id.* 3.10-6). Thus, cannot claim the project to have no cumulative impacts on public services when its has already admitted the opposite. The City cannot now 'unring that bell.'¹³¹

B. Cumulative Air Quality Impacts From This Project Are Significant

As discussed above, this EIR admits that project operations will create significant impacts to air quality. (EIR at 3.2-13). Thus, the conclusion that there will be no cumulative impacts is incomprehensible. (*Id.* at 3.2-16).

The cumulative air quality impacts analysis is also deficient because it fails to provide the necessary quantitative analysis, impermissibly limits the geographic scope considered and impermissibly relies on planning documents to obviate the proper study of the cumulative air quality impacts.

The EIR does not even consider the cumulative impacts of the Project's air emissions together with other proposed and foreseeable projects in the area, such as the proposed Port of Long Beach expansion. Obviously, the combined impacts of these projects will be far greater than disclosed in the EIR.

1. The Air Quality Cumulative Impacts Analysis Lacks the Required Detail and Analytical Analysis.

The Air Quality Cumulative Impacts analysis is sorely deficient. The EIR merely contains one conclusory paragraph, which incorrectly concludes that there will be no cumulative air quality impacts. (EIR at 3.2-16). When conducting a

¹³¹ *Stanislaus Audubon v. Stanislaus* (1995) 33 Cal.App.4th 144, 154.

cumulative impacts analysis, the EIR must consider past, present and reasonably future impacts.

An EIR must include objective measurements of a cumulative impact when such data are reasonably available or can reasonably be produced by further study, and is necessary to ensure disclosure of the impact.¹³² It is impossible to evaluate the air quality impacts unless the EIR analyses and considers the data of other projects that must be considered. *Id.*

Here, the cumulative impact analysis contains no data whatsoever of other past, present, or reasonably future projects that may contribute to the cumulative air impacts. Simply referencing a list of other projects, without providing data and/or analysis explaining what type and magnitude of impact those projects may have is not an adequate cumulative impacts analysis.

2. The Air Quality Cumulative Impacts Analysis Impermissibly Limits the Geographic Scope

In its air quality impacts analysis, the EIR considers forty-three related projects. (EIR Figure 2.6-1). Although the air quality cumulative impacts analysis fails to even mention a single other project in the vicinity, the conclusion that there are no cumulative air impacts implicitly considers these “related projects.” Considering only these local projects, not more than approximately two miles from the Project location, impermissibly limits the geographic scope of the cumulative impacts analysis.

The courts have held that cumulative impacts analyses for air quality impacts must consider projects from the entire air basin.¹³³ The recent *Bakersfield Citizens* case demonstrates why the City has improperly limited the geographic scope.¹³⁴ In *Bakersfield Citizens*, two separate parties were each developing unrelated retail shopping centers 3.6 miles from one another.¹³⁵ Each shopping center failed to consider the cumulative impacts of the other shopping center.¹³⁶ The Court found that both EIRs were inadequate because the lead agency failed to properly define the geographic scope according to CEQA Guidelines Section 15130(b)(1)(B)(3).¹³⁷ The Court explained that “inaccurate minimization of the

¹³² *Kings Country Farm Bureau* (1990) 221 Cal.App.3d 692, 729.

¹³³ *Kings Country Farm Bureau*, 221 Cal.App.3d 692, 723.

¹³⁴ *Bakersfield Citizens v. City of Bakersfield* (2004) 124 Cal.App.4th 1184

¹³⁵ 124 Cal. App. 4th at 1184.

¹³⁶ *Id.* at 1193.

¹³⁷ *Id.*

cumulative impacts on air quality” undermined the need for “[p]roper cumulative impacts analysis [as] absolutely critical to meaningful environmental review.”¹³⁸

The City of Long Beach cannot limit its cumulative impacts analysis to a few projects merely two miles away. It must consider other projects in the air basin that stand to have cumulative effects with this Project.

Furthermore, the South Coast Air Quality Management District (SCAQMD) has already provided its view of the geographic scope for cumulative impact analysis of projects in this area when it prepared its Paramount Refinery Clean Fuels Project EIR. (Attached as Exhibit 14). The Paramount EIR considered many projects up to 18 miles away, including two Long Beach projects – the City of Long Beach Streetscape Improvements and the North Long Beach Redevelopment. (Paramount EIR, Figure 5-2, p. 5-4). For this Project EIR, however, the City failed to consider Paramount’s emissions, or the emissions of any of the other facilities in the same vicinity.

The City is legally required to consider the cumulative impacts of other projects identified in the EIR, and the other projects identified in the Paramount Refinery EIR. All of those projects are in the same air basin, and that they all contribute to the same cumulative air pollution. If, as set forth in the Paramount Refinery EIR, Projects in Long Beach contribute to the cumulative emissions of the Paramount Refinery, then the Paramount Refinery and other projects described in SCAQMD’s EIR for that refinery must contribute to the cumulative emissions of this Project.

In the table below, Dr. Clark has added the Project’s air emissions as set forth in the EIR to the cumulative emissions set forth in the Paramount EIR. Dr. Clark concludes that the Project’s cumulative emissions are significant for every pollutant.

¹³⁸ *Id.* (citing *Kings Country Farm Bureau*, 221 Cal.App.3d 692).

Table 1

**Cumulative Operational Emissions
Modified Based on Responses to Comments
(lbs/day)**

SOURCE	CO	VOC	NO_x	SO_x	PM10
Ultramar CARB Phase 3 Project	514	156	2,164	2,678	287
ConocoPhillips Ethanol Import & Dist. Project	9	-54 ⁽¹⁾	10	--	1
ConocoPhillips CARB RFG Phase 3	136	22	514	402	43
BP ARCO CARB Phase 3 Project	42	86	49	0	57
Shell CARB Phase 3 Project	2,213	482	2030	71	57
ExxonMobil CARB Phase 3 Project	29	288	138	12	103
ChevronTexaco CARB Phase 3 Project	393	347	3,103	2,498	843
Third Party Terminals	-	4	-	-	-
Paramount Clean Fuels Project	104	66	52	1	69
Industrial Warehouse Project (No. 10) ⁽²⁾	76	7	10	<1	5
Recreational Center Project (No. 11) ⁽²⁾	39	3	5	<1	3
Banco Popular Project (No. 13) ⁽²⁾	109	9	14	<1	8
Residential Development (No. 14 and 15) ⁽²⁾	80	25	5	<1	10
Long Beach Memorial	286	25.8	64	3.38	65
Cumulative Emissions	4030	1,468	8,158	5,665	1,551
SCAQMD Thresholds	500	55	55	150	150
Significant (?)	YES	YES	YES	YES	YES

(1) Negative numbers represent emission reductions.

(2) Based on URBEMIS2002 Model, using default assumptions.

Table 1 indicates that cumulative emissions of all criteria pollutants exceed the SCAQMD's emission significance thresholds (in bold). The EIR did not disclose that any emissions were cumulatively significant. These are new significant impacts that must be mitigated. An SEIR should be prepared to evaluate and mitigate these significant impacts.

3. The EIR Impermissibly relies on Planning Documents to Avoid a Valid Cumulative Impacts Analysis.

Relying on planning documents to avoid preparing a cumulative impacts analysis in an EIR does not satisfy CEQA's cumulative impact analysis requirement if summary projections from the planning document are inaccurate, outdated, or insufficient.¹³⁹ Reliance on planning document is also improper when the proposed project requires amendments to the plan that are not taken into account by the general plan EIR's cumulative impacts analysis. *Id.*

Here, the EIR simply states that because the project is consistent with land use plans and zoning, no cumulative impacts analysis are required. (EIR at 3.2-16). As stated in *Bakersfield*, this is inadequate without at the very least showing a summary of the data leading to this conclusion.

Additionally, the EIR states that land use zoning amendments will be necessary for this project. Thus, the EIR cannot rely on these planning documents and current zoning rules.

4. The City's Reliance on Air Quality Management Plan is Misplaced

The City claims that it does not need to conduct a cumulative impacts analysis for this project because the project complies with the Air Quality Management Plan (AQMP).

Reliance on the 2003 AQMP is misplaced, however. CEQA Guidelines Section 15064(h)(3) allows an agency to forgo cumulative analysis only when a plan addresses the cumulative problem with a mitigation program that contains "*specific requirements that will avoid or substantially lessen the cumulative problem ... within the geographic area in which the project is located.*" Here, the City fails to show any evidence that the AQMP satisfies this requirement.

V. The City Violated CEQA By Delegating Its Authority to Review and Approve Mitigation Measures

A lead agency cannot delegate away its responsibility to analyze the environmental impacts of a project and adopt feasible mitigation measures. By delegating its duty to analyze toxic soil contamination and propose feasible mitigation measures for toxic contamination to the Department of Toxic Substance Control (DTSC), the City violated CEQA's non-delegation principle.

¹³⁹ *Bakersfield Citizens v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217.

The Court in *Sundstrom v. Mendocino* held that a CEQA lead agency “cannot delegate the responsibility for considering the EIR.”¹⁴⁰ The courts have also held that a lead agency cannot delegate responsibility to develop mitigation measures to a responsible agency, even if the responsible agency has more expertise in a particular area.¹⁴¹ A lead agency must use its authority to analyze the entire project and to devise mitigation measures.¹⁴² These legal conclusions are based on fundamental CEQA principals requiring the lead agency, and not some other entity, to prepare the EIR and independently review every aspect of the EIR before it considers it for approval.

CEQA requires the EIR to be prepared “directly by, or under contract to” the lead agency.¹⁴³ Additionally, the CEQA Guidelines require that the EIR “must reflect the independent judgment of the lead agency.”¹⁴⁴ As the court has held, the “requirement of ‘public and agency review’ has been called ‘the strongest assurance of the adequacy of the EIR.’”¹⁴⁵

CEQA requires that an agency find, based on substantial evidence, that the mitigation measures are “required in, or incorporated into, the project.”¹⁴⁶ CEQA also requires that an agency “shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.”¹⁴⁷ “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or discarded.”¹⁴⁸ The courts invalidate an EIR when it relies on a mitigation plan prepared by another agency but fails to “[make] a binding commitment to implement the mitigations measures or require[] [mitigation measures] as a condition of project approval in a manner that will ensures their implementation.”¹⁴⁹

¹⁴⁰ (1988) 202 Cal.App.3d 296, 307.

¹⁴¹ *Lexington Hills v. State of Calif.* (1988) 200 Cal.App.3d 415; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433 (Lead agency cannot refrain from considering means of exercising its own regulatory power simply because another agency has general authority over the impacted natural resource. City could not delegate mitigation measure development for project impacts to wetlands to US Army Corps of Engineers.)

¹⁴² Id. at 433-435.

¹⁴³ Pub. Res. Code § 210802.1

¹⁴⁴ CEQA Guidelines § 15084(e)

¹⁴⁵ *Sundstrom*, 202 Cal.App.3d at 308 (quoting *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 823.)

¹⁴⁶ Pub. Res. Code § 21080.

¹⁴⁷ Id. § 21086(b)

¹⁴⁸ *Federation of Hillside and Canyon Assoc. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (citing Pub. Res. Code § 21002.1(b)).

¹⁴⁹ Id. at 1262.

In *Sundstrom*, a project applicant was required to address significant environmental impacts from wastewater and sludge disposal for a proposed hotel project. Rather than comprehensively assess and mitigate these impacts prior to circulation of the environmental review documents, the agency approved the project with a permit condition requiring subsequent county approval of a sludge disposal plan to be prepared by to the Regional Water Quality Control Board.¹⁵⁰ The *Sundstrom* Court held that the county had “evaded its responsibility to engage in comprehensive environmental review” by improperly adopting a mitigation scheme that delegated the approval of a mitigation plan to an outside agency without knowing whether the proposed solution was possible.¹⁵¹

The court also held that the City Counsel, as the ultimate decision maker of the lead agency, could not delegate its responsibility to approve mitigation measures to its own planning commission, let alone to an entirely separate agency:

the conditions improperly delegate the County’s legal responsibility to assess environmental impact by directing the Applicant himself to conduct the hydrological studies subject to the approval of the Planning Commission staff. Under CEQA, the EIR or negative declaration must be prepared “directly by, or under contract to” the lead agency. The implementing regulations explicitly provide: “The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency.” Moreover, the EIR must be presented to the decision making body of the agency. In *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779, the court held that the city council cannot delegate responsibility for considering the EIR to a planning board. By necessary inference, the Board of Supervisors cannot delegate the responsibility to the staff of the Planning Commission. (*Id.* at 307 (citations omitted).)

A. The City’s Delegation to DTSC to Review and Mitigate Environmental Impacts is Illegal

The *Sundstrom* case is directly applicable to this case. Here, the City of Long Beach has delegated its authority to review project site soil contamination analysis to DTSC, which is preparing a Remedial Action Workplan (RAW) to analyze the extent of site contamination and propose mitigation measures. However, the City has made no findings that the RAW is a feasible mitigation plan, and has imposed no permit condition requiring that the plan be implemented. Thus under

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

Sundstrom the EIR is invalid for impermissibly delegating away its authority to prepare and approve mitigation measures.¹⁵²

The EIR is also invalid under *Federation Hillside*. As the city explained in response to DTSC's comments, the City has deferred approval of the RAW until the RAW is finalized and approved by the DTSC. (Final EIR, Response to DTSC Comments, 13-9). Upon approval by DTSC, the City will make the RAW available for review. (Id.) Thus, the Project EIR is relying on a hypothetical mitigation plan that does not exist yet, and has not been adopted or approved. This clearly violates CEQA's requirement that agency be committed and bound to mitigation measures prior to approval of the EIR.¹⁵³

The City's reliance on DTSC's RAW is more implausible given that even DTSC believes that the City of Long Beach has failed to properly consider toxic soil contamination and mitigations measures. In its comment letter to the City, DTSC informed the City that prior to finalizing and approving its Final EIR, it must exercise its duty relating to mitigation of the toxic contamination:

- DTSC explained that the EIR “did not provide sufficient description of the extent and nature of contamination existing at the site, or analysis of the potential impacts associated with potential RAW activities.” (DTSC Comment Letter p. 2).¹⁵⁴
- DTSC explained “the specific impacts and mitigation measures associated with the removal/remediation of contaminated media that may be encountered during construction have not been outlined.” (Id.)
- “As written please note that the draft EIR does not specifically address the cleanup activities that may need to be conducted for the site. Elements of the cleanup requiring mitigation including, but not limited to, soil excavation, onsite storage, off-site transportation, and backfill need to be adequately addressed. The actions that will be outlined in the draft RAW for the Project *must be evaluated and incorporated in the final version of the EIR.*” (Id., emphasis added.)

As explained by DTSC, the City must evaluate and mitigate the impacts from soil contamination and remediation of that contamination. The fact that DTSC will have a plan in the foreseeable future does not obviate that duty, and DTSC confirms

¹⁵² *Sundstrom*, 202 Cal.App.3d at 308

¹⁵³ *Federation of Hillside*, 83 Cal.App.4th at 1262.

¹⁵⁴ The Comment Letter of DTSC is not numbered in the Final EIR like the other comment letters. It appears between pages 13-8 and 13-9.

that any mitigation measures contained in the RAW *must* be “evaluated and incorporated” into the final EIR *before* the City approves the EIR.

B. Reliance on DTSC’s RAW Does Not Sufficiently Address and Mitigate Significant Environmental Impacts

Even if a court found that the City’s delegation of its authority to review and mitigate the significant impacts from soil contamination is valid, it would still find that the EIR is nonetheless incomplete. As discussed above, the City’s only approach to mitigating soil contamination is through DTSC’s RAW. However, this is inadequate because DTSC does not have the regulatory authority to mitigate the site completely.

In a May 20, 2005 letter to SEIU United Healthcare Workers – West, Thomas Cota, of DTSC explained, “DTSC does not have the lead regulatory authority for oil wells. The California Department of Conservation Division of Oil, Gas and Geothermal Resources is the lead regulatory agency [DOGGR].”¹⁵⁵

The Draft EIR established that the proposed site contains nine former oil wells. (Draft EIR, 3.4-14). The Draft EIR also describes the extensive contamination that may be found on site associated with these oil wells. (Draft EIR, 3.6-5 – 7). However, the only mitigation measures proposed to deal with contamination from these abandoned oil wells is that “coordination with DOGGR and proper remediation be incorporated into the construction plans, prior to final approval of plan for the MCH pediatric outpatient building, MCH link building, and Todd Cancer Institute Phases I and II.” (Draft EIR, 3.5-15). As with the City’s delegation to DTSC, the delegation to DOGGR is impermissible because the City must exercise its authority in reviewing and mitigating the project.

Moreover, there is no evidence that DOGGR has prepared or is preparing any review of the Project site or mitigation measures that will mitigate the significant impacts from the nine abandoned oil wells. Thus, even if DTSC’s RAW satisfied the mitigation requirements for toxic substances to the extent that DTSC has authority over toxic substances, the EIR would remain inadequate to the extent that contamination from the remaining abandoned oil wells are left unmitigated.

¹⁵⁵ Letter from Thomas Cota, Department of Toxic Substances Control, Southern California Branch Cleanup Operations Branch, to Mr. Brian Olney, SEIU United Healthcare Workers – West, re: Long Beach Memorial Medical Center Expansion Project, May 20, 2005.

VI. THE EIR FAILS TO ACCURATELY DESCRIBE THE PROJECT OR ITS ENVIRONMENTAL SETTING.

The EIR is inadequate because it contains patently inconsistent Project descriptions throughout the document and fails to adequately describe the Project's environmental setting. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally adequate EIR."¹⁵⁶ "[A] curtailed or distorted project description," on the other hand, "may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the "no project" alternative) and weigh other alternatives in the balance."¹⁵⁷ As one analyst has noted:

The adequacy of an EIR's project description is closely linked to the adequacy of the EIR's analysis of the project's environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.¹⁵⁸

The project description must include an accurate description of the project's environmental setting. An accurate description of the environmental setting is important because it establishes the baseline physical conditions against which a lead agency can determine whether an impact is significant.¹⁵⁹ Under CEQA, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation is published, from both a local and a regional perspective. (*Id.*) Knowledge of the regional setting is critical to an assessment of environmental impacts.¹⁶⁰

The courts are clear that an EIR must focus on impacts to the existing environment, not hypothetical situations.¹⁶¹ The presentation of baseline information must be sufficiently detailed to make further analysis possible.¹⁶² It must provide not only raw data but also analysis.¹⁶³ An EIR must provide an

¹⁵⁶ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182, 201.

¹⁵⁷ *Id.* See also, CEQA section 15124; *City of Santee v. County of San Diego*, 263 Cal.Rptr 340 (1989).

¹⁵⁸ Kostka and Zischke, "Practice Under the California Environmental Quality Act," §12.17.

¹⁵⁹ CEQA Guidelines § 15125(a).

¹⁶⁰ *Id.* at § 15125(c).

¹⁶¹ *County of Amador vs. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 954.

¹⁶² *Id.*

¹⁶³ *Id.* 76 Cal.App.4th at 955; see, *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 355 (holding that an EIR should inventory and address the environment as it

accurate description of the environmental baseline, because “[t]he impacts of the project must be measured against the ‘real conditions on the ground.’”¹⁶⁴

Here, the EIR’s failure to correctly describe the existing physical conditions related to soil contamination precludes informed decisionmaking and informed public participation.

A. Inadequate Description of Existing Site Contamination

A CEQA document must disclose any existing toxic chemical contamination at the site so that the lead agency can propose ways to mitigate the contamination.¹⁶⁵ The EIR in this case fails even to characterize, quantify or specify the nature of very significant levels of toxic chemical contamination on the site.

1. EIR Fails to Disclose Very High Levels of Toxic TCE on the LBMMC Site.

Hazardous materials expert Matt Hagemann undertook painstaking document review outside of the CEQA process to discover extremely high levels of contamination in the site that are not disclosed in the EIR. As discussed above, the EIR fails entirely to mention the fact that the site is heavily contaminated with the toxic chemical TCE (trichloroethylene). TCE has been found on the site at levels from 20 to 30 ug/m³. This is 136 times above the US EPA screening level of 0.22 ug/m³. Despite this extremely high level of contamination, TCE was not even mentioned in the EIR.¹⁶⁶ The EIR’s failure to mention this highly significant contamination at all renders the document patently inadequate as a public information document.

2. EIR Misrepresents Methane Contamination on Site.

Also as discussed above, the EIR misrepresents methane contamination that has been identified on the LBMMC site. The DEIR states that methane contamination is present at levels of 0.6% or 6000 ppmv. (DEIR p. 3.5-7). In fact, a test performed in November 2003 found methane at levels between 16,000 ppmv (1.6%) and 17,000 ppmv (1.7%). Thus, methane has been found in the site in recent

actually existed, not as it was proposed to be under the old General Plan.)

¹⁶⁴ *Save Our Peninsula Committee v. Monterey Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

¹⁶⁵ *McQueen v. Mid-Peninsula*, (1988) 202 Cal. App. 3d 1136.

¹⁶⁶ Since the EIR fails entirely to analyze impacts related to TCE, these impacts are subject to the fair argument, rather than the substantial evidence standard. *Bakersfield Citizens* at 1208.

tests at levels almost 300% higher than disclosed in the EIR.¹⁶⁷ The EIR is therefore failing to perform its basic public information function. These levels are far above DTSC screening levels of 1000 ppmv. Mr. Hagemann concludes that such high levels of methane gas and related hydrogen sulfide gas may pose significant health risks to construction workers, hospital workers and patients and nearby residents. (Id.)

The EIR also fails to mention that an existing methane mitigation system has already been installed at the Miller Children's Hospital. This system is clearly part of the environmental setting of the Project. When DTSC requested test data for the methane recovery system, DTSC was informed that "the records have been misplaced."¹⁶⁸ This information must be located and the test data must be disclosed in a supplemental EIR in order to make the document adequate from a public information perspective. It is obviously relevant whether an existing methane mitigation system has been a success or a failure in determining whether a similar system will adequately mitigate methane impacts.

The EIR fails to describe or even locate at least three of six abandoned oil and gas wells that are known to exist on the LBMMC site. This is a patent failure of an adequate project description. The EIR also fails to note that none of the wells have been closed in accordance with modern standards of the Division of Oil, Gas and Geothermal Resources (DOGGR).¹⁶⁹ Mr. Hagemann concludes that the abandoned wells "may act as conduits for migration of methane and benzene and other toxic gasses." (Id.) Mr. Hagemann concludes that the precise location and re-abandonment of these wells (along with other wells possibly located on the site) is critical given potentially necessary mitigation measures for the project, including:

- soil gas venting;
- constructing impermeable barriers to interrupt gas migration pathways;
- subsurface indoor air monitoring; and
- indoor air venting and alarms.

