APPENDIX D

SCOPING MEETINGS

SCOPING MEETINGS

July 14, 2016, 10:00 AM
Coachella Valley Association of Governments
73-710 Fred Waring Drive
Palm Desert, CA 92260

No CEQA comments were made.

July 14, 2016, 6:00 PM
SCAQMD Auditorium
21865 Copley Drive
Diamond Bar, CA 91765

No CEQA comments were made.

July 20, 2016, 9:30 AM
Buena Park Community Center
6688 Beach Blvd.
Buena Park, CA 90622

No CEQA comments were made.

July 20, 2016, 2:00 PM
Carson Center
801 E. Carson Street
Carson, CA 90745

No CEQA comments were made.

July 21, 2016, 9:30 AM
Norton Regional Events Center
1601 E. 3rd Street
San Bernardino, CA 92408

No CEQA comments were made.

July 21, 2016, 2:00 PM
Hyatt Place Riverside
3500 Market Street
Riverside, CA 92501

No CEQA comments were made.

APPENDIX E

COMMENT LETTERS RECEIVED ON THE DRAFT PROGRAM EIR AND RESPONSES TO COMMENTS

APPENDIX E

COMMENT LETTERS RECEIVED ON THE DRAFT PROGRAM EIR AND RESPONSES TO COMMENTS

INTRODUCTION

The following comments were received on the Draft Program EIR for the 2016 Air Quality Management Plan (AQMP). The Draft Program EIR was circulated for a 60-day public review and comment period starting September 16, 2016 and ending November 15, 2016.

The SCAQMD received eleven comment letters on the Draft Program EIR during the public review period. The comment letters and individual responses to all comments related to potential environmental impacts from the 2016 AQMP are provided in this appendix. The individual comments are bracketed and numbered. The related responses are identified with the corresponding number and are included following each comment letter.

Comment Letter	Submitted By
1	Pala Band of Mission Indians
2	City of Yucaipa
3	Port of Long Beach
4	GDB c/o John Wayne Airport
5	Southern California Edison
6	Port of Los Angeles
7	Airlines for America
8	Long Beach Unified School District
9	Santa Ana Regional Water Quality Control Board
10	Orange County Transportation Authority
11	Harvey Eder

All comments received have been reviewed by SCAQMD staff and incorporated where appropriate. However, the comment letters received do not change any of the SCAQMD's significance determinations for any of the environmental topic areas analyzed in the Draft Program EIR.

PALA ENVIRONMENTAL DEPARTMENT
PALA BAND OF MISSION INDIANS
PMB 50, 35008 Pala Temecula Road | Pala, CA 92059
Phone 760-891-3510 | Fax 760-742-3189

September 16, 2016

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attention: Jeff Inabinet

Re: Notice of Renewed/Proposed Permits – 2016 Air Quality Management Plan (AQMP)

Dear Mr. Inabinet,

Thank you for the notice referenced above. This letter constitutes our response on behalf of Robert Smith, Chairman of the Pala Band of Mission Indians.

At this time, the Pala Band has no objection to the action outlined in the notice as proposed. We reserve the right to comment in the future should there be modifications or if new information becomes available. 1-1

If you have any questions or comments, please contact Darold Wallick, Air Technician for the Pala Environmental Department, at dwallick@palatribe.com or 760-891-3540.

Sincerely,

Shasta C. Gaughen, PhD
Environmental Director

Responses to Comment Letter #1 – Pala Band of Mission Indians

Response 1-1
Thank you for the comment. Since no issues were raised regarding the Draft Program EIR, no response is necessary under CEQA.

CITY OF Yucaipa

November 1, 2016

Jeffrey Inabinet
Office of Planning/CEQA
21865 Copley Drive
Diamond Bar, CA 91765

Regarding: 2016 Air Quality Management Plan; Notice of Availability of a Draft Environmental Impact Report

Thank you for the opportunity to respond to the Draft Environmental Impact Report (DEIR) for the above-referenced project. In reviewing the methodology used for growth projections for the Air Quality Management Plan (AQMP), which serves as the basis of the DEIR, the City of Yucaipa notes that the 2040 growth figure for the City is outdated and therefore inaccurate. To better reflect the 2040 conditions, the City requests that the analysis for the AQMP and EIR be updated to reflect the City's current 2040 projection. This includes the figures from the City's comprehensive General Plan update, which was adopted in April, 2016, and the City's Mobilehome Park Conversion Ordinance. The corrected assumptions should include the following totals for 2040:

2-1

Population	# of Residential Units	Nonresidential Square Feet
79,723	30,903	9,826,104

The changes are notable for the AQMP and its associated EIR to ensure that the analysis accurately and effectively accounts for future growth, and incorporation of the revised figures would more accurately disclose Project-related impacts for decision makers.

If you have any questions, please feel free to contact me at 909-797-2489 x.247 or ptoomey@yucaipa.org.

Sincerely,

CITY OF YUCAIPA

Paul Toomey
Director of Community Development

cc: City Council
Ray Casey, City Manager

Responses to Comment Letter #2 – City of Yucaipa

Response 2-1

The California Health and Safety Code section 40460(b) requires the Southern California Association of Governments (SCAG) to prepare and approve the portions of the Air Quality Management Plan (AQMP) relating to regional demographics projections and integrated regional land use, housing, employment and transportation programs, measures and strategies. Part of this effort is to provide the projected growth mentioned in the comment letter. SCAG approved their 2016 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) and provided all the finalized data including the growth projections in the region. These forecasts were provided with the assistance of cities and counties, but are updated periodically. SCAQMD staff encourages the City of Yucaipa to contact SCAG and provide the updated values to ensure those are used in the next RTP/SCS and corresponding AQMP.

4801 Airport Plaza Drive, Long Beach, CA 90815 Tel 562.283.7000 www.polb.com

Port of LONG BEACH
The Green Port

November 14, 2016

Michael Krause
Planning and Rules Manager
Planning, Rule Development, and Area Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4182

Electronic Submittal via E-mail: aqmp@aqmd.gov and mkrause@aqmd.gov

Re: Comments on the 2016 Draft Program EIR

Dear Mr. Krause:

We appreciate this opportunity to submit comments on the Draft Program Environmental Impact Report ("DPEIR") prepared in connection with the South Coast Air Quality Management District's ("District" or "SCAQMD") consideration of the proposed 2016 Air Quality Management Plan (the "Project" or "Proposed Plan")[1] on behalf of the City of Long Beach acting by and through its Harbor Department (collectively referred to herein as "Port of Long Beach" or "POLB").

As you know, the POLB along with the Port of Los Angeles (collectively the "Ports") have achieved tremendous success in obtaining substantial emissions reductions through their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Ports' initiatives. POLB continues to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, POLB fundamentally disagrees with the District's proposal to again attempt to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Ports. The Ports have previously sought to make the District aware of the serious concerns and objections to this approach.[2]

3-1

[1] This letter refers to the June 2016 version of the Proposed Plan and the June 2016 version of Appendix IV-A to the Proposed Plan as those versions were the ones made available to the public prior to the release of the September 2016 DPEIR.

[2] (*See* letters dated November 7, 2016; August 19, 2016; August 4, 2016; January 31, 2014; January 15, 2014; October 2, 2013; August 21, 2013; November 27, 2012; November 19, 2012; November 8, 2012; October 31, 2012; October 22, 2012; August 30, 2012 (which includes letter

We are also mindful that the California Environmental Quality Act ("CEQA") calls for a thorough analysis of a project's potentially significant environmental impacts as well as feasible means to avoid or substantially lessen such impacts. In order to serve its important public purposes of informing the public and decision-makers of the consequences of its action, such review must occur *prior* to approval of a project. Such review is particularly important where, as here, it is anticipated that the proposed Project will have substantial impacts on and conflict with the authorities of other public agencies.

As such, thorough identification of the proposed Project, and candid disclosure of all phases of the Project and its potential impacts, is essential to ensure that the proposed Project will be planned and implemented in conformity with established community plans and policies, and that environmental review is conducted with full consideration of all potentially significant environmental impacts as well as mitigation measures and alternatives designed to address those impacts. In addition, it will be important to consider the impacts of the proposed Project on the POLB's community, mission, facilities, and operations. The District must therefore provide a meaningful opportunity for informed public review of and comment on a well-defined "project." 3-2

In that context, we respectfully submit the following comments regarding the DPEIR for the Project as well as questions, concerns, and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies. As set forth in more detail below, we believe that: (1) the Project needs to be more thoroughly and accurately described, (2) all potentially significant environmental impacts related to all Project control measures must be thoroughly analyzed, and (3) adequate mitigation measures and alternatives must be provided to address all potentially significant environmental impacts.

Accordingly, the DPEIR needs to be thoroughly revised and recirculated for public review before the District can legally take action on the Project.

I. INTRODUCTION

While we recognize the effort that has gone into preparation of the current DPEIR, it is apparent that the document does not provide the information, evidence, or analysis required under CEQA. The DPEIR thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, or the officials and Board of the District, as to the potential environmental significance and impacts of the proposed Project. 3-3

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dated May 4, 2010); July 10, 2012; July 27, 2012 from POLB and/or Port of Los Angeles to SCAQMD.) The August 4, 2016 letter contains POLB's comments on the Notice of Preparation/Initial Study ("NOP/IS") for the Project. We incorporate by reference herein our comments on the NOP/IS, as well as the other letters referenced above to the extent that they are germane to the environmental impacts associated with the Project.

The necessary contents for an adequate Draft EIR are described in Public Resources Code § 21000. A Draft EIR must include "a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effects on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impacts of the proposed project."

Article 9 of the CEQA Guidelines further expands on the contents of Draft EIRs. Specifically, a Draft EIR must contain the information required by CEQA Guidelines sections 15122 through 15131. (CEQA Guidelines § 15120.) Those sections require, among others, adequate consideration and discussion of (1) the Project Description, (2) the Environmental Setting, (3) Significant Environmental Impacts, (4) Mitigation Measures, (5) Alternatives, and (6) Cumulative Impacts.

3-3 cont.

As set forth in more detail below, the DPEIR fails to, among others: contain an adequate project description; properly identify the environmental setting; adequately assess the Project's potentially significant environmental effects, including those that cannot be avoided; and identify feasible mitigation measures and alternatives to avoid or substantially lessen the Project's significant environmental effects. It is therefore respectfully urged that the DPEIR be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action, on the proposed Project.

3-4

II. THE DPEIR FAILS TO COMPLY WITH CEQA.

A. The DPEIR Does Not Provide A Full And Accurate Description Of The Project.

1. Deficient Project Description—In General

The DPEIR does not provide a full and accurate description of the "Project" as required by CEQA. (*See*, *e.g.*, CEQA Guidelines § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.) In particular, the Proposed Plan released in June 2016 was incomplete as evidenced by the fact that large portions of it were revised and released for public review ***after*** the DPEIR was circulated for review.

An accurate and complete project description is necessary for an intelligent evaluation of the potentially significant environmental impacts of the agency's action. (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 990.) "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." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 [court further observes that an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].)

CEQA Guidelines § 15126 further makes clear that an EIR must take a comprehensive review of the proposed project *as a whole*. "All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation." (CEQA Guidelines § 15126.) This requirement reflects CEQA's definition of a "project" as the "***whole of an action***" that may result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change. (Public Resources Code § 21065; CEQA Guidelines § 15378.)[3]

3-5

The DPEIR falls far short of the above requirements in describing the proposed Project, and thus fails to serve the "public awareness" purposes mandated by CEQA. The DPEIR does not include or even describe the text of several control measures supposed to comprise the "Project." The section of the DPEIR that purports to "describe" the Project, includes nothing more than summaries of certain control measures. In any event, the summaries are insufficient to describe the Project itself, and prevent effective public review and comment. The DPEIR also fails to describe reasonably foreseeable actions that will be taken in response to the proposed Project control measures.

3-6

[3] Unless otherwise noted, emphasis in quotations herein is supplied and citations are omitted.

As to certain control measures, the DPEIR implies that any informed public discussion and environmental review be *deferred* until some point in the future, as detailed below. Such an approach, however, is inconsistent with, and in violation of, many fundamental rules and policies required by CEQA (*e.g.*, failure to identify and analyze the whole of the project, improper project "segmentation," improper deferral of impact analysis and mitigation, failure to identify and evaluate project alternatives, etc.). (*See*, *e.g.*, Public Resources Code § 21003.1; CEQA Guidelines §§ 15126.2, 15126.4, 12126.6, 15378; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

3-6 cont.

The Proposed Plan refers to the future development of "contingency measures" if the area fails to meet certain milestones. (Proposed Plan, pp. 4-44 to 4-45, 6-13.) Yet, no such contingency measures are identified or described in the Proposed Plan or analyzed in the DPEIR.

3-7

It is only through reviewing the lengthy appendices to the Proposed Plan, can the reader understand the proposed Project control measures. The appendices also make clear that several of the proposed Project measures have not even been developed yet by the District and thus cannot be the subject of any meaningful environmental review or analysis. (*See*, *e.g.*, proposed Control Measures EGM-01, MOB-02, MOB-03, MOB-04, MOB-08, MOB-12, MOB-13, MOB-14, and BCM-01.) The details of the proposed Project must be accurately developed and described ***before*** the proposed methods and precise impacts anticipated by the Project may be analyzed or the subject of comment.

3-8

In addition to being accurate and complete, a project description must be stable. (CEQA Guidelines § 15124; *County of Inyo*, *supra*, 71 Cal.App.3d at 197.) Yet, the District released a Revised Draft 2016 AQMP ("Revised Plan") on October 7, 2016, ***after*** the DPEIR was released for public review. The Revised Draft Plan includes several substantive additions to the Proposed Plan from that which was analyzed in the DPEIR. Control measures related to mobile source emissions over which the District lacks regulatory jurisdiction, including MOB-01 to MOB-04, were revised in an attempt to make the emissions reductions associated with these measures "enforceable commitments." A new regulatory measures section was added discussing how the Revised Plan proposes "robust" NOx reduction regulations and other measures. Certain measures were revised to highlight the need for an analysis of life-cycle in-Basin emissions related to energy/fuel production and transmission under future energy pricing and electricity generation scenarios. Further, major revisions were made to the text of control measures, such as MOB-01, MOB-02, MOB-03, MOB-04, CMB-01, CMB-02, CMB-05.

3-9

A discussion of Environmental Justice was also added to the Revised Plan, with a note that this topic will be discussed in a Socio-Economic Report, the complete version of which is still outstanding. In addition, several substantive additions were made to the appendices, such as Appendix II (Current Air Quality), Appendix III (Base & Future Year Emission Inventory), Appendix IV-A (SCAQMD's Stationary & Mobile Source Control Measures), Appendix IV-B (CARB's Mobile Source Strategy), and Appendix IV-C (Regional Transportation Strategy &

3-10

Control). Other appendices, including Appendix V (Modeling & Attainment Demonstrations) and Appendix VI (Compliance With Other Clean Air Act Requirements) are "draft versions" which are "still out for review." As the details of the Proposed Plan are still under development, it is not possible for the District to proceed with CEQA review at this stage.

3-10 cont.

In brief, the DPEIR erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of public agencies or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments on the DPEIR. No effective CEQA review can be undertaken unless and until the District provides an adequate description of the "Project." It is essential that the DPEIR be revised to include an adequate "project description" including *all* of the Proposed Plan's pertinent control measures and strategies that make up the "project" ***before*** the public and agencies can be expected to provide meaningful comments and input.

3-11

2. Specific Comments on "Project Description" Text

The following comments and questions refer to specific portions or pages of Chapter 2 of the DPEIR:

P. 2-7 – Agency Authority-2016 AQMP

The DPEIR correctly acknowledges that the regulation of air quality emissions from mobile sources is primarily done at the federal and state level. By comparison, the District "has lead responsibility for developing stationary, some area, and indirect source control measures . . .." (DPEIR, p. 2-7.)[4] Despite this acknowledged limit on its regulatory jurisdiction, the Proposed Plan nonetheless purports to contain several measures related to mobile source emissions.

3-12

Pp. 2-9 to 2-11 – Overall Attainment Strategy

The DPEIR indicates that the Proposed Plan is designed to meet the following federal standards:

- Revoked 1979 1-hour ozone standard (120 parts per billion ["ppb"]) by 2023;

3-13

[4] *Accord*, Proposed Plan, p. ES-5 ("With limited SCAQMD authority over the mobile sources that contribute the most to our air quality problems, attainment cannot be achieved without state and federal actions.") and Proposed Plan, p. 3-11 ("U.S. EPA and CARB have primary authority to regulate emissions from mobile sources. U.S. EPA's authority applies to aircraft, locomotives, ocean going vessels, and some categories of on- and off-road mobile equipment. CARB has authority over the remainder of the mobile sources, and consumer products. SCAQMD has authority over most area sources and all point sources.").

- Revoked 1997 8-hour federal ozone standard (80 ppb) by 2024;
- 2006 24-hour PM2.5 standard (35 ug/m^3) by 2019;
- 2008 8-hour ozone standard (75 ppb) by 2032; and
- 2012 annual federal and state PM2.5 standards (12 ug/m^3) by 2025.

In addition to developing strategies and measures to meet the above acknowledged revoked standards, the text indicates that a new federal 8-hour ozone standard has been adopted (70 ppb) ostensibly replacing the 2008 standard analyzed. (DPEIR, p. 2-9.) The text does not explain why a plan is being developed to attain standards that have been revoked or superseded.

According to the DPEIR, the "most significant air quality challenge faced by the SCAQMD is to reduce [nitrogen oxide or "NOx"] emissions sufficiently to meet the upcoming ozone and federal PM2.5 federal standard deadlines." (DPEIR, p. 2-9) Specifically, an additional 43 percent NOx emission reduction is needed in 2023 and 55 percent is needed in 2031 to attain the 8-hour ozone standard. (DPEIR, pp. 2-9 to 2-10.) Mobile sources account for 80 percent of the NOx emissions, and the DPEIR accordingly states that the "majority of NOx emission reductions" will need to come from mobile sources. (*Id.*) The DPEIR acknowledges again that the District lacks authority to regulate such emissions which are "divided between" the California Air Resources Board ("CARB") and the U.S. Environmental Protection Agency ("EPA"). (DPEIR, p. 2-10.) The control measures are supposed to be based on, among others, enforceability and legal authority. (DPEIR, p. 2-11.) Yet, through the Proposed Plan, the District is purporting to adopt an "aggressive mobile source control strategy" to control emissions over which it admittedly lacks regulatory jurisdiction. (DPEIR, p. 2-10.)[5]

3-13 cont.

The lack of authority is further reflected by the DPEIR's admission that the Proposed Plan places "heavy reliance on voluntary incentive measures to achieve attainment of the federal air quality standards" such that the District "must design programs such that the emission reductions from these incentive measures are proven to be real, quantifiable, surplus, enforceable, and permanent in order for U.S. EPA to approve the emission reduction as part of the Plan." (DPEIR, pp. 2-17 to 2-18.)

[5] The Proposed Plan at page ES-7 states that mobile sources currently contribute about 88 percent of the region's total NOx emissions. It then states that "[s]ince the SCAQMD has limited authority to regulate mobile sources, staff worked closely with CARB and U.S. EPA, which have primary authority over mobile sources, to ensure mobile sources perform their fair share of pollution reduction responsibilities." (Proposed Plan, p. ES-7.)

Pp. 2-11 to 2-12 – Project Objectives

The DPEIR notes the objective of achieving the various ozone and particulate matter standards by the specified attainment dates. However, as the Tables in the Project Description make clear, most of the emissions reductions are listed as "TBD" with a note that emission reductions "will be determined after projects are identified and implemented" or "once the technical assessment is complete, and inventory and cost-effective control approach[es] are identified." (DPEIR, pp. 2-15, 2-26, 2-36.) Because the emission reductions associated with several control measures have not yet been quantified, there is no guarantee or assurance that the emission reductions will actually be attained. Thus, contrary to the NOP for the DPEIR, the Proposed Plan does not "identif[y] control measures and strategies to bring the region into attainment" with the specified standards nor does it demonstrate "compliance with state and federal Clean Air Act requirements." For this same reason, the Proposed Plan fails to attain its statutorily prescribed purpose.[6]

3-14

P. 2-13 – Project Description

The Project description indicates that the Project "control measures" consist of three main components: (1) the SCAQMD Stationary and Mobile Source Control Measures, (2) State and Suggested Federal Mobile Source Control Measures, and (3) Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") provided by the Southern California Association of Governments ("SCAG").

3-15

The text indicates that the air quality baseline is comprised of 2012 data. (DPEIR, p. 2-13.) Yet, there is no clear explanation or rationale for the use of baseline data that is nearly 5 years old. The scope of the proposed DPEIR and Proposed Plan must be expanded to include a detailed explanation, supported by substantial evidence,[7] that the 2012 air quality baseline is appropriate. (CEQA Guidelines § 15125; *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.) The analysis must also clearly specify the baseline used for other resource topics, and to the extent that they deviate from the normal "existing conditions" scenario, like air quality, provide a clear and cogent explanation as to why this is appropriate.

[6] (42 U.S.C. § 7410; California Health & Safety Code § 40440; *American Coatings Ass'n v. South Coast Air Quality Management District* (2012) 54 Cal.4th 446, 453.)

