23.24 Supplemental	Richard Montevideo	**A. The Response to Comments Were Deficient** **a. Alternatives** **i. The Cursory Rejection of Alternatives Violated CEQA** For example, the Cities commented that the SED did not consider a range of reasonable alternatives because it failed to consider *any legitimate* alternatives. The two "alternatives" included in the SED (USEPA TMDL and "no project") were not legitimate alternatives because they did not come close to meeting the *Goleta II* requirements of (i) potentially offering substantial environmental advantages over the project proposed, and *Board of Supervisors* (1990) 52 Cal.3d 553, 566.)	The "project" for purposes of the alternatives analysis required by CEQA is the adoption of a TMDL – in other words, a waste load allocation (WLA) and load allocation (LA) and a program of implementation. This TMDL sets forth the WLAs and LAs and specifies the length of time to achieve compliance with the allocations, including interim allocations and interim time frames and states that the TMDL will be implemented in appropriate NPDES permits and other regulatory mechanisms. The TMDL does not adopt nor specify the means of compliance. The purpose of the TMDL is to achieve compliance with water quality objectives set forth in the Basin Plan so as to remove the impairment in the LA River and its tributaries. The Substitute Environmental Documents (SED) for the TMDL set forth three alternatives – the no project alternative, the USEPA alternative and the recommended alternative that was ultimately adopted. In addition, the TMDL documents considered several alternatives to the method for establishing the TMDL, including the consideration of varying lengths of time for compliance with the water quality objectives and alternative ways to achieve compliance with the water quality objectives. Alternatives considered for timing are set forth in the Staff Report Section 9.6. The Staff Report compares and contrasts the longer CREST-developed implementation schedule (32 years) with the staff recommendation (25 years). The Staff Report also compares the length of the implementation schedule to the Ballona Creek bacteria schedule length and the Los Angeles River metals TMDL schedule length. In addition, the Regional Board received comments

			from Heal the Bay proposing a implementation schedule of 10 years (18 years for wet weather) and the Regional Board found that length of time not to be feasible. The Regional Board did not consider an option of having no compliance date because such an option would not be consistent with the Clean Water Act. Alternative targets, i.e., alternatives to the recommended alternatives, to achieve compliance with the water quality objectives are considered in the Staff Report in Section 3. Three alternatives were considered for developing the appropriate numeric targets to achieve the water quality standards: (1) strict application of the water quality objectives as listed in the Basin Plan with no allowable exceedance, (2) the Natural Sources Exclusion Approach, and (3) the Reference System/Antidegradation Approach with specific exceedance day frequencies. The factors considered when selecting the recommended alternative included: · Consistency with state and federal water quality laws and policies, · Level of beneficial use protection, · Consistency with current science regarding water quality. In addition, this section also discussed the use of high flow suspension of water quality objectives. Further analysis of the reference system are set forth in Staff Report Section 6.2.6, which evaluates the application of established beach reference system exceedance rates and the application of freshwater stream reference system exceedance rates.

			The commenter suggested additional “alternatives” to the project that should have been considered. As noted above, the Regional Board did consider different alternatives, including different lengths of time, different alternatives to complying with the water quality objective that would take into account natural sources, i.e., the natural source exclusion and the reference system alternatives. The commenter suggests that the Regional Board should have considered a “(1) Revised Beneficial Use Designation Alternative” a “(2) Review Standards Applied to Stormwater Dischargers” alternative, and a “(7) Indicator Bacteria Standards Based on Controllable Water Quality Factors” alternative. Option (1) would not meet the project purpose because it would not result in protection of beneficial uses, including the existing REC 1 use in the LA River itself, and downstream uses, and would not meet the consent decree requirements. Waiting to develop the necessary science would also lead to an EPA-issued TMDL, A number of commenters commented on the advisability of revising the beneficial uses prior to or instead of implementing a TMDL (see Regional Board response to comments dated 9 July 2010, comments no. 3.2, 3.17, 4.7, 6.9, 9.4, 10.8, 11.13, 16.2, 16.21). The Regional Board found that a 'review of standards' did not constitute an alternative (see Regional Board response to comments dated 9 July 2010, comment no 20.13).

			The TMDL, however, does take into account the possibility of revisions to the beneficial use designations and the Regional Board has already begun the review of beneficial use designations. Results of that evaluation will be brought to the Regional Board before any compliance dates in the TMDL occur with time for reconsideration of the TMDL. Option (2) is not consistent with the *Arcadia II case*, which held that the standards are based on the receiving water, not on the type of discharge. Option (7) would not result in compliance with the standard and, therefore, would only result in partial compliance. The Regional Board in the SED chose not evaluate alternatives that would result in partial compliance with the standard since it would not result in compliance with the Clean Water Act. Other "alternatives" suggested by the commenter are either various methods of compliance or are issues that would be addressed in permits used to implement the TMDL. For example, the "(3) Lower Los Angeles River Water Conservation Plan", "(5) MEP-Compliant BMP Iterative Approach", and the "(8) In-City BMPs" proposals constitute methods of compliance or possible permit terms. Reasonably foreseeable methods of compliance are evaluated in the SED section 5 and permit terms will be considered when the TMDL is incorporated into permits. See Response to Comment 23.11. The Regional Board considered alternatives related to time such as the proposed "(4) Lengthier Implementation Schedule," and "(9) Phased-In

			TMDL." The Regional Board did not consider a watershed approach as suggested in "(10) Watershed TMDL" because this TMDL is the last of several TMDLs for the LA River and its tributaries so there were no other constituents to be included in TMDLs. The TMDL does consider the implementation planned for the Los Angeles River metals TMDLs within the discussion of the length of the implementation schedule. [Staff Report Section 9.6.] The City of La Canada Flintridge suggested a dry weather –only TMDL in a comment letter dated June 3, 2010, which was also included in this comment letter ("(6) Dry Weather Only TMDL."). The Regional Board found this alternative not to be viable because the water quality standards apply both in wet and dry weather so the TMDL was required to address both wet and dry weather. See Regional Board response to comments dated July 9, 2010. The commenter also suggested "(7) Indicator The Regional Board was required to adopt a TMDL to achieve compliance with the water quality standards. The Regional Board adequately complied with CEQA by including detailed evaluation of alternatives to achieve compliance with the water quality objective, including consideration of most of the options suggested by the commenter and many others, and by evaluating the reasonable foreseeable means of compliance.