A revised supplemental DEIR should incorporate an exhaustive review of historical oil and gas operations. Results of the review should be included in the SDEIR to identify all potential oil and gas wells at LBMMC. Maps showing the locations of all wells should be included as appendices. The LBMMC EIR should not be finalized until all wells have been located and abandoned according to current DOGGR standards.

¹⁶⁷ Hagemann Comment at section 5.

¹⁶⁸ DTSC Letter to Brian Olney (May 20, 2005).

¹⁶⁹ Hagemann Comment, section 7.

Environmental expert John Paul Williams explains that the site of the proposed Project is heavily contaminated due to many old oil wells, and an abandoned “ravine” landfill. (Williams Research Letter, p.2, March 9, 2005). Contamination already discovered on site includes arsenic, lead, selenium, benzene, Freon, toluene, xylene, ethylbenzene, methane, hydrogen sulfide, and other volatile organic compounds (“VOCs”). (Id. at p.3). Site contamination is so extensive that other portions of the site that have been developed, such as the Miller Children’s Hospital, were required to install a methane mitigation system.

3. EIR Fails to Disclose Other Toxic Contamination on the LBMMC Site.

The EIR fails to adequately define or describe the existing site contamination. As Mr. Williams explains, the EIR states that the concentration of total petroleum hydrocarbons (“TPH”) as diesel and heavy hydrocarbons was 49,700 mg/kg, while a 1991 engineering report shows that levels are as high as 190,000 mg/kg. (Id. at p.5). The EIR nowhere explains this discrepancy.

The California Department of Toxic Substances Control (“DTSC”) submitted written comments on the Project concluding that the EIR “did not provide sufficient description of the extent and nature of contamination existing at the site, or analysis of the potential impacts associated with potential RAW [remedial action workplan] activities. This is primarily due to the fact that information related to the extent and nature of the contamination is still being acquired and evaluated for the development of a draft RAW.” (DTSC Comment, p. 2 (March 16, 2005)).

As discussed, CEQA requires a full disclosure and analysis of the existing environmental conditions. As DTSC concludes, the EIR patently fails to describe the extent and nature of substantial site contamination with highly toxic chemicals. An SEIR is therefore required to disclose this contamination and to propose feasible measures to remediate this impact.

B. Inadequate Project Description Relating to Population, Employment and Housing

The EIR fails to describe key aspects of the proposed project with respect to population, employment and housing with the potential to result in significant environmental impacts. It also fails to describe the environmental setting for these issues. Thus, as Ms. Watt concludes, “potentially significant environmental impacts cannot be adequately analyzed or addressed by the EIR and, for this reason, the EIR is fatally deficient under CEQA.”¹⁷⁰

¹⁷⁰ Watt Comment section II.

Although City policy focuses heavily on maintaining housing stock, providing increased housing stock with new industrial construction, and providing and protecting low income and affordable housing, the EIR barely mentions the loss of housing in the Project Description and fails to disclose key aspects of the project and project setting related to employment and housing.¹⁷¹ Ms. Watt concluded that failure to properly provide housing related information renders the EIR inadequate because “[t]he housing loss associated with the development of the project based on the limited information available can only be characterized as significant.”¹⁷²

The EIR fails to disclose critical information about the housing units slated for destruction, the number of people residing in the units, the families that reside in them, whether they work at the Medical Center, where else they could live, and the demand for new housing units as a result of the expansion. Ms. Watt concludes, “[w]ithout this information, the EIR cannot support the conclusion that housing and population impacts are less than significant or adequately analyze the impacts associated with increased jobs, increased housing demand and loss of housing.”¹⁷³

In order to provide a legally sufficient EIR, the project description and project setting must include the following information at a minimum:

- The exact number and characteristics of the housing slated for demolition on site (e.g. unit type and size; affordability/subsidized; etc.);
- A general description of who lives in those units (e.g. number of people, whether they work at the hospital, work elsewhere in the City, are seniors or other special needs, etc.);
- The number of new jobs to be created by each phase of the project, including future phases anticipated in the Master Plan;
- The general range of wages of new employees and displaced families and ability to afford a home/rent in Long Beach;
- The employee base in Long Beach matched to new jobs (e.g. where will new employees come from?) (Note there is some information in the EIR’s growth inducing section, but it fails to support the local labor pools availability and adequacy of training to the project’s needs);
- A description of existing housing opportunities within a 20-mile and 40-mile radius matched to employment in the new facilities;
- A description of the existing and projected jobs-housing balance in the City and within the geographic area where existing employees reside;
- A description of the current and projected gap in housing affordable to residents and workers in the City of Long Beach and within the geographic area where existing employees reside;

¹⁷¹ See Id.

¹⁷² Id.

¹⁷³ Id.

- Where existing Medical Center employees live as a basis for determining the likely range of where new employees where live;
- The number of housing units (demand) per existing employee (e.g. are there employees who reside together thereby lowering the likely unit demand per new employee?).¹⁷⁴

Data is readily available from the project applicants, the census, City plans and policies, housing studies, SCAG as well as other readily available sources for this information.

In addition to the above, Ms. Watt concluded that the EIR should also include an estimate of secondary growth generated by the Project, the housing demand related to that growth, the affordability range for that new demand, as well as the portion of displaced residents (from the demolished units) plus new employees expected to reside in Long Beach and other communities.¹⁷⁵

Ms. Watt explained that this information is critical to properly analyzing new and potentially significant traffic, transit, air quality and other impacts, as well as determining the extent to which new employees or displaced families will need general public assistance (e.g. food stamps), health care, and housing assistance, among other social services Ms. Watt concluded that without this information and analysis, “it is not possible to conclude that impacts related to population increases, housing and employment will be less than significant.”¹⁷⁶

C. Project Description is Internally Inconsistent.

As mentioned above, the Project description must be “accurate, stable and finite.” By contrast, the EIR in this case contradicts itself repeatedly – often on the same page and concerning the same impacts. Such an internally inconsistent project description fails to meet the most basic requirements of CEQA.

For example, the EIR clearly states that “proposed project would be anticipated to have significant impacts to air quality during operations due to the exceedance of the SCACMD significance threshold for NO_x,” (EIR at 3.2-12,13,15), but then contradicts itself in the following cumulative impacts section by stating “the operational emissions from the proposed project are individually insignificant.” (*Id.* at 3.2-16). The EIR again contradicts itself when dismissing the cumulative impacts for hazardous materials. The EIR explained that the “proposed project has the potential to result in significant impacts to the public or the environment related to the routine transport, use, or disposal of hazardous materials,” (*Id.* at 3.5-

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

9), and that “[o]ff-site transport and disposal routes for biomedical, radiological, hazardous, and nonhazardous may include the route . . . within 0.25 miles of the [Jackie Robinson Elementary] school.” (*Id.* 3.5-11). The EIR contradicts itself when it states two pages later “hazards and hazardous materials impacts expected from the implementation of the proposed project do no affect lands outside the boundaries of the proposed project site...” (*Id.* 3.5-13).

Professional engineer Tom Brohard points out numerous inconsistencies in the project description. For example:

- Page 2-9 indicates completion of construction for the Todd Cancer Institute Phase I in September 2006, while just four pages later, on page 2-13, the document states that the same facility will be completed in December 2007 – over one year later.
- Page 2-9 states that the Todd Cancer Institute Phase II will be 42,300 square feet while four pages later the same facility is described as being 45,500 square feet. (page 2-13).
- Page 2-10 states that the Miller Children’s Hospital Phase I will be 129,220 square feet, but fives pages later, the EIR states that the same facility will be 124,500 square feet.
- Page 2-10 states that the Miller Children’s Hospital Phase II will be 86,030 square feet, but at page 2-15, the same facility is described as being 73,500 square feet.

The Project description also fails to provide a consistent timeline for the Project describing construction duration of 6, 8, or 10 years in different parts of the EIR. Duration of construction is a critical issue, which determines the extent of air impacts, duration of soil disturbance as well as other impacts. Thus, a definitive timeline must be provided for this Project.

These internal inconsistencies must be clarified in a new SEIR.

D. The Environmental Setting Fails to Discuss New Ozone Standards.

The environmental setting must include a discussion of applicable environmental standards, regulatory frameworks and plans. (CEQA Guidelines §15125.) The EIR lists several state and federal air quality standards to apply in the area, but fails to mention the new 8-hour ozone standard adopted by the California Air Resources Board (“CARB”) on April 28, 2005. Since the document fails entirely to mention this standard, there is no analysis of how the project may affect the standard, or the region’s ability to comply with the standard.

On April 28, 2005, CARB adopted a new 8-hour ozone standard of 0.070 parts per million. (Exhibit 4). The EIR cites only the 1-hour ozone standard of 0.09 ppm and does not mention the 8-hour standard. (EIR, p. 3.2-3). Ozone presents very significant human health impacts, and the Los Angeles region has the worst ozone problem in the nation. The EIR admits that the Project will increase emissions of ozone precursors nitrogen oxides (NO_x) and volatile organic compounds (VOCs). (EIR section 3.2). Thus, the Project will exacerbate the region's already unacceptable ozone problem.¹⁷⁷ Since the EIR has not yet been certified, it should be revised to address the 8-hour ozone standard, including how the Project may affect the region's ability to meet that standard, and analyze the feasible measures that may reduce this impact.

An understanding of the nature of ozone pollution will help to understand why an individual and cumulative impacts analysis is so vitally important to understand the impacts of the Project. Ozone, the principal element of smog, is a secondary pollutant produced when two precursor air pollutants — volatile organic compounds (“VOCs”) and nitrogen oxides (“NO_x”) — react in sunlight.¹⁷⁸ VOCs and NO_x are emitted by a variety of sources, including cars, trucks, industrial facilities, petroleum-based solvents, and diesel engines.

The human health and associated societal costs from ozone pollution are extreme. In proposing a new rulemaking limiting emissions of NO_x and particulate matter from certain diesel engines, EPA summarized the effects of ozone on public health:

“A large body of evidence shows that ozone can cause harmful respiratory effects, including chest pain, coughing and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue, produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses.”¹⁷⁹

Moreover, ozone is not an equal opportunity pollutant, striking hardest the most vulnerable segments of our population: children, the elderly, and people with respiratory ailments. (*Id.*) Children are at greater risk because their lung capacity is still developing, because they spend significantly more time outdoors than adults — especially in the summertime when ozone levels are the highest, and because

¹⁷⁷ *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990).

¹⁷⁸ *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1181 (D.C. Cir. 1981).

¹⁷⁹ 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001).

they are generally engaged in relatively intense physical activity that causes them to breathe more ozone pollution. (*Id.*)

Ozone has severe impacts on millions of Americans with asthma. While it is as yet unclear whether smog actually causes asthma, there is no doubt that it exacerbates the condition.¹⁸⁰ Moreover, as EPA observes, the impacts of ozone on “asthmatics are of special concern particularly in light of the growing asthma problem in the United States and the increased rates of asthma-related mortality and hospitalizations, especially in children in general and black children in particular.”¹⁸¹ In fact:

“[A]sthma is one of the most common and costly diseases in the United States. . . . Today, more than 5 percent of the US population has asthma [and] [o]n average *15 people died every day* from asthma in 1995. . . . In 1998, the cost of asthma to the U.S. economy was estimated to be \$11.3 billion, with hospitalizations accounting for the largest single portion of the costs.”¹⁸²

The health and societal costs of asthma are wreaking havoc here in California. There are currently 2.2 million Californians suffering from asthma.¹⁸³ In 1997 alone, nearly 56,413 residents, including 16,705 children, required hospitalization because their asthma attacks were so severe. Shockingly, asthma is now the leading cause of hospital admissions of young children in California. *Id.* at 1. Combined with very real human suffering is the huge financial drain of asthma hospitalizations on the state’s health care system. The most recent data indicate that the statewide financial cost of these hospitalizations was nearly \$350,000,000, with nearly a third of the bill paid by the State Medi-Cal program. (*Id.* at 4.)

The Los Angeles air basin has the worst ozone problem in the nation. The EIR admits that the Project will increase emissions of NOx and VOCs which create ozone. The EIR must discuss how the project may impact the new more stringent ozone standard, and propose feasible mitigation measures to reduce ozone precursor emissions.

In short, in light of the regional nature of the ozone problem, the failure of the Los Angeles area to meet ozone standards, the public health threat presented by ozone pollution, and the already serious respiratory problems in the area, ozone is

¹⁸⁰ See 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001) (EPA points to “strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms”).

¹⁸¹ 62 Fed. Reg. at 38864.

¹⁸² 66 Fed. Reg. at 5012.

¹⁸³ *California Department of Health Services, California County Asthma Hospitalization Chart Book*, August 1, 2000.

precisely the type of pollutant that must be analyzed for its cumulative and individually-significant impacts.¹⁸⁴ Thus, the City must prepare an SEIR for the Project to fully analyze, disclose to the public and consider mitigation measures to address this important public health problem.

VII. THE EIR FAILS TO ADEQUATELY CONSIDER ALTERNATIVES TO THE PROPOSED PROJECT

CEQA requires that an EIR “shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”¹⁸⁵ The purpose of the discussion of alternatives is both to support the decision makers and to inform public participation. Thus, “[a]n EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.”¹⁸⁶ An EIR must also include “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”¹⁸⁷ One of the most substantive aspects of CEQA is that Section 21002 of the statute forbids agencies from approving projects with significant adverse impacts when feasible alternatives (or feasible mitigation measures) can substantially lessen such impacts.¹⁸⁸

The CEQA Guidelines explanation of the alternatives analysis purpose highlights its import:

Because an EIR *must* identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some

¹⁸⁴ See, *Kings County, supra*.

¹⁸⁵ CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

¹⁸⁶ *Laurel Heights I*, 47 Cal.3d at 404.

¹⁸⁷ *Id.* at 405.

¹⁸⁸ *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 440-41; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711, 730-31; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2).

degree the attainment of the project objectives, or would be more costly.¹⁸⁹

An EIR “shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.”¹⁹⁰ The EIR “must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.”¹⁹¹ The EIR should briefly describe the rationale for selecting the alternatives to be discussed.¹⁹² The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination.¹⁹³

In determining the nature and scope of alternatives to be examined in an EIR, local agencies shall be guided by the doctrine of “feasibility.” CEQA has defined “feasible,” for purposes of CEQA review, as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”¹⁹⁴ The courts have further declared that “[t]he statutory requirements for consideration of alternatives must be judged against a rule of reason.”¹⁹⁵ When considering whether an alternatives analysis is reasonable, the courts have repeatedly framed the question with the conclusion that “[o]ne of [an EIR's] major functions ... is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.”¹⁹⁶

California courts provide guidance on how to apply these factors in determining whether an alternative or mitigation measure is economically feasible. In *Burger v. County of Mendocino*, the court held that the county's approval of an 80 unit hotel project over a smaller 64 unit alternative, despite recommendations to the contrary in the EIR, was not supported by substantial evidence.¹⁹⁷ The EIR discussed numerous adverse environmental effects that would be caused by the 80-unit project and recommended that the developer be allowed to construct a smaller 64-unit hotel so long as certain mitigation measures were completed, including

¹⁸⁹ CEQA Guidelines § 1526.6(b).

¹⁹⁰ CEQA Guidelines § 15126.6(d).

¹⁹¹ CEQA Guidelines § 15126.6(a); *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750.

¹⁹² CEQA Guidelines § 15126.6(c).

¹⁹³ *Id.*

¹⁹⁴ Pub. Resources Code, § 21061.1; Guidelines, § 15364; *Citizens of Goleta Valley*, 52 Cal.3d at 565; *Laurel Heights*, supra, 47 Cal.3d at 402, fn. 10.

¹⁹⁵ *Citizens of Goleta Valley*, 52 Cal.3d at 565

¹⁹⁶ *Id.*

¹⁹⁷ (1975) 45 Cal.App.3d 322

relocation of some of the proposed buildings. In evaluating whether substantial evidence supported the county's rejection of the smaller alternative as economically infeasible, the court found that "there is no estimate of income or expenditures, and thus no evidence that a reduction of the motel from 80 to 64 units, or relocation of some units, would make the project unprofitable."¹⁹⁸ Thus, the court identified three criteria that should be evaluated in a comparative analysis to determine whether a project alternative or mitigation measure would be economically feasible: (1) estimated income; (2) estimated expenditures; and (3) estimated profitability between the proposed project and alternative or with and without recommended mitigation measures.

This EIR fails to meet the CEQA standards for a proper alternatives analysis because it fails to present a reasonable range of alternatives, fails to demonstrate or describe the process used to narrow down the alternatives considered, fails to consider any alternative related to the five central parts for the Long Beach Memorial Medical Center Expansion, and fails to provide quantitative and comparative assessments of various alternatives to the proposed Project.

First, the EIR fails to provide a reasonable range of alternatives as required by CEQA.¹⁹⁹ This Project consists of six major elements: (1) the Todd Cancer Institute (TCI), (2) the Millers Children's Hospital (Pediatric Inpatient Tower, Utility Trench, and Central Plant Building), (3) Millers Children's Hospital—Pediatric Outpatient Building, (4) Millers Children's Hospital—Link Building, (5) Roadway Realignment, and (6) Parking Program. (DEIR at 2-6). However, the alternatives analysis only considers one alternative to the timing of construction of TCI (Alternative A) as it relates to parking issues, and one alternative to the timing of construction of a parking structure (Alternative B). (DEIR § 4.0).

As the *Goleta* case explained, what constitutes a reasonable range of alternatives depends on the facts of the case, the environmental benefits to the alternative, and the feasibility of the alternative.²⁰⁰ Here, the City has failed to consider *any* substantive changes to the Project plan other than timing of buildout as it relates to parking issues. While the City need not consider every alternative, it is required to consider a reasonable range of alternatives. Only considering a change of timing for the parking for the Project does not constitute a reasonable range of alternatives, or adequately addressing all reasonable alternatives.²⁰¹

A supplemental EIR should include a range of alternatives which better

¹⁹⁸ *Burger v. County of Mendocino*, 45 Cal.App.3d at 326-327.

¹⁹⁹ CEQA Guidelines § 15126.6(a); *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750.

²⁰⁰ *Citizens of Goleta Valley*, 52 Cal.3d at 566

²⁰¹ *Id.* at 565

addresses the environmental impacts from this Project. For example, given that the impact to affordable housing is a significant environmental impact from this Project, logical alternatives to this Project would consider changes to the scope of the build-out of the Project, or alternative design configurations that would meet the goals of the Project without requiring the demolition of affordable housing including construction of a parking structure or structures to accommodate parking needs and the retention of existing housing, or construction of a mixed use structure combining parking in combination with housing.²⁰²

The EIR provides an alternative of a parking structure rather than surface level parking. This alternative would allow the preservation of affordable housing since affordable housing is proposed to be destroyed to make room for surface level parking. However, the alternatives analysis does not even analyze this alternative in terms of affordable housing and does not analyze whether this alternative would avoid the Project's impacts on affordable housing. Since the EIR fails to address the Project's impacts on affordable housing entirely, it fails to consider alternatives that would avoid that impact.

The EIR itself demonstrates that downsizing the Project not only appears to be feasible, but also can occur while simultaneously meeting all of the twelve objectives²⁰³ of the proposed Project.²⁰⁴ Since this alternative is feasible, would meet Project objectives, and would be environmentally preferable, it is required under CEQA.²⁰⁵ Additionally, without considering an economic analysis of whether downsizing is cost effective, the City cannot properly make the determination that such an alternative is not preferable.²⁰⁶ Nevertheless, the EIR does not recommend implementation of this alternative. Thus, a supplemental EIR should consider this alternative and related alternatives through means including conducting the proper economic analysis.

Additionally, while the City is not required to fully consider every alternative, it must at the very least show the process it used to explore a full range of alternatives and why it chose certain alternatives over others.²⁰⁷ This EIR, however, fails to give any indication as to the process of formulating a list of alternatives, a list of alternatives considered, or why certain alternatives were chosen. Rather than explaining its choices for alternatives, the EIR merely

²⁰² Watt Comment pp. 17-18.

²⁰³ Objective 6 to provide a pediatric inpatient tower might be slowed down, being fully achieved 12 years later.

²⁰⁴ As a result of alternative B, expediting the construction of the parking structure, the DEIR anticipates having to downsize phase I of TCI and MCH. Although the DEIR fails to consider downsizing as an alternative, Alternative B demonstrates that this is feasible.

²⁰⁵ CEQA §21002.

²⁰⁶ *Burger v. County of Mendocino*, 45 Cal.App.3d at 326-327.

²⁰⁷ CEQA Guidelines § 15126.6(c).

dismisses alternative locations because of 1) the separation from major thoroughfares and 2) cost of property acquisition. (DEIR at 4-1.) Then, without any explanation whatsoever, the EIR plainly states that “[t]he alternatives analysis is directed toward parking.” (DEIR at 4.2.) This violates CEQA’s requirement that the City describe the basis for selection of alternatives since it provides no explanation whatsoever.

A supplemental EIR must therefore be prepared which considers the feasible alternatives to the proposed project that address a reasonable range of alternatives addressing more than merely parking issues, which describes a basis for selecting discussed alternatives, and which explains fully why a chosen alternative was selected over any environmentally superior alternatives.

VIII. THE CITY MUST PREPARE A SUPPLEMENTAL EIR

As discussed above, the Project EIR is deficient in several respects. In particular, the City’s failure to discuss mitigation measures for impacts from toxic contamination, failure to address significant impacts to affordable housing at all, failure to discuss a reasonable range of alternatives, and failure to include the Parking Study as part of the EIR result in inadequate Draft and Final EIRs that are incomplete and inadequate. Additionally, the comments above demonstrate that the EIR failed to provide adequate mitigation measures for significant traffic impacts, operational air pollution impacts and cumulative air pollution impacts and demonstrated that there are mitigation measures that the City must consider in a supplemental EIR. Given the Planning Commission’s May 5, 2005 certification of the Final EIR, a subsequent or supplemental EIR (SEIR) must be prepared to correct the deficiencies found in the current version of the EIR.²⁰⁸ Preparing an SEIR is necessary to provide the public with the opportunity to participate in the review of all aspects of this Project.

A. Public Participation is Essential to CEQA

“Public participation is an essential part of the CEQA process.”²⁰⁹ As the courts have repeatedly held, allowing the public to provide comments on projects that may affect their communities is central to CEQA.²¹⁰ The purposed of allowing the public to comment on the entire environmental review of a project has been well articulated by the court:

²⁰⁸ In the alternative, the City is required to recirculate the Draft EIR prior to certification of the Final EIR by the Long Beach City Council. Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5; *Laurel Heights Improvement Assoc. of San Francisco, Inc. v. Regents of the University of California* (1993) 6 Cal.4th 1112.