[7] (*See* Public Resources Code § 21080(e) [CEQA defines substantial evidence as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" and excluding, among others, "speculation" and "unsubstantiated opinion."].)

Pp. 2-13 to 2-23 – Stationary Source Control Measures (SCAQMD)

The stationary control measures to be implemented by the District are listed in Table 2.8-1 and summarized in the text following that table.

The DPEIR fails to acknowledge, let alone analyze, all potentially significant environmental impacts of the stationary source control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 383.) 3-16

Measure CMB-03 proposes to reduce emissions from non-refinery flares by "capturing the gas that would typically be flared and converting it into an energy source (*e.g.*, transportation fuel, fuel cells) . . .." (DPEIR, p. 2-16.) A similar measure appears to be proposed for nitrogen gas and biogas. (*See* Measures BCM-05 and BCM-10.) Yet, there is no discussion or consideration of the potentially significant impacts associated with pipelines or other infrastructure that would be needed to implement these measures nor of the traffic, air quality, noise, and other impacts associated with increased truck traffic to facilities containing such refined materials. There is similarly no analysis of the proposed alternative of reinjecting the gas into the ground or combusting it through flares. (Proposed Plan, Appendix IV-A, p. IV-A-70.)

Measure ECC-04 includes a vague reference to widespread adoption of cool roofs. This measure may result in significant environmental impacts in the areas of aesthetics, biological resources, and land use/planning. 3-17

Measure ECC-03 would "seek to provide incentives" to go beyond the Title 24 standards and existing local regulations pertaining to NOx emissions. (DPEIR, p. 2-18.) "Incentive programs ***would be developed*** for existing residences that include weatherization, upgrading older appliances with highly efficient technologies and renewable energy sources to reduce energy use for water heating, lighting, cooking and other large residential energy sources." (*Id.*) The measure also references providing "solar thermal and solar photovoltaics" to provide emission reductions within the residential sector. (*Id.*) The measure lacks any specificity about the programs that the District acknowledges would still be developed. There is no information on the amount of funding and the number of residents that may take advantage of this program. Based on the examples provided, this measure may result in significant environmental impacts in the areas of aesthetics, air quality, land use, solid waste, and other resource topics.

Measure CMB-01 would seek emission reductions of NOx from traditional combustion engines by replacing them with zero and near-zero emission technologies through, among other methods, electrification and fuel cells. This measure would also seek energy storage systems and smart grid control technologies coupled with renewable energy generation. This measure has the 3-18

potential to result in significant environmental impacts with respect to, among others, the construction of additional energy infrastructure. Per a more detailed description of this measure in the Appendix to the Proposed Plan, it also seeks to "[e]ncourage new businesses that use and/or manufacture near-zero and zero emission technologies to site in the Basin." (Proposed Plan, Appendix IV-A, p. IV-A-47.)[8] The DPEIR contains, at best, an incomplete analysis of this measure as evidenced by its omission of any discussion of its potential growth inducing impacts.[9]

3-18 cont.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be analyzed and are not. (*See* Control Measures ECC-04, CMB-01, CMB-02, CMB-03, CMB-04, MCS-02, FLX-01, FLX-02, and BCM-10.) For instance, the impacts of most measures is described by a single sentence in tables set forth in the DPEIR. Table 4.0-1 of the DPEIR wrongly concludes that Control Measures MCS-02 and FLX-01 will result in no impacts, asserting without any substantial evidence that "[i]mpacts are speculative" due to unknown future technologies and the unknown effectiveness of education and outreach.

3-19

Measure CTS-01 seeks to lower the content of VOCs in coatings, solvents, and adhesives. Such measures may result in additional applications of lower quality products which could result in a net increase in air emissions. (*Dunn-Edwards Corp. v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4th 644.)

3-20

Pp. 2-23 to 2-33 – Mobile Source Control Measures (SCAQMD)

Notwithstanding its lack of regulatory jurisdiction over mobile sources, the District's Proposed Plan nonetheless contains a detailed list of mobile source control measures. The mobile source control measures are listed in Table 2.8-2 and summarized in the text following that table.

The DPEIR fails to acknowledge let alone analyze all potentially significant environmental impacts of the mobile source control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*See*, *e.g. Muzzy Ranch*, *supra*.)

3-21

[8] A similar provision is included as part of FLX-02. (Proposed Plan, Appendix IV-A, p. IV-A-105.)

[9] (CEQA Guidelines § 15126.2(d); *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 367 [EIR must discuss growth-inducing effects even though those effects will result only indirectly from a project.].)

Of particular concern for the POLB is MOB-01. Stemming from a desire to take ongoing credit for the voluntary emission reductions undertaken by the Ports through the CAAP Program, Control Measure MOB-01 could make the voluntary emission reductions a mandatory enforceable commitment in the form of a regulation enacted by the District "within its existing legal authority" or some yet-to-be granted authority that the District will "seek" to regulate mobile source emissions. (DPEIR, p. 2-24.)[10] In a separate comment letter to the District on the Proposed Plan dated August 19, 2016, the Ports explain why the District lacks the legal authority to adopt or enforce any such regulation.[11] Due to its lack of legal authority, this measure is not feasible and thus cannot serve as any valid form of mitigation. (Public Resources Code §§ 21004 and 21081(a)(3); CEQA Guidelines §§ 15040 and 15364; *Sierra Club v. California Coastal Comm'n* (2005) 35 Cal.4th 839; and *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) Moreover, from a CEQA standpoint, the emission reductions from the CAAP Program are already reflected in the baseline/setting as well as in the discussion of the No Project Alternative.[12]

3-21 cont.

MOB-02 appears intended to correct two District rules pertaining to rail yards and intermodal facilities rejected by the U.S. EPA presumably because they are beyond the scope of the District's regulatory jurisdiction. Per this vague and amorphous measure, the District will reconvene a stakeholder working group "to discuss and identify actions or approaches that can be implemented to further reduce emissions at rail yards and intermodal facilities." (DPEIR, p. 2-28.) At most, this is a proposal to develop a measure that cannot be adequately analyzed at present in the DPEIR and should be removed from consideration.[13] Any such contemplated implementation strategies must be included in the "Project Description" so that they may be evaluated in the DPEIR along with the other control measures.

3-22

Measure MOB-05 proposes to provide funding rebates for at least 15,000 zero emission or partial-emission vehicles per year. Measure MOB-07 similarly seeks to deploy up to 120 zero

3-23

[10] Specifically Measure MOB-01 "seeks to quantify the emission reductions realized from the CAAP and credit the reductions into the [State Implementation Plan ("SIP")] to the extent that these actions are real and surplus to the SIP." (DPEIR, p. 2-28.)

[11] The Ports supplemented its August 19, 2016 letter on the Proposed Plan with a November 7, 2016 comment letter on the Revised Plan and the partially-released Socio-Economic Report.

[12] (*See*, *e.g.*, CEQA Guidelines § 15126.6(e)(3)(A) [when the "project" is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future."].)

[13] Similar deficiencies apply to Measures MOB-03 (Emission Reductions at Warehouse Distribution Centers), MOB-04 (Emission Reductions at Commercial Airports), MOB-12 (Further Emission Reductions from Passenger Locomotives), MOB-13 (Off-Road Mobile Source Emission Reduction Credit Generation Program), MOB-14 (Emission Reductions from Incentive Programs), and EGM-01 (Emission Reductions from New Development and Redevelopment Projects).

and partial-zero emission heavy-duty vehicles per year. The DPEIR needs to contain an analysis of the traffic, noise, air quality, and other impacts associated with such programs, which could result in additional vehicles being added to already congested roadways.

Measure MOB-06 seeks to retire 2,000 older light and medium-duty vehicles per year. Measure MOB-08 similarly seeks to retire 2,000 heavy-duty vehicles per year. The DPEIR needs to contain an analysis of the traffic, noise, air quality, and other impacts associated with such programs, which could result in additional vehicles being added to already congested roadways.

3-23 cont.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See* Control Measures MOB-06, MOB-07, MOB-08, MOB-10, MOB-11, MOB-12, MOB-13, and MOB-14.)

Pp. 2-33 to 2-39 – SCAQMD Proposed PM2.5 Strategy

Measure BCM-03 calls for an unspecified increase in the watering of roads to control fugitive dust. The measure also proposes to evaluate existing fugitive dust rules to see if unknown and unspecified additional PM2.5 emission reductions can be achieved. The potentially significant air quality, noise, traffic, and water supply impacts of such a proposal must be thoroughly analyzed and mitigated in the DPEIR.

Measure BCM-04, which calls for revised manure management strategies, requires more analysis than is provided in the DPEIR. (*See*, *e.g.*, *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597 [EIR required to examine impacts of alternative sewage sludge disposal].)

Measure BCM-07 calls for increased watering of rotating cutting discs to reduce dust emissions. "Emissions are expected to be minimal, provided the waste material is disposed of properly." (Proposed Plan, Appendix IV-A, p. IV-A-201.) Yet, no analysis of the potentially significant air, noise, hazards, traffic, solid waste, or water supply impacts are provided such that any mitigation could be imposed to ensure that waste material is, in fact, disposed of properly.

3-24

The noise, air quality, geology and other impacts of Measure BCM-08, which seeks to limit agricultural burning through promoting burning alternatives (*e.g.*, chipping/grinding or composting) must be fully analyzed and mitigated.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See*, *e.g.*, Control Measures BCM-01, BCM-02, BCM-04, BCM-06, BCM-07, and BCM-10.)

Pp. 2-39 to 2-45 – SCAQMD Air Toxic Control Measures

In addition to the criteria pollutant control measures, the Proposed Plan also contains a detailed list of measures to control toxic air contaminants ("TAC") from stationary sources. The TAC control measures are listed in Table 2.8-5 and summarized in the text following that table.

The DPEIR fails to acknowledge, let alone analyze, all potentially significant environmental impacts of the air toxic control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*See*, *e.g. Muzzy Ranch*, *supra*.) 3-25

Measure TXM-01 contains a list of potential emission control approaches for metal grinding operations. Because there is no specific proposal, the DPEIR cannot meaningfully analyze this measure.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See* Control Measures TXM-04, TXM-05, TXM-06, TXM-08, and TXM-09.)

Pp. 2-45 to 2-53 – State and Federal Control Measures

The DPEIR's project description contains a detailed list of federal and state mobile source control measures. Although the District admittedly lacks regulatory jurisdiction over mobile sources, because the federal and state mobile source control measures are described as part of the Project, the DPEIR must contain a thorough analysis of the potentially significant environmental effects associated with these measures. Yet, Table 4.0-1 of the DPEIR wrongly concludes that several of these measures will result in no impacts. Instead, it claims without any evidentiary support that "[i]mpacts are speculative" due to unknown future technologies and the design of future cars. 3-26

Control Measure ORLD-01 proposes to increase the sales of zero emission vehicles and plug-in electric vehicles beyond the levels required in 2025. Measure ORLD-03 calls for "greater penetration of zero and near-zero technologies" as well as the "potential for autonomous vehicles and advanced transportation systems." (DPEIR, p. 2-48.) Measure ORHD-05 requires the use of low-NOx engines and the purchase of zero emission trucks "for certain class 3-7 last mile delivery trucks" starting in 2020 and "ramping up to a higher percentage of the fleet at time of normal replacement through 2030." (DPEIR, p. 2-49.) Measure ORHD-09 calls for "greater penetration of zero and near-zero technologies through incentive programs, emission benefits associated with increased operation efficiency strategies, and the potential for new driver assist and intelligent transportation systems." (DPEIR, p. 2-50.) Measure OFFS-08 likewise calls for

"greater penetration of zero and near-zero technologies through incentive programs, and emission benefits associated with the potential for worksite integration and efficiency, as well as connected and autonomous vehicle technologies." (DPEIR, p. 2-52.) The potentially significant air quality, noise, traffic, and other impacts associated with such measures must be thoroughly analyzed and mitigated in the DPEIR.

Further, the Proposed Plan identifies nearly $15 billion in incentive funding needed to facilitate the transition to zero and near-zero emissions equipment. The Proposed Plan indicates that SCAQMD will develop an action plan to identify "the necessary actions by the District" and other stakeholders "to ensure the requisite levels of funding are secured." (Proposed Plan, p. 4-66.) Although the Proposed Plan discusses the possibility of a federal "superfund" program, state bond measures, and local ballot measures to obtain this funding, it does not define the specific "necessary actions." Without more detail, it is impossible to evaluate whether this incentive action plan and the necessary $15 billion in government funding have significant environmental impacts. The DPEIR states that such a measure could result in significant secondary impacts in the areas of aesthetics, energy, hazards, water, noise, waste, and traffic. (DPEIR, pp. 6-40 to 6-41.) But no thorough analysis nor mitigation is provided as required by CEQA. Instead, the impacts of such a proposal are only cursorily examined as a Project "alternative." 3-26 cont.

Pp. 2-53 to 2-55 – SCAG's Regional Transportation Plan/Sustainable Communities Strategy and Transportation Control Measures

SCAG has the responsibility for preparing and approving the portions of the Proposed Plan related to regional demographic projections and integrated regional land use, housing, employment, and transportation programs, measures, and strategies. (DPEIR, p. 2-53.) The DPEIR further indicates that the District "combines its portions of the AQMP with those portions prepared by SCAG" per Health & Safety Code § 40460. (*Id.*) In particular the Project contains Transportation Control Measures ("TCM"), from SCAG's RTP/SCS. 3-27

Although those measures are only generally described in the DPEIR, they include several measures that may result in significant environmental impacts. (*See* DPEIR, p. 2-54 [measures include, among others, expanding regional transit, passenger rail, highway capacity, and high occupancy lanes].) Yet, none of these measures are analyzed in the DPEIR. As noted in Section II.D below, the DPEIR only evaluates the TCMs in the cumulative impact analysis and ignores completely the land use and transportation strategies. This results in a failure of the DPEIR to consider the "whole of the action" and associated improper segmentation of project impacts. (CEQA Guidelines § 15378; *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 283-284.)

B. The DPEIR Fails To Acknowledge And Address Numerous Significant Environmental Impacts.[14]

1. Introduction

We provide below comments that are common to all resource topics.

Given the total lack of information regarding what control measures the Project would entail and whether their implementation is feasible, it is premature to assess impacts related to any environmental resource topic, either on a project or cumulative basis. The "whole" of the Project must be analyzed in an EIR. As such, these details must be provided before these topics can be properly analyzed and mitigated in a revised and recirculated DPEIR.

In general, there is no indication what criteria were used to develop the significance thresholds or that they are supported by substantial evidence, as required. (Public Resources Code § 21082; CEQA Guidelines § 15064.7; and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) In the categories examined by the DPEIR, the significance criteria are inconsistent with the recommended questions designed to elicit whether the Project would have potentially significant impacts per Appendix G of the CEQA Guidelines.

3-28

Other than in tables with a one-sentence description of potential impacts, the vast majority of control measures are not mentioned at all in the Environmental Impact "Analysis." (*See* Tables 4.1-1, 4.1-4, 4.2-1, 4.3-1, 4.4-1, 4.5-1, 4.6-1, 4.7-1, and 4.8-1.) ***A one-sentence description of potential impacts does not constitute an adequate good faith effort at full disclosure***. (CEQA Guidelines § 15151 ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences" and that in reviewing an agency's efforts in regard to preparing an EIR courts look for "adequacy, completeness, and a good faith effort at full disclosure"]; *accord*, CEQA Guidelines § 15204(a) [requiring that a "good faith effort at full disclosure [be] made in the EIR."].)

In several instances, the DPEIR fails to identify significant unavoidable impacts as required by CEQA. It also relies on future CEQA documents by local agencies to correct any shortcomings in its analysis. Not only is such deferral of analysis improper under CEQA, it fails to recognize that given the likely ministerial nature of permits needed from local agencies, no further CEQA review may occur. (Public Resources Code § 21080(b)(1); CEQA Guidelines § 15268.) Even if such measures did require discretionary approvals, as the DPEIR repeatedly notes, the measures would be implemented at existing facilities and thus would likely be

[14] This Section provides comments on both the Existing Environmental Setting (Chapter 3) and Environmental Impacts and Mitigation Measures (Chapter 4) of the DPEIR.

determined by local agencies to be exempt from CEQA pursuant to the existing facilities exemption. (*See*, *e.g.*, CEQA Guidelines § 15301.)

The DPEIR must be revised and recirculated to contain a thorough analysis of all potentially significant impacts associated with all of the proposed Project's control measures as well as feasible mitigation measures and alternatives designed to avoid or substantially lessen those impacts.

3-28 cont.

2. Air Quality and Greenhouse Gas Emissions

a. Scope of Analysis

Several air quality topics were scoped out of the analysis pursuant to the IS. (DPEIR, p. 4.1-10.) Yet, the District's conclusion that the Project will not result in any potentially significant impacts to those topic areas is not supported by substantial evidence, as required.

For instance, the IS concluded that the Project would not conflict with or obstruct implementation of the applicable air quality plan. Along those lines, the IS notes that the Proposed Plan includes control measures for stationary, mobile, and indirect sources and that these measures are based on "feasible methods of attaining the [ambient air quality standards]." (IS, p. 2-11.) There is no evidence, let alone substantial evidence, as required, to support this statement. As noted above, control measures related to mobile sources are beyond the District's regulatory jurisdiction and thus infeasible for legal and other grounds.

3-29

There is also no factual basis to conclude that implementation of the Project would not create any odor issues and therefore need not be studied. It is premature to dismiss this area of analysis given the lack of information currently available regarding the Project. Furthermore, the IS analysis only applies to construction odors and ignores any potential odors that may occur due to Project operations.

Several of the proposed control measures have not yet been developed by the District. Further, the emissions reductions from numerous control measures are listed as "TBD" in the Proposed Plan and DPEIR. Thus, the District lacks the requisite evidentiary basis to conclude that the Project would not diminish any existing air quality rule or future compliance requirement resulting in a significant increase in air pollutant(s).

The DPEIR must be revised, and the scope of the proposed DPEIR expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant air quality impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

b. Environmental Setting

The discussion of environmental setting or baseline is confusing and fails to comport with CEQA Guidelines § 15125. That section requires that the impacts of a project be evaluated compared to the existing environmental setting as of the time of the notice of preparation. The NOP here was issued on July 5, 2016. Yet, the DPEIR states that "2012 is the baseline year used for the emissions inventory to develop the control strategy and future baseline emissions in the 2016 AQMP." (DPEIR, p. 4.1-12.) The DPEIR goes on to inconsistently say that the latest verifiable air quality data are from 2015 and the most recent environmental topic data is from 2016. (*Id.*) It is unclear whether data from 2012 was used as the baseline for analysis of air quality impacts, or data from 2015 or 2016. An EIR that relied on shifting baselines, like the DPEIR purports to do here, was struck down by the Court of Appeal in *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99. If 2016 was used as the baseline, where is the verified air quality data to support it? The DPEIR refers to the use of a future baseline (DPEIR, p. 4.1-12), which was also struck down by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439.

3-30

c. Impact Analysis

In order to determine whether or not the air quality impacts from the proposed Project are significant, impacts are compared to the significance criteria in Table 4.1-2. (DPEIR, p. 4.1-10.) That table lists the numerical thresholds for criteria and other pollutants. There is no qualitative analysis of any air quality impacts nor consideration of several topics referenced in Section III of the Appendix G Checklist.

The DPEIR acknowledges that "[t]he exact scope of the construction activities necessary to implement the proposed control measures is not known at this time." (DPEIR, p. 4.1-19.) It nonetheless states that the measures are similar to the measures which have been implemented at facilities due to SCAQMD rulemaking. (*Id.*) No evidence is provided to support this statement.

3-31

More fundamentally, the actual "analysis" of peak construction emissions from the approximately 80 control measures is predicated on construction of only four facilities or control devices on any given day. (DPEIR, pp. 4.1-19 and Table 4.1-3.) No explanation is provided as to how this number was derived or why it is a reasonable assumption given that the Proposed Plan applies to a nearly 11,000 square mile area consisting of numerous cities and unincorporated communities in the counties of Los Angeles, Orange, San Bernardino, and Riverside. (DPEIR, pp. 1-6, 2-8, 3.9-2.) As a result of this artificial and flawed assumption, the resulting air quality impacts are grossly underreported. For instance, only NOx emissions are reported as significant impacts, requiring mitigation. Emissions of other key pollutants (*e.g.*, VOC, CO, SOx, PM10 and PM2.5) are reported as less than significant and no mitigation is proposed.

3-32

The analysis also omits any consideration of grading activities "because modifications or installation of new equipment would occur at existing industrial/commercial facilities and, therefore, would not be expected to require earthmoving, grading, etc." (DPEIR, p. 4.1-19.) Even assuming that most upgrades would be made to existing facilities, some grading is likely to occur. By omitting such activity from the analysis, the DPEIR underreports the Project's air quality impacts. 3-33

Although the District has developed localized significance thresholds for criteria pollutant emissions, which are commonly employed for air quality impact analysis in the region, the DPEIR omits any localized air quality impact analysis claiming that "the details of the individual projects to implement [the AQMP] and their locations are not known at this time." (DPEIR, p. 4.1-20.) If the details of the project is not known, then no analysis can be undertaken at all. Moreover, there is no reason why the DPEIR could not have employed reasoned estimates of air quality emissions to provide analysis of likely impacts compared to the localized significance criteria. 3-34

Control Measure BCM-04 is intended to reduce ammonia emissions from livestock waste through a process known as thermal gasification. The DPEIR states that because such systems are in the testing stage, it is not likely that this technology will become widespread until further testing is done and that "any air quality impacts will be minimal." (DPEIR, p. 4.1-30.) The measure, among others, is intended to be implemented to attain federal and state air quality standards. The DPEIR thus must assume the measures will be implemented and analyze their impacts. 3-35

The Proposed Plan contains a number of measures designed to reduce emissions from mobile sources by accelerating the penetration of partial zero-emission and zero emission vehicles. (*See*, *e.g.*, Control Measures MOB-05, MOB-06, MOB-08, MOB-09, ORLD-03, ORHD-05, and ORHD-08.) The air quality analysis presumes that all older vehicles would be eliminated and discarded and thus only considers the air quality impacts associated with scrapping old vehicles. (DPEIR, Section 4.1.6.2.4; *see also*, DPEIR, pp. 4.1-43 to 4.1-44.)[15] There is no evidence to support this assumption. The air quality analysis should have conservatively assumed operation of both the new and old vehicles simultaneously at least for the estimated remaining operational life of the old vehicles. Indeed, the DPEIR acknowledges that "it is not conclusive that equipment will be put out of service and that the high number of vehicles or equipment will be scrapped as solid/hazardous waste." (DPEIR, p. 6-33.) Similarly, the DPEIR should have assumed *increased* levels of petroleum fuel production and 3-36

[15] Even so, the scrapping analysis is based on an "internet search" of auto recycling facilities in the Basin. (DPEIR, p. 4.1-39.) This is hardly a scientific basis on which to conduct a robust analysis of potential air quality impacts. Indeed, there are other auto recycling facilities located outside the Basin and there are likely additional facilities inside the Basin as well.

transportation of crude oil, as opposed to vastly reduced levels. (DPEIR, pp. 4.1-41, 4.1-51 to 4.1.52.) 3-36 cont.

Control Measure BCM-08 is intended to provide alternatives to agricultural burns. Yet, no alternatives are specified. Thus, the conclusion that BCM-08 would reduce emissions from agricultural burn operations is not supported and does not inform the analysis of air quality impacts. (DPEIR, p. 4.1-42.) 3-37

The DPEIR claims that due to the qualitative nature of the analysis of greenhouse gas ("GHG") emissions, "it is not possible to show the magnitude of GHG emission effects from implementing 2016 AQMP control measures." (DPEIR, p. 4.1-50.) The DPEIR nonetheless asserts that the Proposed Plan "is expected to reduce GHG emissions consistent with the AB 32 Scoping Plan," resulting in less than significant GHG impacts. It reaches this conclusion by amortizing already depressed construction emissions over a 30-year period and claiming that increased GHG emissions from energy demand will be offset by substantial reductions in the amount of petroleum fuel use (*e.g.*, 530 million gallons by 2023 and 870 million gallons by 2031). (DPEIR, pp. 4.1-51 to 4.1-53.) As noted above, those assumptions are artificial and unfounded.

There is no analysis of recently enacted SB 32. This measure requires the State to reduce GHG emissions by 40 percent below 1990 levels by 2030. There is likewise no acknowledgment or analysis of the Project's consistency with State policy of reducing GHG emissions by 80 percent below 1990 levels by 2050. (Executive Order S-3-05.) The California Supreme Court has acknowledged the need to consider the evolving GHG targets and standards. (*Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204.) 3-38

While concluding that the Project may have a potentially significant impact with respect to GHG emissions, the DPEIR inconsistently finds a less than significant impact with respect to the Project's impacts in regard to conflicts with applicable plans, policies, and regulations adopted for the purpose of reducing greenhouse gas emissions. The DPEIR must likewise study this issue and all applicable federal, state, and local GHG reduction plans and policies.

Finally, the DPEIR only analyzes the air quality and GHG impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential air quality and GHG impacts associated with, among others, Control Measures CMB-01, CMB-02, CMB-03, ECC-03, MOB-05, MOB-06, MOB-07, MOB-08, MOB-13, BCM-03, BCM-06, BCM-07, BCM-08, BCM-10, CTS-01, TXM-01, TXM-05, TXM-06, TXM-09, ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08. 3-39

d. Mitigation

As noted above, the air quality analysis was artificially constrained by focusing only on a theoretical maximum of four facilities undertaking construction activities per day in response to the control measures. As such, and contrary to CEQA, the disclosure of potentially significant air quality impacts, and the imposition of feasible mitigation measures to address them, is largely ignored by the DPEIR.

The DPEIR does acknowledge a significant impact in regard to NOx emissions. However, Section 4.1.7 of the DPEIR states that various measures "*should* be implemented, where applicable and *if feasible*."[16] This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168 [no evidence that recommendations for reducing GHG emissions would function as enforceable or effective mitigation measures]; and *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 [list of potential mitigation measures rejected as "nonexclusive, undefined, untested and of unknown efficacy."].)

3-40

Several of the mitigation measures appear to have nothing at all to do with NOx emissions. Moreover, no effort is made to quantify the reduction in NOx emissions as a result of the measures, as is commonly done. Thus, it is impossible to determine whether impacts have been avoided or substantially lessened, as required. Instead, the DPEIR concludes that while implementation of these measures would reduce construction emissions, "the overall construction air quality and GHG impacts after mitigation would likely remain significant." (DPEIR, p. 4.1-57.)

The DPEIR also fails to acknowledge that because the District lacks controls over implementation of these measures, the impact is significant and unavoidable. Instead, the DPEIR contains a vague reference to reliance on "subsequent CEQA analyses." (DPEIR, p. 4.1-57.)

3-41

3. Energy

a. Scope of Analysis

Several energy topics were scoped out of the analysis pursuant to the IS. (DPEIR, p. 4.2-7.) However, the District's conclusion that the Project will not potentially result in significant impacts to those areas is not supported by substantial evidence.

3-42

[16] Mitigation Measure AQ-2 similarly "encourage[s]" contractors to apply for SCAQMD funding incentives.

For instance, the IS determined that the Project would not conflict with an adopted energy conservation plan or existing energy standards. (IS, p. A-76.) The District reached this conclusion by assuming that any owners or operators of affected facilities would comply with applicable standards at the time of future installation. However, there is no substantial evidence supporting the conclusion that owners or operators would comply with future standards. If the net effect of implementing the Project is an increase in regional energy demand, as the DPEIR indicates is likely, potential conflicts with adopted energy conservation plans and existing energy standards cannot be dismissed as "no impact." The shift from fossil fuels to alternative fuels or electrical- powered technologies and increased reliance on such alternative fuels or electricity such that sufficient supply and emergency storage would be available in the event of a major disaster must also be considered. 3-42 cont.

Additionally, the IS reached the conclusion that the Project would not conflict with an adopted energy conservation plan by assuming that the Project control measures would promote, rather than interfere with, energy efficiency and conservation. However, the IS does not analyze the potential for the control measures to frustrate adopted energy conservation plans by implementing conflicting measures. In fact, the IS does not even disclose any adopted energy conservation plans or energy standards. As such, there is no substantial evidence to support the conclusion that the Project will not conflict with adopted energy conservation plans or existing energy standards. 3-43

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant energy impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts. 3-44

b. Impact Analysis

The DPEIR specifically states that the "actual potential increase in the amount of electricity use due to the implementation of the 2016 AQMP is unclear at this time because specific information regarding the number and size of the air pollution control devices that may be installed are currently unknown." (DPEIR, p. 4.2-11.) Yet, estimates of increased energy use must be provided based on substantial evidence. The DPEIR must accordingly be revised to include the potential operational energy use, including pollution control equipment that would be added pursuant to Control Measure CMB-05. 3-45

The Energy Section improperly relies on a 2015 Final Program Environmental Assessment ("PEA"), which analyzed potential increases in electricity demand associated with SCAQMD's Regional Clean Air Incentives Market ("RECLAIM") program to conclude that Control Measure CMB-05, which would seek further NOx reductions under the RECLAIM program, would not increase electricity demand. However, the DPEIR states that Measure CMB-05 may encourage different types of control devices, including "SCR, SNCRs, a proprietary Low Temperature Oxidation technology . . . and catalyst impregnates filters." 3-46

(DPEIR, p. 4.2-8.) The DPEIR does not disclose how these different types of control devices would affect the conclusions in the 2015 PEA, but presumably, different types of control devices would alter the analysis and should be considered. More importantly, any further NOx reductions under the RECLAIM program should be quantified and analyzed. The District cannot simply assume that CMB-05 would not substantially increase electricity demand by relying on a 2015 EA for an existing program.

3-46 cont.

Similarly, the analysis of impacts from Control Measures MOB-09, ORHD-08, ORHD-06, and ORHD-09 is based on a Draft EIR/EIS prepared by Caltrans in 2012 for the Interstate 710 Corridor Project. (DPEIR, p. 4.2-12.) The District states that Caltrans is in the process of revising the I-710 Corridor Project EIR/EIS and that the associated estimates used in the DPEIR, thus, are preliminary.

The EIR/EIS for the I-710 Corridor Project is in the process of being revised and recirculated and the particulars of that project are still unknown. A Draft EIR/EIS for the I-710 Corridor Project was released in 2012. In 2013, the I-710 Corridor Project lead agencies announced that they would be pursuing a Recirculated CEQA document with updated alternatives. This Recirculated EIR/EIS is not anticipated to be released until Spring 2017 at the earliest. As such, the alternatives being considered for the I-710 Corridor Project are currently unknown, and it is speculative to make any statements about the environmental impacts of the alternatives or rely on the underlying analysis that is a basis for environmental impacts of the alternatives.

3-47

It is not permissible to simply state that an impact analysis was based on preliminary data in lieu of preparing data supported by substantial evidence. The District should calculate an estimate of electricity demand for electric or magnetic power for anticipated new roadway infrastructure instead of relying on a four year old Caltrans document that is in the process of being substantially revised.

The DPEIR notes that construction activities necessary to implement control measures would increase gasoline and diesel demand. (DPEIR, p. 4.2-19.) The DPEIR then states that larger construction projects will likely require project-specific CEQA analysis and that the Project is anticipated to reduce petroleum fuels and alternative fuels overall. A deferral of environmental analysis until after a project is approved is not allowed by CEQA. (Public Resources Code §§ 21002, 21151; CEQA Guidelines § 15004.) The conclusion that the Project will not have a significant impact with regard to the use of gasoline, diesel, and alternative fuels is also not based on sufficient evidence. The DPEIR must be revised to include estimates of petroleum fuels and alternative fuels based on substantial evidence.

3-48

The DPEIR states that the Project will result in a shift from petroleum-based fuels to alternative fuels, including hydrogen. (DPEIR, p. 4.2-21.) The DPEIR then states that hydrogen fueling capacity will be insufficient by 2020. Nonetheless, the DPEIR does not include any

3-49

analysis or mitigation to address impacts associated with this deficiency in hydrogen fueling capacity, such as through development of additional hydrogen fueling facilities and/or reliance on alternative fuels. As such, the DPEIR should be revised to include analysis of this potentially significant impact.

3-49 cont.

There is no substantial evidence to support the DPEIR's conclusion that impacts related to the increased demand of alternative fuels, alternative energy, renewable energy, petroleum fuels, and natural gas would be less than significant. (DPEIR, p. 4.2-24.) In the Energy Section itself, the DPEIR cites potential indirect impacts of the control measures, including the increased use of electricity and potentially increased need to generate additional renewable energy sources. (DPEIR, p. 4.2-23.) These indirect impacts would increase demand for alternative fuels, alternative energy, and renewable energy and are not quantified in the energy section. Thus, impacts cannot be deemed less than significant.

3-50

Appendix F of the CEQA Guidelines contains several requirements, which have recently been held by the court to be critical to include in EIR energy sections. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173.) One of the requirements is for total energy demand to be quantified, which is absent from the DPEIR. Other requirements mandate consideration of construction processes and specify that total daily vehicle trips be included. This information is also omitted from the Energy Section. Mitigation Measure E-4 purports to improperly defer the requisite energy analysis until after approval of the Project. The District must revise the Energy Section to include all components of Appendix F.

3-51

Finally, the energy analysis fails to analyze the impacts associated with all of the proposed control measures. For instance, there is no substantive discussion or analysis of, among others, the potential energy impacts associated with, among others, Control Measures CMB-01, CMB-03, CMB-03, ECC-04, ECC-02, ECC-03, MOB-01, MOB-02, MOB-04, TXM-01, ORHD-04, ORFIS-01, and ORFIS-03.

3-52

c. Mitigation

Section 4.2.5 of the DPEIR states that various measures "*should*" be implemented "where feasible." Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)

For instance, Mitigation Measure E-1 states that project sponsors should "pursue incentives" to encourage the use of energy efficient equipment and vehicles and promote energy conservation. It is unclear specifically what incentives should be pursued and the number of energy efficient equipment and vehicles needed to mitigate Project impacts. Mitigation

3-53

Measures E-5, E-6, and E-7 likewise call for "evaluat[ing] the potential for reducing peak energy demand" through various means. Studying or considering the potential for reducing energy demand is not the same as imposing a binding commitment to reduce energy demand. 3-53 cont.

4. Hazards and Hazardous Materials

a. Scope of Analysis

The IS stated that the Project would not be located on a site which is included in a list of hazardous materials sites compiled pursuant to Government Code § 65962.5, also known as the "Cortese list." As such, the IS concluded that "implementation of the proposed control measures is not expected to interfere with site cleanup activities or create additional site contamination" and that this topic "will not be further evaluated" in the DPEIR. (IS, p. 2-28.)

In our comment letter on the IS, we pointed out that Government Code § 65962.5 must be considered and that there are several parcels on the Cortese list located within the POLB alone.[17] The DPEIR includes a brief section on this issue and states that some facilities are included on lists of hazardous materials sites or near listed sites and that construction on these sites could pose risks to the public and environment. But, the DPEIR states that without knowing the sites and contaminants present, "it is not possible to know in advance which regulations would apply." (DPEIR, p. 4.3-40.) This is a critical issue that must be considered for the DPEIR to be adequate pursuant to CEQA. As such, the DPEIR must be revised and recirculated to adequately address this issue. 3-54

b. Impact Analysis

The DPEIR concludes that hazards associated with increased ethanol from mobile sources are equivalent or reduced compared to diesel fuel and gasoline. However, the DPEIR itself lists certain characteristics of ethanol that would pose a greater hazard risk than diesel and gasoline, such as ethanol's higher auto ignition temperature and the fact that ethanol can ignite in enclosed spaces, unlike gasoline. (DPEIR, p. 4.3-18.) It is unclear based on the limited information provided in the DPEIR whether, on balance, ethanol is more or less hazardous than diesel fuel and gasoline. The DPEIR should be revised to include further details about the specific differences between ethanol, diesel fuel, and gasoline, prior to making a conclusion that hazards associated with ethanol are generally equivalent or less than conventional fuel hazards. 3-55

The DPEIR reaches a similar unsupported conclusion regarding the hazards associated with the use of compressed natural gas. The DPEIR needs to explain specifically why 3-56

[17] (*See* California Department of Toxic Substances Control. Hazardous Waste and Substances Site List—Site Clean (Cortese List) *www.dtsc.ca.gov/Site Cleanup/Cortese_List.cfm*. City of Long Beach zip code 90802.)

compressed natural gas poses the same or fewer hazards compared to conventional fuels, and such explanation must be supported by substantial evidence. 3-56 cont.

Regarding the use of liquefied natural gas, the DPEIR cites a methodology for estimating the potential risk of a vapor explosion; however, the Project's potential vapor explosion risk is never quantified. In addition, the discussion states that exposure of liquefied natural gas concentrations that would cause adverse health effects is unlikely because the lower explosive limit ("LEL"), or concentration at which a given gas ignites or explodes, is five percent. However, the discussion never explains what percentage would cause a LEL to result in adverse health effects nor does it compare a five percent LEL to any adopted threshold of significance. 3-57

Section 4.3.4.2.5 of the Hazards Section discusses biodiesel's characteristics and then concludes that biodiesel and renewable diesel are safer than conventional diesel. However, there is no analysis, much less substantial evidence, to support this conclusion. This section must be revised to compare the hazardous characteristics of biodiesel to conventional diesel in order to conclude that biodiesel is the safer of the two. 3-58

The DPEIR analyzes the difference between hydrogen and conventional fuels and concludes that hydrogen is equivalent or safer than conventional fuels. However, the discussion notes that a hydrogen flame has few warning properties and that hydrogen has an unusually large flammability range. It is difficult to determine, on balance, based on the discussion in the DPEIR, why hydrogen's impacts are the same or less than conventional fuels. As such, the DPEIR should be revised to include a more detailed and quantitative analysis of the comparison of hydrogen and conventional fuels to support its less than significant conclusion. 3-59

In all of the sections of the DPEIR discussed above that balance the risks of alternative fuels compared to conventional fuels, the DPEIR fails to disclose whether the quantity of each chemical is the same quantity that is required for conventional fuels. This information is critical to the determination of whether hazardous impacts would increase compared to conventional fuels and therefore should be included in Section 4.3. 3-60

We noted in our comment letter on the IS that "risk of upset" was improperly omitted from the IS checklist. While risk of upset is included in Section 4.3 of the DPEIR, the analysis fails to adequately describe and improperly minimizes impacts that could potentially result from hazardous materials spills or accidents. For example, Section 4.3 includes an ammonia tank rupture scenario but simply states that major industrial facilities are typically large enough and far enough away from sensitive receptors to minimize impacts associated with new tanks by siting new tanks at least 528 feet from sensitive receptors. However, the section then notes that there are a number of industrial facilities in the Basin with sensitive receptors located within 528 feet of industrial facilities. Thus, the conclusion that any future new tank would be far enough away from sensitive receptors to minimize impacts is illogical since there are sensitive receptors currently located within 528 feet of industrial facilities that could be impacted by such an 3-61

incident. The analysis goes on to state that "information on specific projects potentially affected by these control measures are unknown at this time" and "to identify any impacts at this time without knowing the specific design features would be speculative." (DPEIR, p. 4.3-33.) This is an inadequate conclusion under CEQA. The DPEIR must seek to disclose as much information as it reasonable can so as to reflect a good faith effort at full disclosure. 3-61 cont.

Finally, the DPEIR improperly analyzes the hazardous materials impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential hazards impacts associated with, among others, Control Measures BCM-07, TXM-01, TXM-05, TXM-06, TXM-08, and TXM-09. 3-62

c. Mitigation

Section 4.3.5 of the DPEIR contains various measures that "*should*" be implemented. Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.) 3-63

Several of the mitigation measures in the Hazards Section are insufficient to mitigate the Project's impacts. For example, Mitigation Measure HZ-1 calls for consumer warning requirements on all products that are flammable and extremely flammable, but does not indicate what those warnings must contain. Mitigation Measure HZ-2 similarly calls for a public education and outreach program with local fire departments as to such measures, without providing any performance standard or metric to ensure impacts are mitigated. Mitigation Measure HZ-3 requires fire departments to install secondary containment, but does not specify the level of containment required and does not require the containment to be inspected or approved by the fire department. Similarly, HZ-10 requires the use of best management practices to avoid soil and groundwater hazards, but does not identify specific practices or give an agency authority to review and approve the practices. HZ-17 requires transportation of hazardous materials within one-quarter mile of schools to be avoided "wherever feasible." 3-64

Formulation of mitigation measures cannot be deferred until a later time. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom*, *supra*.) However, several mitigation measures in the Hazards Section constitute improper deferral of mitigation. For example, Mitigation Measure HZ-3 simply recommends that future projects "[i]nstall secondary containment (e.g., berms)" and Mitigation Measure HZ-4 recommends that future projects "[i]nstall valves that fail shut." Mitigation Measure HZ-6 requires performance integrity testing of LNG storage tanks to prevent structural failure problems; however, this measure does not include an explanation of how to prevent physical damage if the integrity testing shows that the storage tanks will fail. Mitigation Measure HZ-7 requires future facilities to conduct Phase 1 Environmental Site Assessments ("ESA") prior to construction. If known contamination is discovered, Mitigation Measure HZ-7 requires a Phase II ESA to be conducted and the recommendations of the Phase II ESA to be 3-65

implemented. This is improper deferral of mitigation and requires recirculation of the DPEIR with legally adequate mitigation measures. 3-65 cont.