²⁰⁹ CEQA Guidelines § 15201.

²¹⁰ *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 820.

The purpose of requiring public review is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. Public review permits accountability and 'informed self-government . . . Public review and comment ... ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise Thus public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources.²¹¹

The public review period for a DEIR must be no less than 30 days following the date of notice.²¹² The court in the *Ultramar* case held that this 30-day period does not begin until the lead agency has provided the public with complete copies of the environmental documents.²¹³ The *Ultramar* court also held that where the agency's obligation to provide 30-day public review was not satisfied until the entire EIR has been properly circulated according to the practice of the agency.²¹⁴ In the case of *Ultramar*, the agency could not satisfy its obligation by claiming that missing documents were on file with the agency because the recipients of the original environmental document "naturally assume that they were being sent a complete copy," and thus would not have reason to inspect the agency offices.²¹⁵

B. The City Must Prepare a Supplemental EIR

In this case, the City of Long Beach must prepare an SEIR because the previous EIR failed to address significant environmental effects and failed to discuss mitigation measures would substantially reduce the impacts from this Project.²¹⁶ Also, the Parking Study was not available to the public when the Draft and Final EIRs were circulated, despite the fact that the documents falsely stated that the study was included. Thus "new information, which was not known and could not have been know at the time the environmental impact report was certified as complete" is available and demonstrates that

²¹¹ *Schoen v. Department of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556, 574-574 (internal quotations and citations omitted).

²¹² Pub.Res.Code § 21091; CEQA Guidelines §§ 15105(a), 15205(d).

²¹³ *Ultramar, Inc. v. South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 700.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶

an SEIR must be prepared, and opened for a new comment period prior to certification of the Final EIR by the City of Long Beach.²¹⁷

CEQA Guidelines Section 15162(a)(3) requires that a supplemental EIR be prepared when “new information of substantial importance” shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

In this case, the City of Long Beach failed in multiple respects triggering the need to prepare an SEIR.

1. The City Must Prepare An SEIR with Mitigation Measures for Toxic Soil Contamination

The City seeks certification of the EIR before mitigation measures for toxic soil contamination have been prepared and incorporated into the EIR. This clearly triggers CEQA Guidelines Sections 15162(a)(3)(C & D) which require an SEIR when mitigations measures that were not analyzed in the EIR would substantially reduce significant environmental effects. Here, the City failed to provide any mitigation measures at all, but simply deferred to DTSC to prepare a Remedial Action Workplan (RAW) which would contain mitigation measures for the soil contamination. However, the RAW has not been completed, therefore the City must prepare an SEIR when the RAW is completed.

As DTSC explained in its comments on the project, “elements of the clean-up requiring mitigation including, but not limited to, soil excavation, onsite storage, off-site transportation, and backfill need to be adequately addressed. *The actions that will be outlined in the draft RAW for the Project must be evaluated and incorporated in the final version of the EIR.*” (DTSC

²¹⁷ Pub. Res. Code § 21166.

Comment, p. 2 (March 16, 2005)). DTSC also stated that “specific impacts associated with the removal of contaminated soil, and corresponding mitigation measures *must be outlined in the final EIR.*” (Id. at p.3). *However, the final EIR did not evaluate, incorporate, or even describe any such mitigation measures or remedial activities.*

Instead of proposing mitigation measures, the EIR states that the toxic contamination will be mitigated in the future pursuant to a plan that will be developed by various agencies including the DTSC, the Long Beach Health Department and the South Coast Air Quality Management District. (Mitigation measures 1-15, pp. 3.5-14 – 3.5-17). As discussed above, deferring such responsibility to the future is contrary to CEQA.²¹⁸ Thus, the City must provide the mitigation measures in this EIR. In fact, DTSC plans to have the RAW completed in June 2005. At that time, the City must incorporate the mitigation measures from the RAW and incorporate feasible mitigation measures for toxic soil contamination. At that time, the City must also prepare an SEIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162(a)(3)(C & D).²¹⁹

2. The City Must Prepare An SEIR with Analysis and Mitigation Measures for Impacts to Affordable Housing

The City failed to address the significant impacts to affordable housing at all. As discussed above, the Project will have significant affects on affordable housing, and mitigation measures must be adopted to mitigate those impacts. The City must address this significant impact with analysis and mitigation measures. This new information triggers CEQA Guidelines Section 15162(a)(3)(A) because the Project will have significant effects on affordable housing not discussed in the current EIR at all, and Section 15162(a)(3)(D) because the EIR will present new mitigation measures not previously analyzed that will reduce the significant impacts to affordable housing.²²⁰

As Ms. Watt explained in her comments, “an SEIR must be prepared which includes, but is not limited to the following analysis based on revised information in the Project Description, Setting and other information:

²¹⁸ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.

²¹⁹ Alternatively, this fits firmly into CEQA Guidelines Section 15088.5(a)(3) as an inadequate EIR because the City did not address affordable housing use at all. This also fits into CEQA Guidelines Section 15088.5(a)(3) because alternatives and mitigations measures must be raised in the revised EIR to address impacts to affordable housing.

²²⁰ Alternatively, this fits firmly into CEQA Guidelines Section 15088.5(a)(3) because alternatives and mitigations measures must be raised in the revised EIR to address impacts from toxic soil contamination.

- o Total new housing demand generated by the Project, secondary growth and cumulative projects;
- o The housing affordability range for that new demand;
- o The number of displaced residents (from the demolished units) plus new employees expected to reside in Long Beach;
- o Increased Housing availability to accommodate total new demand in Long Beach and increased housing demand in other communities;
- o All potential impacts associated with new housing demand within Long Beach and the region;
- o The expected new traffic and transit trips based on where employees will reside and details of those trips, including geographic range; impacts to road/transit capacity. This information should be used to revise traffic and transit analyses in the EIR.
- o Additional air quality impacts associated with commute patterns. This information should be used to revised air quality information in the EIR.
- o The extent to which new employees or displaced families will need general public assistance (e.g. food stamps), health care, and housing assistance, among other social services.”²²¹

As Ms. Watt concluded, “In the absence of this information and analysis it is not possible to conclude that impacts related to population increases, housing and employment will be less than significant.”²²² Thus, an SEIR must be prepared to address these issues.

3. The City Must Prepare An SEIR with A Reasonable Range of Project Alternatives

The City’s failure to discuss a reasonable range of alternatives triggers CEQA Guidelines Section 15162(a)(3)(D). There are alternatives (discussed

²²¹ Watt Comment section III

²²² Id.

above) that would significantly lessen the impact of the Project that the City failed to address and adopt. For example, downsizing the Project or building a parking garage that obviates the need for the southern parking lots which are planned to displace 51 units of affordable housing could eliminate the significant impacts to affordable housing. Instead of conducting a proper alternatives analysis, the City offered changes in timing to its parking plan to the Project as its only alternatives. Thus, CEQA Guidelines Section 15162(a)(3)(D) is also triggered because the EIR is patently inadequate and mitigation measures that are considerably different than those currently addressed in the EIR can better mitigate the significant effects of this Project.²²³

4. The City Must Prepare An SEIR with Mitigation Measures for traffic, air pollution, and cumulative impacts

The City failed to consider mitigation measures for environmental impacts from traffic, air pollution, and cumulative impacts all of which the City found to be significant. The comments above, however, demonstrate that mitigation measures are available for all three impact categories. For traffic impacts, Tom Brohard outlined numerous mitigation measures such as purchasing additional rights of way and creating additional turn lanes to mitigate the effects. (Brohard Comment, p. 9). For significant air pollution, a long list of mitigation measures are available (discussed above), none of which were even considered by the City. . Thus, under Public Resources Section 21166 and CEQA Guidelines Section 15162(a)(3)(D), the City must prepare an SEIR with these mitigation measures.²²⁴

5. The City Must Prepare An SEIR to Properly Circulate a Complete EIR

The City's failure to include the parking study in the Draft EIR and Final EIR deprived the public its right to review the complete EIR. In the Final EIR response to comments, the City of Long Beach indicated that the Parking Demand Occupancy Study completed by LLG was a part of the EIR Appendix N. (Final EIR p. 13-34.) This study, however, does not appear in the DEIR as Appendix N. In fact, it does not appear in the DEIR at all. During the May 5, 2005 Planning Commission meeting, the Planning Commission acknowledged that it failed to include this document, but certified the EIR nonetheless. Failure to circulate the parking study with the EIR, when the Commission explicitly includes it as part of the EIR, violates

²²³ Alternatively, the City's failure to discuss a reasonable range of alternatives triggers CEQA Guidelines Section 15088.5(a)(3).

²²⁴ Alternatively, this fits firmly into CEQA Guidelines Section 15088.5(a)(3) because alternatives and mitigations measures must be raised in the revised EIR.

the fundamental notion of CEQA's public review requirements, and triggers the requirement to prepare an SEIR when "new information, which was not known and could not have been known at the time the environmental impact report was certified as complete," became available.²²⁵

Failure to include the parking study also violates the public review requirements of CEQA. The *Ultramar* court held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidated the entire CEQA process.²²⁶ In the *Ultramar*, the court invalidated the CEQA process because the agency failed to include 12 pages of a 288 environmental review document, and then denied a commenters request to extend the review deadline by nine days following receipt of the documents. This case is strikingly similar. Here the City failed to include the traffic study, which it claimed to be a part of the EIR. If the City fails to prepare an SEIR with the parking study, it will violate the public review requirement clearly codified in *Ultramar*. Providing the document at the City office is not adequate – the City must circulate the document to all parties, as the court required in *Ultramar*.²²⁷

For the above reasons, the City must prepare an SEIR, open a new comment period, and respond to comments prior to certification of the Final EIR by the City of Long Beach.²²⁸ Failure to do so would be an abuse of discretion.

²²⁵ Pub. Res. Code § 21166.

²²⁶ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689

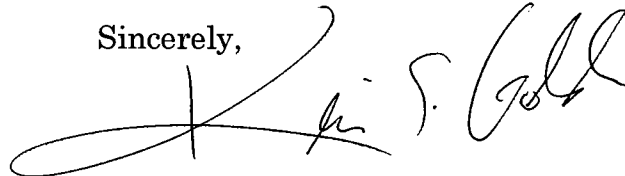
²²⁷ *Id.* at 700.

²²⁸ SEIRs must receive the same kind of notice and public review required for other kinds of draft EIRs. CEQA Guidelines §§ 15162(d), 15163(c); *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.

IX. CONCLUSION.

The Project will have numerous highly significant impacts that are neither disclosed, analyzed, nor mitigated in the EIR. We urge the City to prepare an SEIR that fully complies with CEQA prior to approving the Project or certifying the EIR. Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Richard Toshiyuki Drury" and "Kevin S. Golden". The signature is written in a cursive style with a large, sweeping initial "R" and "K".

Richard Toshiyuki Drury
Kevin S. Golden

KSG:
Attachments

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May 31, 2005

Secretary of the Planning Commission, and
Honorable Members of the City of Long Beach Planning Commission
c/o Ms. Anita Garcia, Project Manager
Department of Planning and Building
City Hall, 5th floor
333 West Ocean Blvd.
Long Beach, CA 90802

RE: Supplemental Comments on the Long Beach Memorial Medical Center
Expansion Environmental Impact Report

Honorable Members of the City of Long Beach Planning Commission:

This letter is written on behalf of SEIU United Health Care Workers – West (“SEIU”) with regard to the City’s Long Beach Memorial Medical Center Expansion (the “Project”) Environmental Impact Report (State Clearinghouse No. 2004081142) (“the EIR”). This letter supplements the comments already submitted on behalf of SEIU on the Project dated May 4, 2005.¹ The focus of this comment letter is the EIR’s failure to adequately describe, disclose, analyze and mitigate the Project’s likely significant impacts related to housing, population and employment and in turn to adequately describe or mitigate air quality, transportation, social services and cumulative impacts. Due to the deficiencies in the EIR in this respect, a supplemental EIR (“SEIR”) must be prepared to fully describe the project, the project’s impacts and additional mitigation measures and alternatives capable of reducing new significant impacts related to population, housing and employment aspects of the project.

In preparing these comments the following documents were reviewed:

- 1) The EIR, including Volumes I, II and III.
- 2) The City’s General Plan Housing Element.

¹ Terrell Watt, a professional planning consultant, prepared these comments. See resume of Terrell Watt attached hereto as Attachment A.

- 3) The City of Long Beach Housing Action Plan².
- 4) SEIU's Comment Letter dated May 4, 2005.
- 5) Current Census Data for the City and region.
- 6) Background Information for the City's General Plan Update

Detailed comments on the adequacy of the EIR are set forth below.

I. The EIR Must Analyze Significant Impacts Related to Population, Housing and Jobs

The Project proposes a significant expansion of an existing Medical Center, which in turn will result in hundreds of new employees. Project development includes the demolition of existing affordable rental housing units so that a *surface parking lot* can be constructed. The increase in employment, directly related demand for additional housing and loss of housing are considered by CEQA as economic and social effects, and therefore are not to be identified as significant impacts in and of themselves. CEQA Guidelines Section 15131. However, where these impacts directly lead to significant physical environmental impacts they must be considered either in the EIR or some other document in the record. CEQA Guidelines Sections 15131, 15064(f) and 15382. The Project will increase the demand for additional housing by generating new jobs and by destroying existing housing. This is a significant adverse physical environmental impact that must be addressed in the EIR.

The CEQA Guidelines Appendix G is also instructive concerning what constitutes a potentially significant impact that must be considered in a CEQA document. Specifically, Appendix G of the CEQA Guidelines poses the following questions with respect to potentially significant impacts to land use, population and housing:

- Would the project conflict with any applicable land use plan, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?
- Would the project induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- Would the project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
- Would the project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

² City of Long Beach Department of Community Development, Housing Services Bureau, City of Long Beach Housing Action Plan, FY 2005-2009, Adopted June 2004, attached hereto as Attachment J.

Based on the severe lack of affordable housing in the Long Beach area and region, as well as the City's own aggressive housing policies, another question would also be appropriately considered as a threshold of significance:

- Would the project increase the demand for affordable housing?

In this case, a detailed analysis is warranted of all of the above potentially significant impacts and issues. Project related impacts associated with the increase in jobs, commensurate housing demand and loss of rental units include, but are not limited to:

- The loss of 51 housing units alone and in combination with an increased demand for housing as a result of the increase of approximately 500 new jobs (not including secondary growth in service jobs due to the Project)³ results in a significant demand for affordable housing in the City and potentially elsewhere.
- The project will further reduce the "jobs – housing" balance, resulting in longer commutes, significant vehicle trips and air quality impacts not disclosed or analyzed.
- Cumulative impacts related to population, housing and employment from the Project plus cumulative projects. Again, this is not disclosed or analyzed in the EIR.

Because of the EIR's failure to provide information about the Project, EIR-based assumptions are not available for the likely demand for new housing units total, or for affordable units, generated by the project plus secondary growth. Based on conservative assumptions and excluding secondary growth, the Project is likely to generate a demand for approximately 300 new units, with the majority of those in the affordable range (51 rental units plus 250 units for ½ the new employees not currently residing in the area). This increase in demand is significant based on both the number of Lower-income units built in the City over the last five years; 771 low income apartment units (Housing Plan, page V-2), as well as when compared with housing unit potential in the area identified by the City. Specifically, the City has identified three sites within the vicinity of the proposed project that are to be developed for future residential units – providing an estimated 231 new residential units at Long Beach Boulevard, Del Amo Boulevard, and 31st Street." EIR, page 13-49. Not all of those potential 231 new units will be affordable. In summary, an increase in demand for 300+ new units based on just the loss of existing units and demand for new units by half the new employees, and not counting new demand for all new employees or secondary growth, is a *significant* new demand. Actual demand for total new units generated by the Project plus secondary growth is likely to be

³ According to the EIR: "This proposed project would create *hundreds of jobs for Long Beach citizens and for those in neighboring communities* during both the design and construction phase and for many years thereafter in new support staff and professional staff positions." Emphasis added. See Section on Growth Inducement.

even greater than 300 units, with a high percent of those units needed in below market rate or affordable price ranges.⁴

EIR's routinely include an analysis of population, jobs and housing where the project will increase employment and the demand for housing or result in the loss of housing. See Attachments C and D hereto; examples of EIR analyses of housing, employment and population.⁵

In addition to analyzing population, housing and employment related impacts, an EIR must evaluate the consistency of a proposed project with applicable plans and policies. In this case, the Project is inconsistent with numerous policies of the City's General Plan; which consistencies are not disclosed, analyzed or addressed.

The EIR fails to adequately address these potentially significant project-related and cumulative impacts even though the EIR acknowledges that population and housing impacts must be considered. The reason provided for not analyzing them in the EIR is that impacts related to housing and population *are not expected* to be significant:

“The analysis undertaken in support of the Initial Study determined that there are several environmental issue areas related to the California Environmental Quality Act (CEQA) that are not expected to have significant impacts resulting from implementation of the proposed project. These issue areas are agricultural resources, biological resources, mineral resources, *population and housing*, and recreation. These issue areas, therefore, were not carried forward for detailed analysis in the EIR.” DEIR, page ES-7.

The flaw here is that the EIR fails to provide any facts, evidence or analysis to support the conclusion that impacts related to population and housing will not be significant. To the contrary the facts strongly support another conclusion; that the increase in new jobs and related demand for housing affordable for those employees alone and in combination with the loss of affordable rental housing units in an area of acute lack of affordable housing is significant.⁶ See also Footnote 3, above. Moreover, the housing impacts will lead to significant demand for new housing in the City but also likely elsewhere leading to longer commutes and air quality impacts that are not disclosed, analyzed or mitigated in the EIR.

⁴ In addition, based on *Concerned Citizens of South Central v. Los Angeles Unif. Sch. Dist.* (1994) 24 Cal.App.4th 826, 837, “the impact of a reduction in 67 total dwelling units would be considered a significant adverse housing impact on housing in the local area. In fact given the shortage of vacant housing even a much smaller reduction in the current housing supply would be considered a significant adverse impact on housing resources in the local area.”

⁵ Placer County - Northstar Highlands DEIR, Chapter 4.2, Population, Housing and Employment; Lassen County - Dyer Mountain Resort DEIR, Chapter 5, Population, Housing and Employment.

⁶ Attachment B: Out of Reach in 2004, provides evidence that the housing affordability problem in Long Beach is acute. This conclusion is also supported by the City's Housing Action Plan and Housing Element. The “Demographic Data for the Community Around Long Beach Memorial” also shows how demographics relates to the affordable housing problem.

The following sections of this letter set forth in detail the failure of the EIR to adequately address these impacts and the information that should be included in an SEIR.

II. The EIR Fails to Accurately and Completely Describe the Project and Project Setting with respect to Population, Employment and Housing

The DEIR fails to describe the project and its setting accurately and completely. It omits key project features that have the potential to result in significant impacts. The CEQA Guidelines define “project” as “the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately . . .” CEQA Guidelines § 15378. Among other components, an EIR’s project description must contain a “general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” CEQA Guidelines § 15124(c). As the Court of Appeal has noted, “The defined project and not some other project must be the EIR’s bona fide subject.” County of Inyo, 71 Cal.App.3d at 185. An accurate and complete project description is indispensable because, “[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” Id. at 192.

The DEIR also fails to provide an adequate description of the setting for the project. Such a failure is fatal under CEQA. CEQA and the CEQA Guidelines mandate that an EIR include a description of “the physical environmental conditions in the vicinity of the project . . . from both a local and a regional perspective . . . Knowledge of the regional setting is critical to the assessment of environmental impacts.” CEQA Guidelines §§ 15125(a) and (c). This requirement derives from the principle that without an adequate description of the project’s local and regional context, the EIR, and thus the decision-makers and the public who rely on the EIR, cannot accurately assess the potentially significant impacts of the proposed project.

The EIR for the project is inadequate. It fails to describe key aspects of the proposed project with respect to population, employment and housing with the potential to result in significant environmental impacts. Additionally, it fails to describe accurately and completely the environmental setting for these issues. Accordingly, potentially significant environmental impacts cannot be adequately analyzed or addressed by the EIR and, for this reason, the EIR is fatally deficient under CEQA.

The EIR goes to great lengths to describe how parking is going to be completed in phases to satisfy increased parking needs of the project. This is presumably because City regulations require parking to be adequate for projects and the CEQA Guidelines include the question whether a project will result in inadequate parking.

The City's policies with respect to housing are also quite clear:

- Goal #1: Maintain and Improve the Quality of Existing Housing Stock
- Goal #2: Provide Opportunity to Expand the Housing Stock with New Construction
- Goal #3: Protect and Preserve Housing Affordable to Low-Income Households
- Goal #4: Increase Opportunity for Low-Income Households and Special Needs
- Goal #5: Provide Increased Opportunities for Home Ownership
- Goal #6: Ensure Fair Treatment and Equal Opportunity for All Households

Source: City of Long Beach Housing Element, page V-1. The CEQA Guidelines also include questions about project impacts on housing and population.

Yet, the EIR barely mentions the loss of housing in the Project Description and does not disclose key aspects of the project and project setting related to employment and housing.⁷ The housing loss associated with the development of the project based on the limited information available can only be characterized as significant: 51 *rental units*, including 6 single-family homes and 7 multi-family buildings. Rental units are typically more affordable than ownership units.

The EIR fails to disclose any information about the housing units, the number of people residing in the units, the families that reside in them, whether they work at the Medical Center, where else they could live, and the demand for new housing units as a result of the expansion. Without this information, the EIR cannot support the conclusion that housing and population impacts are less than significant or adequately analyze the impacts associated with increased jobs, increased housing demand and loss of housing.

A revised Project Description and Project Setting must include the following information at a minimum:

- The exact number and characteristics of the housing slated for demolition on site (e.g. unit type and size; affordability/subsidized etc.);

⁷ The Executive Summary and Project Description briefly mentions the loss of housing:

“All on-site parking would be developed in areas designated for interim or permanent use of parking in the Master Plan of Land Uses. This would include demolition of 51 existing residential units to create surface parking lots (Lots Q, R, S, and T.) If determined to be necessary, a multilevel parking structure capable of accommodating approximately 100 spaces per level would be sited in an area designated for long-term parking.” DEIR, page ES-5, 2-12 and 2-21.