CEQA requires a lead agency to present feasible mitigation measures to avoid or substantially lessen significant environmental impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) Despite concluding that the Project will result in significant hazards impacts with respect to the transportation of ammonia, the DPEIR does not contain a single mitigation measure to address this impact. The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant hazards impacts. 3-66

5. Hydrology and Water Quality

a. Scope of Analysis

Runoff-related impacts were scoped out of the DPEIR pursuant to the IS, with the District reasoning that only "minor modifications" would be needed to commercial or industrial facilities affected by the proposed control measures. (DPEIR, p. A-86.) Drainage pattern impacts were similarly scoped out of the analysis in the DPEIR. Excluding these topics is not supported by substantial evidence in the record. 3-67

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant hydrology and water quality impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

b. Impact Analysis

The water quality impacts related to wastewater treatment capacity rely on estimated affecting coating usage data from the Program EIR ("PEIR") for the 2012 AQMP. (DPEIR, p. 4.4-9.) The discussion states that the 2012 data provides a conservative estimate of wastewater use because some of the materials may have already been reformulated. However, this explanation does not constitute a reasoned explanation why the 2012 data is appropriate to rely upon without supporting documentation proving that the estimate is, in fact, conservative. The discussion does not provide any details about why data from the 2012 AQMP PEIR is appropriate or relevant to analyze the significant water quality impacts of the particular 2016 control measures. As shown in Table 4.4-2, in addition to the total wastewater generated from reformulated materials, Control Measures CTS-01, FLX-02, TXM-08, CMB-05, BCM-01, and CPP-01 generate wastewater flow. The DPEIR should include a current estimate of how these control measures would affect projected wastewater flow. 3-68

The wastewater treatment capacity section asserts that a 2.1 million gallon per day increase in wastewater flow would be within the capacity of existing wastewater treatment 3-69

plants, but fails to list the wastewater treatment plants that would accept this capacity. If all of the new wastewater flow is sent to one wastewater treatment plant, for example, flow generated by the Project could exceed the capacity of that plant. This data should be provided in the DPEIR and the conclusion should be supported by substantial evidence. 3-69 cont.

The analysis for wastewater discharge impacts is flawed because it relies on the 2015 PEA for the District's NOx RECLAIM program, which analyzed wastewater impacts for refinery facilities that would potentially install Wet Gas Scrubbers ("WGS") or Wet Electrostatic Precipitators ("ESP") technologies. The analysis concludes that since the RECLAIM PEA showed peak percentage increases from baseline levels to be less than 25 percent and thus under the need to obtain a wastewater discharge permit, any increased wastewater generated from WGS or Wet ESP technologies under the Project would not exceed 25 percent of existing capacity. The analogy to the 2015 PEA is insufficient evidence to support the conclusion that the Project control measures would not trigger a 25 percent or more increase above existing capacity at any facility, much less that the impacts from the Project control measures would be "similar or fewer" than impacts analyzed in the 2015 PEA. Control Measure CMB-05 itself requires further NOx reductions from the RECLAIM Assessment and requires a re-examination of the RECLAIM program, including voluntary opt-out of the program and implementation of additional control and SCR equipment. The DPEIR must specifically analyze potentially affected refineries and include capacity limits to properly analyze the impacts of the Proposed Plan. The DPEIR cannot simply rely on the analysis completed for a different project to conclude that the Project's wastewater discharge impacts are less than significant. 3-70

The DPEIR's discussion of water demand concludes that new water conveyance infrastructure is not expected because the anticipated increased water demand associated with the Project, *e.g.*, five million gallons per day, is expected to be associated with existing sources within the Basin which already have water conveyance infrastructure. This conclusion is completely unsupported. An increase of water demand of five million gallons per day is extremely unlikely to be able to be accommodated by existing infrastructure. This impact must be adequately studied and impacts must be disclosed in order for the DPEIR to be legally adequate under CEQA. 3-71

The DPEIR identifies potential new or increased sources of water pollution, such as biodiesel fuels, compressed natural gas, liquefied natural gas, and hydrogen. The DPEIR states that alternative fuels are expected to be less toxic compared to conventional fuels. However, the DPEIR fails to provide substantial evidence to support the conclusion that alternative fuels would be less toxic than conventional fuels. Further, even if alternative fuels are less toxic, they may cause or contribute to exceedances of storm water permit requirements because they present different pollutants into the storm drain system compared to conventional fuel byproducts. For example, as noted in the DPEIR, electric vehicles contain lead-acid and nickel-cadmium batteries. Although, as noted in the DPEIR, these batteries are being recycled at an increasing rate, they remain a source of storm water pollution which could exceed "numeric action limits" 3-72

in various storm water permits issued to agencies in SCAQMD's jurisdiction. Thus, the conclusion that alternative fuel vehicles will not pose water quality impacts is unsupported by substantial evidence.

3-72 cont.

Lastly, the DPEIR only analyzes the hydrology impacts associated with some, but not all, of the proposed control measures. For instance, the potential water quality impacts (both water demand and water quality impacts) associated with cleaning solar panels during routine maintenance (Control Measure ECC-03) are not analyzed. In addition, there is no substantive discussion or analysis of the potential hydrological impacts associated with, among others, Control Measures BCM-03, BCM-07, ECC-04, BCM-04, TXM-01, TXM-02, TXM-04, TXM-05, TXM-06, TXM-07, and CCP-01.

3-73

c. Mitigation

Section 4.4.6 of the DPEIR states that various measures "*should*" be implemented "where feasible." Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)

For example, Mitigation Measure WQ-1 states that local water agencies should continue to evaluate future water demand. Mitigation Measure WQ-2 provides that project sponsors should coordinate with local water providers to make sure there are adequate water supplies. Mitigation Measure WQ-3 encourages project sponsors to implement water conservation measures and prioritize recycled water "whenever available and appropriate." Finally, Mitigation Measure WQ-4 states that project sponsors should consult with local water providers to identify "feasible and reasonable" measures to reduce water consumption.

3-74

Most of these measures, which rely on future study and action, also constitute improper deferred mitigation under CEQA. (CEQA Guidelines §15126.4(a)(1)(B); *Sundstrom*, *supra*.)

6. Noise

a. Scope of Analysis

We appreciate the District adding operational noise impacts to the scope of the DPEIR in response to our comments on the NOP/IS. However, the DPEIR still neglects to address the qualitative noise impacts that Appendix G of the CEQA Guidelines specifically recommends be addressed. For instance, there is no discussion of whether the Project would result in a substantial temporary or permanent increase in ambient noise levels above levels existing without the Project.

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The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant noise impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts. 3-75 cont.

b. Impact Analysis

In order to determine whether or not the noise impacts from the proposed Project are significant, impacts are compared to the significance criteria in Section 4.5.3. (DPEIR, p. 4.5-5.) That section indicates that construction noise levels are significant if they: (a) "exceed the local noise ordinances," (b) increase ambient noise levels by more than three decibels if the noise threshold is currently exceeded, or (c) exceed federal Occupational Safety and Health Administration noise levels. For operational noise, thresholds similar to (a) and (b) above are used.

Despite the stated use of these thresholds, no analysis is performed of the Project's impacts compared to these thresholds. Instead, the DPEIR simply states based on the noise from a typical construction site, that construction noise impacts would be significant. There is no analysis of whether Project construction activities would exceed local noise ordinances. There is also no analysis of existing ambient noise levels, whether those noise levels are currently exceeded, and, if so, whether the Project would increase those levels by more than three decibels. The DPEIR employs a vibration significance threshold that is not included in its significance criteria and provides no explanation whatsoever to justify its use or reliance thereon. 3-76

Moreover, there is no *qualitative* analysis of any noise impacts nor consideration of several topics referenced in Section XII of the Appendix G Checklist. (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 [lead agency did not comply with CEQA by relying solely on specified noise standard without undertaking analysis of potential impacts pursuant to Appendix G of the CEQA Guidelines].) 3-77

Further, the DPEIR only analyzes the construction-related noise impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential noise impacts associated with, among others, Control Measures MOB-05, MOB-08, MOB-13, BCM-08, and ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08. Other measures that may result in significant impacts, such as Control Measures CMB-03, MOB-06, BCM-03, and BCM-07, are given cursory, at best, treatment. Further, the DPEIR assumes that "no new industrial facilities or corridors will be constructed," but provides no evidence, let alone substantial evidence, as required, to support this statement. (DPEIR, p. 4.5-5.) 3-78

The analysis of operational noise impacts suffers from the same flaws as the analysis of construction noise impacts. The stated noise thresholds are ignored and no reasoned analysis or 3-79

substantial evidence supports the DPEIR's claim that "operational noise and vibration impacts associated with the Proposed Plan are expected to less than significant." (DPEIR, p. 4.5-10.)

3-79 cont.

c. Mitigation

The DPEIR acknowledges a significant impact in regard to construction noise and vibration impacts. Section 4.5.5 of the DPEIR states that various measures "*should* be implemented." This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.) Moreover, as noted previously, *none* of these measures may be implemented given the ministerial nature of the subsequent local permitting process. Indeed, the DPEIR states that the District "cannot predict" how local agencies "might choose to mitigate a significant construction noise and vibration impacts for a future project." (DPEIR, p. 4.5-13.)

3-80

The DPEIR acknowledges that the identified measures are not sufficient to mitigate the significant noise impacts to a less than significant level. No effort or attempt is made to explain what noise levels would be with or without mitigation. Thus, it is impossible to determine whether impacts have been avoided or substantially lessened, as required.

Mitigation Measure NS-1 requires the installation of temporary noise barriers during construction. It is not clear whether such barriers must be installed during all construction periods, as implied.

Mitigation Measure NS-2 specifies that noise barriers shall be used to protect sensitive noise receptors from excessive noise levels during construction. Again, the measure does not specify whether such barriers must be installed during all construction periods, as implied. Further, the measure does not specify what constitutes "excessive" noise levels.

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Mitigation Measure NS-3 indicates that if construction activities are allowed outside the hours allowed by local ordinances, the impacted individual should seek "temporary relocation or use of hearing protective devices." Placing the onus of mitigating noise impacts on the impacted sensitive receptor is anathema to the District's mitigation obligations under CEQA.

7. Solid and Hazardous Waste

a. Scope of Analysis

The IS prepared for the Project scoped out compliance with federal, state, and local statutes and regulations related to solid and hazardous waste from the DPEIR on the basis that the District's Board would be required to make consistency findings with current regulations prior to adopting or amending the proposed control measures. There is no substantial evidence

3-82

to support the statement that the control measures would be consistent with regulations simply because the District will make consistency findings.

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant solid and hazardous waste impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

3-82 cont.

b. Impact Analysis

Section 4.6.4.2.2 states that the permitted capacity of landfills in Los Angeles, Orange, Riverside, and San Bernardino counties is 112,592 tons per day and that the increase in solid waste from the Project control measures would only result in a minor increase in solid waste that would not exceed permitted capacity. There are several issues with this analysis. First, the discussion omits an estimate of the quantity of solid waste anticipated to be generated by the Project, which is a critical component to making a significance determination of solid waste impacts. Second, the discussion does not state which landfills will accept solid waste from the Project. Third, the analysis does not consider when applicable landfills will reach capacity, which is vital to understanding whether there will be capacity to accept future waste, particularly for an EIR that analyzes impacts of a program that will be implemented over many years.

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Similarly, the DPEIR states that the permitted capacity at the Buttonwillow Landfill, which would likely accept hazardous waste generated as a result of the Project, is in excess of 10 million cubic yards and will therefore have "sufficient capacity to handle any small amounts of hazardous waste that could be collected by the filters, baghouses, or [electrostatic precipitators]." (DPEIR, p. 4.6-14.) This conclusion is not supported by substantial evidence because it does not quantify the "small amount" of hazardous waste generated by the Project and relies on permitted capacity rather than presenting data on current capacity.

3-84

Regarding construction waste, the DPEIR does not even attempt to quantify the solid waste that would be generated by the Proposed Plan's measures. Rather, the DPEIR states that "at this time, it is speculative to estimate the amount of construction waste that may be generated as the 2016 AQMP is implemented, since the extent and timing of individual projects is not known." (DPEIR, p. 4.6-17.) This conclusion is unsupported by any evidence, much less substantial evidence, as required. Construction waste estimates must be quantified and presented in the DPEIR along with feasible mitigation measures to avoid or substantially lessen any associated impacts.

3-85

The Solid and Hazardous Waste Section only analyzes impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential solid and hazardous waste impacts associated with, among others, Control Measures ECC-03, ECC-04, BCM-01, BCM-02, BCM-07, CMB-01, CMB-02, CMB-

3-86

04, FLX-02, MOB-05, MOB-06, MOB-07, MOB-08, MOB-10, MOB-11, MOB-12, and MOB-13. 3-86 cont.

c. Mitigation

CEQA requires a lead agency to present feasible mitigation measures to avoid or substantially lessen significant environmental impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) Despite concluding that the Project will result in significant solid and hazardous waste impacts, the DPEIR does not contain a single mitigation measure to address this impact. The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant waste impacts. 3-87

8. Transportation and Traffic

a. Scope of Analysis

Per the conclusions of the IS, the DPEIR does not contain any analysis of whether the Project would conflict with an applicable transportation plan, ordinance, or policy; substantially increase hazards due to a design feature or incompatible use; or conflict with adopted policies, plans, or programs regarding public transit, bicycle or pedestrian facilities. (DPEIR, p. 4.7-6.) These highly relevant topics from Section XVI of the Appendix G Checklist should be addressed in the DPEIR. As noted in our comment letter on the NOP/IS, the DPEIR's conclusion that the Project will not result in significant impacts to any of these categories is not supported by substantial evidence. 3-88

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant traffic and transportation impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

b. Impact Analysis

In order to determine whether or not the traffic impacts from the proposed Project are significant, impacts are compared to the significance criteria in Section 4.7.3. (DPEIR, p. 4.7-6.) Per that section, the Project would result in significant traffic impacts if it would, among others: (a) cause peak period levels on major arterials to degrade to Level of Service ("LOS") D, E, or F for more than a month, (b) substantially alter water borne, rail car, or air traffic, (c) result in the need for 350 employees, or (d) increase customer traffic by more than 700 visits. There is no explanation for how these artificial thresholds, which do not appear to represent any local thresholds, were derived. 3-89

More fundamentally, the DPEIR never applies the thresholds it purports to use. For instance, as to construction traffic impacts, the DPEIR simply concludes without any reasoned 3-90

analysis or supporting data that construction traffic impacts could be significant. The reader is assured that such impacts will be studied later since "Project specific impacts would require a separate CEQA evaluation." (DPEIR, p. 4.7-7.) As noted previously, any further CEQA review would only be required if implementation of the Project control measures required discretionary approvals. Even if such measures did require discretionary approvals, as the DPEIR repeatedly notes, the measures would be implemented at existing facilities and thus would likely be determined by local agencies to be exempt from CEQA. (*See*, *e.g.*, CEQA Guidelines § 15301.) This underscores the important point that by law the time for CEQA review is now before the Project is approved.

3-90 cont.

As to operational traffic impacts, the DPEIR claims that "it is not known what control strategies may be applied, which facilities may require additional trips, or how often these trips may be necessary." (DPEIR, p. 4.7-9.) As such, the DPEIR claims that "no traffic estimates can be prepared at this time." Consistent with its treatment of other topics, the DPEIR summarily concludes without any analysis of Project impacts compared to its stated significance thresholds that the impacts of the proposed Project on traffic and transportation are expected to be significant prior to mitigation.

In particular, the DPEIR does not contain any analysis of the potentially significant traffic impacts associated with an estimated increase of over 700,000 partial-zero and zero emission vehicles, 11,000 partial-zero and zero emission buses, and 245,000 partial-zero and zero heavy emission trucks[18] by 2031. (DPEIR, p. 4.7-8.) Instead of analyzing the impacts caused by additional vehicles, the analysis assumes that these vehicles will replace older vehicles "upon retirement." (*Id.*) However, other drivers will now be able to drive these vehicles and the analysis should have assumed that both the old and new vehicles will be used at the same time.[19] Indeed, the DPEIR itself acknowledges that "it is not conclusive that equipment will be put out of service and that the high number of vehicles or equipment will be scrapped as solid/hazardous waste." (DPEIR, p. 6-33.)

3-91

The DPEIR fails to meaningfully describe and analyze potentially significant impacts to rail and marine vessel traffic, ignoring the specific significance criterion related to this topic. Any attempt to quantify and analyze the impacts of increased marine vessel and rail traffic are dismissed by the DPEIR are "speculative." (DPEIR, pp. 4.7-8 to 4.7-9.)

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The DPEIR likewise fails to meaningfully describe and analyze potentially significant impacts associated with the use of overhead catenary electrical lines. Instead, the reader is told that the use of such lines could result in significant traffic impacts due to closure of lane(s) to

3-93

[18] The DPEIR text wrongly cites this figure as 115,000 light, medium, and heavy duty trucks, whereas Table 4.7-2 lists this figure as 245,000 vehicles.

[19] This same assumption should be reflected in all the analyses, including but not limited to, air quality, GHG emissions, and noise.

vehicular traffic and alteration of traffic patterns and congestion. (DPEIR, p. 4.7-10.) Such analysis and mitigation is improperly deferred to an unspecified, later "CEQA evaluation." (DPEIR, p. 4.7-9 to 4.7-10.)

3-93 cont.

Finally, the DPEIR only analyzes the traffic impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential traffic impacts associated with, among other others, Control Measures CMB-03, MOB-05, MOB-06, MOB-08, MOB-13, BCM-03, BCM-07, ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08.

3-94

c. Mitigation

As to mitigation of identified significant construction traffic impacts, the DPEIR claims that it cannot impose mitigation measures for all such impacts because it failed to study them. (DPEIR, p. 4.7-10.) This plainly violates CEQA. (Public Resources Code §§ 21002, 21002.1., 21100.) As to the lone traffic mitigation measure the DPEIR does identify for significant construction traffic impacts (Mitigation Measure TR-1), this measure constitutes impermissible deferral of mitigation.

3-95

Formulation of mitigation measures should not be deferred until a later time. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom*, *supra*.) Deferral is permitted only in limited circumstance where a lead agency can show: (1) practical considerations prohibit devising such measures earlier in the planning process and (2) the EIR specifies the specific performance standards capable of mitigating the project's impact(s) to a less than significant level. (*Sacramento Old City Ass'n*, *supra*, 229 Cal.App.3d at 1028-1029; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237.)

3-96

Mitigation Measure TR-1 calls for the preparation of a future Construction Management Plan. No commitment to mitigation is provided by the measure. Instead, the specified items need only be included "if determined to be feasible by the Lead Agency." In addition, no clear, specific performance standards are specified by this measure. Moreover, as noted previously, this measure may well never be implemented given the ministerial nature of the subsequent local permitting process.

3-97

No mitigation measures are provided for the identified significant operational traffic impacts. This clearly and unequivocally violates CEQA, which requires agencies to not only identify potentially significant impacts but also mitigation measures and alternatives designed to avoid or substantially lessen such impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) An agency cannot simply conclude an impact is significant without identifying all feasible mitigation to address that impact. (*Id.*) The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant traffic impacts.

3-98

9. Aesthetics

a. Scope of Analysis

We appreciate the District adding Aesthetics to the scope of the DPEIR in response to our comments on the NOP/IS. 3-99

b. Impact Analysis

Implementation of Control Measures ORHD-05, ORHD-06, ORHD-08, and ORHD-09 would result in the installation of catenary overhead electrical lines and fixed guideway systems, battery charging stations, and fueling infrastructure within or adjacent to existing roadways, streets, freeways, and/or transportation corridors. The DPEIR contends that the installation of catenary lines in industrialized areas near the Ports, is not expected to result in any significant aesthetic impacts to scenic highways because such areas "are not near an officially designated Scenic Highway or a roadway eligible for State Scenic Highway Designation." (DPEIR, p. 4.8-4.) However, the DPEIR fails to identify or even describe known visual resources such as John S. Gibson Boulevard, Harbor Boulevard, and the Vincent Thomas Bridge, all of which are designated as local scenic highways in the San Pedro and Wilmington-Harbor City Community Plans. Ocean Boulevard is likewise identified as a scenic route in the Scenic Element of Long Beach's General Plan. Indeed, there are many historic and cultural resources, both listed and found eligible for listing through surveys, that contribute to the visual setting and character of the Ports and if modified, through obstruction, alteration, or demolition would have a negative aesthetic impact. 3-100

Implementation of Control Measures MOB-01 and ORFIS-04 would lead to the use of bonnet technology, which could be either land-based or barge-based, to reduce emissions from marine terminals. The DPEIR claims that while the use of bonnet technology could degrade the existing visual character or quality in the immediate surrounding area, it is unlikely that the use of bonnet technology would be visible from sensitive vantage points due to the presence of intervening structures at the ports. There is no substantial evidence, such as visual simulations, maps, or comparable data to support such statements. 3-101

Implementation of Control Measures ECC-03 and ECC-04 would require the installation of solar panels and cool roof technology. The DPEIR acknowledges that there would be a significant construction-related impact due to degradation of the existing visual character of each affected site as a result of equipment staging and laydown areas. The DPEIR likewise acknowledges that these technologies could increase a significant source of glare as a result of the Proposed Plan. 3-102

Further, the DPEIR only analyzes the aesthetic impacts associated with some, but not all, of the proposed control measures. The DPEIR does not even attempt to analyze the potentially 3-103

significant aesthetic impacts from the proposed control measures which require and/or provide incentives for facility modifications, increased electrical usage (which may require new substations, powers plants and related infrastructure), and cool roofs and solar panels. In addition, there is no substantive discussion or analysis of, among others, the potential aesthetic impacts associated with Control Measures ECC-03, ECC-04, ECC-02, CMB-01, EGM-01, MOB-02, MOB-03, and MOB-04. 3-103 cont.

c. Mitigation

Section 4.8.5 proposes various measures to address the above aesthetics impacts. Most of the measures are qualified by the phrase "where feasible" providing no assurances that the measures will, in fact, be implemented. This does not constitute adequate or effective mitigation under CEQA. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)

For instance, Mitigation Measures AE-1 specifies that to "the extent feasible" construction staging areas should be located in areas that are already disturbed and sited to take advantage of natural screening opportunities provided by existing structures, topography, and/or vegetation. Mitigation Measure AE-2 requires construction areas to be screened from view "where feasible." Mitigation Measure AE-3 siting projects next to important scenic resources "should be avoided to the greatest extent possible." Finally, to reduce glare, Mitigation Measure AE-5 states that structural and/or vegetative screening from light-sensitive uses are to be provided "where feasible." 3-104

10. Other CEQA Topics

The DPEIR neglects to discuss or assess the potentially significant growth inducing impacts associated with several control measures. (*See*, *e.g.*, Control Measures CMB-01 and FLX-02). The DPEIR concludes that the Project would not directly increase economic or population growth or result in the need for new housing in the Basin. (DPEIR, p. 4.10-1.) However, there is no substantial evidence to support this statement, as required by CEQA. 3-105

The DPEIR relies on the fact that the District does not have land use authority to conclude that the Proposed Plan would not generate new residential development or alter land use policies. (DPEIR, p. 4.10-2.) The fact that the District does not have authority over local land use matters does not justify or excuse its need to study this issue consistent with CEQA. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail*, *supra*.) 3-106

The DPEIR acknowledges that the Proposed Plan would result in construction activities associated with implementation of control measures, such as activities from installation of control equipment at existing stationary sources and electrification of existing roadways. The DPEIR then purports to justify its conclusion that few or no workers would relocate to the 3-107

region, with statements that there is currently a workforce in the region and the Proposed Plan would be implemented over several years. These two facts alone do not constitute substantial evidence to support the conclusion that no additional workers would be needed to complete construction resulting from the Proposed Plan. Potential growth inducing impacts must be quantified and mitigated in the DPEIR.

3-107 cont.

The DPEIR assumes that no new roadway access would be constructed as a result of the Project and therefore the Proposed Plan would not induce growth. (DPEIR, p. 4.10-2.) However, there is no evidence to support the statement that no new roadway access would be constructed, let alone substantial evidence, as required. Even if it were true, this does not mean that the Project would not result in new growth because there are other factors that induce growth besides new roadways and infrastructure.

3-108

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant growth inducing impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

C. <u>The Project May Result In Numerous Significant Impacts That Were Scoped Out Of, And Not Analyzed By, The DPEIR</u>.

The scope of the proposed DPEIR improperly excludes potentially significant impacts to (1) Biological Resources, (2) Cultural Resources, (3) Geology and Soils, (4) Land Use and Planning, (5) Population and Housing, and (6) Public Services. Unless and until those areas are more fully addressed, the scope of the DPEIR is improperly limited and erroneously excludes areas requiring further assessment. In several respects, the DPEIR merely ***assumes*** the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the (inadequately-described) Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398; and *Sundstrom, supra*.)

3-109

While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of a project, the authority to use such focus is misapplied in the DPEIR. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR ***only*** as to such impacts that the initial study properly shows to be ***clearly insignificant and unlikely to occur*** (*i.e.*, "effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR . . .."). The DPEIR, by contrast, excludes from consideration numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

1. Biological Resources

The DPEIR dismisses potentially significant impacts to biological resources because the DPEIR states that these impacts are not reasonably foreseeable. (DPEIR, pp. 4.9-1 to 4.9-2.) But, construction of new and/or expanded facilities is a reasonably foreseeable indirect impact of implementation of the Proposed Plan. For instance, the Project will result in the likely construction of transportation support systems, installation of control equipment at existing stationary sources, and electrification of existing roadways. (DPEIR, p. 4.10-2.) Any of these and other related Project construction activities could result in potentially significant biological impacts. As such, impacts to biological resources must be analyzed and cannot simply be dismissed for being unforeseeable. 3-110

The DPEIR also dismisses impacts on land use plans, local policies, ordinances, and regulations protecting biological resources. (DPEIR, p. 4.9-2.) The rationale behind this conclusion is that development would take place with or without the Project and that SCAQMD does not have legal authority over land use decisions. These arguments are improper considerations under CEQA. CEQA does not permit a lead agency to dismiss potential direct or indirect impacts to the environment simply because development will occur with or without a project or because the lead agency does not have authority over certain land use decisions that will be affected by the Project. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail*, *supra*.) CEQA requires lead agencies to analyze the direct and indirect environmental impacts of a Project, regardless of those considerations. The Project control measures will certainly conflict with some land use plans, local policies, ordinances, and resolutions protecting biological resources. As such, any impacts should be fully analyzed and mitigated as appropriate in a recirculated DPEIR. 3-111

The DPEIR fails to analyze, through detailed quantification and hydrodynamic modeling, potential wastewater impacts to designated wetlands. Section 4.9 of the DPEIR states that Project control measures promoting the installation of air pollution control equipment at Port facilities is not anticipated to have wastewater impacts because the facilities would be required to comply with applicable water quality standards. (DPEIR, p. 4.9-2.) This explanation remains insufficient to conclude that potential impacts on protected wetlands would be less than significant. 3-112

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant impacts to biological resources, as well as feasible mitigation measures and alternatives designed to address those impacts. 3-113

2. Cultural Resources

The DPEIR fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. (DPEIR, p. 4.9-2.) The DPEIR dismisses impacts to cultural resources because it states that any physical modifications would likely be located in a previously disturbed location. (*Id.*) Even if it is likely that physical environmental changes will occur in areas that are currently developed, the Project's potentially significant cultural resources impacts must be analyzed and mitigated in the event that development occurs on an undeveloped site or one with known or unknown cultural resources.

3-114

For instance, not all areas within the Ports are devoid of cultural resources or have been previously disturbed, as concluded on Page 4.9-2 of the DPEIR. There are known recorded historic and prehistoric sites throughout the Ports alone,[20] and there are undoubtedly other historic and prehistoric sites in the Basin that would be affected by the Project. Without knowing the location and extent of ground disturbance from possible construction activities associated with the Project, it is speculative to assume that no significant adverse cultural resources impacts are expected as a result of its implementation. The conclusion in the DPEIR that the Project will result in "no impact" to cultural resources is unsupported by substantial evidence, as required.

Further, the DPEIR includes language reflecting the typical mitigation measure to be imposed on unknown cultural resources to justify its "no impact" conclusion. (DPEIR, p. 4.9-2). This fact alone demonstrates that there are potentially significant cultural resource impacts requiring analysis and mitigation in the DPEIR.

3-115

The DPEIR must be revised, and the scope of the proposed DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding potentially significant impacts to cultural resources as well as feasible mitigation measures and alternatives designed to address those impacts.

3-116

3. Geology and Soils

Because details concerning several Project control measures are not yet known, the DPEIR improperly concludes that the Project has no potential to generate significant adverse impacts to geology and soil resources. In particular, the DPEIR wrongly assumes that only "minor" modifications at existing industrial or commercial facilities would be needed due to Project control measures and that "no control measures would require the location of new or relocation of existing facilities in areas prone to liquefaction." (DPEIR, p. 4.9-3.) At minimum,

3-117

[20] For example, *see* City of Los Angeles's website at http://www.portoflosangeles.org/idx_history.asp.

the potentially significant geology-related impacts associated with the control measures identified above must be analyzed in the DPEIR. 3-117 cont.

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant geology and soils impacts as well as feasible mitigation measures and alternatives designed to address those impacts. 3-118

4. Land Use and Planning

CEQA requires an analysis of whether the Project would conflict with any applicable plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (CEQA Guidelines § 15125(d); CEQA Guidelines, Appendix G, Item X.b; and *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.) However, the DPEIR does not include an analysis of potential conflicts between the Proposed Plan and applicable plans, policies, and regulations adopted to avoid or mitigate environmental effects.

The DPEIR states that there would be no land use conflicts because construction would occur with or without implementation of the Project and because modified rail or truck traffic routes would not conflict with land use documents. (DPEIR, p. 4.9-3.) As discussed above, CEQA requires an analysis of direct and indirect impacts on the environment from an action and does not allow a lead agency to conclude that impacts would not occur simply because an action would occur with or without the project. The fact that the District does not have authority over local land use matters (DPEIR, p. 4.9-3) does not justify or excuse its need to study this issue consistent with CEQA. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail*, *supra*.) Further, it is impossible to determine whether land use conflicts would occur without conducting any analysis of the applicable land use documents and the Project control measures. There is no evidence to support the conclusion that the Project would not conflict with applicable land use documents. 3-119

In addition to local plans, there are numerous federal and state plans that contain pertinent policies that must be considered and evaluated in light of the Project control measures. For instance, the proposed Project would seemingly create conflicts with the Ports' existing policies implementing the State Tidelands Trust principles, the California Coastal Act planning and permitting requirements, and the existing Master Plan for each Port, as detailed in the previous Port letters. In addition, the proposed Project would create inconsistencies with the CAAP. The numerous ***inconsistencies*** between the Project, as proposed, and the existing plans and policies require inclusion in the DPEIR. (CEQA Guidelines § 15125(d).)

The DPEIR assumes that no new rail or truck traffic routes would be constructed and that instead existing transportation lines near the Ports would be modified to add electrical lines. (DPEIR, p. 4.9-3.) There is no evidence to support this statement, let alone substantial evidence, as required. Even if it were true this does not mean that the Project would not result in any 3-120

conflicts with plan policies adopted for the purpose of avoiding or mitigating environmental effects. Increased electrical use would increase electrical demand. As noted above, this could conflict with adopted energy conservation plans. Installation of electric infrastructure could raise significant conflicts with aesthetics/visual policies especially since these lines are proposed to be located overhead.

3-120 cont.

Additionally, fueling infrastructure to support zero and near-zero emissions vehicles, such as those powered by hydrogen fuel cells or natural gas, could have a significant impact on local land use and may conflict with existing plans. Such Project components could likewise contribute to the physical division of an established community. The DPEIR admits as much in noting that to the extent such infrastructure requires modification to an existing rail or truck traffic route/corridor, this "will require a separate CEQA evaluation." (DPEIR, p. 4.9-3.) The District cannot legally defer analysis of Project impacts to some future, speculative CEQA review process. The analysis must take place now in order to inform the District's decision on the Proposed Plan.

3-121

The DPEIR states that it incorporates "local land use planning decisions and population growth." (DPEIR, p. 4.9-4.) However, there is no explanation or evidentiary support for this statement, and even if there were, it is irrelevant. The pertinent questions are whether the Project may conflict with plan policies pertaining to environmental issues and/or physical division of an established community.

3-122

The DPEIR admits that it is possible construction activities would divide an existing community, but reasons that because the Project would only result in modification of existing traffic routes, the Project would not divide an existing community in the long-run. (DPEIR, p. 4.9-3.) As discussed above, however, there is no basis to support the conclusion that the Project would not result in construction of new traffic routes or corridors. As such, the conclusion that the Project would not divide an existing community is not supported by substantial evidence.

3-123

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant land use and planning impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

3-124

5. Population and Housing

The analysis assumes that "few or no new employees would need to be hired at affected facilities as the new control equipment is typically not labor intensive to operate or maintain." (DPEIR, p. 4.9-4.) The DPEIR concludes that no control measures would induce population growth because "there are a finite number of drivers in the region at any given time." (*Id.*) There is no evidence to support either statement, let alone substantial evidence, as required.

3-125

The DPEIR states that there would be no displacement of people or housing without providing any analysis to support the conclusion. (DPEIR, p. 4.9-4.) Several of the control measures, including new or expanded transportation corridors, could result in displacement of people or housing. 3-125 cont.

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant population and housing impacts as well as feasible mitigation measures and alternatives designed to address those impacts. 3-126

6. Public Services

The DPEIR assumes that the Project would not generate any increased need for public services. (DPEIR, p. 4.9-4.) However, the DPEIR does not provide any substantial evidence to support its *assumptions* regarding the absence of impact on additional public services or facilities. New fueling infrastructure to support zero and near-zero emissions vehicles, including hydrogen and natural gas, could impact Fire Department resources and require additional public services. 3-127

The DPEIR relies on the lack of future population increase assumed in the Population and Housing Section to conclude that no new school facilities or public facilities would be required. This conclusion is not supported by substantial evidence and is therefore improper.

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant public services impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

D. <u>The DPEIR Fails To Consider And Discuss Cumulative Impacts</u>.

The cumulative impact analysis includes the project-specific analyses of the SCAQMD's stationary and mobile source control measures and CARB's mobile source control measures, as well as the TCMs that were developed and adopted by SCAG as part of the 2016 RTP/SCS. (DPEIR, pp. 1-22, 5-1.) In general, TCMs are control measures that provide emission reductions from on-road mobile sources, based on changes in the patterns and modes by which the regional transportation system is used. (DPEIR, p. 5-2.) The DPEIR claims that the TCMs "are appropriately part of the cumulative impact analysis because they include regulatory activities associated with measures that could also generate related environmental impacts within the Basin." (DPEIR, p. 5-1.) 3-128

A cumulative impact analysis is supposed to evaluate the impacts of a project along with *other* projects producing *related effects*. (CEQA Guidelines § 15130(b).) The Project Description states that the Project is comprised of: (1) the SCAQMD's Stationary and Mobile

Source Control Measures, (2) stated and suggested Federal Source Control Measures, and (3) RTP/SCS Control Measures provided by SCAG. (DPEIR, p. 2-13.) The TCMs are part of the RTP/SCS. (DPEIR, pp. 2-53 to 2-55.) The DPEIR thus improperly segmented the Project analysis by removing a portion of it, the TCMs, from the project-level analysis and treating it as a separate project for purposes of the cumulative impact analysis. The whole of an action must be considered when evaluating an activity, both on a project-level and on a cumulative basis.[21] 3-128 cont.

There is also no explanation as to why other past, present, and probable future projects producing related effects were not considered. The DPEIR reaches this conclusion apparently because it mistakenly focused on whether the projects themselves were "related," instead of whether the impacts were related. (DPEIR, p. 5-4.) The DPEIR thus errs in failing to consider other projects that along with the Project result in potentially significant impacts. 3-129

As noted above, the DPEIR did not analyze several resource topics on the ground that the Project would not result in any significant impacts in those areas. These topics include biological resources, cultural resources, geology and soils, land use, mineral resources, and public services. Yet, the cumulative impact analysis acknowledges that the Project would result in potential impacts in these areas albeit in a form "different" than the impacts of the TCMs. (DPEIR, pp. 5-10 to 5-12, 5-14, 5-18, 5-20, 5-23.) 3-130

The cumulative noise analysis wrongly states that the Project's significant construction impacts were limited to the construction of the overhead catenary lines. Section 4.5.4.1 of the DPEIR identified significant noise impacts associated with other construction activities as well. (*See also*, Table 4.5-1.) 3-131

The cumulative traffic analysis focuses exclusively on construction traffic impacts. (DPEIR, Section 5.18.) It neglects to reference or analyze the Project's significant unavoidable operational traffic impacts. These include significant congestion and hazard traffic impacts associated with the use of the catenary lines and barge-based bonnet technology. (DPEIR, p. 4-7-10.) 3-132

E. <u>The EIR Fails To Analyze A Reasonable Range Of Alternatives To The Project</u>. 3-133

CEQA requires that an EIR include a reasonable range of alternatives to the project that would feasibly meet most of the basic project objectives while avoiding or significantly reducing the project's significant impacts. (CEQA Guidelines § 15126.6.) The EIR's alternatives analysis does not comply with CEQA because it includes legally infeasible alternatives as well as

[21] The DPEIR also improperly omits any discussion of the RTP/SCS's land use and transportation strategies as well as the federal mobile source control measures, which are also part of the Project (*see* Section 2.8), from the cumulative impact analysis.

alternatives that would not meet most of the basic project objectives and/or avoid or substantially lessen significant environmental impacts.

The DPEIR considers four alternatives. These include: (1) No Project Alternative (2012 AQMP), (2) Mobile Source Reduction Only, (3) CARB or SCAQMD Regulation Only, and (4) Expanded Incentive Funding. None of the alternatives, other than the Expanded Incentive Funding alternative would meet most of the basic project objectives. (DPEIR, p. 6-41.) The DPEIR claims that that the Expanded Incentive Funding alternative has the potential to be the environmental superior alternative even though it would result in increased impacts to aesthetics, energy, hazards, water, noise, waste, and traffic. (DPEIR, pp. 6-40 to 6-41.) Only one of these alternatives, the No Project Alternative, would substantially reduce impacts compared to the Project. The Mobile Source Reduction Only Alternative is not legally feasible as the District lacks regulatory jurisdiction over mobile source emissions.

3-133 cont.

In several resource topics (*e.g.*, air quality, energy, hazards and hazardous materials, hydrology and water quality, noise, transportation and traffic), the DPEIR acknowledges that the No Project Alternative would result in significant impacts. But, it calls the impact less than significant because this alternative is "requiring what has already been adopted and analyzed to be implemented." (DPEIR, pp. 6-19, 6-20, 6-22, 6-25, 6-28, 6-34.)[22] This is akin to an impermissible plan-to-plan comparison of impacts. (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350.) If continued implementation of the 2012 AQMP would result in significant impacts, this should have been acknowledged in a simple and straight-forward manner. The failure to do so skews the entire alternatives analysis since impacts that are in fact significant are deemed insignificant merely because of the bureaucratic reason that the plan has been approved.

3-134

The discussion of construction noise impacts (Section 6.4.5.1) wrongly states that the Project does not result in significant construction noise impacts. As set forth in Section 4.5.4.1, the Project results in significant and unavoidable construction noise impacts.

3-135

III. CONCLUSION

While it is plain that an EIR is needed in connection with this proposed Project, it is also clear that the DPEIR should be more complete than the version that was provided for public review and comment. The current version of the DPEIR fails to adequately describe the "Project" thereby thwarting effective public review and comment on the Proposed Plan. In several key areas, it fails to thoroughly and adequately identify the Project's significant environmental impacts and propose feasible mitigation measures and alternatives to avoid or

3-136

[22] As to traffic, the DPEIR then inconsistently claims that "the traffic and transportation impacts will not change the traffic and transportation impacts identified in the 2012 AQMP, and therefore, remain significant." (DPEIR, p. 6-34.)

substantially lessen such impacts. As such, the DPEIR fails to comply with CEQA, and the DPEIR must therefore be revised, corrected, and re-circulated with all of the analysis and other content required by CEQA before the District may lawfully take action on the Project.

3-136 cont.

Thank you for your consideration of POLB's comments on the DPEIR. Please do not hesitate to contact the undersigned or Dawn McIntosh with any questions concerning this correspondence. Our contact information is as follows:

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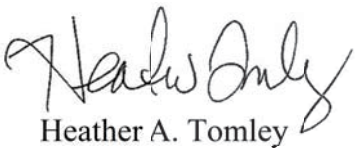
Sincerely,



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Responses to Comment Letter #3 – Port of Long Beach

Comment 3-1

We appreciate this opportunity to submit comments on the Draft Program Environmental Impact Report ("DPEIR") prepared in connection with the South Coast Air Quality Management District's ("District" or "SCAQMD") consideration of the proposed 2016 Air Quality Management Plan (the "Project" or "Proposed Plan")[1] on behalf of the City of Long Beach acting by and through its Harbor Department (collectively referred to herein as "Port of Long Beach" or "POLB").

As you know, the POLB along with the Port of Los Angeles (collectively the "Ports") have achieved tremendous success in obtaining substantial emissions reductions through their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Ports' initiatives. POLB continues to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, POLB fundamentally disagrees with the District's proposal to again attempt to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Ports. The Ports have previously sought to make the District aware of the serious concerns and objections to this approach.[2]

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[1] This letter refers to the June 2016 version of the Proposed Plan and the June 2016 version of Appendix IV-A to the Proposed Plan as those versions were the ones made available to the public prior to the release of the September 2016 DPEIR.

[2] (*See* letters dated November 7, 2016; August 19, 2016; August 4, 2016; January 31, 2014; January 15, 2014; October 2, 2013; August 21, 2013; November 27, 2012; November 19, 2012; November 8, 2012; October 31, 2012; October 22, 2012; August 30, 2012 (which includes letter dated May 4, 2010); July 10, 2012; July 27, 2012 from POLB and/or Port of Los Angeles to SCAQMD.) The August 4, 2016 letter contains POLB's comments on the Notice of Preparation/Initial Study ("NOP/IS") for the Project. We incorporate by reference herein our comments on the NOP/IS, as well as the other letters referenced above to the extent that they are germane to the environmental impacts associated with the Project.

Response 3-1

This is an introductory comment which states disagreement with the approach in the 2016 AQMP but does not raise specific comments regarding the Draft Program EIR. The August 4, 2016 comment letter on the NOP/IS and the responses to those comments were included in Appendix B of the Draft Program EIR as Comment Letter A-7. The August 19, 2016 comment letter on the Draft 2016 AQMP is referred to as Comment Letter #50 and the responses to those comments are available on the internet here: http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/response-to-comments/2016-aqmp-rtc-3-of-4.pdf. The November 7, 2016 comment letter on the Revised Draft 2016 AQMP is referred to as Comment Letter #96 and the responses to those comments are available on the internet here: http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/response-to-comments/2016-aqmp-rtc-4-of-4.pdf. Therefore, no further response is necessary under CEQA.