In Response to Comment No. 1 to a letter from Rommel Porciuncula, the EIR discloses the project's proposal with respect to existing housing:

“There are currently 13 residential structure on the site, including 6 single-family dwellings and 7 multi-unit dwellings; all of these structures are occupied by renters. These structures would be demolished and converted to parking uses to support the proposed project.” EIR page 13-49.

- A general description of who lives in those units (e.g. number of people, whether they work at the hospital, work elsewhere in the City, are seniors or other special needs, etc.);
- The number of new jobs to be created by each phase of the project, including future phases anticipated in the Master Plan;⁸
- The general range of wages of new employees and displaced families and ability to afford a home/rent in Long Beach;
- The employee base in Long Beach matched to new jobs (e.g. where will new employees come from?) (Note there is some information in the EIR's growth inducing section, but it fails to support the local labor pools availability and adequacy of training to the project's needs);
- A description of existing housing opportunities within a 20-mile and 40-mile radius matched to employment in the new facilities;
- A description of the existing and projected jobs-housing balance in the City and within the geographic area that existing employees reside in;
- A description of the current and projected gap in housing affordable to residents and workers in the City of Long Beach and within the geographic area that existing employees reside in.
- Where existing Medical Center employees live as a basis for determining the likely range of where new employees where live;
- The number of housing units (demand) per existing employee (e.g. are there employees who reside together thereby lowering the likely unit demand per new employee?).

Data is readily available from the project applicants, the census, City plans and policies, housing studies, SCAG as well as other readily available sources for this information.

Based on this and other information needed, a SEIR must analyze the impacts of the new jobs and housing demand (combination of new demand from new employment and demolished units) with respect to need for new housing, jobs-housing balance and commutes and related traffic and air quality impacts. The analysis should also include an estimate of secondary growth generated by the Project and housing demand related to that growth. Based on the estimate of new employment and displaced families, *total housing demand* must be estimated along with the affordability range for that new demand. In addition that portion of displaced residents (from the demolished units) plus

⁸ The Executive Summary, pages ES-2 to ES-4 and the Project Description partially describes the new facilities. Employees are mentioned for some of the facilities and for some phases, but the information is incomplete. Information missing includes, but is not limited to, the following:

- Total employees; the EIR only describes the maximum number of employees in a building at one time;
- Total employees for all buildings (e.g. No employees are described for the MCH Link Building);
- Total net new employees;
- Type of employee (by type and salary range);
- Likely residence of new employees, among other information necessary to support an analysis of project impacts.

new employees expected to reside in Long Beach and other communities must be disclosed. In part, this analysis can be based on the geographic range of residences, by general salary and longevity in the job, of existing employees. See Attachment E hereto, Addendum, Medical/Hospital Jobs Housing Nexus Analysis for a possible methodology to assess total housing demand related to the Project. This study goes further and identifies the linkage fee for medical/hospital facilities in Walnut Creek.

This information is then the source for analysis of new and potentially significant traffic, transit, air quality and other impacts. In addition, this information should also be used to determine the extent to which new employees or displaced families will need general public assistance (e.g. food stamps), health care, and housing assistance, among other social services. In the absence of this information and analysis it is not possible to conclude that impacts related to population increases, housing and employment will be less than significant. There is certainly more than a fair argument that the Project will have significant adverse impacts on housing which must be analyzed in an SEIR.

III. The EIR Fails to Disclose and Analyze Significant Project-Related Impacts

The project setting is the City of Long Beach, a City in a region experiencing a severe shortage of housing, and in particular housing that is affordable to its workforce. See Attachment B. The Campus is the second largest employer in the City of Long Beach, including 1,200 physicians and more than 3,500 employees. Appendix R.A. Master Plan, page 2. The project will increase employment by approximately 500 new employees (See Growth Inducing Section of the EIR). The lack of affordable rents, overcrowding in apartments, aging housing stock, and homeless families were among the primary concerns raised by Long Beach residents to the City Planning Bureau when the Bureau was developing an updated version of its General Plan housing element.⁹ Moreover, the area immediately surrounding Memorial (Atlantic Avenue/Long Beach Blvd.) was cited by community participants as particularly problematic with respect to these issues.¹⁰ The General Plan Update notes that the City has experienced a 49.2 percent increase in severely overcrowded units and that 58 percent of the housing units were built before 1960.¹¹ Sites suitable for new housing are scarce and the loss of any sites that are designed for high density housing, such as the project site, are a significant loss. Because of the project's setting, any loss of housing alone or in this case coupled with demand for new housing, will result in significant impacts.

Specifically, as a result of the loss of rental housing and the increased demand for housing related to this loss alone and in combination with the increase in demand for housing, the following impacts are likely to be significant and must be disclosed and analyzed in an SEIR:

⁹ City of Long Beach Department of Planning and Building, "Community Cluster Input," General Plan Update: Land Use and Mobility elements, 2004, Chapter 2, Page 9.

¹⁰ General Plan Update at page 12.

¹¹ Technical Background Report, General Plan Update, Chapter 2, page 2-1.

- The loss of 51 housing units alone and in combination with an increased demand for housing as a result of the increase of approximately 500 net new jobs results in a significant demand for affordable housing in the City and elsewhere. To the extent the demand cannot be met in the City, longer commutes will result.
- The Project is likely to further reduce the jobs to housing balance in the City and immediate region, resulting in employees and displaced residents experiencing longer commutes, significant vehicle trips and air quality impacts not disclosed or analyzed in the EIR. Neither the air quality nor the traffic analysis include the impacts of the displaced residents, let alone consider the longer commutes of new employees unable to find housing in Long Beach.
- Cumulative impacts related to population, housing and employment, which, at a minimum, should be based on a study area related to where existing employees reside.

In order to analyze and accurately characterize the above impacts, an SEIR must be prepared which includes, but is not limited to the following analysis based on revised information in the Project Description, Setting and other information:

- Total new housing demand generated by the Project, secondary growth *and cumulative projects*.
- The housing affordability range for that new demand.
- The number of displaced residents (from the demolished units) plus new employees expected to reside in Long Beach.
- Housing availability to accommodate total new demand in Long Beach and increased housing demand in other communities.
- All potential impacts associated with new housing demand within Long Beach and the region.
- The expected new traffic and transit trips based on where employees will reside and details of those trips, including geographic range; impacts to road/transit capacity. This information should be used to revise traffic and transit analyses in the EIR.
- Additional air quality impacts associated with commute patterns. This information should be used to revise air quality information in the EIR.
- The extent to which new employees or displaced families will need general public assistance (e.g. food stamps), health care, and housing assistance, among other social services.

In the absence of this information and analysis it is not possible to conclude that impacts related to population increases, housing and employment will be less than significant. There is much more than a fair argument that the impacts related to population increases, housing and employment will be significant.¹²

IV. The EIR Fails to Adequately Address the Growth Inducing Impacts of the Project

The EIR must consider the growth-inducing potential of the project (referred to above as secondary growth potential). CEQA requires that an EIR include a “detailed statement” setting forth the growth-inducing impacts of the proposed project. See Public Resources Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg*, 187 Cal.App.3d 1325, 1337 (1986). The statement must “[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” CEQA Guidelines § 15126.2(d). It must also discuss how a project may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.” *Id.*

The DEIRs brief (1 ½ page) growth-inducing section concludes that the project is consistent with growth projections and would not extend services or provide service beyond the project boundaries. Therefore, the DEIR concludes that the proposed project would not be growth inducing. Yet, according to the EIR,

“The Long Beach Memorial Medical Center (LBMMC) is not expected to be growth inducing. In general, projects that induce growth also provide infrastructure that is suitable to support growth, such as the construction of additional housing. The goal of the proposed project is to meet the existing and anticipated health care needs of the community and to improve the quality of life. *This proposed project would create hundreds of jobs for Long Beach citizens and for those in neighboring communities during both the design and construction phase and for many years thereafter in new support staff and professional staff positions.*” Emphasis added. EIR, page 12-59.

The above statements are self-contradictory. A project, such as the Long Beach Memorial expansion, that creates hundreds of new jobs will by definition have a significant growth-inducing impact. A revised growth inducing analysis must be prepared, including the total demand for new housing and services generated by the hundreds of new jobs within Long Beach and surrounding communities generated by the Project. The analysis must include revised cumulative estimates of air quality and transportation impacts taking into consideration growth generated by the Project.

V. The EIR Fails to Analyze Project Consistency with Applicable Plans, Policies and Regulations of the City

¹² Attachment K, Unaffordable Housing: the Costs to Public Health, City and County of San Francisco Department of Public Health, June 2004.

The DEIR's discussion of project consistency with the City's applicable plans and policies fails to adequately analyze such inconsistencies and fails to disclose numerous project inconsistencies as follows:

- The Long Beach General Plan

The EIR describes the project as being consistent with the General Plan land use designation. The City's General Plan designates the property for No. 7 Mixed-Use District in the Land Use Element, Figure 3.04, General Plan Land Use Designation. This District is intended for use in large, vital activity centers that by their nature involve mixed uses. The Master Plan is also located within the City's Central Long Beach Redevelopment Area. A Figure in Appendix R.A. at page 12 shows numerous residential neighborhoods and existing schools in the vicinity of the Campus. The EIR also explains that the parking is consistent with the zoning. None of the discussions in the EIR explain that the General Plan, not the zoning, provides the blueprint for future land uses in the City. A revised consistency discussion must disclose that the removal of housing for construction of surface parking is not wholly consistent with the policy objectives of LUD No. 7 including, but not limited to:

- Combinations of land uses intended by this district are, for example, employment centers such as retail, offices, medical facilities, higher density residences, visitor-serving facilities, personal and professional services, or recreational facilities.
- Land is not intended for uses that may have a detrimental effect on the ambiance, environment, or social well-being of the area, such as industrial and manufacturing uses, warehousing activities, and outside storage.

The General Plan also states that tall buildings in this center would be very appropriate.

Moreover, the loss of housing sites and replacement with surface parking appears to be inconsistent with the higher intensity uses intended for this land use designation. A revised consistency analysis must thoroughly review the project-policy consistency issues in all elements of the city's General Plan. A consistency table should be developed which includes each relevant policy and a description of how the project is or is not consistent. This table should be the basis for project modification to attain consistency (e.g. a mixed Medical Center and Housing Project) or to amend the policies or land use designations to attain consistency. Inconsistencies between the project and the City's General Plan must be resolved; overriding considerations cannot be used to overcome such inconsistencies.

- The Long Beach Housing Element and Housing Action Plan

Similarly, the EIR fails to point out a single inconsistency between the project and the policies and programs in the Long Beach Housing element, which is part of the General

Plan, and Housing Action Plan. Again, these should be disclosed in a consistency table that evaluates the project as compared with each relevant goal, policy or program.

The project appears to be inconsistent with the primary Goals of the City's housing element as follows:

- Goal #1: Maintain and Improve the Quality of Existing Housing Stock
- Goal #2: Provide Opportunity to Expand the Housing Stock with New Construction
- Goal #3: Protect and Preserve Housing Affordable to Low-Income Households
- Goal #6: Ensure Fair Treatment and Equal Opportunity for All Households

In addition, the project is not consistent with numerous other policies and programs in the Housing element and HAC, including, but not limited to policies which call for housing stock maintenance (Housing Element, page V-3); encouraging construction of new housing on appropriate sites (Id. Page V-4); protecting and preserving affordable housing (Id., Page V-5), housing and neighborhood conservation and related policies (Id. Page V-9); Policy 2.5 to encourage housing development along transit corridors and in activity centers on infill sites (Id. Page V-10), and more.

In addition, an objective of the Housing Element is to evaluate establishing a commercial impact/linkage fee for non-residential development to fund housing services. Housing Element, Page V-22, Objective 21. The Housing Element states:

“There is a clear relationship between new employment within a given area and the associated demand for new housing. Some jobs will be service occupations that earn more modest income, while other occupations will be higher-paying. If the demand for new housing exceeds the supply of housing, housing costs will increase accordingly – having its greatest impact upon low- and moderate-income households. Suitable housing will also need to be available in order to attract desired industries. An impact fee program can provide funding to address the demand for affordable housing generated by commercial and office development. Funds received are deposited in a Housing Trust fund.” Id.

The EIR fails to identify these Project –policy issues and inconsistencies. These inconsistencies are significant impacts within the meaning of CEQA and must be analyzed in an SEIR, and mitigation measures and alternatives must be considered.

Moreover, the EIR fails to acknowledge that some of these policies and objectives provide clear leads to how the Project could address the housing-related impacts, including, but not limited to a linkage fee, retention of the on-site housing and construction of new housing in a mixed-use configuration.

- The Long Beach City ordinances related to housing relocation assistance

Clearly, there are requirements in the City codes and redevelopment law relevant to the type of mitigation required for displacement of housing. Yet, the EIR fails to clearly describe these requirements or the project's consistency with them.

- The Long Beach Redevelopment Plan

The project is located in the Central Redevelopment Area of the City of Long Beach, governed in part by a Strategic Guide for Development of the Central Area. The Guide includes the following policy guidance:

1. The revitalized Central Study Area will be a community with: residential neighborhoods that meet the needs of families, seniors and individuals with an emphasis on affordable and accessible ownership opportunities; new or rehabilitated residential structures replacing deteriorated housing...
2. Increasing the supply of housing stock, reducing overcrowding, preserving and enhancing existing neighborhoods, and enriching the livability of residential neighborhoods, are among the primary goals of the Central Study Area; among other policy guidance.

The EIR fails altogether to describe the policies of these plans and to analyze project consistency with the Redevelopment Plan and strategic guide. An SEIR must be prepared which includes a detailed inventory of relevant goals, plans, policies and other requirements and describes how the project is or is not consistent with each of these.

VI. The EIR Fails to Mitigate Housing and Employment Related Impacts

CEQA requires that mitigation measures be identified and analyzed. "The purpose of an environmental impact report is . . . to list ways in which the significant effects of such a project might be minimized . . ." Pub. Res. Code § 21061. The Supreme Court has described the mitigation and alternative sections of the EIR as the "core" of the document. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553 (1990). As explained below, the DEIRs identification and analysis of mitigation measures, like its analysis throughout, is thoroughly inadequate. An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. See San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal.App.3d 61, 79 (1984). Moreover, an EIR may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data." Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 361 (1988). Nor may the agency use vague mitigation measures to avoid disclosing impacts. See Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal.App.4th 182, 195 (1996). Lastly, the formulation of mitigation measures may not properly be deferred until after Project approval; rather, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments." 14 CCR § 15126.4 (a). In the present case, the DEIR does not come close to satisfying these basic CEQA requirements regarding impact mitigation for housing related impacts.

The EIR improperly defers both the analysis of housing and employment related impacts and the determination of mitigation needed to address the impacts. Feasible mitigation measures exist for the loss of housing. Such measures range from relocation of the housing to payment of “linkage” fees and other means. A mitigation “fee” can be legally imposed under CEQA. Concerned Citizens of South Central v. Los Angeles USD, 24 Cal.App.4th 826, 837. A City may even require a developer to construct new housing to mitigate adverse impacts to affordable housing. Commercial Builders v. Sacramento (1991) 941 F.2d 872. Of course, the City could simply require Memorial to refrain from destroying the affordable housing by constructing a parking structure rather than ground level parking. These would all be feasible mitigation measures and feasible alternatives that must be analyzed in an SEIR.

The project proponents acknowledge the importance of senior and worker housing. According to the Master Plan for the project: “The City of Long Beach and the LBMMC recognize the value and importance of senior and worker housing in close proximity to major employment centers and public transit. The LBMMC will continue to work with the City of Long Beach to discuss opportunities for senior and worker housing.” Master Plan, page 56.

In addition, objectives for the project include objective, #13:

“Continue to work with the City of Long Beach to identify appropriate locations for these land uses within the Campus. LBMMC understands the importance of worker and senior housing.” Appendix R.A. Master Plan, page 7.

On April 18, 2005, executives from the Medical Center met in a closed door meeting with an official from the Community Development Agency and a representative from Sapphos. In the meeting, which was not open to the public, it was announced that the project would comply with City ordinances requiring relocation assistance by making a one-time relocation fee of \$3,489 per qualifying household. There is no evidence in the EIR that this will be a requirement of the project, nor any evidence this relocation fee is sufficient to offset the cost of relocation. This requirement is not part of the mitigation monitoring plan for the project and is not adequate or even cognizable mitigation under CEQA.

According to Response to Comment No. 1 by Rommel Porciuncula:

“Mitigation measures are not required for the loss of the 13 residential structures as the properties are owned by the LBMMC. In addition, the proposed parking structure is consistent with the Long Beach Municipal Code land uses.” EIR, page 13-49.

In another response to the same letter, the EIR discloses that “...the City has identified three sites within the vicinity of the proposed project that are to be developed for future residential units – providing an estimated 231 new residential units at Long Beach Boulevard, Del Amo Boulevard, and 31st Street.” EIR, page 13-49.

Despite numerous letters calling for the EIR to address the affordable housing issues, and the specific suggestions for approaches to mitigating housing related impacts, the EIR fails in these key respects.

Feasible mitigation measures to reduce the impacts associated with new housing demand include, but are not limited to the following:

- Construction of a parking structure or structures to accommodate parking needs, while allowing retention of the existing housing (see also Alternatives);
- Construction of a mixed-use structure; parking in combination with housing (see also Alternatives);
- Purchase of housing off-site for rental to employees;
- Construction of housing off-site within the City (for example, a developer in Sacramento was required to construct housing off-site to mitigate housing impacts of a commercial development project, Commercial Builders v. Sacramento (1991) 941 F.2d 872);
- Payment of a “linkage” fee or fee to offset the cost of providing both replacement housing and new housing for employees (per Housing Objective 21).¹³

An SEIR must be prepared that both analyzes the housing related impacts and includes feasible mitigation measures to address these impacts.

VII. The DEIR Fails to Analyze a Reasonable Range of Alternatives

Although the alternatives section of the DEIR describes a number of alternatives, this section continues to fall short of the standard set by CEQA. Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project’s significant impacts. See Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). As stated in Laurel Heights I, “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public

¹³ See Also, Attachment F, California Inclusionary Housing Reader, Institute for Local Self Government, Page 42, Linkage Programs; Attachment G, Table of Jobs Housing Linkage Programs and Attachment H, Walnut Creek Agenda Report; Imposition of a Fee on Commercial Development for Affordable Housing, February 15, 2005; Attachment I, Inclusionary Zoning: the California Experience, National Housing Conference, NHC Affordable Housing Policy Review, Vol. 3, Issue 1, February 2004; Attachment L: The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and their Consideration in CEQA Policy and Practice, PHES Technical Research Report, May 2004.

be fully informed as to the consequences of action by their public officials.” 47 Cal.3d 376, 404 (1988). The DEIRs discussion of alternatives fails to meet these standards because the alternatives fail to include an alternative that would be consistent with the City’s intended land uses and policies for the area with respect to housing and efficient use of the project site.

Among the stated goals of the Master Plan are:

5. *Maximize the effective utilization of the existing 54 acres owned by MHS within the City of Long Beach.*
6. Identify specific capital improvements and related infrastructure improvements to be undertaken to accommodate departmental needs, operational efficiency, and future workload, particularly in light of future health and practice changes.
7. Develop solutions that are consistent with goals and priorities established during the master planning process and that are conducive to a user friendly environment for patient, staff and visitors.
8. Develop and apply unifying design principles that satisfy the LBMMC design guidelines for consistent landscaping, streetscape, pedestrian corridors, outdoor spaces, wayfinding and signage design treatments, and processes that establish a stronger revival of the adjacent community and neighborhood.
9. Establish design guidelines to facilitate a cohesive Campus that is compatible and sensitive to the surrounding land use and development patterns. Appendix R.A. Master Plan, page 7.

Objectives for the project focus on providing a facility to meet demand in the community through the year 2020, including one building designed for mixed uses, including retail uses and adequate “infrastructure” to support the project. The last objective, #13, states:

“Continue to work with the City of Long Beach to identify appropriate locations for these land uses within the Campus. LBMMC understands the importance of worker and senior housing.” Appendix R.A. Master Plan, page 7.

The Master Plan refers to this issue again at page 56:

“The City of Long Beach and the LBMMC recognize the value and importance of senior and worker housing in close proximity to major employment centers and public transit. The LBMMC will continue to work with the City of Long Beach to discuss opportunities for senior and worker housing.”

A number of alternatives that would either retain or include production of new housing to meet the total demand for housing by the project appear to be feasible including, but not limited to:

- Construction of a parking structure or structures to accommodate parking needs, and retention of the existing housing.

The EIR states that an option is to build a parking structure, rather than at grade parking: “If determined to be necessary, a multilevel parking structure capable of accommodating approximately 100 spaces per level would be sited in an area designated for long-term parking.” DEIR, page ES-5, 2-12 and 2-21. Clearly there are opportunities on the site to provide for either additional structured parking so that the housing can be retained or to combine uses in manner that retains the housing. Such a feasible alternative must be evaluated in an SEIR.

- Construction of a mixed-use structure; parking in combination with housing or housing in combination with the retail mixed use Link Building.

The City’s General Plan and redevelopment plan intended for this area to be developed with high density mixed uses. There area includes a range of housing and existing schools and services which provide an environment friendly to housing. Such an alternative could either combine high density housing with parking in a single structure or structures, or provide for structural parking separate from new housing. A range of housing affordability, including some market rate units, could offset the cost of providing the new housing. Examples of such mixed use buildings are plentiful in urban areas.

VIII. The EIR Failed to Adequately Respond to Comments Requesting that Housing Impacts be Analyzed

Numerous comment letters on the DEIR commented that the DEIR fails to address the affordable housing issues in the neighborhood. Responses to these comments were not adequate. For example the Response to Comment No. 1 by Rommel Poricuncula contains misleading and incorrect information. EIR, page 13-49. The response implies that the units demolished and converted to parking is consistent with the City requirements, specifically zoning. This comment overlooks that fact that the General Plan land use designation for the area is mixed use, which provides for just the types of mixed uses currently in existence. The section continues on to state that parking, and by implication not housing, is consistent with the City’s zoning. This overlooks the General Plan land use designation for a mix of uses, including housing.

The Response continues on to state that:

“The LBMMC acquired these properties to accommodate the expansion. Without the acquisition of these properties, the Campus would not be able to expand and thus not be able to provide medical services to the community.” EIR, page 13-49.

This belies the opportunity for parking in structures to either retain or rebuild the housing. See Alternatives above.

Moreover, the comments request an analysis of housing affordability issues. Such an analysis was not provided. An SEIR should be prepared which includes all the information and analysis suggested herein.