Comment 3-2

> We are also mindful that the California Environmental Quality Act ("CEQA") calls for a thorough analysis of a project's potentially significant environmental impacts as well as feasible means to avoid or substantially lessen such impacts. In order to serve its important public purposes of informing the public and decision-makers of the consequences of its action, such review must occur *prior* to approval of a project. Such review is particularly important where, as here, it is anticipated that the proposed Project will have substantial impacts on and conflict with the authorities of other public agencies.
>
> As such, thorough identification of the proposed Project, and candid disclosure of all phases of the Project and its potential impacts, is essential to ensure that the proposed Project will be planned and implemented in conformity with established community plans and policies, and that environmental review is conducted with full consideration of all potentially significant environmental impacts as well as mitigation measures and alternatives designed to address those impacts. In addition, it will be important to consider the impacts of the proposed Project on the POLB's community, mission, facilities, and operations. The District must therefore provide a meaningful opportunity for informed public review of and comment on a well-defined "project."
>
> In that context, we respectfully submit the following comments regarding the DPEIR for the Project as well as questions, concerns, and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies. As set forth in more detail below, we believe that: (1) the Project needs to be more thoroughly and accurately described, (2) all potentially significant environmental impacts related to all Project control measures must be thoroughly analyzed, and (3) adequate mitigation measures and alternatives must be provided to address all potentially significant environmental impacts.
>
> Accordingly, the DPEIR needs to be thoroughly revised and recirculated for public review before the District can legally take action on the Project.

Response 3-2

SCAQMD staff agrees that a CEQA document should include a thorough and well-defined project description and allow the public to review and provide comments. The project description was included in Chapter 2 of the Draft Program EIR. The Notice of Preparation/Initial Study (NOP/IS) was released on July 5, 2016 for a 30-day public review and comment period ending on August 4, 2016. The Draft Program EIR was released on September 16, 2016 for a 60-day public review and comment period ending on November 15, 2016. The first paragraph of this comment does not provide specific comments on the Draft Program EIR and no further response is necessary under CEQA.

The second paragraph of this comment provides a summary of specific comments presented later in the comment letter. Responses to those specific comments are provided to the specific comments later.

Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring

mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The third paragraph of this comment does not raise any issues which would trigger the need for recirculation. Therefore, no further response is necessary under CEQA.

Comment 3-3

> **I. INTRODUCTION**
>
> While we recognize the effort that has gone into preparation of the current DPEIR, it is apparent that the document does not provide the information, evidence, or analysis required under CEQA. The DPEIR thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, or the officials and Board of the District, as to the potential environmental significance and impacts of the proposed Project.
>
> The necessary contents for an adequate Draft EIR are described in Public Resources Code § 21000. A Draft EIR must include "a detailed statement setting forth all of the following:
>
> (1) All significant effects on the environment of the proposed project.
>
> (2) In a separate section:
>
> (A) Any significant effects on the environment that cannot be avoided if the project is implemented.
>
> (B) Any significant effect on the environment that would be irreversible if the project is implemented.
>
> (3) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.
>
> (4) Alternatives to the proposed project.
>
> (5) The growth-inducing impacts of the proposed project."
>
> Article 9 of the CEQA Guidelines further expands on the contents of Draft EIRs. Specifically, a Draft EIR must contain the information required by CEQA Guidelines sections 15122 through 15131. (CEQA Guidelines § 15120.) Those sections require, among others, adequate consideration and discussion of (1) the Project Description, (2) the Environmental Setting, (3) Significant Environmental Impacts, (4) Mitigation Measures, (5) Alternatives, and (6) Cumulative Impacts.

Response 3-3

The comment claims that the Draft Program EIR does not provide information, evidence, or analysis required under CEQA without providing specifics or evidence as to where this is lacking in the Draft Program EIR. The Draft Program EIR released for public review included a discussion of all significant effects on the environment in Chapter 4, significant effects that cannot be avoided or would be irreversible in Chapter 4.10, mitigation measures proposed to reduce potentially significant impacts in Chapter 4, alternatives to the proposed project in Chapter 6, growth-inducing impacts in Chapter 4.10, a detailed project description in Chapter 2, the environmental setting in Chapter 3, and cumulative impacts in Chapter 5. This comment does not provide specific

comments on the Draft Program EIR. Therefore, no further response is necessary under CEQA.

Comment 3-4

> As set forth in more detail below, the DPEIR fails to, among others: contain an adequate project description; properly identify the environmental setting; adequately assess the Project's potentially significant environmental effects, including those that cannot be avoided; and identify feasible mitigation measures and alternatives to avoid or substantially lessen the Project's significant environmental effects. It is therefore respectfully urged that the DPEIR be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action, on the proposed Project.

Response 3-4

The comment summarizes comments made later in the comment letter. Responses to those specific comments are included later in the letter. Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no further response is necessary under CEQA.

Comment 3-5

II. THE DPEIR FAILS TO COMPLY WITH CEQA.

A. The DPEIR Does Not Provide A Full And Accurate Description Of The Project.

1. Deficient Project Description—In General

The DPEIR does not provide a full and accurate description of the "Project" as required by CEQA. (*See, e.g.*, CEQA Guidelines § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.) In particular, the Proposed Plan released in June 2016 was incomplete as evidenced by the fact that large portions of it were revised and released for public review *after* the DPEIR was circulated for review.

An accurate and complete project description is necessary for an intelligent evaluation of the potentially significant environmental impacts of the agency's action. (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 990.) "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." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 [court further observes that an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].)

CEQA Guidelines § 15126 further makes clear that an EIR must take a comprehensive review of the proposed project *as a whole*. "All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation." (CEQA Guidelines § 15126.) This requirement reflects CEQA's definition of a "project" as the "***whole of an action***" that may result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change. (Public Resources Code § 21065; CEQA Guidelines § 15378.)[3]

[3] Unless otherwise noted, emphasis in quotations herein is supplied and citations are omitted.

Response 3-5

A detailed and comprehensive project description was included in Chapter 2 of the Draft Program EIR and the Draft 2016 AQMP was available during the public comment period to provide meaningful review. This comment does not provide specific examples to support the claim that the project description in the Draft Program EIR is deficient under CEQA. A project description is open to revision and agency modification during the CEQA process. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Ass'n* (Cal. 1986) 42 Cal.3d 929, 936.) The CEQA process "is not designed to freeze the ultimate proposal for a proposed project in the precise mold of the initial project [; indeed, n]ew and unforeseen insights may emerge during the investigation and evoke a revision of the original proposal." *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692, 738. Changes to the project during that process do not necessarily invalidate that description (*Concerned Citizens*, 42 Cal.3d at 936) or require recirculation (*Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (Cal. 1993) 6 Cal 4th 1112, 1130 ("Laurel Heights II")). As further discussed in Response 3-2, the changes to the Draft Program EIR do not require recirculation.

Moreover, as discussed further in Response 3-6, the Draft Program EIR is a programmatic-level document and the project description contained therein is appropriate under CEQA.

Comment 3-6

> The DPEIR falls far short of the above requirements in describing the proposed Project, and thus fails to serve the "public awareness" purposes mandated by CEQA. The DPEIR does not include or even describe the text of several control measures supposed to comprise the "Project." The section of the DPEIR that purports to "describe" the Project, includes nothing more than summaries of certain control measures. In any event, the summaries are insufficient to describe the Project itself, and prevent effective public review and comment. The DPEIR also fails to describe reasonably foreseeable actions that will be taken in response to the proposed Project control measures.
>
> As to certain control measures, the DPEIR implies that any informed public discussion and environmental review be *deferred* until some point in the future, as detailed below. Such an approach, however, is inconsistent with, and in violation of, many fundamental rules and policies required by CEQA (*e.g.*, failure to identify and analyze the whole of the project, improper project "segmentation," improper deferral of impact analysis and mitigation, failure to identify and evaluate project alternatives, etc.). (*See, e.g.*, Public Resources Code § 21003.1; CEQA Guidelines §§ 15126.2, 15126.4, 12126.6, 15378; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

Response 3-6

The Draft 2016 AQMP was released to the public on June 30, 2016 and the Revised Draft 2016 AQMP was released to the public on October 7, 2016. All key comments on the Draft 2016 AQMP and modifications to the Draft 2016 AQMP were disclosed to the public during the public comment period of the Draft Program EIR, which was from September 16, 2016 to November 15, 2016. Summaries of control measures provided in the Draft Program EIR were used to aid in the understanding of the Draft 2016 AQMP for the general public. A more extensive discussion of the control measures was available in the Draft 2016 AQMP in both Chapter 4 and Appendices IV-A, IV-B, and IV-C and appropriate references were included in the Draft Program EIR to allow easy referencing for the reader. Modifications made between the releases of the Draft, Revised Draft and Draft Final 2016 AQMP are described in the preface of the Final Program EIR. None of the modifications made caused additional significant adverse environmental impacts from the proposed project not already analyzed in the Draft Program EIR.

In general, the 2016 AQMP provides a framework of control measures for attaining National Ambient Air Quality Standards (NAAQS). It must be noted that the CEQA analysis for the 2016 AQMP is not project-level, but rather program level. All environmental topics were analyzed in the Initial Study and those found to have potentially significant impacts were fully analyzed in the Draft Program EIR on a programmatic level, not deferred, as the comment claims. This is the proper use of a programmatic EIR. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton v. California High Speed Rail Authority* (3d Dist. 2014) 228 Cal. App. 4th 314, 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that

requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. The comment does not provide specifics to support the claim that the summaries are insufficient to describe the project.

Comment 3-7

> The Proposed Plan refers to the future development of "contingency measures" if the area fails to meet certain milestones. (Proposed Plan, pp. 4-44 to 4-45, 6-13.) Yet, no such contingency measures are identified or described in the Proposed Plan or analyzed in the DPEIR.

Response 3-7
Chapter 4 of the 2016 AQMP has a detailed discussion as to what is being defined as a contingency measure to comply with the Clean Air Act (CAA) requirements. Contingency measures are those measures whose emissions reductions were not used to demonstrate attainment of the NAAQS. The contingency measures were analyzed along with the other proposed control measures in environmental impacts subchapters of Chapter 4 of the Draft Program EIR regardless of how the control measure is classified to comply with CAA requirements.

Comment 3-8

> It is only through reviewing the lengthy appendices to the Proposed Plan, can the reader understand the proposed Project control measures. The appendices also make clear that several of the proposed Project measures have not even been developed yet by the District and thus cannot be the subject of any meaningful environmental review or analysis. (*See, e.g.*, proposed Control Measures EGM-01, MOB-02, MOB-03, MOB-04, MOB-08, MOB-12, MOB-13, MOB-14, and BCM-01.) The details of the proposed Project must be accurately developed and described ***before*** the proposed methods and precise impacts anticipated by the Project may be analyzed or the subject of comment.

Response 3-8
Details of all of the proposed project's control measures (in Appendix IV-A, IV-B, and IV-C of the 2016 AQMP) were available to the public during the public comment period of the Draft Program EIR.

Regardless of the level of specificity of the control measures, potential environmental impacts associated with those measures can still be analyzed on a programmatic level to the extent they are based on known information and supported assumptions, as was done in the Draft Program EIR, to determine foreseeable environmental effects. Further attempts to analyze the environmental impacts would have been speculative. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-9

> In addition to being accurate and complete, a project description must be stable. (CEQA Guidelines § 15124; *County of Inyo*, *supra*, 71 Cal.App.3d at 197.) Yet, the District released a Revised Draft 2016 AQMP ("Revised Plan") on October 7, 2016, ***after*** the DPEIR was released for public review. The Revised Draft Plan includes several substantive additions to the Proposed Plan from that which was analyzed in the DPEIR. Control measures related to mobile source emissions over which the District lacks regulatory jurisdiction, including MOB-01 to MOB-04, were revised in an attempt to make the emissions reductions associated with these measures "enforceable commitments." A new regulatory measures section was added discussing how the Revised Plan proposes "robust" NOx reduction regulations and other measures. Certain measures were revised to highlight the need for an analysis of life-cycle in-Basin emissions related to energy/fuel production and transmission under future energy pricing and electricity generation scenarios. Further, major revisions were made to the text of control measures, such as MOB-01, MOB-02, MOB-03, MOB-04, CMB-01, CMB-02, CMB-05.

Response 3-9

The goal of the 2016 AQMP is to provide a framework of measures for attaining the NAAQS. Control measures were identified and analyzed in the Draft Program EIR on a programmatic level to determine foreseeable environmental effects. Regardless of the level of specificity of the control measures, potential environmental impacts associated with those measures can still be analyzed on a programmatic level to the extent they are based on known information and supported assumptions, as was done in the Draft Program EIR, to determine foreseeable environmental effects. Additionally, the environmental impacts associated with control measures are not dependent on how they are achieved (i.e. based on incentives or regulations). Therefore, a change in approach in this manner does not result in a substantive change to the project description. In response to a comment received, the possibility of performing a life-cycle analysis in order to determine the cost-effectiveness of control measures or how funds from incentives could be distributed was added to the Revised Draft 2016 AQMP. This change does not have environmental impacts associated with it. Similarly, the addition of a new regulatory measures section added to Chapter 4 of the Revised Draft 2016 AQMP was for clarification purposes. Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-10

> A discussion of Environmental Justice was also added to the Revised Plan, with a note that this topic will be discussed in a Socio-Economic Report, the complete version of which is still outstanding. In addition, several substantive additions were made to the appendices, such as Appendix II (Current Air Quality), Appendix III (Base & Future Year Emission Inventory), Appendix IV-A (SCAQMD's Stationary & Mobile Source Control Measures), Appendix IV-B (CARB's Mobile Source Strategy), and Appendix IV-C (Regional Transportation Strategy & Control). Other appendices, including Appendix V (Modeling & Attainment Demonstrations) and Appendix VI (Compliance With Other Clean Air Act Requirements) are "draft versions" which are "still out for review." As the details of the Proposed Plan are still under development, it is not possible for the District to proceed with CEQA review at this stage.

Response 3-10

The Socioeconomic Report provides an analysis of the socioeconomic impacts of the 2016 AQMP in order to further inform public discussions and the decision-making process associated with the adoption of the 2016 AQMP. The Draft Program EIR is independent of the Socioeconomic Report, which was not used in the analysis of environmental impacts. At the time of release of the Draft Program EIR for public review, all documents which were relied upon for the analysis of environmental impacts, such as the Draft 2016 AQMP and corresponding appendices, were also available for public review. Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. *See also* Responses 3-5 and 3-6.

Comment 3-11

> In brief, the DPEIR erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of public agencies or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments on the DPEIR. No effective CEQA review can be undertaken unless and until the District provides an adequate description of the "Project." It is essential that the DPEIR be revised to include an adequate "project description" including *all* of the Proposed Plan's pertinent control measures and strategies that make up the "project" ***before*** the public and agencies can be expected to provide meaningful comments and input.

Response 3-11
A detailed and comprehensive project description was included in Chapter 2 of the Draft Program EIR and the Draft 2016 AQMP was available during the public comment period to provide meaningful review. The adverse environmental impacts associated with the Draft 2016 AQMP were analyzed on a programmatic level. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. *See also* Responses 3-5 and 3-6.

Comment 3-12

2. Specific Comments on "Project Description" Text

The following comments and questions refer to specific portions or pages of Chapter 2 of the DPEIR:

P. 2-7 – Agency Authority-2016 AQMP

The DPEIR correctly acknowledges that the regulation of air quality emissions from mobile sources is primarily done at the federal and state level. By comparison, the District "has lead responsibility for developing stationary, some area, and indirect source control measures . . .." (DPEIR, p. 2-7.)[4] Despite this acknowledged limit on its regulatory jurisdiction, the Proposed Plan nonetheless purports to contain several measures related to mobile source emissions.

[4] *Accord*, Proposed Plan, p. ES-5 ("With limited SCAQMD authority over the mobile sources that contribute the most to our air quality problems, attainment cannot be achieved without state and federal actions.") and Proposed Plan, p. 3-11 ("U.S. EPA and CARB have primary authority to regulate emissions from mobile sources. U.S. EPA's authority applies to aircraft, locomotives, ocean going vessels, and some categories of on- and off-road mobile equipment. CARB has authority over the remainder of the mobile sources, and consumer products. SCAQMD has authority over most area sources and all point sources.").

Response 3-12
The SCAQMD has limited regulatory authority over mobile sources (e.g., fleet rules) and thus, a suite of SCAQMD facility-based mobile source measures are being proposed. Most of these mobile source measures will work in concert with CARB's State SIP Strategy being developed locally. Incentives are one way to gain emission reductions sooner than natural turnover of vehicles and equipment. Accelerating the deployment of cleaner technologies before future rulemaking is established allows the new technology to be commercially available, achieved in practice, feasible in more applications, cost effective, as well as publicly acceptable. The specific sources of funding have yet to be finalized, but staff has developed the Financial Incentive Funding Action Plan that maps out the possible opportunities to ensure the proposals have secured funding. Such funding is being sought on a federal, state and local level. To ensure the reductions are

creditable in the SIP, the U.S. EPA does require these reductions to be quantifiable, surplus (beyond regulations), permanent and enforceable. With such integrity elements in place, the incentive actions can be effective and provide lasting improvements.

The mobile source control measures, including the measures that CARB has identified, were analyzed for potential environmental impacts in Chapter 4 of the Draft Program EIR. Potential air quality impacts from mobile source control measures are analyzed in Subchapter 4.1.6.2.4.

Comment 3-13

Pp. 2-9 to 2-11 – Overall Attainment Strategy

The DPEIR indicates that the Proposed Plan is designed to meet the following federal standards:

- Revoked 1979 1-hour ozone standard (120 parts per billion ["ppb"]) by 2023;
- Revoked 1997 8-hour federal ozone standard (80 ppb) by 2024;
- 2006 24-hour PM2.5 standard (35 ug/m^3) by 2019;
- 2008 8-hour ozone standard (75 ppb) by 2032; and
- 2012 annual federal and state PM2.5 standards (12 ug/m^3) by 2025.

In addition to developing strategies and measures to meet the above acknowledged revoked standards, the text indicates that a new federal 8-hour ozone standard has been adopted (70 ppb) ostensibly replacing the 2008 standard analyzed. (DPEIR, p. 2-9.) The text does not explain why a plan is being developed to attain standards that have been revoked or superseded.

According to the DPEIR, the "most significant air quality challenge faced by the SCAQMD is to reduce [nitrogen oxide or "NOx"] emissions sufficiently to meet the upcoming ozone and federal PM2.5 federal standard deadlines." (DPEIR, p. 2-9) Specifically, an additional 43 percent NOx emission reduction is needed in 2023 and 55 percent is needed in 2031 to attain the 8-hour ozone standard. (DPEIR, pp. 2-9 to 2-10.) Mobile sources account for 80 percent of the NOx emissions, and the DPEIR accordingly states that the "majority of NOx emission reductions" will need to come from mobile sources. (*Id.*) The DPEIR acknowledges again that the District lacks authority to regulate such emissions which are "divided between" the California Air Resources Board ("CARB") and the U.S. Environmental Protection Agency ("EPA"). (DPEIR, p. 2-10.) The control measures are supposed to be based on, among others, enforceability and legal authority. (DPEIR, p. 2-11.) Yet, through the Proposed Plan, the District is purporting to adopt an "aggressive mobile source control strategy" to control emissions over which it admittedly lacks regulatory jurisdiction. (DPEIR, p. 2-10.)[5]

The lack of authority is further reflected by the DPEIR's admission that the Proposed Plan places "heavy reliance on voluntary incentive measures to achieve attainment of the federal air quality standards" such that the District "must design programs such that the emission reductions from these incentive measures are proven to be real, quantifiable, surplus, enforceable, and permanent in order for U.S. EPA to approve the emission reduction as part of the Plan." (DPEIR, pp. 2-17 to 2-18.)

[5] The Proposed Plan at page ES-7 states that mobile sources currently contribute about 88 percent of the region's total NOx emissions. It then states that "[s]ince the SCAQMD has limited authority to regulate mobile sources, staff worked closely with CARB and U.S. EPA, which have primary authority over mobile sources, to ensure mobile sources perform their fair share of pollution reduction responsibilities." (Proposed Plan, p. ES-7.)

Response 3-13

The 2008 ozone standard has not yet been revoked, so the obligation to demonstrate attainment still remains. Sanctions and consequences to our region will be imposed if a plan is not submitted. However, once a standard is revoked, there are still anti-backsliding requirements that need to be complied with. Please see Chapter 6 of the 2016 AQMP for more information. CARB has authority to propose a State SIP Strategy. The State SIP Strategy includes reductions from federal sources including aircraft, locomotives and ocean-going vessels, as well as reductions from on-road vehicles and off-road equipment under the authority of CARB. SCAQMD proposes reductions from stationary and mobile sources under the SCAQMD's control for the 2016 AQMP in the form of regulatory, incentive and co-benefit approaches.

The SCAQMD does not lack authority, but rather has limited authority. The overall strategy, that includes state and federal sources, is an aggressive mobile source strategy.

Comment 3-14

Pp. 2-11 to 2-12 – Project Objectives

The DPEIR notes the objective of achieving the various ozone and particulate matter standards by the specified attainment dates. However, as the Tables in the Project Description make clear, most of the emissions reductions are listed as "TBD" with a note that emission reductions "will be determined after projects are identified and implemented" or "once the technical assessment is complete, and inventory and cost-effective control approach[es] are identified." (DPEIR, pp. 2-15, 2-26, 2-36.) Because the emission reductions associated with several control measures have not yet been quantified, there is no guarantee or assurance that the emission reductions will actually be attained. Thus, contrary to the NOP for the DPEIR, the Proposed Plan does not "identif[y] control measures and strategies to bring the region into attainment" with the specified standards nor does it demonstrate "compliance with state and federal Clean Air Act requirements." For this same reason, the Proposed Plan fails to attain its statutorily prescribed purpose.[6]

[6] (42 U.S.C. § 7410; California Health & Safety Code § 40440; *American Coatings Ass'n v. South Coast Air Quality Management District* (2012) 54 Cal.4th 446, 453.)

Response 3-14

SCAQMD staff's goal for the Draft 2016 AQMP was to propose a comprehensive plan with all feasible measures. The emission reductions listed as TBD referred to in the comment were not relied upon in the attainment demonstration and would need additional technical assessment in order to be quantified. However, many of these measures would help implement state mobile source strategies. There may also be the possible need in the near future for measures to help make up any shortfall in reductions in which case the TBD measures could be explored further to assist

in those needs.

Comment 3-15

P. 2-13 – Project Description

The Project description indicates that the Project "control measures" consist of three main components: (1) the SCAQMD Stationary and Mobile Source Control Measures, (2) State and Suggested Federal Mobile Source Control Measures, and (3) Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") provided by the Southern California Association of Governments ("SCAG").

The text indicates that the air quality baseline is comprised of 2012 data. (DPEIR, p. 2-13.) Yet, there is no clear explanation or rationale for the use of baseline data that is nearly 5 years old. The scope of the proposed DPEIR and Proposed Plan must be expanded to include a detailed explanation, supported by substantial evidence,[7] that the 2012 air quality baseline is appropriate. (CEQA Guidelines § 15125; *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.) The analysis must also clearly specify the baseline used for other resource topics, and to the extent that they deviate from the normal "existing conditions" scenario, like air quality, provide a clear and cogent explanation as to why this is appropriate.

[7] (*See* Public Resources Code § 21080(e) [CEQA defines substantial evidence as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" and excluding, among others, "speculation" and "unsubstantiated opinion."].)

Response 3-15

The environmental setting and baseline that was used to evaluate proposed project impacts is explained in detail in Subchapter 3.2 of the Draft Program EIR. 2012 is the baseline year used for the emissions inventory to develop the control strategy and future baseline emissions for the 2016 AQMP. The latest verifiable air quality data (from approved air quality monitoring sites) is from 2015, which can be found in Chapter 2 of the 2016 AQMP and Subchapter 3.2 of the Draft Program EIR. The verified 2015 air quality data was used as the baseline for evaluating air quality impacts associated with the proposed project. The most recent environmental topic data from 2016 was used for the CEQA baseline in determining environmental impacts from other environmental topic areas because that was the time of the release of the NOP/IS.

Comment 3-16

Pp. 2-13 to 2-23 – Stationary Source Control Measures (SCAQMD)

The stationary control measures to be implemented by the District are listed in Table 2.8-1 and summarized in the text following that table.

The DPEIR fails to acknowledge, let alone analyze, all potentially significant environmental impacts of the stationary source control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 383.)

Response 3-16
The Draft Program EIR contains a comprehensive analysis of the reasonably foreseeable direct and indirect impacts of the 2016 AQMP. Currently, SCAQMD staff does not have evidence to support nor is it foreseeable that industries or other regulated entities would need to relocate elsewhere due to implementation of the 2016 AQMP. The comment does not provide any evidence to support its claims. No further response is necessary under CEQA.

Comment 3-17

> Measure CMB-03 proposes to reduce emissions from non-refinery flares by "capturing the gas that would typically be flared and converting it into an energy source (*e.g.*, transportation fuel, fuel cells) . . .." (DPEIR, p. 2-16.) A similar measure appears to be proposed for nitrogen gas and biogas. (*See* Measures BCM-05 and BCM-10.) Yet, there is no discussion or consideration of the potentially significant impacts associated with pipelines or other infrastructure that would be needed to implement these measures nor of the traffic, air quality, noise, and other impacts associated with increased truck traffic to facilities containing such refined materials. There is similarly no analysis of the proposed alternative of reinjecting the gas into the ground or combusting it through flares. (Proposed Plan, Appendix IV-A, p. IV-A-70.)
>
> Measure ECC-04 includes a vague reference to widespread adoption of cool roofs. This measure may result in significant environmental impacts in the areas of aesthetics, biological resources, and land use/planning.
>
> Measure ECC-03 would "seek to provide incentives" to go beyond the Title 24 standards and existing local regulations pertaining to NOx emissions. (DPEIR, p. 2-18.) "Incentive programs ***would be developed*** for existing residences that include weatherization, upgrading older appliances with highly efficient technologies and renewable energy sources to reduce energy use for water heating, lighting, cooking and other large residential energy sources." (*Id.*) The measure also references providing "solar thermal and solar photovoltaics" to provide emission reductions within the residential sector. (*Id.*) The measure lacks any specificity about the programs that the District acknowledges would still be developed. There is no information on the amount of funding and the number of residents that may take advantage of this program. Based on the examples provided, this measure may result in significant environmental impacts in the areas of aesthetics, air quality, land use, solid waste, and other resource topics.

Response 3-17
Potential environmental impacts associated with the measures that involve replacing equipment, operations, and/or infrastructure referred to in the comment, including CMB-03, are analyzed in Chapter 4 of the Draft Program EIR. The potential environmental impacts from traffic, air quality, and noise associated with increased truck traffic referred to in the comment are also analyzed in Chapter 4 of the Draft Program EIR. It is speculative at this time to assume the options an operator will choose to take in handling gas, such as microturbines, fuel cells, sell back to gas companies, reinjection, or low-emitting burners. The Draft Program EIR takes into account, programmatically, that extensive construction will take place and found significant adverse impacts. These impacts are due to a variety of construction processes, but could include pipeline installation, infrastructure, or reinjection into the ground due to CMB-03, BCM-05, and BCM-10.

ECC-03 is an incentive-based measure to take credit for emission reductions from the existing residential sector. The specific details of implementation will be established in a working group process to take place once the 2016 AQMP has been approved to proceed in the development

phase. However, this control measure was analyzed in the Draft Program EIR for the topic areas of aesthetics, air quality, and solid waste. The comment refers to "other resource topics" potentially being impacted, but does not provide any specific information. Staff is not aware of potential significant impacts to other topic areas. Therefore, it is speculative to determine potential impacts from other resource topic areas at this time. Since ECC-03 is directed towards existing residences, land use impacts are not expected and, therefore, were not analyzed in the Draft Program EIR.

Control measure ECC-04 is intended for commercial building roofs and high-rise residential roofs with low slopes and the aesthetic impacts from ECC-04 were analyzed in the Draft Program EIR. It should be noted that these types of structures are typically located in either highly industrialized or highly developed settings. Therefore, no significant impacts to biological resources are anticipated since ECC-04 would affect existing structures. Land use decisions are made on a local level and it would be speculative to assume adverse decisions would be made based on roof product and color.

The Draft Program EIR analyzed the environmental impacts from the Draft 2016 AQMP on a programmatic level. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. *See also* Responses 3-5 and 3-6.

Comment 3-18

> Measure CMB-01 would seek emission reductions of NOx from traditional combustion engines by replacing them with zero and near-zero emission technologies through, among other methods, electrification and fuel cells. This measure would also seek energy storage systems and smart grid control technologies coupled with renewable energy generation. This measure has the potential to result in significant environmental impacts with respect to, among others, the construction of additional energy infrastructure. Per a more detailed description of this measure in the Appendix to the Proposed Plan, it also seeks to "[e]ncourage new businesses that use and/or manufacture near-zero and zero emission technologies to site in the Basin." (Proposed Plan, Appendix IV-A, p. IV-A-47.)[8] The DPEIR contains, at best, an incomplete analysis of this measure as evidenced by its omission of any discussion of its potential growth inducing impacts.[9]
>
> [8] A similar provision is included as part of FLX-02. (Proposed Plan, Appendix IV-A, p. IV-A-105.)
>
> [9] (CEQA Guidelines § 15126.2(d); *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 367 [EIR must discuss growth-inducing effects even though those effects will result only indirectly from a project.].)

Response 3-18
CEQA defines growth-inducing impacts as those that "foster economic or population growth or construction of additional housing." CMB-01 seeks to advance the deployment of engines, ovens and boilers, which are not anticipated to result in the direct or indirect construction of housing. Additionally, any new businesses that site within the District as a result of CMB-01 will undergo project-level CEQA analysis at that time.

The Draft Program EIR analyzed the adverse environmental impacts from the Draft 2016 AQMP on a programmatic level. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. *See also* Responses 3-5 and 3-6.

Comment 3-19

> All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be analyzed and are not. (*See* Control Measures ECC-04, CMB-01, CMB-02, CMB-03, CMB-04, MCS-02, FLX-01, FLX-02, and BCM-10.) For instance, the impacts of most measures is described by a single sentence in tables set forth in the DPEIR. Table 4.0-1 of the DPEIR wrongly concludes that Control Measures MCS-02 and FLX-01 will result in no impacts, asserting without any substantial evidence that "[i]mpacts are speculative" due to unknown future technologies and the unknown effectiveness of education and outreach.

Response 3-19
The potential environmental impacts associated with the measures (ECC-04, CMB-01, CMB-03, CMB-04, MCS-02, FLX-01, FLX-02, BCM-01, BCM-02, BCM-04, BCM-06, BCM-07, BCM-10) that involve replacing equipment, operations, and/or infrastructure referred to in the comment were analyzed in Chapter 4 of the Draft Program EIR. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

As described in Table 4.0-1, MCS-02 – Application of All Feasible Measures refers to implementation of rulemaking to establish emission limits for future BARCT analysis, and FLX-01 – Improved Education and Public Outreach refers to increased and public outreach to guide consumer behavior. Both these measures will be developed in the future and their environmental impacts are considered speculative at this time since the specifics on implementation have not been developed. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].) As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically. Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that

requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-20

> Measure CTS-01 seeks to lower the content of VOCs in coatings, solvents, and adhesives. Such measures may result in additional applications of lower quality products which could result in a net increase in air emissions. (*Dunn-Edwards Corp. v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4th 644.)

Response 3-20

Subchapter 4.1 of the Draft Program EIR includes a discussion of the specific issues associated with reformulation of coatings including increased viscosity, illegal thinning, the need for more priming, more topcoats, more touch-ups and repair work, more frequent recoating, substitution, and reactivity. The comment does not raise any new issues not already discussed in the Draft Program EIR. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. *See also* Responses 3-5 and 3-6.

Comment 3-21

> Pp. 2-23 to 2-33 – Mobile Source Control Measures (SCAQMD)
>
> Notwithstanding its lack of regulatory jurisdiction over mobile sources, the District's Proposed Plan nonetheless contains a detailed list of mobile source control measures. The mobile source control measures are listed in Table 2.8-2 and summarized in the text following that table.
>
> The DPEIR fails to acknowledge let alone analyze all potentially significant environmental impacts of the mobile source control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*See, e.g. Muzzy Ranch, supra.*)

Of particular concern for the POLB is MOB-01. Stemming from a desire to take ongoing credit for the voluntary emission reductions undertaken by the Ports through the CAAP Program, Control Measure MOB-01 could make the voluntary emission reductions a mandatory enforceable commitment in the form of a regulation enacted by the District "within its existing legal authority" or some yet-to-be granted authority that the District will "seek" to regulate mobile source emissions. (DPEIR, p. 2-24.)[10] In a separate comment letter to the District on the Proposed Plan dated August 19, 2016, the Ports explain why the District lacks the legal authority to adopt or enforce any such regulation.[11] Due to its lack of legal authority, this measure is not feasible and thus cannot serve as any valid form of mitigation. (Public Resources Code §§ 21004 and 21081(a)(3); CEQA Guidelines §§ 15040 and 15364; *Sierra Club v. California Coastal Comm'n* (2005) 35 Cal.4th 839; and *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) Moreover, from a CEQA standpoint, the emission reductions from the CAAP Program are already reflected in the baseline/setting as well as in the discussion of the No Project Alternative.[12]

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[10] Specifically Measure MOB-01 "seeks to quantify the emission reductions realized from the CAAP and credit the reductions into the [State Implementation Plan ("SIP")] to the extent that these actions are real and surplus to the SIP." (DPEIR, p. 2-28.)

[11] The Ports supplemented its August 19, 2016 letter on the Proposed Plan with a November 7, 2016 comment letter on the Revised Plan and the partially-released Socio-Economic Report.

[12] (*See, e.g.*, CEQA Guidelines § 15126.6(e)(3)(A) [when the "project" is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future."].)

Response 3-21

The SCAQMD has limited regulatory authority over mobile sources (e.g., fleet rules) and thus, a suite of SCAQMD facility-based mobile source measures are being proposed. Most of these mobile source measures will work in concert with CARB's State SIP Strategy being developed locally. Incentives are one way to gain emission reductions sooner than natural turnover of vehicles and equipment. Accelerating the deployment of cleaner technologies before future rulemaking is established allows the new technology to be commercially available, achieved in practice, feasible in more applications, cost effective, as well as publicly acceptable. The specific sources of funding have yet to be finalized, but staff has developed the Financial Incentive Funding Action Plan that maps out the possible opportunities to ensure the proposals have secured funding. Such funding is being sought on a federal, state and local level. To ensure the reductions are creditable in the SIP, the U.S. EPA does require these reductions to be quantifiable, surplus (beyond regulations), permanent and enforceable. With such integrity elements in place, the incentive actions can be effective and provide lasting improvements.

Currently, SCAQMD staff has no evidence that the control measures will cause industries and other regulated entities to relocate elsewhere and this is considered speculative. This comment does not provide evidence to support its claim.

Emission reductions from the ports (through the Clean Air Action Plan - CAAP Program) are included in the baseline emissions inventory. Staff believes that a constructive approach to achieving additional emission reductions in the near-term is through the actions the Ports are taking in the development of the CAAP update. If such actions are voluntary in nature and the associated emission reductions are proposed to be included in the SIP, enforceable commitments must be made to ensure the reductions are surplus and permanent. The enforceable commitment may be

in the form of a rule or other enforceable mechanisms. The approach agreed upon in the future regarding how to implement MOB-01 will dictate the exact direct and indirect impacts. However, MOB-01 is analyzed programmatically in the Draft Program EIR.

The August 19, 2016 comment letter on the Draft 2016 AQMP is referred to as Comment Letter #50 and the responses to those comments are available on the internet here: http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/response-to-comments/2016-aqmp-rtc-3-of-4.pdf.

The Draft Program EIR analyzed the environmental impacts associated with the mobile source control measures, as applicable, and as summarized in Table 3-1 below. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Table 3-1 – Summary of Environmental Topics Analyzed in the Draft Program EIR for Mobile Source Control Measures

Mobile Source Control Measure	Air Quality and GHG	Energy	Hazards and Hazardous Materials	Hydrology and Water Quality	Noise	Solid and Hazardous Waste	Transportation and Traffic	Aesthetics
MOB-01	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MOB-02	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-03	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-04	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-05	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-06	No	No	No	No	No	Yes	No	No
MOB-07	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-08	No	No	No	No	No	Yes	No	No
MOB-09	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
MOB-10	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-11	No	No	No	No	No	Yes	No	No
MOB-12	No	No	No	No	No	Yes	No	No
MOB-13	Yes	Yes	Yes	Yes	No	Yes	No	No
MOB-14	Yes	Yes	Yes	No	No	Yes	No	No

Comment 3-22

> MOB-02 appears intended to correct two District rules pertaining to rail yards and intermodal facilities rejected by the U.S. EPA presumably because they are beyond the scope of the District's regulatory jurisdiction. Per this vague and amorphous measure, the District will reconvene a stakeholder working group "to discuss and identify actions or approaches that can be implemented to further reduce emissions at rail yards and intermodal facilities." (DPEIR, p. 2-28.) At most, this is a proposal to develop a measure that cannot be adequately analyzed at present in the DPEIR and should be removed from consideration.[13] Any such contemplated implementation strategies must be included in the "Project Description" so that they may be evaluated in the DPEIR along with the other control measures.

[13] Similar deficiencies apply to Measures MOB-03 (Emission Reductions at Warehouse Distribution Centers), MOB-04 (Emission Reductions at Commercial Airports), MOB-12 (Further Emission Reductions from Passenger Locomotives), MOB-13 (Off-Road Mobile Source Emission Reduction Credit Generation Program), MOB-14 (Emission Reductions from Incentive Programs), and EGM-01 (Emission Reductions from New Development and Redevelopment Projects).

Response 3-22

MOB-02 is intended to aid in the acceleration of the penetration of zero and near-zero emission locomotives and the use of alternative fuels and fuel additives. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP (including MOB-02, MOB-03, MOB-04, MOB-14, and EGM-01) were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) MOB-12 was determined to not have any potential air quality impacts. Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-23

Measure MOB-05 proposes to provide funding rebates for at least 15,000 zero emission or partial-emission vehicles per year. Measure MOB-07 similarly seeks to deploy up to 120 zero and partial-zero emission heavy-duty vehicles per year. The DPEIR needs to contain an analysis of the traffic, noise, air quality, and other impacts associated with such programs, which could result in additional vehicles being added to already congested roadways.

Measure MOB-06 seeks to retire 2,000 older light and medium-duty vehicles per year. Measure MOB-08 similarly seeks to retire 2,000 heavy-duty vehicles per year. The DPEIR needs to contain an analysis of the traffic, noise, air quality, and other impacts associated with such programs, which could result in additional vehicles being added to already congested roadways.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See* Control Measures MOB-06, MOB-07, MOB-08, MOB-10, MOB-11, MOB-12, MOB-13, and MOB-14.)

Response 3-23

Chapter 4 of the Draft Program EIR included an analysis of the air quality impacts from all applicable control measures, including MOB-05, MOB-07, MOB-09, MOB-10, MOB-13 and MOB-14, which are detailed in Subchapter 4.1. As explained in Subchapter 4.7, control measures MOB-05, MOB-06, MOB-07, MOB-09, MOB-10, MOB-13 and MOB-14 are expected to replace already existing, older high emitting vehicles with cleaner vehicles, and will not result in additional cars added to the roadways. The only mobile source control measures with potential noise impacts were MOB-01 and MOB-09, which are analyzed in Subchapter 4.5.

Comment 3-24

Pp. 2-33 to 2-39 – SCAQMD Proposed PM2.5 Strategy

Measure BCM-03 calls for an unspecified increase in the watering of roads to control fugitive dust. The measure also proposes to evaluate existing fugitive dust rules to see if unknown and unspecified additional PM2.5 emission reductions can be achieved. The potentially significant air quality, noise, traffic, and water supply impacts of such a proposal must be thoroughly analyzed and mitigated in the DPEIR.

Measure BCM-04, which calls for revised manure management strategies, requires more analysis than is provided in the DPEIR. (*See, e.g., County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597 [EIR required to examine impacts of alternative sewage sludge disposal].)

Measure BCM-07 calls for increased watering of rotating cutting discs to reduce dust emissions. "Emissions are expected to be minimal, provided the waste material is disposed of properly." (Proposed Plan, Appendix IV-A, p. IV-A-201.) Yet, no analysis of the potentially significant air, noise, hazards, traffic, solid waste, or water supply impacts are provided such that any mitigation could be imposed to ensure that waste material is, in fact, disposed of properly.

The noise, air quality, geology and other impacts of Measure BCM-08, which seeks to limit agricultural burning through promoting burning alternatives (*e.g.*, chipping/grinding or composting) must be fully analyzed and mitigated.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See, e.g.*, Control Measures BCM-01, BCM-02, BCM-04, BCM-06, BCM-07, and BCM-10.)

Response 3-24

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

For BCM-03, the air quality, noise, traffic, and water supply impacts were analyzed in Chapters 4.1, 4.5, 4.7, and 4.4, respectively. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

For BMC-04, the air quality, energy, hazards, hydrology, solid waste, and transportation impacts were analyzed in Chapters 4.1, 4.2, 4.3, 4.4, and 4.7, respectively. The comment does not include specifics as to the additional analysis required and does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

For BCM-07, the air quality, energy, hydrology, noise, solid waste, and transportation impacts were analyzed in Chapters 4.1, 4.2, 4.4, 4.5, 4.6, and 4.7, respectively. The comment does not

raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

For BCM-08, the air quality, hazards, solid waste, and transportation impacts were analyzed in Chapters 4.1, 4.3, 4.6, and 4.7, respectively. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 3-25

Pp. 2-39 to 2-45 – SCAQMD Air Toxic Control Measures

In addition to the criteria pollutant control measures, the Proposed Plan also contains a detailed list of measures to control toxic air contaminants ("TAC") from stationary sources. The TAC control measures are listed in Table 2.8-5 and summarized in the text following that table.

The DPEIR fails to acknowledge, let alone analyze, all potentially significant environmental impacts of the air toxic control measures. The DPEIR must contain a complete and comprehensive analysis of the direct and reasonably foreseeable indirect impacts of all such measures. The potential for these measures to cause industries and other regulated entities to relocate elsewhere must also be considered. (*See, e.g. Muzzy Ranch, supra*.)