Conclusion

As described in detail above, the Project will result in significant impacts that are neither described, disclosed, analyzed or mitigated in the EIR related to population, housing and employment. The City must prepare an SEIR that fully complies with CEQA and addresses these grave omissions prior to approving the Project or certifying the EIR.

Sincerely,

Terrell Watt, AICP



Attachments

by
LB

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EXPERIENCE

1989 - **TERRELL WATT PLANNING CONSULTANTS**
Planning consulting firm owner

1981-1989 **SHUTE, MIHALY & WEINBERGER**
Planning Expert/Paralegal

1981-1983 **MUNDIE & ASSOCIATES**
Planning Consultant to public and private clients

1979-1980 **EDAW, INC.**
Project Management, Planning Consultant

PROFESSIONAL MEMBERSHIPS AND BOARDS

American Institute of Certified Planners (AICP)
American Planning Association (APA)
Board Member of the Conservation Biology Institute www.consbio.org

EDUCATION

USC GRADUATE SCHOOL OF URBAN AND REGIONAL PLANNING
Masters degree in City and Regional Planning

STANFORD UNIVERSITY
Bachelor's degree in Urban Studies

Since 1989, Terrell Watt, AICP, has owned Terrell Watt Planning Consultants. Ms. Watt's firm specializes in planning and implementation efforts focused on regionally-significant projects that promote sustainable development patterns. Prior to forming her own consulting group, she was the staff planning expert with the environmental and land use law firm Shute, Mihaly & Weinberger. She is an expert in general and specific planning, open space and agricultural land conservation and environmental compliance. Her skills also include public outreach, negotiation and facilitation.

Terrell works with a wide variety of clients throughout California including conservation organizations, government agencies and foundations. Her recent projects include:

- Project Coordinator for the Los Angeles Housing Infill Potential Methodology study, funded by an Environmental Justice Grant from Caltrans and jointly sponsored by the City of Los Angeles, County of Los Angeles and Environment Now.
- Secretary Terry Tamminen's Representative to the California Housing Infill Study Task Force, a Subcommittee to the State's Smart Growth Task Force.
- Planning consultant to the American Farmland Trust providing expertise on the efficacy of general plan's to protect prime farmland in the Central Valley and Central Coast of California.
- Advisor to the Governor's Cabinet on options for restructuring the "smart growth" dialogue.
- Advisor to the Attorney General's office on the status of general plans and housing elements in California.
- Primary consultant to the City of Livermore on the South Livermore Wine County Specific Plan and Transfer of Development Rights Program.
- Consultant to the Institute of Local Self Government for the development of A Local Official's Guide to Funding Open Space Acquisition.
- Consultant to the Planning and Conservation League led coalition of community and environmental groups on California High Speed Rail.
- Member of Mayor Gonzales' San Jose Coyote Valley Task Force to revision the Coyote Valley on behalf of the Silicon Valley Conservation Council.
- Founder and Project Director of the newly forming Association of Infill Housing Builders.

Out of Reach in 2004

Renters' Housing Wage

It costs \$1,123/month to rent a decent two bedroom/one bath apartment in Long Beach.¹ The standard for housing affordability is that a family should not pay more than 30% of their earnings on rent. Thus, a working family needs to earn \$21.60 per hour – or \$44,924 per year – to afford the average two bed/one bath rent in Long Beach.

The minimum wage in California is not enough to pay the rent in Long Beach. At \$6.75 per hour, two full-time minimum wage workers supporting a family would have to each work nearly 64 hours per week to afford the average 2 bedroom/one bath rent.

Decent Rental Housing is Out of Reach For

fast food workers	\$14,800/year
garment workers	\$14,800/year
cashiers	\$15,200/year
security officers	\$17,100/year
nurses aides	\$18,800/year
social worker	\$24,900/year
bookkeepers	\$26,700/year
janitors (unionized)	\$27,500/year
administrative assistants	\$30,368/year
carpenters (non-union)	\$33,400/year
auto mechanics (non-union)	\$33,000/year
legal secretaries	\$36,000/year
computer technicians	\$37,400/year
grade school teachers	\$40,100/year
county sheriff deputies	\$43,600/year

¹ 110% of HUD, 2004, proposed fair market rent.

² February 2004 Dataquick, as printed in *LA Times*, using the mean of the medians listed for 11 representative Long Beach city zip codes.

³ This assumes 5% down, an interest rate of 6% and a loan period of 30 years.

* Postsecondary.

Long Beach Housing Wage:

For City of Long Beach renters

\$21.60/hour
\$44,924/year

For City of Long Beach homebuyers

\$47.35/hour
\$98,492/year

Homebuyers' Housing Wage

In February 2004, the median-priced home in the city sold for \$387,909.² The monthly mortgage payment needed to support buying the median priced Long Beach home is \$2,209/month (\$2,736 once taxes and insurance are included). A family would need to earn at least \$98,492 to support this mortgage, assuming they pay no more than 33% of the family's income.³

Homeownership is Out of Reach For

firefighters	\$45,800/year
registered nurses	\$47,700/year
police officers	\$49,400/year
computer programmers	\$49,858/year
electrical engineers	\$53,100/year
union carpenters	\$57,200/year
database administrators	\$59,000/year
nursing instructor*	\$59,300/year
geography instructor*	\$63,170/year
computer systems analyst	\$64,140/year
education administrator*	\$84,000/year

SCA N P H

Southern California Association of Non-Profit Housing
3345 Wilshire Blvd, Ste 1005 Los Angeles CA 90010
(213) 480-1249, fax (213) 480-1788
April 2004

Demographic Data for the Community Around Long Beach Memorial:

Long Beach Memorial Medical Center
2801 Atlantic Ave.
Long Beach, CA 90806

Data taken from the 2000 Census

- Zip Code: 90806¹ (12 mile width)
- Total Population for this zip code area: 49,641
 - 9.6 % are children under the age of 5.
 - 34.9% are children under the age of 18.
 - 6.8% are people 65 or over.
 - 27.3% of the population 21-64 years of age have some type of disability status.
- Primarily people of color:
 - 20.5% African American
 - 19.7% API
 - 43.4% Latino or Hispanic
- Significant immigrant population & need for language access:
 - 37.3% foreign born.
 - 59.4% speak a language other than English at home.
- Income:
 - Median family income is \$31,050, 38% lower than the national median family income of \$50,046.
 - 26.4% of families live below the poverty level, almost 3 times the national average.
 - 28.6% of individuals live below the poverty level, more than twice the national average.
- Housing:
 - 63.3% renter-occupied, 36.7% owner-occupied
 - Median value of single family home is \$171,000 compared to \$211,500 for California (19% lower than the CA median).

The General Plan Update notes that **the City has experienced a 49.2% increase in severely overcrowded units and that 58.0% of the housing units were built prior to 1960.**²

¹ Using the zipcode to represent the community surrounding LBMC and the planned expansion provides a better set of data for our purposes than a smaller geographic area.

² "Technical Background Report," *General Plan Update*, Ch. 2, p. 2-1.

DRAFT ENVIRONMENTAL IMPACT REPORT

FOR

NORTHSTAR HIGHLANDS

Prepared for:

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JULY 2004

4.2 POPULATION, HOUSING AND EMPLOYMENT

This section analyzes the population, housing, and employment impacts of the proposed project. Within this section are discussions on the population characteristics, housing, and employment opportunities within the planning region.

4.2.1 EXISTING SETTING

REGIONAL AND LOCAL SETTING

The project site is located on the Placer County portion of Martis Valley. This area of the Martis Valley has remained relatively undeveloped aside from a few recreational and residential developments. The majority of the population within the Placer County portion of the Martis Valley is located in three primary development areas, including Northstar-at-Tahoe, Lahontan, and the Ponderosa Palisades, Sierra Meadows, Ponderosa Ranchos, and Martiswood Estates subdivisions located adjacent to the Town of Truckee. However, both Northstar-at-Tahoe and Lahontan provide primarily recreational and seasonal housing; the majority of the permanent populations in the Placer County portion of Martis Valley reside in the Ponderosa Palisades, Sierra Meadows, Ponderosa Ranchos, and Martiswood Estates subdivisions. Other than these development areas, the majority of growth has occurred in Nevada County and the Town of Truckee.

Housing and development restrictions in the Lake Tahoe Basin, as well as area housing costs, have created an affordable housing shortage in the area. Additionally, resort communities tend to generate a large supply of low-paying jobs. Restrictions in the Lake Tahoe Basin were set up to manage the land use and resources of the Lake Tahoe region based on environmental protection and the encouragement of recreation-oriented land uses. The restrictive nature of potential development in the Tahoe Basin has forced surrounding areas to absorb the growth pressures. Housing projects in the Martis Valley area tend to be second home in nature (i.e., seasonal use) and are generally not considered affordable. Affordable housing developments are generally not proposed because of the high land values and the recreational oriented land use of the area.

Within the Tahoe area, a development right of one residential unit is given for each of the 16,000 Parcels in the basin, unless otherwise restricted. This means that multifamily projects must obtain development rights for each additional unit proposed and further land subdivisions are prohibited. Because of the land restrictions and the high land values of the area, affordable housing will continue to be limited (Placer County 1994a).

Population and growth projections for the Martis Valley Community Plan area are difficult to pinpoint based upon the recreational nature of the area and the use of the properties as secondary residences. Buildout figures from the 1975 Martis Valley General Plan, the 1994 Placer County General Plan, and recent development approvals provide a varied array of population and housing figures for the area.

The 1975 Martis Valley General Plan was prepared for an area within both Placer and Nevada Counties. This planning document provided growth projections based upon demographic information at the time. Most of the population figures have not been met. The permanent resident population in the Martis Valley General Plan area was estimated to be approximately 1,200 persons in 1975, with a relatively high percentage of second homes at approximately 80 percent. The average year round population was estimated based on three factors: (1) the seasonal nature of the job market associated with ski areas and construction work; (2) the tourist use and occasional rentals of condominiums; and (3) the intermittent occupancy of second homes (Placer County 1975a).

4.2 POPULATION, HOUSING AND EMPLOYMENT

The permanent population projected to be within the Martis Valley General Plan area for both Nevada and Placer Counties by buildout (1990) was estimated to be 22,000 to 25,000 persons. This estimate was based upon two methods for estimating permanent population. The first method was based upon the following assumptions: (1) the primary homes of moderate cost and mobile homes will serve permanent residents of the area; (2) the rentals of moderate cost will serve transient employees of the area but would generate the equivalent of 80 percent occupancy by permanent residents; and (3) there are 2,000 existing dwelling units that could serve a permanent population. This method of estimation results in a figure of 8,627 primary dwelling units or 25,881 permanent residents at 3.0 persons per dwelling unit. The second method for estimating permanent population was derived from the ratio of four secondary homes to three primary homes in the Tahoe area. The 1975 plan provided for 17,000 dwelling units of all types. Based on the basin ratio, the permanent population of the Martis Valley General Plan area at complete buildout would approach 22,000 persons (Placer County 1975a).

The 1975 Martis Valley General Plan also projected the peak weekend population to be approximately 41,000 persons for the Martis Valley area within Nevada and Placer Counties based upon the continued demand for primary and second homes, a peak occupancy rate of 80 percent, and an average of 3.0 persons per dwelling unit (Placer County 1975a). The rate and intensity of development expected within the Martis Valley portion of Placer County and analyzed within the 1975 Martis Valley General Plan has not taken place to date. The majority of growth since 1975 has occurred within the Nevada County portion of Martis Valley and the Town of Truckee, which was incorporated in 1993. The 2000 census identified census block group 5 of census tract 220.01, containing Martis Valley, as having a permanent population of 1,335 persons. Developments within the Placer County portion of the Martis Valley General Plan area have not added the number of permanent residents projected by the Martis Valley General Plan.

Demographics

Geographic Area

Demographic and employment data for the Martis Valley area are difficult to aggregate since Martis Valley is not a political entity nor a federally or regionally recognized area in terms of long-range planning or U.S. Census data collections. As such, very little data are available that are specific to Martis Valley.

In discussing demographics for the Martis Valley, data from three geographic areas in or relating to Martis Valley have been included. Not all data types (i.e., race, household income, or housing units) are available for each geographic area. The areas include the following:

Martis Valley Census Tract and Block Group

The closest level of data aggregation to the Plan area is a census block group; Census Tract 220.01, Block Group 5 (Martis Valley Block Group), does not fully coincide geographically with the Martis Valley, but provides an approximation for data purposes. Census Tract 220.01 (Martis Valley Census Tract) is a larger geographic unit, but fully encompasses the Martis Valley.

The census tract information for the Placer County portion of Martis Valley does not portray a full representation of the actual demographics for the area. The census information is primarily completed by full-time residents and property owners of the area and appears to have undercounted the dwelling units in the Placer County portion of Martis Valley. A majority of the individuals that have property or houses in Martis Valley use the property for recreational/second

4.2 POPULATION, HOUSING AND EMPLOYMENT

houses. Census information includes housing unit data for seasonal use, but does not include any household size, income, employment, or other demographic data for seasonal residents.

Placer High Country Regional Analysis District

The Placer County portion of the Plan area is within the Placer High Country Regional Analysis District (RAD). RADs are sub-County areas for which the Sacramento Area Council of Governments (SACOG) estimates and projects population, household, housing unit, and employment data. The Placer High Country RAD extends from east of the Colfax area to the northwestern border of the Lake Tahoe Basin, bordered to the north by Nevada County and to the south by the El Dorado County line. While the RAD is much larger than the Plan area, it includes data estimates that are more pertinent to the Plan area than Placer County data as a whole.

Placer County

1990 and 2000 census data have been used to provide demographic information for Placer County.

Town of Truckee

1990 and 2000 census data have been used to provide demographics for the Town of Truckee, which is the northern entry point to the Placer County portion of the Martis Valley. While the Town of Truckee provides amenities more targeted toward a population of permanent residents than does the Plan area, the demographics of Truckee are representative of the Martis Valley Plan area.

Population Trends

As shown in Table 4.2-1, the permanent population in the Martis Valley increased from 1,000 in 1990 to 1,185 in 2000, an increase of 18.5 percent. Persons in the RAD increased by 15.6 percent while the population of Truckee increased 55.6 percent.

TABLE 4.2-1
POPULATION TRENDS

	Martis Valley Plan Area ¹	Martis Valley Block Group ²	Martis Valley Census Tract ²	Placer High Country RAD ³	Placer County ²	Town of Truckee ⁴
1990	1,000	701	4,013	5,211	172,796	8,912
2000	1,185	1,335	5,501	6,025	248,399	13,864
Change	185	634	1,488	814	75,603	4,952
Percent Change	18.5	90.4	37.1	15.6	43.8	55.6

Sources:

- ¹ Placer County 1994a; Placer County aggregation of 2000 census data
- ² 2000 Census
- ³ Sacramento Area Council of Governments 2000, 2001
- ⁴ Town of Truckee 1994, 2000 Census

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Household Trends and Demographics

Households

During the decade from 1990 to 2000, households in the Martis Valley Census Tract increased by 39.8 percent, or 617 households, compared with increases of 69.2 percent and 57.4 percent in the Martis Valley Block Group and the Town of Truckee, respectively. Table 4.2-2 depicts household trends from 1990 to 2000.

TABLE 4.2-2
HOUSEHOLD TRENDS

	Martis Valley Block Group ¹	Martis Valley Census Tract ¹	Placer High Country RAD ²	Placer County ¹	Town of Truckee ³
1990	299	1,550	5,211	64,101	3,271
2000	506	2,167	5,803	93,382	5,149
Change	207	617	592	29,281	1,878
Percent Change	69.2	39.8	11.4	45.7	57.4

Sources:

¹ 1990 Census; 2000 Census

² Town of Truckee 1994, 2000 Census

³ Sacramento Area Council of Governments 2000, 2001

Table 4.2-3 contains household size data. In the Martis Valley Block Group, the average persons per residence was 2.63. This rate is used throughout this section in determining the population based on number of units in the Plan area. In Truckee, the average persons per residence were 2.72, only 0.09 higher than the Martis Valley Plan area figure.

TABLE 4.2-3
HOUSEHOLD TRENDS – 2000 CENSUS

Status	Martis Valley Block Group		Martis Valley Census Tract		Town of Truckee	
	Number	Percent	Number	Percent	Number	Percent
1 Person	90	17.8	484	22.3	961	18.6
2 Person	212	41.9	833	38.4	1,903	37.0
3 Person	77	15.2	359	16.6	916	17.8
4 Person	85	16.8	303	14.0	880	17.1
5 Person	23	4.5	123	5.7	310	6.0
6 Person	11	2.2	52	2.4	101	2.0
7 or more persons	8	1.6	13	0.6	78	1.5
Total	506	100	2,167	100	5,149	100
Persons / Household	2.63		2.52		2.72	

Source: 2000 Census

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As shown in **Table 4.2-4**, the Martis Valley Census block group had a median income of \$52,941 in 1999, which is \$5,907 or 10 percent less than the Town of Truckee median income of \$58,848.

**TABLE 4.2-4
MEDIAN INCOME**

Status	Martis Valley Census Tract 220.01	Town of Truckee	Martis Valley Block Group	Placer County
Median 1989 Household Income	\$35,121	\$36,676	\$40,819	\$36,676
Median 1999 Household Income	\$52,941	\$58,848	N/A	N/A

Source: 1990 Census STF3A; Town of Truckee General Plan 1994; 2000 Census SF3

Tenure

Tenure describes the proportion of renters to owners; tenure rates for Martis Valley are shown in **Table 4.2-5**. In the Martis Valley, the majority of households own their home, with 83.8 percent of households in the Martis Valley Block Group owning and 77.3 percent of households within the census tract owning. Within the Martis Valley Block Group, renters represent only 16.2 percent of householders while in the Town of Truckee the renter rate is higher at 32.9 percent.

**TABLE 4.2-5
HOUSING TENURE – 2000 CENSUS**

Status	Martis Valley Block Group		Martis Valley Census Tract		Town of Truckee	
	Number	Percent	Number	Percent	Number	Percent
Owner	424	83.8	1,675	77.3	2,314	67.1
Renter	82	16.2	492	22.7	1,137	32.9
Total	506	100	2,167	100	3,451	100

Source: 2000 Census STF1; Town of Truckee General Plan

Housing Units

The Martis Valley Community Plan area is estimated to have had approximately 1,935 housing units in 2001. The Martis Valley Block Group had 1,545 housing units in 1990; this number increased to 1,745 by 2000. Housing units in the Martis Valley Census Tract increased by 8.5 percent, 428 units, from 1990 to 2000 as depicted in **Table 4.2-6**. Placer County and the Town of Truckee both experienced high rates of development with respective increases of 37.8 and 40.8 percent.

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**TABLE 4.2-6
HOUSING UNIT TRENDS**

	Martis Valley Block Group ¹	Martis Valley Census Tract ¹	Placer High Country RAD ²	Placer County ¹	Town of Truckee ³
1990	1,545	5,022	5,610	77,879	6,932
2000	1,756	5,450	6,489	107,302	9,757
Change	211	428	879	29,423	2,825
Percent Change	13.7	8.5	15.7	37.8	40.8

Sources:

¹ 1990 Census; 2000 Census

² Sacramento Area Council of Governments 2000, 2001

³ Town of Truckee, 1994; 2000 Census

Housing Unit Occupancy

Table 4.2-7 contains occupancy data and further describes the type of occupancy or vacancy. Vacant homes in the Martis Valley area represent the majority of housing units, with 71.2 percent of homes in the Martis Valley Block Group vacant and 60.2 percent of homes in the census tract vacant. In the Martis Valley Block Group there were six vacant homes for sale or rent during the 2000 Census. The vast majority of unoccupied homes were seasonal, recreational, or other types of vacancies. Only 59 vacant units, 1.8 percent, in the census tract were available for sale or rent. Generally, a vacancy rate beneath 5 percent indicates a lack of choice in the housing market. In Truckee, year-round occupancy at 52.58 percent is higher than that of either the Martis Valley Census Tract or Block Group.

**TABLE 4.2-7
HOUSING UNIT OCCUPANCY AND TYPE OF OCCUPANCY OR VACANCY – 2000 CENSUS**

Status	Martis Valley Block Group		Martis Valley Census Tract		Town of Truckee	
	Number	Percent	Number	Percent	Number	Percent
Occupied	506	28.8	2,167	39.8	3,271	47.2%
Owner	424	83.8	1,675	77.3	2,134	30.8%
Renter	82	16.2	492	22.7	1,137	16.4%
Vacant	1,250	71.2	3,283	60.2	3,661	52.8%
Seasonal, Recreational	1,209	96.7	3,133	95.4	3,479	50.2%
For Sale or Rent	6	0.5	59	1.8	182	2.6%
Other Vacancy	35	2.8	91	2.9	N/A	N/A
Total	1,756	100	5,450	100	6,932	100%

Source: 2000 Census STF1; Town of Truckee General Plan

Housing Price and Availability

The recent developments within the Martis Valley Community Plan area cater to a second home or recreational home market. These projects are not designed to meet permanent housing

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needs. The developments are intended to provide seasonal activities that are oriented toward winter or summer.

The residential lots in the Lahontan development are broken down into the following price ranges: forest homesites are from \$210,000 to \$485,000; view homesites are from \$500,000 to \$1 million; and golf course homesites are from \$475,000 to \$800,000. A completed house and lot range from \$1 million to \$2.5 million. A membership at the Lahontan Golf Course is \$125,000 and a social membership is \$25,000.

The Northstar development contains homes, condominiums, and lots for sale. Based on a listing of Northstar properties sold from 1999 through April 2000, houses sold ranged in price from \$355,000 to \$1,924,500. Condominiums sold ranged in price from \$115,000 to \$425,000 and lots sold ranged in price from \$174,500 to \$410,000.

Data provided by County staff and used in the Lahontan I and II CEQA documents show that the annual combined owner/renter occupancy rate between 1984 and 1990 ranged from a low of 32.5 percent in 1986 to a high of 43.6 percent in 1990. During this period, the highest occupancy rate was 76.6 percent.

A cursory review of the occupancy rates would indicate that residential units are available for rent within the Plan area. However, the occupancy figures do not take into account that many of the residences are secondary/recreational homes and that the property owners have no intention of occupying the residences on a full-time basis. There is the potential that many of the residences are not available for rental purposes and that many residences that are offered for rent would not be available during the peak season (winter and summer months), when temporary or seasonal employees would need housing. The rental and housing prices within the Martis Valley are also prohibitive for seasonal or temporary housing.

The high priced nature of the Plan area developments precludes employees generated by these projects from living in the area.

Most of the individuals who work and live full time in the Plan area cannot afford to live in the Lahontan and Northstar-at-Tahoe developments. The property and housing prices in the Plan area would be prohibitive for most individuals that work in the vacation or resort industry.

Affordable and Employee Housing Projects

New developments in Martis Valley and surrounding areas have left a void in affordable housing for employees of low and moderate income paying jobs created by these resort communities. The rise in rents and housing values has made it difficult to find housing. The Town of Truckee and Placer County take an active role in ensuring the provision of affordable housing in the area.

Placer County has created a Redevelopment Agency to coordinate countywide affordable housing efforts. The Redevelopment Agency is responsible for the administration of the Community Development Block Grant (CDBG) Program. The Redevelopment Agency has currently secured approximately \$1,800,000 in State funding for affordable housing projects in the unincorporated County. In the last two years, more than \$800,000 has been committed for housing-related projects located in the Tahoe area. The following affordable housing programs are being initiated for the Tahoe Basin region in Placer County.

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- The Kings Beach Housing Rehabilitation Program, funded in 1998 and 2000 through CDBG and the Redevelopment Agency, was initiated to improve affordable housing. The County contracted with Mercy Housing to administer and implement the rehabilitation program. More than \$400,000 has been committed to the efforts to package and receive loan approvals in the Tahoe area.
- The County established an affordable housing in-lieu fee for certain projects within North Tahoe. The county has received \$84,000 from one project and a commitment of up to \$2,000,000 from another (Placer County, 2002).
- The Placer County Redevelopment Agency (RDA) entered into a Memorandum of Understanding with Affordable Housing Development Corporation (AHDC) in 2001 for the purpose of facilitating development of affordable housing. Once AHDC secures a site for development, the RDA provides financial assistance with the project. Currently, AHDC is proposing a 110-unit affordable housing complex in Tahoe Vista called Cedar Grove Apartments.

Northstar-at-Tahoe is leasing both the Hilltop Lodge and five houses in Truckee to accommodate 100 employees. Sawmill Heights, a workforce housing project, is planned at Northstar-at-Tahoe and would provide 96 units.

Within the Town of Truckee, there are several affordable housing projects that provide housing for low and medium income families. The federally funded Truckee Pines development contains 104 units for low-income households. Riverview Homes consists of 39 detached rental units for low and medium income households. Sierra Village is a 72 unit complex and 57 of those units will be for low-income families.

The County of Placer requires new resorts in the Sierra Nevada and Lake Tahoe areas to provide for employee housing equal to 50 percent of the housing demand generated by the project. To meet the County's resort housing requirements, tenants of the project must be (a) Northstar employees or employees working at Northstar, or (b) regional employees whose income does not exceed "moderate" income guidelines for Placer County.

Employment

The Truckee-Tahoe economy is heavily dependent upon the vacation and resort industry, with 28.5 percent of employees in the Martis Valley Census Tract working in retail, arts, entertainment, recreation, accommodation and food service jobs and 30.9 percent of employees in Truckee working in these jobs (Census, 2000). As a result of this emphasis, much of the ongoing development in the region is focused on the more affluent vacation and second home markets. **Table 4.2-8** contains the number of employed residents for the Martis Valley census tract, Placer High Country RAD, and the Town of Truckee.

Employment by occupation is represented for the Martis Valley census tract and Town of Truckee residents, in **Table 4.2-9**. Most of the jobs created by the vacation and resort industry are seasonal and/or relatively low paying support or service positions that do not provide sufficient income to rent or purchase housing in the area.

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**TABLE 4.2-8
EMPLOYMENT FIGURES**

	Martis Valley – Census Tract ¹	Town of Truckee ²	Placer High Country RAD
1990	2,082	4,961	368
2000	2,972	8,110	1,542
Change	890	3,149	1,174
Percent Change	42.7%	63%	319.0

Source: 1990 Census, 2000 Census

¹ SACOG Population Estimates and Housing Unit Inventory, 2000; SACOG Projections, 2001

² Truckee General Plan, 1994; 2000 figure based on Truckee CDP rate of employment increase from 1990 to 2000, CA Employment Development Department, Labor Market Information Division

However, information regarding place of residence that corresponds to place of employment indicates that 61 percent of the summer employees and 54 percent of the winter employees live and work within Truckee/Martis Valley region (LSC Transportation Consultants, 2002 / Appendix G in Northstar Highlands PEA). Additionally, 25 percent of the summer employees and 34 percent of the winter employees reside in the North Shore area. The remainders of the employees reside in Reno/Sparks/Verdi (5 percent summer/4 percent winter), Incline/Crystal Bay (3 percent summer/4 percent winter), Sierra/Plumas Counties (1 percent summer and winter), and nearby Donner Summit (1 percent summer and winter).

**TABLE 4.2-9
EMPLOYMENT BY OCCUPATION**

Occupation	Martis Valley – Census Tract ¹		Town of Truckee ²	
	Number	Percent	Number	Percent
Management, Professional and Related Occupations	1,069	36.0%	2,597	32.0%
Service Occupations	464	15.7%	1,559	19.2%
Sales and Office Occupations	706	24.0%	2,006	24.7%
Farming, Fishing and Forestry, Occupations	12	0.4%	43	0.5%
Construction, Extraction, and Maintenance Occupations	455	15.0%	1,305	16.1%
Production, Transportation, and Material Moving Occupations	266	8.9%	600	7.4%

Sources:

¹ 2000 Census

² Town of Truckee General Plan, 1994

Area Employment

The Northstar-at-Tahoe development is a second home or recreational community that has winter and summer sport opportunities. The resort is operated year-round and while it primarily creates part time or seasonal jobs, Northstar also provides full-time year-round employment

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opportunities. These jobs include cashiers, ski instructors, lift operators, food service, retail sales, golf course maintenance, and other recreational/vacation resort style jobs.

The current employment trend in Martis Valley results from developments that require a seasonal, low-paid labor force, but consist of exclusive housing that workers cannot afford. Developments in Martis Valley will continue to contribute to the regional problem of affordable housing.

4.2.2 REGULATORY FRAMEWORK

LOCAL

Placer County General Plan

The Placer County General Plan contains the policies analyzed in **Table 2** in **Appendix 4.0A** relative to the maintenance, improvement, and development of housing, along with providing a wide range of housing and employment opportunities. While this EIR analyzes the project's consistency with the Placer County General Plan pursuant to CEQA Section 15125(d), the Placer County Planning Commission and/or Board of Supervisors will ultimately make the determination of the project's consistency with this General Plan.

Martis Valley Community Plan

Table 2 in **Appendix 4.0A** analyzes the project's consistency with proposed Martis Valley Community Plan policies related to population, employment, and housing, and presents an evaluation of the consistency of the project with these statements as required by CEQA Guidelines 15125(d). While this EIR analyzes the project's consistency with the Martis Valley Community Plan pursuant to CEQA Section 15125(d), the Placer County Planning Commission and/or Board of Supervisors will ultimately make the determination of the project's consistency with this Community Plan.

4.2.3 IMPACTS AND MITIGATION MEASURES

STANDARDS OF SIGNIFICANCE

A population and housing impact is considered significant if implementation of the project would result in any of the following:

- Result in the exceedance of population projections set forth in the Placer County General Plan.
- Induce substantial growth or concentration of population in an area either directly or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure) that would be inconsistent with the Placer County General Plan and would result in a physical effect on the environment.
- Displace existing housing, especially affordable housing.
- Displace a large number of people.

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- Indirect environmental effects associated with inability to provide for affordable and/or employee housing equal to 50 percent of the demand projected for employees of the project.
- Conflict with Placer County policies associated with population, housing, and employment.

METHODOLOGY

Research on demographic and housing conditions was conducted using existing documents and other information sources. Information was obtained from governmental agencies through their Internet websites. Among these agencies were the U.S. Census Bureau, the Sacramento Area Council of Governments (SACOG), and the California Employment Development Department. The Housing Elements of Placer County and the Town of Truckee were additional sources of information on housing and socioeconomic conditions as well as housing policy.

The Town of Truckee, Town of Mammoth Lakes, and Town of Vail were contacted to obtain employment generation factors and housing policy information for resort areas. Newspaper articles and contacts with local real estate agencies provided more current information on housing prices. Based on an average household size of 2.63 persons for each multifamily housing unit, and 3.96 persons for each employee-housing unit, this would result in a maximum population of 4,883 persons at project buildout.

The proposed project would have no impact regarding displacement of housing because there are currently no housing units on the Highlands project site. Because the proposed project would not displace housing, displacement of people would also not occur.

PROGRAM (HIGHLANDS) IMPACTS AND MITIGATION MEASURES

Temporary Increase in Construction Employment

Impact 4.2.1 Buildout of the proposed project would create a temporary increase in construction employment. This impact is considered **less than significant**.

Buildout of the proposed project would generate temporary construction jobs between the construction period (May through October) of each year from May 2005 to October 2022. Construction of the proposed project would generate up to 450 temporary construction jobs each year at the peak day of construction. However, specific construction employment generation beyond Phase I cannot be estimated until subsequent phases have been designed.

The demand for construction workers that would be generated by development of the proposed project could be met by the existing labor force coming from the region containing Placer and Nevada counties. However, construction workers may also be imported from areas outside the region, such as Sacramento and Reno. Construction-related jobs associated with development projects similar to the project do not typically generate a demand for permanent housing. In fact, some construction trades would not be needed on an annual basis. In some years or phases, construction work may be limited to excavation, whereas in other years more finishing or building construction activities may occur. A variety of trades and contractors would be utilized throughout development of Highlands. Depending on the demand for future phases and planning for those phases, there may be years without any construction activity.

4.2 POPULATION, HOUSING AND EMPLOYMENT

It is anticipated that some of the employee housing would be available during the summer season, the peak construction period, for construction employees, since many of the seasonal, ski hill employees generally move elsewhere at this time of year (East West, 2004). The proposed project therefore would not be expected to generate the need for substantial additional permanent housing during the construction period. This impact is considered less than significant. Environmental effects related to commute trips of construction workers, such as those on air quality and traffic, would be temporary and are discussed in the respective sections of this EIR.

Mitigation Measures

None required.

Increase in Population Growth

Impact 4.2.2 Development of the proposed project could result in population growth of up to 4,883 new residents. The residential population generated by the proposed project would not exceed the holding capacity of the Martis Valley Community Plan area (Plan area). This impact is considered **less than significant**.

The proposed project is located within the MVCP area. The County General Plan identified the holding capacity of the Plan area as 21,500 persons, based on development of 8,600 dwelling units. The Martis Valley holding capacity is calculated as 80 percent of the maximum 1994 buildout capacity (Placer County 1994), or 20,209 persons. As the County General Plan does not distinguish between year-round and seasonal or part-time residences, the population is based on full-time occupancy of the residences. Buildout of the proposed project would result in the addition of up to 1,450 multifamily housing units and 270 employee housing units to the Plan area. Based on an average household size of 2.63 persons for each multifamily housing unit, and 3.96 persons for each employee-housing unit, this would result in a maximum population of 4,883 persons at project buildout. However, the population of the Martis Valley is primarily seasonal. Using a year-round occupancy rate of 20 percent for the multifamily housing units, 763 of the residential units would be occupied on a year-round basis at project buildout, resulting in a year-round resident population of 1,832 persons at project buildout, as shown in Table 4.2-10.

**TABLE 4.2-10
PROJECT BUILDOUT POPULATION GENERATION (2022)**

Year-round Residency Rate (%)	Units	Resident Generation ¹	Seasonal Residents ²	Permanent Residents ²
100	1,450 multifamily units	2.63 persons per multifamily unit ¹	0	3,814
20 ²	1,450 multifamily units	2.63 persons per multifamily housing unit	3,051	763
100	270 employee housing units	3.96 ³ persons per multifamily employee housing unit	0	1,069

Source: Placer County 2002b

¹ Placer County 2002

² 20 percent year-round residency rate applies only to multifamily units. All residents in employee housing units would be year-round residents.

³ East West Partners 2003

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The total housing units added to the Martis Valley Community Plan area as a result of the buildout of the proposed project represent 16.8 percent (based on 2003 MVCP) of the Martis Valley Community Plan area buildout amount. The project at buildout would not exceed the holding capacity of the Martis Valley Community Plan area.

The increase in the year-round resident population as well as the addition of a seasonal population would result in direct and indirect environmental effects on areas such as noise, community services, traffic, and air quality, which are discussed in the relevant sections of this EIR. Although the proposed project would result in population growth, the Martis Valley Community Plan area is designated for such growth in the County General Plan. Buildout of the proposed project would result in an addition of up to 1,450 multifamily housing units and 270 employee-housing units. In addition, the Northstar resort community, which contains the proposed project site, has been designated for growth in the 1971 Northstar-at-Tahoe Master Plan, the 1975 Martis Valley General Plan, the MVCP, and the Placer County General Plan, and the proposed project is consistent with designations within these plans. Therefore, impacts relating to population growth are considered **less than significant**.

Mitigation Measures

None required.

Jobs/Housing Balance

Impact 4.2.3 The proposed employee housing at project buildout would accommodate 50 percent of the employees employed on the Highlands project site. The proposed project at buildout is considered to be balanced in terms of the jobs/housing ratio required by the County General Plan. However, available employee housing will not be available until project buildout. This impact is considered **potentially significant**.

The residential, ski services, hotel, and public components of the proposed project are expected to generate as many as 701 full-time employee equivalent jobs. These full-time employee equivalent jobs take into account both full-time and part-time jobs. **Table 4.2-11** shows the number of direct jobs that could be expected at buildout of the proposed project using the following ratios. As required by the Housing Element of the County General Plan, the proposed Highlands project is required to provide housing for 50 percent of the employees it generates. **Table 4.2-11** shows the number of employee housing units required, based on 3.96 persons per employee housing unit (East West Partners 2003) (based on the capacity of employee housing for Northstar Village and the projected capacity of Sawmill Heights).

Placer County has developed a draft Employee Housing Ordinance as part of the County's implementation of the programs provided in the 2000-2007 Housing Element. The draft Employee Housing Ordinance would establish employee housing requirements, consistent with Policy A.14, for commercial service, commercial retail, industrial, office, recreation, residential, resort, transient lodging, and timeshare uses at an elevation of 5,000 feet or higher. The employee housing requirement can be met through the following methods: provision of employee housing on-site, provision of employee housing off-site, dedication of land, or payment of an in-lieu fee. Projects would be required to submit a housing mitigation plan that details the type, occupancy, and implementation (e.g., timing, fee payment, offer of dedication) proposed for the project.

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The coordinator at the Big Springs Day Lodge would schedule and coordinate anticipated employees for special events. The Big Springs Day Lodge would absorb the employees. No new employees would be generated.

Buildout of the proposed project would result in the development of 1,450 dwelling units, plus 275 employee-housing units. It is conservatively estimated that the proposed condominium and townhome units, with the exception of the proposed employee housing units, would not be affordable to most of the people who would be employed on the project site. However, it is not anticipated that every employee would live on the project site nor that all employees live where they work.

**TABLE 4.2-11
EMPLOYMENT GENERATION PROJECT BUILDOUT**

Land Use Type	Units	Employment Generation	Jobs	Employee Dwelling Units Needed ¹
Condominium – transient rental	1,450 units	0.33 FTEE/du ¹	479	121
Hotel	255 rooms 12,000 sf	0.33 FTEE/room	84	22
Skier Services	30,000 sf	2.0 FTEE/1,000 ² sf	60	16
Homeowners Association Recreation Center	16,000 sf	2.0 FTEE/1,000 sf	32	8
Spa Facility in Hotel	20,000 sf	2.0 FTEE/1,000 sf	40	10
Intercept Lot	32 peak-hour bus trips	1.00 FTEE/6 peak hour bus trips	6	2
Highlands Project Subtotal			701	177
Village Project			388	98
Total			1,089	275

FTEE = full-time employee equivalent
 sf = square feet
 du = dwelling unit

¹Employee housing needs are based on 3.96 persons per employee housing unit (based on design of Sawmill Heights which would accommodate an average of 3.96 employees per housing unit; the number of employees that would live in each unit is based on the number of bedrooms of each unit)

²EDAW, 2003; Draft Employee Housing Ordinance, Placer County 2003

Sources: LSC Transportation Consultants 2001, Town of Mammoth Lakes 1999, Town of Vail 1991, Placer County 2002c, East West Partners 2002

The indirect effects of employees traveling to their job site include traffic, and air quality and noise impacts related to traffic. Trips generated by employees of the project are included in the overall trip generation for the project and are discussed in Section 4.4, Transportation and Circulation. Noise and air quality impacts resulting from these trips are included in the discussions of air quality and noise impacts resulting from trips generated by the project and are discussed in the relevant sections of this EIR.

The proposed Highlands would generate approximately 701 jobs. Additional development proposed for the Northstar-at-Tahoe resort community, such as the proposed Northstar Village

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expansion project, would generate as many as 388 additional jobs for the community. The two projects combined (Northstar Village plus Highlands) would generate approximately 1,089 jobs. One of the objectives of the proposed project is to designate sufficient land to provide appropriate locations for affordable housing to serve Northstar's employees and/or regional employees whose income does not exceed moderate-income guidelines, and to provide housing primarily for Northstar employees, employees working at Northstar, or regional employees whose income does not exceed the moderate-income guidelines. For this reason, it is assumed that employee housing designated within the project site would also accommodate employees generated by the Northstar Village project. Therefore, the totals listed in **Table 4.2-11** also reflect the Northstar Village project. Assuming a rate of 3.96 residents for each of the employee housing units, based on the employees per unit that would be accommodated by Sawmill Heights Employee Housing, the 388 jobs generated by the Northstar Village project will result in the need for an additional 98 employee housing units. To comply with Placer County's requirements for employee housing, Northstar Village will need 49 employee housing units, assuming 3.96 employees per unit.

Assuming that 49 of the Sawmill Heights employee housing units would be occupied by employees generated by the proposed Northstar Village expansion project, the 47 remaining Sawmill Heights Units would be available to accommodate Northstar Highlands employee housing needs. The Highlands would generate 701 employees, which translates into 177 employee housing units needed. To comply with Placer County's requirements for housing resort employees, Northstar Highlands would need to provide 89 employee housing units. This exceeds the units anticipated to be available at Sawmill Heights by 42 units. In addition to the Sawmill Heights units, 174 employee housing units would be available from the future employee housing sites. The 221 total employee housing units available to Northstar Highlands would exceed the 89 employee housing units Northstar Highlands would be required to provide. However, since no timing has been specified for the development of the future employee housing sites, there will be a shortfall of employee housing if future phases of Northstar Highlands are developed in advance of the future employee housing sites or without an employee housing component, resulting in a **potentially significant impact**.

Mitigation Measures

MM 4.2.3

The project applicant shall mitigate potential impacts to employee housing through compliance with the Placer County General Plan Housing Element Policy (2.A.14) requiring new Sierra Nevada and Lake Tahoe projects to house 50 percent of the employee housing demand (e.g., FTEE employees) generated by the project. Prior to the approval of a final map, and with submittals of future tentative maps and/or CUP applications, the project applicant shall submit to Placer County an Employee Housing Mitigation Plan that details the method of providing the required employee housing units, proposed occupancy (rental or for-sale), number of employees served by the employee housing units or, in the case of land dedication or in-lieu fee payment, number of employees credited, site suitability if land dedication is proposed, transportation to and from the project (if employee housing is located off-site), timing of the development of employee housing units, and any incentives requested. For each subsequent development phase, the need for employee housing shall be accommodated by providing the correct ratio of employee housing units.

The employee housing units shall be provided in one of the following ways: (1) provide on-site employee housing, 2) provide off-site employee housing

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(either through construction of new housing or substantial rehabilitation of an existing structure), 3) dedicate land for employee housing, or 4) pay an in-lieu fee.

Timing/Implementation: Submitted with future tentative map or CUP application submittals and implemented before issuance of occupancy permits

Enforcement/Monitoring: Placer County Planning Department

Implementation of mitigation measure MM 4.2.3 would reduce the affordable housing and employee-housing imbalance impacts to **less than significant**. The above mitigation measure would bring the project into consistency with policies pertaining to housing in the Martis Valley Community Plan, and the Placer County General Plan. Because the housing units would be consistent with the Plan for the area in which they are built, and because of the limited number of units that are required, impacts of that development with mitigation would be less than significant.

PROJECT (PHASE 1) IMPACTS AND MITIGATION MEASURES

Temporary Increase in Construction Employment

Impact 4.2.4 Construction of the proposed Phase 1 development would generate up to 466 temporary construction jobs (EDAW, 2003), each year at the peak day of construction during Phase 1. Construction would not generate an additional need for permanent housing and would be temporary. This impact is considered **less than significant**.

Refer to Impact 4.2.1 for detailed discussion of this impact. Phase 1 of the proposed Highlands project would generate up to a maximum of 466 temporary construction jobs during the construction period (May through October) each year from May 2005 to October 2010. Some of the employee housing will be utilized during the summer construction periods for contractor employees, since many of the seasonal ski workers will have moved elsewhere. This would provide housing opportunities on-site and reduce traffic and traffic-related effects. The contractors would use Northstar Shuttle and Chondolas to get to and from the jobsite everyday. This issue is also discussed in detail in Section 4.4 Transportation. The proposed project therefore would not generate the need for substantial additional permanent housing during the construction period. This impact is considered **less than significant**.

Mitigation Measures

None required.

Increase in Population Growth

Impact 4.2.5 Phase 1 development could result in population growth of up to 990 persons. The residential population generated by Phase 1 of the proposed project would not exceed the holding capacity of the Martis Valley Community Plan area (Plan area). This impact is considered **less than significant**.

Refer to Impact 4.2.2 for a discussion of the holding capacity of the Martis Valley Plan area. Phase 1 of the proposed project would result in the construction of 232 multifamily housing units

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and 96 employee housing units, generating 990 persons. However, the population of the Martis Valley is primarily seasonal. At a 20 percent year-round occupancy rate for the multifamily housing units, 46 of the developed multifamily housing units would be occupied on a year-round basis, resulting in a permanent resident population of 502 persons in Phase 1, as shown in **Table 4.2-12**.

As discussed in Program Level impacts, the population growth generated by the proposed project, including Phase 1, would be consistent with the growth designated for the Plan area. Therefore, impacts relating to population growth are considered **less than significant**.

Mitigation Measures

None required.

**TABLE 4.2-12
PHASE 1 POPULATION GENERATION (2010)**

Year-round Residency Rate (percent)	Units	Resident Generation	Seasonal Residents	Permanent Residents
100	232	2.63 persons/multifamily du	0	610
20	232	2.63 persons/multifamily du	488	122
100	96	3.96 persons/employee housing du	0	380

du - dwelling unit

Creation of Short-Term Jobs/Housing Imbalance

Impact 4.2.6 While Phase 1 of the proposed project would result in the creation of 201 full-time employee equivalent jobs, Phase 1 would provide sufficient employee housing units to accommodate its demand for employee housing. This impact is considered **less than significant**.

Phase 1 developments are expected to generate as many as 201 full-time employee equivalent jobs. These full-time employee equivalent jobs take into account both full-time and part-time jobs. **Table 4.2-13** shows the number of jobs that would be directly generated by the Phase 1 development. As required by the Housing Element of the Placer County General Plan and the MVCP, the proposed Phase 1 development is required to provide housing for 50 percent of the employees it generates. **Table 4.2-11** shows the number of employee dwelling units required, based on 3.96 persons per employee housing unit.

Phase 1 of the proposed project would result in the development of 232 multifamily housing units and 96 employee-housing units. It is conservatively estimated that the proposed housing units in Phase 1 would not be affordable to most of the people who would be employed on the project site. However, it is not anticipated that every employee would live on the project site nor that all employees live where they work.

The indirect effects of employees traveling to their job site include traffic, and air quality and noise impacts related to traffic. Trips generated by employees of the project are included in the

4.2 POPULATION, HOUSING AND EMPLOYMENT

overall trip generation for the project and are discussed in Section 4.4, Transportation and Circulation. Noise and air quality impacts resulting from these trips are included in the discussions of air quality and noise impacts resulting from trips generated by the project and are discussed in the relevant sections of this EIR

Phase 1 of the Highlands would generate approximately 201 jobs. Additional development proposed for the Northstar resort community, such as the proposed Northstar Village expansion project, would generate as many as 388 additional jobs in Northstar, resulting in combined job growth of up 589 jobs. It is assumed that employee housing within Phase 1 of the proposed project would also accommodate employees generated by the proposed Northstar Village expansion project. Assuming a rate of 3.96 residents for each of the employee housing units, based on the average number of employees that would live in each unit at Sawmill Heights, the 388 jobs generated by the proposed Northstar Village expansion project would result in the need for an additional 98 employee housing units.

**TABLE 4.2-13
PHASE 1 EMPLOYMENT GENERATION**

Land Use Type	Units	Employment Generation	Jobs	Employee Dwelling Units Needed ¹
Condominium – transient rental	232 units	0.33 FTEE/du ²	77	20
Hotel	255-rooms/12,000 sq.ft.	0.33 FTEE/room	84	22
Spa facility in Hotel	20,000 sq. ft	2.0 FTEE/1,000 sf	40	11
Highlands Phase 1			201	51
Village Project			388	98
Total			589	149

du = dwelling unit

FTEE = full-time employee equivalent

¹*Employee housing needs are based on 3.96 persons per employee housing unit (based on design of Sawmill Heights which would accommodate an average of 3.96 employees per housing unit; the number of employees that would live in each unit is based on the number of bedrooms of each unit)*

²*EDAW, 2003; Draft Employee Housing Ordinance, Placer County 2003*

Sources: LSC Transportation Consultants 2001, Town of Mammoth Lakes 1999, Town of Vail 1991, Placer County 2002c, East West Partners 2002

Assuming 49 of the Sawmill Heights employee-housing units would be occupied by employees generated by the proposed Northstar Village expansion project, the 47 remaining Sawmill Heights units would accommodate 50 percent (26 units) of the demand for 51 units generated by Phase 1 of Northstar Highlands. The proposed Phase 1 development would be balanced in terms of jobs/housing ratio, resulting in a **less than significant** impact.

4.2 POPULATION, HOUSING AND EMPLOYMENT

Mitigation Measures

None Required.

4.2.4 CUMULATIVE SETTING, IMPACTS AND MITIGATION MEASURES

CUMULATIVE SETTING

Regionally, Northstar Highlands is part of a larger resort area that is primarily the northwest quadrant of the Lake Tahoe area that includes the communities of Squaw Valley, Alpine Meadows, Town of Truckee, and the Tahoe Basin (e.g. Kings Beach). The cumulative setting for population, housing, and employment includes approved and proposed development within the region (see **Table 4.0-1** and **Figure 4.0-1**) as well as development anticipated under the Martis Valley Community Plan, Town of Truckee General Plan, and resort activities associated with Northstar-at-Tahoe, Lake Tahoe, Alpine Meadows, and Squaw Valley. Affordable housing efforts in the region, as well as regional population, housing, and employment demographics, are detailed under 4.2.1 Existing Setting.

IMPACTS AND MITIGATION MEASURES

Cumulative Population Growth and Housing Need

Impact 4.2.7 Development of the Northstar Highlands project would result in increased population in the Martis Valley region as well as additional need for employee housing inconsistent with Policy A.14 of the Placer County General Plan. This is considered a **cumulative significant** impact.

Cumulative development in the vicinity of the project would increase the population and number of housing units within Placer County. However, development of Northstar Highlands is consistent with the land use designations and growth assumed in the Placer County General Plan, the 1975 Martis Valley General Plan, and the Martis Valley Community Plan. The General Plan has placed the Community Plan designation in the Martis Valley area in order to accommodate anticipated growth. The project's contribution to population growth has been identified and considered within the General Plan EIR as well as the Martis Valley Community Plan EIR.

As described under Impacts 4.2.1 and 4.2.2, development of Northstar Highlands would result in increased population and employment and would contribute to the regional need for affordable housing. The Northstar-at-Tahoe resort provides employee housing at Hilltop Lodge and at homes in Truckee. The proposed project includes construction of 270 employee-housing units, which would accommodate more than 50 percent of the employees generated by the project, as required by Policy 2A.14 of the Placer County General Plan Housing Element. Thus, the proposed project would not contribute to the cumulative demand for affordable employee housing in the Martis Valley area. The environmental impact of creating more jobs than housing occurs primarily through the increase in trips that employees would make to travel to and from their home and place of employment. Employee trips are a component of the trip generation factors based on types of land use and thus are considered in the analysis of transportation/circulation, air quality, and noise impacts of the proposed project in this EIR.

4.2 POPULATION, HOUSING AND EMPLOYMENT

Mitigation Measures

Implementation of mitigation measure MM 4.2.3 would reduce the project's contribution to cumulative population, housing and employment impacts; therefore, the cumulative impact is considered **less than significant**.

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**Lassen County
Dyer Mountain Resort
Draft Environmental Impact Report
(SCH # 2001052122)**

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CHAPTER 5 POPULATION, HOUSING AND EMPLOYMENT

The Dyer Mountain Resort project proposed to construct 4,104 new resort residential units including 1,478 single family homes, 2,126 multi-family units, 500 hotel rooms, and a yet-to-be determined amount of employee housing. This project is expected to generate 1,051 seasonal jobs and 825 year-round jobs.

This chapter analyzes the impact that the proposed project would have on the area's population and housing supply, particularly affordable housing, and determines whether any shift in the jobs-housing balance would occur as a result of project construction. To assess these impacts, the analysis 1) describes the current population, employment and housing conditions; 2) identifies housing and employment levels to be generated by the Dyer Mountain Resort project; 3) determines the extent of offsite housing that would be needed to accommodate workers as a result of new job opportunities; and 4) evaluates the jobs/housing balance within the context of the proposed project as defined by the Dyer Mountain Initiative and *Lassen County General Plan 2000*, as amended by passage of this initiative.

Data are taken from several recent sources to analyze the potential impacts on population, employment, and housing — particularly affordable housing. The primary sources are the January 2004 Proponent's Environmental Analysis (PEA) prepared by Jones & Stokes, the *Westwood/Clear Creek Area Plan*, the *Lassen County General Plan 2003 - 2008 Housing Element*, and the 2000 Census of Population and Housing (Census 2000) conducted by the U.S. Census Bureau. provides data for various geographic levels such as countywide, citywide, Census designated place (CDP), and Census county division (CCD). The Census data for this analysis are taken at the Census county division (CCD) level; this subdivision is used for presenting housing and employment data in areas that do not have well-defined political boundaries served by local governments, as is the case with the Westwood, Pinetown, and Clear Creek communities; the Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village communities; and the Susanville vicinity, including Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville.

5.1 ENVIRONMENTAL SETTING

Population

According to Census 2000, the Westwood/Clear Creek area contains 2,252 households with a total population of 2,900 people. These figures represent a 2 percent increase in the number of households over the 1990 level and a 2 percent decrease in total population, which indicates that the average household size is decreasing. No growth rate projections are yet available from the State of California Department of Finance (DOF) for the Westwood/Clear Creek area.

By comparison, Lassen County's population within the unincorporated County (excluding prison populations and group quarters) has increased slightly more—since 1990 the County grew from an estimated 16,269 to 16,964 in 2003, representing a 4.3 percent increase. The number of households in unincorporated Lassen County is projected to grow from 6,109 in 2000 to 6,996 by 2020, an increase of 14.5 percent (Lassen County 2003).

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The average household size for unincorporated Lassen County has decreased from 2.74 persons per household in 1990 to 2.65 in 2000; the number of one- and two-person households showed significant gains over the decade, while the number of four- and five-person households declined during the same period. The Westwood/Clear Creek average household size is even lower, at 2.41 persons per household.

The median household income in the Westwood/Clear Creek area is \$29,490 (in 1999 dollars), meaning that half of all households earned more than this amount and half earned less. This represents a 19.4 percent increase over 1990 levels. Despite the increase in median income, 18.2 percent of the residents live at or below the poverty level. Countywide, the median household income is higher - \$36,310 (in 1999 dollars). Census 2000 reported that a majority of households in the unincorporated County own their homes (76 percent), while the remaining 24 percent are renters.

Table 5.1 summarizes the population and household income data for Lassen County and the Westwood/Clear Creek area, as provided in Census 2000.

**Table 5.1
Demographic Summary**

Population	Income
1990 U.S. Census Data	
<i>Westwood/Clear Creek</i> Total population = 2,965 Households = 1,175	Median Household Income = \$23,766
<i>Lassen County</i> ¹ Total population = 27,598 Households = 8,545	Median Household Income = \$26,764
2000 U.S. Census Data	
<i>Westwood/Clear Creek</i> Total population = 2,900 Households = 1,203	Median Household Income = \$29,490
<i>Lassen County</i> ¹ Total population = 33,828 Households = 9,625	Median Household Income = \$36,310

¹ - includes City of Susanville

Sources: 1990 U.S. Census, Census 2000 for Westwood CCD.

Employment

According to the U.S. Census, about 50 percent of the local labor force in the Westwood/Clear Creek area is employed. The majority of employment in the vicinity of the project site is confined to these two communities. Businesses that provide jobs to area workers include professional services, personal services, commercial trade, rooming/boarding houses, motels, auto-related services, and transportation services (Lassen County 1999a). On a countywide basis, the major employers in Lassen County represent a range of industries, although the public sector is most heavily represented. The Public Administration sector employs the largest number of workers (25 percent), followed closely by Education, Health and Social Services (22 percent). The next largest industry in the local area and countywide is Retail Trade, which represents about 11 percent of total County employment (Lassen County 2003), and about 12 percent of the Westwood/Clear Creek area's employment (Jones & Stokes 2004). While the

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largest numerical increase in employees since 1990 was Education, Health and Social Services (556), the industry with the largest percentage increase in employment since 1990 was Arts, Entertainment and Recreation Services, showing a 375 percent gain.

The primary source of employment presently on the project site is timber production, although only around 6 percent of the local work force is reported as being employed in the forestry or agriculture industry. Timber production is the largest manufacturing sector activity within the County, which produces 3 percent of total timber in the State (California DOF 2002, as cited in Jones & Stokes 2004). However, Census 2000 reports a shift over the last decade in the Lassen County economy from basic industries such as agriculture and timber production to more of a services-based economy.

At 10.1 percent, the Westwood/Clear Creek unemployment rate is quite high compared to the County's rate of 4.9 percent (California Employment Development Department 2002, as cited in Jones & Stokes 2004). Table 5.2 identifies the number of currently unemployed workers that could fill available jobs within the Dyer Mountain Resort project. It shows approximately 1,032 unemployed workers within a 40-minute commute range of the proposed Dyer Mountain Resort.

Table 5.2
Unemployment in Susanville, Chester/Lake Almanor, and Westwood/Clear Creek Areas

Community	Male	Female	Total
Susanville & vicinity ¹	404	275	679
Lake Almanor/Chester & vicinity ²	105	73	178
Westwood & vicinity ³	126	49	175
TOTAL	635	397	1,032

¹includes Susanville vicinity, Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville

²includes Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village

³includes Westwood/Clear Creek area, and Eagle Lake vicinity

Source: Census 2000 Summary File 1 (SF1)

Housing

Of the 12,000 housing units in Lassen County, there are currently 2,252 housing units in the Westwood/Clear Creek area. Approximately 75 percent of the units are single-family homes, which is slightly more than the overall County, where 68 percent of existing housing units are single-family homes. Mobile homes are the next largest category of housing, comprising 18 percent of Westwood/Clear Creek units as compared with nearly 20 percent countywide. A single housing unit is currently located on the project site - it is an old cabin used during the summer season by a rancher.

About a quarter of the housing units in the area were built in 1939 or earlier, and a nearly equal amount were built between 1980 and 1990. Sixteen percent (16 percent) of the units were built since 1989. A 2001 housing conditions survey of Westwood showed that approximately 67 percent of residential properties exhibited physical deterioration ranging from deferred maintenance to dilapidation; one-third of all homes (33 percent) required substantial repairs or replacement (Parsons and Connerly Associates 2001).

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The following are other Census 2000 facts about housing in the Westwood/Clear Creek community:

- In 1999, 81 building permits were obtained for the unincorporated areas of Lassen County. All of these permits were for single-family residential structures;
- The median value of a home in the Westwood/Clear Creek area was \$89,200;
- The median monthly homeowner costs (with a mortgage) are \$813;
- The median contract rent is \$405; and
- The vacancy rate for owner-occupied homes and rental units is 6.1 percent and 17.8 percent, respectively. However, those numbers are reduced to 5.4 percent and 6.9 percent, respectively, after removing the seasonal (vacation) homes from the mix (Note: 72.1 percent of all vacant homes are for seasonal, recreational, or occasional use).

Table 5.3 provides Census 2000 data showing the number of vacant units (non-recreational, non-seasonal, non-farmworker) in and around the Westwood/Clear Creek, Susanville, and Lake Almanor/Chester areas. According to the Census 2000 Factfinder Definitions, these vacant units are identified as being either for sale, for rent, or "other" vacant units being maintained by a caretaker, janitor, or held vacant for personal reasons. Approximately 1,128 dwelling units are available to provide Dyer Mountain employee housing within a 40-minute commute shed.

Table 5.3
Vacant Units in Susanville, Chester/Lake Almanor, and Westwood/Clear Creek Areas

Community	Vacant Rental	Vacant For-Sale	Vacant Other	Vacant Total¹
Susanville & Vicinity ²	228	150	201	579
Lake Almanor/Chester & Vicinity ³	76	80	100	256
Westwood & Vicinity ⁴	72	57	164	293
TOTAL	376	287	465	1,128

¹excludes: seasonal, recreation, and occasional use homes; migrant worker housing

²includes Susanville vicinity, Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville

³includes Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village

⁴includes Westwood/Clear Creek area, and Eagle Lake vicinity

Source: Census 2000 Summary File 1

Vacant sites and potential units that could provide additional new housing construction in Westwood and Clear Creek for employee households are shown in Table 5.4 and Table 5.5 below. The Westwood Community Services District (CSD) presently serves 914 units and has an estimated capacity with current water and sewer facilities to serve an additional 522 units; the Lassen County Housing Element projects approximately 218 units to be built within the 2003-2008 planning period. The Clear Creek CSD currently serves 154 units and has capacity to serve an additional 46 units with its present facilities (Lassen County 2003). While this community's vacant land provides the potential to build up to 68 units (known to have a reliable water supply), the Housing Element projects that approximately 80 units will be built during this same planning period, if the Clear Creek CSD facility capacity is increased to meet the demand.

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Table 5.4
Vacant Sites and Potential Units in Westwood

Zoning	Vacant		Typical Density (dwelling units per acre)	Potential Units (with available water & sewer)	New Units ¹
	Acres/Parcels				
R-3	8	12	8.25	66	40
R-2	13	46	6	78	24
R-1	9	54	6	54	54
PUD	81	4	4	324	100

1 - Refers to number of new units reasonably expected within the planning period.
Source: Lassen County 2003-2008 Housing Element

Table 5.5
Vacant Sites and Potential Units in Clear Creek

Zoning	Vacant		Typical Density (dwelling units per acre)	Potential Units (with available water & sewer)	New Units ¹
	Acres/Parcels				
R-3	---	---	---	---	---
R-2	---	---	---	---	---
R-1	17	13	4	68	40
PUD	270	3	4	Unknown ²	40

1 - Refers to number of new units reasonably expected within the planning period.
2 - Water supply will need to be established with each development proposal.
Source: Lassen County 2003-2008 Housing Element

5.2 REGULATORY FRAMEWORK

No federal or state regulations related to population or housing apply to the proposed project.

Lassen County

The Lassen County General Plan Land Use Element indicates that, as Lassen County's population continues to grow, new housing development and employment opportunities "are necessary for the economic well-being of the County and its people." The General Plan, including the 2003-2008 Housing Element, contains goals, policies, and programs that address population growth, employment, and residential development. Although voter approval of the Dyer Mountain Initiative removed the Dyer Mountain Resort project site from the Westwood/Clear Creek Area Plan in November 2000, the relevant goals and policies from that plan are listed below to provide a basis for evaluating the effect of the project on the remaining area covered by the plan. Relevant goals, policies and programs are as follows:

Lassen County General Plan 2000

GOAL L-7: Consistent with the Housing Element, maintain an adequate amount of housing and diverse residential opportunities and land uses which are located in consideration of the availability of support services and infrastructure, avoidance of conflicting land uses, and the minimization of development impacts.

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LU-17 POLICY: The County shall, after confirmation of the area's appropriateness for such use and consideration of other resource values, designate and zone appropriate areas for residential development.

LU-18 POLICY: Pursuant to the Housing Element, the County will help provide adequate sites to be designated in the General Plan and zoned for residential land use to meet the objectives of the Housing Element, and will help facilitate the expansion of needed water, sewer and fire protection services.

LU-20 POLICY: The County shall refer to the Housing Element for applicable policies pertaining to the development of housing.

2003-2008 Housing Element

GOAL: To provide an adequate supply of sound, affordable housing units in a safe and satisfying environment for the present and future residents of the County, regardless of race, age, religion, sex, marital status, ethnic background, or personal disabilities, and support economic development projects which will provide employment opportunities so that people will be able to afford adequate housing.

POLICY: The following policies will guide the objectives and programs necessary to fulfill the County's housing goal. The County will, within its capabilities:

- Ensure that there is an adequate number of housing units to meet the needs of its citizens.
- Ensure that housing is affordable to all economic segments of the community.
- Facilitate the provision of adequate sites and facilities to support future housing needs.
- Ensure that there are housing units available to serve persons with special housing needs.
- Work diligently towards the rehabilitation of the existing housing stock and strive to replace housing units in need of repair.
- Encourage regular maintenance of housing as a means of conserving existing housing stock.
- Develop strategies and actions to increase home ownership opportunities through economic development, including preservation and creation of employment opportunities.
- Support resource-based employment and lumber production by supporting productive timber management and harvest practices.
- Maintain a healthy jobs-to-housing balance.
- Facilitate the development of infrastructure (sewer, water and access roads) in appropriate locations to better serve housing and job creation opportunities.

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- Assist citizens in need of short-term emergency housing.
- Discourage discrimination in housing.
- Provide ample opportunities for citizen participation as part of the housing element preparation and revision process.
- Maintain consistency among all General Plan policies.

Westwood/Clear Creek Area Plan

GOAL L-6: An adequate amount of housing and diversified residential opportunities, including affordable housing, which are located with consideration to the availability of support services and infrastructure, avoidance of conflicting land uses, and the minimization of development impacts.

GOAL L-7: Accommodate modest population growth by filling in existing vacant lots and adding to existing communities.

GOAL L-8: Locate multi-family dwellings and mobile home parks at appropriate sites as needed.

POLICY LU-16: The Area Plan land use maps provide specific residential land use designations for areas in which residential uses of various types and densities should be developed.

Implementation Measure LU-K: The County will refer to the Lassen County 2003-2008 Housing Element for applicable policies pertaining to the development in the planning area.

Implementation Measure LU-L: The County will continue to utilize building and development codes to regulate new residential development projects.

GOAL L-9: Increased community wealth, job opportunities and the provision of needed commercial services through economic growth and diversification by supporting the expansion of existing commercial operations and by encouraging new commercial ventures in appropriate locations.

GOAL L-11: Improvement, expansion and diversification of the planning area's industrial base and generation of related employment opportunities.

GOAL L-14: Multiple economic and social benefits for nearby communities, the county and the region related to development of the proposed Dyer Mountain Resort project adjacent to the Westwood/Clear Creek Planning Area while realizing minimal significant adverse impacts to lands and resources within the area plan planning area.

POLICY LU-28: The County will consider and support appropriate ways by which the economic and social benefits that may be stimulated by development and operation of the Dyer Mountain Resort project can be optimized in communities within the Westwood/Clear Creek Planning Area.

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5.3 IMPACTS

Significance Criteria

In general, impacts on a population occur when the distribution or concentration of growth would be altered by the implementation or construction of a project. Adverse impacts on housing occur when a project displaces housing or people and requires the construction of replacement housing for people who have been displaced. If businesses are displaced, business activity may also be affected.

Potentially significant impacts associated with the Development Concept Plan and Phase 1 Development Plan have been evaluated using the following significance criteria. Would the project:

- Concentrate population growth away from areas with available infrastructure and urban services;
- Displace a substantial number of people, necessitating the construction of replacement housing elsewhere;
- Displace a substantial amount of existing housing, necessitating the construction of replacement housing elsewhere;
- Substantially increase the demand for affordable housing; and
- Substantially worsen the jobs/housing balance in the Westwood/Clear Creek area.

The CEQA Guidelines state that the economic and social effects of a project shall not be treated as a significant effect on the environment. CEQA indicates that social and economic effects should be considered in an EIR only to the extent that they would result in secondary or indirect adverse impacts on the physical environment.

Project Impacts

As established in CHAPTER 2 PROJECT DESCRIPTION, this EIR provides two (2) levels of analysis of the proposed project —impacts from the proposed land subdivision and buildout of the Development Concept Plan are assessed at a programmatic level while impacts from construction of the proposed Phase 1 Development Plan are evaluated at a project-specific level.

Impacts Determined to be Less than Significant

Substantial Population Growth. The project applicant has prepared a projection of the numbers and types of residential units that would be built as the Dyer Mountain Resort reaches buildout. The projections are documented in the Impact and Area Tabulations document, which is available for review at the Lassen County Department of Community Development District (LCDCD). This projection includes an estimation of the maximum residential population of the resort, based on typical occupancy patterns at other ski resorts. According to this projection, the maximum population capacity of the resort (i.e., at 100 percent occupancy of each residential unit) would be 17,382.

Generally, 100 percent occupancy conditions are not expected to occur. Occupancy data from similar four-seasons resorts—The Canyons in Park City, Utah; Northstar at Lake Tahoe, California; and Mammoth Lakes, California - indicate that during peak season occupancy of

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seasonally-occupied units (rental and owner-occupied) averages between 68 to 85 percent, annual occupancy rates range from 47 to 68 percent, and midweek/off-season periods experience occupancy rates of 25 to 35 percent. This analysis assumes the most conservative occupancy estimates of 85 percent in peak season, 68 percent annually, and 35 percent midweek and off-season. Therefore, the proposed project is expected to bring approximately 14,775 residents on average during peak season; an average of 11,820 would occupy the resort year-round; and 6,084 would reside there midweek.

The proposed project would require 825 year-round employees and 1,051 seasonal employees at full buildout (by 2035). This analysis assumes these employees would reside in Westwood where the community average household size is 2.41 persons. With a conservative assumption of one (1) Dyer Mountain Resort job per household, the Westwood population could increase by 4,521 additional persons. Based on the Lassen County average of 1.17 workers per household, the resultant population increase in Westwood would be 3,864 persons. It is possible that the actual population increase could be less than this range (from 3,864 to 4,521 persons), because seasonal employees may either commute from nearby recreation communities, be of single marital status, or share housing with other seasonal employees. In addition, a portion of the year-round employees and their families may already reside in the area or commute from other communities. Due to the lack of actual projected employee distribution figures, however, this impact analysis assumes the 4,521 level of population increase in the Westwood/Clear Creek area as a conservative estimate.

With a combined population of 19,296 during peak season (14,775 resort residents plus 4,521 workers and family members), this represents a maximum 680 percent increase in population in and around the Westwood/Clear Creek area, and up to 116 percent increase countywide, depending on the number of resort occupants and worker households that relocate to the area from outside Lassen County.

Population growth alone is not considered an environmental impact unless the growth directly or indirectly causes a separate, physical, environmental impact. Examples of impacts associated with growth include effects on air quality, noise, traffic, utilities, and public services, displacement of individuals, and new housing construction. Impacts related to air quality, noise, traffic, utilities, and public services have all been addressed in other chapters of this EIR. Impacts on the community's jobs/housing balance and on affordable housing are addressed in the housing impact discussions below.

Although the proposed project would allow the growth mentioned above, this increase has been provided for through passage of the Dyer Mountain Initiative and amendment of the *Lassen County General Plan 2000*. It is expected that this planned growth would not create a significant impact on the environment or the human population currently living in the area, except for the potential effects addressed separately below and in other chapters of this EIR. This impact is considered less than significant.

Impact to Regional Employment. This section provides a discussion of the project's effect on area employment, as allowed for under CEQA Guidelines Section 15131. The project's effect on local jobs is not treated as a potentially significant impact because it is not anticipated that the changes in employment will result in any adverse changes to the physical environment (Public

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Resources Code Section 21082.2) or result in a substantial adverse effect on the human population (Public Resources Code Section 21083(c)).

The majority of jobs that would be created with the Dyer Mountain Resort project can be classified as commercial non-basic employment. Non-basic jobs support the local population, providing goods and services to area customers, with no national or regional component. This is in contrast to the area's timber harvesting-related jobs, which is considered basic employment exporting product for sale outside of the area to national or regional markets.

The Dyer Mountain Resort project is projected to generate approximately 825 permanent jobs and 1,051 seasonal jobs. It is anticipated that 582 jobs would be created by the development included in the Phase 1 Development Plan; this includes 256 year-round jobs and 326 seasonal jobs (Dyer Mountain Associates 2004). The expected distribution among various job categories is as follows:

	<u>Development Concept Plan</u>	<u>Phase One</u>
Commercial/Retail	461 workers	102 workers
Hotel	255 workers	77 workers
Ski Operations	575 workers	302 workers
Vacation Rental support	586 workers	101 workers

These workers would support approximately 333,800 square feet of commercial and resort support uses included in the Development Concept Plan, of which 52,500 square feet are proposed with the Phase 1 Development Plan. In addition, 131 attached residential units, 274 detached residential units, and 30 lodging units are proposed in the Phase 1 Development Plan.

New employment generated by the proposed project, including Phase 1 Development, is considered a beneficial impact to the community. Other environmental impacts associated with this new employment are discussed elsewhere in this chapter and other chapters of the EIR.

Displacement of Existing Housing in the Project Area. Other than the cabin, which is used only during summer, there is no existing housing on the project site. No existing housing units would be displaced by the proposed development. The influx of new residents to the community may stimulate economic revitalization that could eventually result in the replacement of some of Westwood's housing units categorized as "dilapidated" in the 2001 County study (27 percent of total units) with new dwellings. This impact is considered less than significant.

Increase in Demand for Housing, Particularly Affordable Housing, During Phase 1 Development. It is expected that there will be sufficient housing to accommodate Phase 1 Development Plan's estimated 582 employees. With high unemployment in the Westwood/Clear Creek area, up to 30 percent of new jobs created with Phase 1 Development could be filled by the local labor force (i.e., unemployed workers who already reside in the area—see Table 5.2). Another 30 percent could be filled by unemployed workers living in the Lake Almanor/Chester area. The remaining employees could be housed in existing vacant units in the Westwood/Clear Creek area (up to 293 units) or commute from available housing

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located within a 40-minute radius of the project. The current housing vacancy rate is high enough and rental costs low enough to accommodate the addition of employee households to the Westwood/Clear Creek, Lake Almanor/Chester, and Susanville areas.

Potentially Significant Impacts — Development Concept Plan

Impact 5.1 Potential Effect on the Jobs/Housing Balance in the Area

Significance Before Mitigation:	Potentially Significant
Proposed Mitigation:	Mitigation Measure 5.1a
Significance After Proposed Mitigation:	Potentially Significant
Recommended Mitigation:	Mitigation Measure 5.1b
Significance After Recommended Mitigation:	Less than Significant

While the County has no explicit policies quantifying the desired jobs-to-housing ratio, the 2003-2008 Housing Element does address the jobs-housing balance. The element provides a policy to "facilitate economic development through new business development and job creation" and proposes the use of state and local funding to support economic development activities and job growth.

To minimize adverse environmental impacts associated with commutes, many California communities have made a policy decision to provide an adequate supply of housing within a 15 to 20 minute commute shed for resident workers. A maximum 20-minute commute shed for seasonal workers in ski resorts is typically maintained by a combination of local affordable housing stock and onsite facilities (sources: Northstar, Mammoth Lakes, and Bear Mountain). Affordable housing, both onsite and offsite, must be timed to occur as new job opportunities become available so that there is not an excess of employee housing in a community with few jobs or vice versa.

For the purposes of this jobs-housing balance analysis, a 20-minute commute shed has been established for seasonal employees, and a 40-minute commute shed for year-round employees. Figure 5.1 illustrates these 20-minute and 40-minute commute sheds for the Dyer Mountain Resort.

Employee Housing Availability. As shown in Table 5.3, approximately 1,128 vacant dwelling units are available within a 40-minute commute distance (i.e., Westwood/Clear Creek, Lake Almanor/Chester, and Susanville areas as shown in Figure 5-1). These units could potentially accommodate all of the 825 year-round employees and, of those units located within the 20-minute commute shed, a portion of the 1,051 seasonal workers.

If no other affordable housing were to be built, the Westwood/Clear Creek and Lake Almanor/Chester areas could absorb approximately 67 percent of the year-round employee households (assuming one (1) Dyer Mountain Resort employee per household) with 549 available units. Housing the remaining 276 year-round employee households and 1,051 seasonal employees would require 1) workers to commute from Susanville and other areas outside the 20-minute commute shed; 2) new housing construction onsite and in the Westwood/Clear Creek area; or 3) some combination of the two.

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Some seasonal employee housing would be provided onsite in the form of efficiency apartments or dormitories for the seasonal employees of the resort at buildout. This measure is a standard practice for ski resorts that allows such employers to attract the reasonably inexpensive labor force needed during the ski season. In addition, multifamily housing products onsite may include manager units and accessory apartments, while second units may be constructed on properties with single-family homes. Seasonal housing could potentially accommodate all of the housing needs for the resort (up to 1,051 employees, which corresponds to a total population of 2,532), but the actual amount constructed will likely be determined by the local supply of labor and housing. By supplementing the supply of offsite housing with seasonal employee housing onsite, the project would substantially meet the demand for local affordable housing.

The project as proposed, assumes that the project would not generate a substantial demand for housing by year-round employees and their families, because the resort would employ workers already residing in the vicinity of Westwood/Clear Creek, Lake Almanor/Chester, and Susanville. While *Table 5-2* shows a total of approximately 1,032 unemployed workers in these areas, the project would employ up to 1,876 workers. Therefore, it is expected that up to 45 percent of the Dyer Mountain Resort workforce could move into these communities from more distant places. As shown in *Table 5.4* and *Table 5.5*, there is ample vacant land to construct up to 522 new units in Westwood and 108 in Clear Creek, although "it is more realistic to assume 218 units and 80 units, respectively, during the planning period of the Area Plan" (Lassen County 1999b). In either case, these communities could provide sufficient vacant land to meet the demand for employee housing.

Of the 87 percent of Westwood/Clear Creek workers that drive or carpool to work, a majority are commuting an average of 23 minutes to work (Census 2000) because they find housing affordable in the area but most jobs are located elsewhere. Approximately 20 percent of the community's workers are employed in service occupations. Therefore, it is anticipated that among the workers that commute, up to 20 percent could potentially reduce their commute and work closer to home as Dyer Mountain Resort service employees.

There are no data available to estimate the number of Lake Almanor/Chester area and Susanville area residents now working in their own communities who would choose to increase their commute to work at the Dyer Mountain Resort. Jobs filled by unemployed or other-employed workers in more distant communities could also adversely impact the jobs-housing balance. The housing supply and affordability factor will largely determine what choices future employees will make and whether there is an adverse shift in the jobs-housing balance. The shift in jobs-to-housing balance is considered a potentially significant impact.

Mitigation Measures 5.1a and *5.1b*, addressing housing affordability as described below, are recommended to ensure the jobs-housing balance is not adversely affected. To the extent that employees can afford to live in close proximity to their work, other adverse environmental effects can also be mitigated, including traffic and air quality impacts.

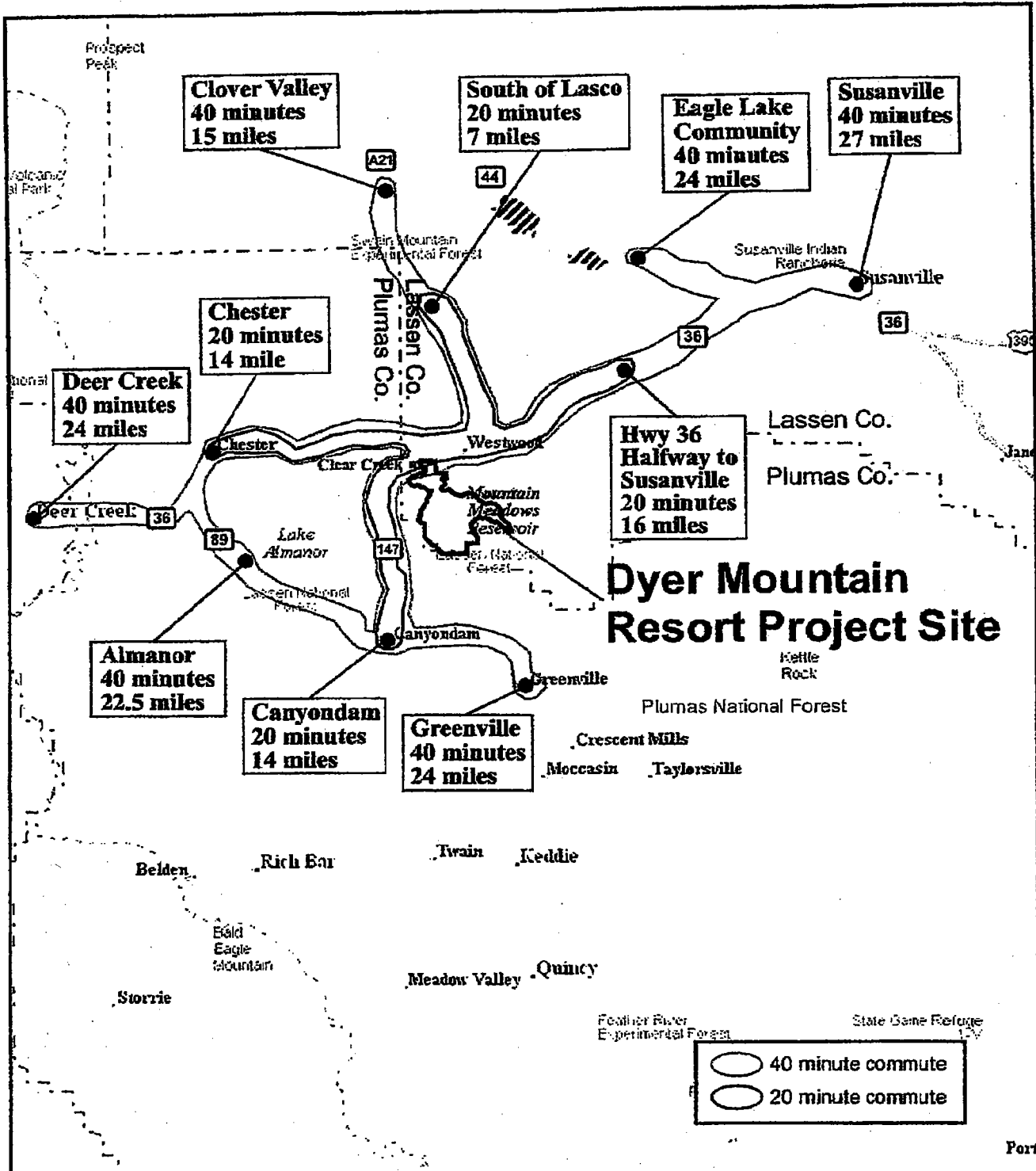


Figure 5-1

COMMUTE SHEDS
Dyer Mountain Resort EIR

Lassen County, CA

Scale: 0 to 9 miles. Approximate scale in miles.

North arrow pointing North.

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Impact 5.2 Increase in Demand for Affordable Housing in the Project Area

Significance Before Mitigation:	Potentially Significant
Proposed Mitigation:	Mitigation Measure 5.2a
Significance After Proposed Mitigation:	Potentially Significant
Recommended Mitigation:	Mitigation Measure 5.2b and 5.2c
Significance After Recommended Mitigation:	Less than Significant

Buildout of the Dyer Mountain Resort project would result in construction of approximately 4,104 dwelling units onsite, with a mix of multifamily and single-family residences. These single-family, multi-family, and town home units are intended to serve visitors and residents of the Dyer Mountain Resort community. Ownership options will include whole-ownership, timeshare, clubs, and other fractional-ownership techniques.

Housing Affordability. Housing affordability for Dyer Mountain Resort employees is summarized in Table 5.6 below, showing the maximum affordable rent and mortgage payment among various income categories, and the number of households projected for each category. Households earning between 30 and 50 percent of the County median income could afford rent of \$334 to \$556 per month. Those earning between 50 and 80 percent of the County median income could afford a maximum monthly payment of \$556 to \$889 (which will support a mortgage of up to \$161,900). Households that earn more than 80 percent of median could support monthly payments of \$1,334 and a purchase price of around \$243,000.

**Table 5.6
Dyer Mountain Resort
Employee Households by Affordability Category**

Income Category	Annual Household Income ¹	Maximum affordable housing cost (30% of gross income) ²		Number of Employee Households ⁴		
		Rent	Own ³	Seasonal	Year-round	Total
Extremely Low-30%	Less than \$13,350	\$334	—	0	0	0
Very Low-50%	\$22,250	\$556	—	241	190	431
Low-80%	\$35,550	\$889	\$161,900	503	394	897
Moderate-120%	\$53,350	\$1334	\$243,000	307	241	548
TOTAL				1,051	825	1,876
Total less than 80% of median County income				744	584	1,328

1 For purposes of determining affordability, this analysis uses the 2004 State Income Guidelines for a three-person household, as provided by the State Department of Housing and Community Development (HCD) (www.hcd.ca.gov). Median household income for a three-person household in Lassen County is \$44,450. Extremely low represents 30% or less of County median income; very low represents 50% or less of County median income; low represents 80% or less of County median income; and moderate represents 120% or more of County median income.

2 HCD defines housing as affordable if it does not cost greater than 30% of gross monthly income.

3 Mortgage loan assumes a 30-year term at 5.5% and includes real estate taxes, mortgage and homeowners insurance.

4 To determine number of employee households by income category, proportionate generation rates were taken from Figure 3 of "The Canyons" Employee Housing Needs Assessment and Proposed Mitigation Plan, March 1999.

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The number of households in each income category depends on an estimate of household income. All employees are projected to earn more than \$13,350 per year (the State minimum wage of \$6.75 per hour yields an annual full-time salary of \$14,000). *Table 5.6* shows relatively high earnings because of the effect of multiple job holding—resort employees typically hold an average of 1.24 jobs; in addition, the number of workers per household is estimated at 2.4 because staff level employees adapt to a low-wage or high-cost environment by forming larger households (Rosenthal 1999).

The affordable housing demand would be as much as 744 affordable units to accommodate seasonal employees, and 584 affordable units for year-round employee households—that is, 1,328 affordable units would be needed for employee households earning 80 percent or less of Lassen County median income. Some seasonal employees would reside in dormitory-style housing on the project site, while others are expected to commute from nearby communities. As discussed above a maximum 20-minute commute shed is considered the ski resort industry standard. Year-round jobs would be filled by a combination of local residents, commuters from the surrounding communities of Lake Almanor, Chester, and Susanville, and households that relocate to these areas from other communities. Consequently, the demand for affordable housing is expected to be considerably less than 1,328 units.

Currently, year-round housing is relatively affordable in the Westwood/Clear Creek and Lake Almanor/Chester areas. However, once the Dyer Mountain Resort project is approved, it is expected that property values could increase in these areas, with corresponding increases in housing costs. A determination of adequate employee housing must take into account the affordability factor. A lack of affordable housing could force the majority of workers that are not housed onsite to commute from longer distances. For employees that already reside in the Westwood/Clear Creek and Lake Almanor/Chester areas and employee households that desire to move into the community as a result of the new jobs, the potential impact of the project on housing affordability is considered potentially significant.

An Employee Housing Needs Assessment would be required to quantify employee household distribution by geographic location and, by extension, determine the local affordable housing need through project buildout. If housing costs rise substantially, mitigation could include employer-subsidized "below-market" units for households earning 80 percent or less of County median income. New development should offset a proportionate share of total demand in the context of any shortage of affordable housing, particularly for those earning 50 percent or less of County median income. Other mitigation could include "in-lieu" fees to equal the equity required in order to produce a housing unit. These fees would be combined with other state, federal, and local funding sources (e.g., block grants, redevelopment funds, revolving loan funds, etc.) to produce the affordable units. An Employee Housing Needs Assessment update with each phase of development would help to ensure that the actual need of local affordable housing is identified.

Potentially Significant Impacts — Phase 1 Development Plan

Implementation of the Phase 1 Development Plan would contribute to the potential effects on the jobs/housing balance in the area (Impact 5.1) and the demand for affordable housing in the project area (Impact 5.2) but would not result in any additional impacts nor require mitigation measures beyond those discussed above under each impact.

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5.4 MITIGATION MEASURES

The County will need to implement some of the General Plan's 2003-2008 Housing Element programs after buildout of the Phase 1 Development Plan in order to facilitate construction of affordable housing for project employees. These programs include:

- Revise zoning ordinance to increase density by right in the R-3, C-T, and mixed use zone districts.
- Use state, federal, and local funding sources to provide assistance with the development of new affordable units and rehabilitation of existing affordable units in need of repair.
- Adopt a density bonus ordinance to provide incentives for increased production of affordable units.
- Adopt a second unit ordinance to facilitate production of affordable second units on single-family home sites.
- Annually monitor vacancy rates and housing costs (including rental and for-sale units).

With implementation of these programs, the following mitigation measures are proposed or recommended to ensure an adequate supply of affordable housing.

Potential Effect on the Jobs/Housing Balance in the Area
Proposed Mitigation

Mitigation Measure 5.1a: The project applicant/developer(s) shall provide an adequate supply of onsite affordable housing for seasonal employees if needed by constructing dormitory or other housing within the resort area that provides affordable units for seasonal employees to offset demand not met within the 20-minute commute shed.

Recommended Mitigation

Mitigation Measure 5.1b: The project applicant/developer(s) shall prepare an Employee Housing Needs Assessment and Proposed Mitigation Plan with periodic updates for each phase of development. The employee Housing Needs Assessment (EHNA) and Proposed Mitigation Plan shall identify the amount and type of housing that will be needed and the timing of construction to ensure that the units are available for employees at each phase of project construction. The EHNA shall be submitted to Lassen County as part of the Project Compliance Program for each development phase.

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Increase in Demand for Affordable Housing in the Project Area***Proposed Mitigation***

Mitigation Measure 5.2a: The project applicant/developer(s) shall implement *Mitigation Measure 5.1a*, which requires provision of an adequate supply of onsite affordable housing for seasonal employees to offset demand not met within the local community.

Recommended Mitigation

Mitigation Measure 5.2b: The project applicant/developer(s) shall implement *Mitigation Measure 5.1b*, which requires preparation and implementation of an Employee Housing Needs Assessment and Proposed Mitigation Plan. Updates to the assessment shall be required with each phase of project construction.

Mitigation Measure 5.2c: Each new phase of the Dyer Mountain Resort development shall provide its fair share of affordable housing, as needed, through construction and/or payment of in-lieu fees. The Project Compliance Report prepared by the project applicant/developer(s) for each development phase shall demonstrate that an adequate supply of affordable housing is or will be available with each development phase. This would be accomplished with an update of the Employee Housing Needs Assessment, as determined by Lassen County.