Measure TXM-01 contains a list of potential emission control approaches for metal grinding operations. Because there is no specific proposal, the DPEIR cannot meaningfully analyze this measure.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure must be thoroughly analyzed and mitigated. (*See* Control Measures TXM-04, TXM-05, TXM-06, TXM-08, and TXM-09.)

Response 3-25

The Draft Program EIR analyzed the environmental impacts associated with the toxic air contaminant (TAC) control measures, as applicable, and as summarized in Table 3-2 below. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Table 3-2 – Summary of Environmental Topics Analyzed in the Draft Program EIR for TAC Control Measures

TAC Control Measure	Air Quality and GHG	Energy	Hazards and Hazardous Materials	Hydrology and Water Quality	Noise	Solid and Hazardous Waste	Transportation and Traffic	Aesthetics
TXM-01	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-02	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-03	No	No	No	No	No	Yes	No	No
TXM-04	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-05	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-06	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-07	Yes	Yes	No	Yes	Yes	Yes	Yes	No
TXM-08	Yes	Yes	Yes	Yes	No	Yes	No	No
TXM-09	Yes	Yes	No	No	Yes	Yes	Yes	No

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

For example, Proposed Rule (PR) 1430 – Control of Emissions from Grinding Operations at Metal Forging Facilities is currently being proposed, which is consistent with the intent of TXM-01. As part of the rulemaking process, an environmental assessment was prepared for PR 1430 and was released for a 30-day public review and comment period from January 11, 2017 to February 10, 2017.

Comment 3-26

Pp. 2-45 to 2-53 – State and Federal Control Measures

The DPEIR's project description contains a detailed list of federal and state mobile source control measures. Although the District admittedly lacks regulatory jurisdiction over mobile sources, because the federal and state mobile source control measures are described as part of the Project, the DPEIR must contain a thorough analysis of the potentially significant environmental effects associated with these measures. Yet, Table 4.0-1 of the DPEIR wrongly concludes that several of these measures will result in no impacts. Instead, it claims without any evidentiary support that "[i]mpacts are speculative" due to unknown future technologies and the design of future cars.

Control Measure ORLD-01 proposes to increase the sales of zero emission vehicles and plug-in electric vehicles beyond the levels required in 2025. Measure ORLD-03 calls for "greater penetration of zero and near-zero technologies" as well as the "potential for autonomous vehicles and advanced transportation systems." (DPEIR, p. 2-48.) Measure ORHD-05 requires the use of low-NOx engines and the purchase of zero emission trucks "for certain class 3-7 last mile delivery trucks" starting in 2020 and "ramping up to a higher percentage of the fleet at time of normal replacement through 2030." (DPEIR, p. 2-49.) Measure ORHD-09 calls for "greater penetration of zero and near-zero technologies through incentive programs, emission benefits associated with increased operation efficiency strategies, and the potential for new driver assist and intelligent transportation systems." (DPEIR, p. 2-50.) Measure OFFS-08 likewise calls for

"greater penetration of zero and near-zero technologies through incentive programs, and emission benefits associated with the potential for worksite integration and efficiency, as well as connected and autonomous vehicle technologies." (DPEIR, p. 2-52.) The potentially significant air quality, noise, traffic, and other impacts associated with such measures must be thoroughly analyzed and mitigated in the DPEIR.

Further, the Proposed Plan identifies nearly $15 billion in incentive funding needed to facilitate the transition to zero and near-zero emissions equipment. The Proposed Plan indicates that SCAQMD will develop an action plan to identify "the necessary actions by the District" and other stakeholders "to ensure the requisite levels of funding are secured." (Proposed Plan, p. 4-66.) Although the Proposed Plan discusses the possibility of a federal "superfund" program, state bond measures, and local ballot measures to obtain this funding, it does not define the specific "necessary actions." Without more detail, it is impossible to evaluate whether this incentive action plan and the necessary $15 billion in government funding have significant environmental impacts. The DPEIR states that such a measure could result in significant secondary impacts in the areas of aesthetics, energy, hazards, water, noise, waste, and traffic. (DPEIR, pp. 6-40 to 6-41.) But no thorough analysis nor mitigation is provided as required by CEQA. Instead, the impacts of such a proposal are only cursorily examined as a Project "alternative."

Response 3-26

The SCAQMD has limited regulatory authority over mobile sources (e.g., fleet rules) and thus, a suite of SCAQMD facility-based mobile source measures are being proposed. Most of these mobile source measures will work in concert with CARB's State SIP Strategy being developed locally. Incentives are one way to gain emission reductions sooner than natural turnover of vehicles and equipment. Accelerating the deployment of cleaner technologies before future rulemaking is established allows the new technology to be commercially available, achieved in practice, feasible in more applications, cost effective, as well as publicly acceptable. The specific sources of funding have yet to be finalized, but staff has developed the Financial Incentive Funding Action Plan that maps out the possible opportunities to ensure the proposals have secured funding. Such funding is being sought on a federal, state and local level. To ensure the reductions are creditable in the SIP, the U.S. EPA does require these reductions to be quantifiable, surplus (beyond regulations), permanent and enforceable. With such integrity elements in place, the incentive actions can be effective and provide lasting improvements.

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

The Draft Program EIR analyzed the environmental impacts associated with the state and federal control measures, as applicable, and as summarized in Table 3-3 below. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further

response is necessary under CEQA.

Table 3-3 – Summary of Environmental Topics Analyzed in the Draft Program EIR for State and Federal Control Measures

TAC Control Measure	Air Quality and GHG	Energy	Hazards and Hazardous Materials	Hydrology and Water Quality	Noise	Solid and Hazardous Waste	Transportation and Traffic	Aesthetics
ORLD-01	Yes	Yes	Yes	Yes	No	Yes	No	No
ORLD-02	No	No	No	No	No	No	No	No
ORLD-03	Yes	Yes	Yes	Yes	No	Yes	No	No
ORHD-01	No	No	No	No	No	No	No	No
ORHD-02	Yes	Yes	Yes	Yes	No	Yes	No	No
ORHD-03	No	No	No	No	No	No	No	No
ORHD-04	Yes	Yes	Yes	Yes	No	Yes	No	No
ORHD-05	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ORHD-06	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ORHD-07	Yes	Yes	Yes	Yes	No	Yes	No	No
ORHD-08	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ORHD-09	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ORFIS-01	Yes	Yes	Yes	Yes	No	Yes	Yes	No
ORFIS-02	No	No	No	No	No	No	No	No
ORFIS-03	Yes	Yes	Yes	No	No	Yes	Yes	No
ORFIS-04	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ORFIS-05	Yes	Yes	Yes	Yes	No	Yes	No	No
OFFS-01	Yes	Yes	Yes	Yes	No	Yes	No	No
OFFS-02	No	No	No	No	No	No	No	No
OFFS-03	No	No	No	No	No	No	No	No
OFFS-04	Yes	Yes	Yes	No	No	Yes	No	No
OFFS-05	Yes	Yes	Yes	Yes	No	Yes	No	No
OFFS-06	Yes	Yes	No	No	No	No	No	No
OFFS-07	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
OFFS-08	Yes	Yes	Yes	Yes	No	Yes	No	No
CPP-01	Yes	No	Yes	Yes	No	No	No	No

The Draft Program EIR analyzed the environmental impacts regardless of how the control measures are implemented (incentive-based or regulatory). SCAQMD staff reviewed the Draft Financial Incentives Funding Action Plan (released in December 2016) and did not find any associated environmental impacts. Therefore, no further analysis is needed.

Comment 3-27

> Pp. 2-53 to 2-55 – SCAG's Regional Transportation Plan/Sustainable Communities Strategy and Transportation Control Measures
>
> SCAG has the responsibility for preparing and approving the portions of the Proposed Plan related to regional demographic projections and integrated regional land use, housing, employment, and transportation programs, measures, and strategies. (DPEIR, p. 2-53.) The DPEIR further indicates that the District "combines its portions of the AQMP with those portions prepared by SCAG" per Health & Safety Code § 40460. (*Id.*) In particular the Project contains Transportation Control Measures ("TCM"), from SCAG's RTP/SCS.
>
> Although those measures are only generally described in the DPEIR, they include several measures that may result in significant environmental impacts. (*See* DPEIR, p. 2-54 [measures include, among others, expanding regional transit, passenger rail, highway capacity, and high occupancy lanes].) Yet, none of these measures are analyzed in the DPEIR. As noted in Section II.D below, the DPEIR only evaluates the TCMs in the cumulative impact analysis and ignores completely the land use and transportation strategies. This results in a failure of the DPEIR to consider the "whole of the action" and associated improper segmentation of project impacts. (CEQA Guidelines § 15378; *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 283-284.)

Response 3-27

The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. The RTP TCMs are required by Health and Safety Code 40460 to be combined with the SCAQMD's portion of the AQMP; however, the 2016 RTP/SCS is considered a separate project under CEQA because the land use and transportation strategies program are within SCAG's jurisdictional authority and the 2016 RTP/SCS will move forward with or without adoption of the 2016 AQMP. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis.

Comment 3-28

B. The DPEIR Fails To Acknowledge And Address Numerous Significant Environmental Impacts.[14]

1. Introduction

We provide below comments that are common to all resource topics.

Given the total lack of information regarding what control measures the Project would entail and whether their implementation is feasible, it is premature to assess impacts related to any environmental resource topic, either on a project or cumulative basis. The "whole" of the Project must be analyzed in an EIR. As such, these details must be provided before these topics can be properly analyzed and mitigated in a revised and recirculated DPEIR.

In general, there is no indication what criteria were used to develop the significance thresholds or that they are supported by substantial evidence, as required. (Public Resources Code § 21082; CEQA Guidelines § 15064.7; and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) In the categories examined by the DPEIR, the significance criteria are inconsistent with the recommended questions designed to elicit whether the Project would have potentially significant impacts per Appendix G of the CEQA Guidelines.

Other than in tables with a one-sentence description of potential impacts, the vast majority of control measures are not mentioned at all in the Environmental Impact "Analysis." (*See* Tables 4.1-1, 4.1-4, 4.2-1, 4.3-1, 4.4-1, 4.5-1, 4.6-1, 4.7-1, and 4.8-1.) ***A one-sentence description of potential impacts does not constitute an adequate good faith effort at full disclosure***. (CEQA Guidelines § 15151 ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences" and that in reviewing an agency's efforts in regard to preparing an EIR courts look for "adequacy, completeness, and a good faith effort at full disclosure"]; *accord*, CEQA Guidelines § 15204(a) [requiring that a "good faith effort at full disclosure [be] made in the EIR."].)

In several instances, the DPEIR fails to identify significant unavoidable impacts as required by CEQA. It also relies on future CEQA documents by local agencies to correct any shortcomings in its analysis. Not only is such deferral of analysis improper under CEQA, it fails to recognize that given the likely ministerial nature of permits needed from local agencies, no further CEQA review may occur. (Public Resources Code § 21080(b)(1); CEQA Guidelines § 15268.) Even if such measures did require discretionary approvals, as the DPEIR repeatedly notes, the measures would be implemented at existing facilities and thus would likely be determined by local agencies to be exempt from CEQA pursuant to the existing facilities exemption. (*See, e.g.*, CEQA Guidelines § 15301.)

The DPEIR must be revised and recirculated to contain a thorough analysis of all potentially significant impacts associated with all of the proposed Project's control measures as well as feasible mitigation measures and alternatives designed to avoid or substantially lessen those impacts.

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[14] This Section provides comments on both the Existing Environmental Setting (Chapter 3) and Environmental Impacts and Mitigation Measures (Chapter 4) of the DPEIR.

Response 3-28

A detailed project description was included in Chapter 2 of the Draft Program EIR. The one sentence description of potential impacts in the tables referenced in the comment is intended to be a summary of the potential impacts, with further details and a more thorough discussion following later in the respective subchapters. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR.

The SCAQMD's CEQA Significance Thresholds were utilized for analyzing impacts in the Draft Program EIR. Those thresholds were clearly stated in the Initial Study and the Draft Program EIR.

The comment does not provide specifics as to which significant and unavoidable impacts were omitted or provide evidence of significant environmental impacts which would occur at existing facilities, not already analyzed in the Draft Program EIR, therefore, no revisions to the Draft Program EIR are necessary.

Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no further response is necessary under CEQA.

Comment 3-29

2. Air Quality and Greenhouse Gas Emissions

a. Scope of Analysis

Several air quality topics were scoped out of the analysis pursuant to the IS. (DPEIR, p. 4.1-10.) Yet, the District's conclusion that the Project will not result in any potentially significant impacts to those topic areas is not supported by substantial evidence, as required.

For instance, the IS concluded that the Project would not conflict with or obstruct implementation of the applicable air quality plan. Along those lines, the IS notes that the Proposed Plan includes control measures for stationary, mobile, and indirect sources and that these measures are based on "feasible methods of attaining the [ambient air quality standards]." (IS, p. 2-11.) There is no evidence, let alone substantial evidence, as required, to support this statement. As noted above, control measures related to mobile sources are beyond the District's regulatory jurisdiction and thus infeasible for legal and other grounds.

There is also no factual basis to conclude that implementation of the Project would not create any odor issues and therefore need not be studied. It is premature to dismiss this area of analysis given the lack of information currently available regarding the Project. Furthermore, the IS analysis only applies to construction odors and ignores any potential odors that may occur due to Project operations.

Several of the proposed control measures have not yet been developed by the District. Further, the emissions reductions from numerous control measures are listed as "TBD" in the Proposed Plan and DPEIR. Thus, the District lacks the requisite evidentiary basis to conclude that the Project would not diminish any existing air quality rule or future compliance requirement resulting in a significant increase in air pollutant(s).

The DPEIR must be revised, and the scope of the proposed DPEIR expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant air quality impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-29

As explained in the IS, the 2016 AQMP "would update the SCAQMD's 2007 and 2012 AQMPs as well as provide attainment demonstrations for new standards, as required pursuant to state and federal law." By building upon the previous adopted and approved AQMPs, which are regional air quality plans, the 2016 AQMP would not conflict with or obstruct implementation of the 2007 and 2012 AQMPs. Information related to the feasibility of control measures is included in the specific control measure write-up located in Appendix IV of the 2016 AQMP.

As noted in the comment, the SCAQMD has limited regulatory authority over mobile sources (e.g., fleet rules) and thus, a suite of SCAQMD facility-based mobile source measures are being proposed. Most of these mobile source measures will work in concert with CARB's State SIP Strategy being developed locally. Incentives are one way to gain emission reductions sooner than natural turnover of vehicles and equipment. Accelerating the deployment of cleaner technologies before future rulemaking is established allows the new technology to be commercially available, achieved in practice, feasible in more applications, cost effective, as well as publicly acceptable. The specific sources of funding have yet to be finalized, but staff has developed the Financial

Incentive Funding Action Plan that maps out the possible opportunities to ensure the proposals have secured funding. Such funding is being sought on a federal, state and local level. To ensure the reductions are creditable in the SIP, the U.S. EPA does require these reductions to be quantifiable, surplus (beyond regulations), permanent and enforceable. With such integrity elements in place, the incentive actions can be effective and provide lasting improvements.

As discussed in the IS, odor impacts from construction equipment are not expected to be significant because most diesel-fueled equipment are mobile and do not remain in one location that could continuously affect offsite receptors. As a result, odor impacts from construction activities to implement the 2016 AQMP control measures are not expect to be significant.

The IS discussed potential operational odors from the use of reformulated products and from modifications to industrial facilities to produce reformulated products. Reformulated products tend to have reduced VOC content and reduced emissions and, therefore, lower potential for creating odor impacts. As a result, significant adverse odor impacts have not been associated with reformulated products, especially those relying on water-based formulations, compared to conventional high-VOC products. Modifications to industrial facilities to produce reformulated products (e.g., refineries) also have the potential to create odor impacts. However, owners/operators of industries affected by control measures in the proposed 2016 AQMP would be subject to existing air quality rules and regulations, including SCAQMD's Rule 402 - Nuisance, which prohibits creating odor nuisances. For these reasons, implementing the 2016 AQMP is not expected to create significant adverse odor impacts and, therefore, was not further addressed in the Draft Program EIR. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR.

SCAQMD staff's goal for the Draft 2016 AQMP was to propose a comprehensive plan with all feasible measures. The emission reductions listed as TBD referred to in the comment are not relied upon in the attainment demonstration and would need additional technical assessment in order to be quantified. However, some of these measures would help implement CARB's Further Deployment of Cleaner Technologies measures (Further Deployment Measures). There may be the possible need in the near future for measures to meet shortfall reductions, in which case the TBD measures could be explored further to assist in those needs. As discussed in the IS, promulgating control measures in the 2016 AQMP, such as control requirements for stationary sources, mobile sources, incentive programs, etc., into rules or regulations typically would serve to strengthen an existing rule or regulation. Similarly, an AQMP control measure may be promulgated as a new rule or regulation, which would serve to control emissions from an unregulated or minimally regulated source. Therefore, the 2016 AQMP is not expected to diminish any existing air quality rule or future compliance requirement resulting in a significant increase in air pollutants. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Pursuant to CEQA Guidelines Section15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no revisions to the Draft Program EIR are necessary and no further response is necessary under CEQA.

Comment 3-30

b. Environmental Setting

The discussion of environmental setting or baseline is confusing and fails to comport with CEQA Guidelines § 15125. That section requires that the impacts of a project be evaluated compared to the existing environmental setting as of the time of the notice of preparation. The NOP here was issued on July 5, 2016. Yet, the DPEIR states that "2012 is the baseline year used for the emissions inventory to develop the control strategy and future baseline emissions in the 2016 AQMP." (DPEIR, p. 4.1-12.) The DPEIR goes on to inconsistently say that the latest verifiable air quality data are from 2015 and the most recent environmental topic data is from 2016. (*Id.*) It is unclear whether data from 2012 was used as the baseline for analysis of air quality impacts, or data from 2015 or 2016. An EIR that relied on shifting baselines, like the DPEIR purports to do here, was struck down by the Court of Appeal in *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99. If 2016 was used as the baseline, where is the verified air quality data to support it? The DPEIR refers to the use of a future baseline (DPEIR, p. 4.1-12), which was also struck down by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439.

Response 3-30

The environmental setting and baseline that was used to evaluate proposed project impacts is explained in detail in Subchapter 3.2 of the Draft Program EIR. 2012 is the baseline year used for the emissions inventory to develop the control strategy and future baseline emissions for the 2016 AQMP. The latest verifiable air quality data (from approved air quality monitoring sites) is from 2015, which can be found in Chapter 2 of the 2016 AQMP and Subchapter 3.2 of the Draft Program EIR. The verified 2015 air quality data was used as the baseline for evaluating air quality impacts associated with the proposed project. The most recent environmental topic data from 2016 was used for the CEQA baseline in determining environmental impacts from other environmental topic areas because that was the time of the release of the NOP/IS. The Draft Program EIR used the appropriate baseline, which was disclosed.

Comment 3-31

> **c. Impact Analysis**
>
> In order to determine whether or not the air quality impacts from the proposed Project are significant, impacts are compared to the significance criteria in Table 4.1-2. (DPEIR, p. 4.1-10.) That table lists the numerical thresholds for criteria and other pollutants. There is no qualitative analysis of any air quality impacts nor consideration of several topics referenced in Section III of the Appendix G Checklist.
>
> The DPEIR acknowledges that "[t]he exact scope of the construction activities necessary to implement the proposed control measures is not known at this time." (DPEIR, p. 4.1-19.) It nonetheless states that the measures are similar to the measures which have been implemented at facilities due to SCAQMD rulemaking. (*Id.*) No evidence is provided to support this statement.

Response 3-31

The Draft Program EIR focused on the checklist topics which were identified as having a potentially significant impact, as disclosed in the NOP/IS (Appendix A). As some of the checklist topics in the Air Quality and GHG area were identified as having either a less than significant or no impact from the proposed 2016 AQMP, those checklist topics were not further analyzed in the Draft Program EIR.

As discussed earlier, the 2016 AQMP updates and builds upon the 2007 and 2012 AQMPs. Some of the control measures are expanding or continuing the measures which have already been implemented as part of previous AQMPs. Therefore, in those cases, SCAQMD staff assumed that the impacts would be similar to those of previously implemented measures. Additionally, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-32

> More fundamentally, the actual "analysis" of peak construction emissions from the approximately 80 control measures is predicated on construction of only four facilities or control devices on any given day. (DPEIR, pp. 4.1-19 and Table 4.1-3.) No explanation is provided as to how this number was derived or why it is a reasonable assumption given that the Proposed Plan applies to a nearly 11,000 square mile area consisting of numerous cities and unincorporated communities in the counties of Los Angeles, Orange, San Bernardino, and Riverside. (DPEIR, pp. 1-6, 2-8, 3.9-2.) As a result of this artificial and flawed assumption, the resulting air quality impacts are grossly underreported. For instance, only NOx emissions are reported as significant impacts, requiring mitigation. Emissions of other key pollutants (*e.g.*, VOC, CO, SOx, PM10 and PM2.5) are reported as less than significant and no mitigation is proposed.

Response 3-32
Chapter 4.1, Page 4.1-19 of the Draft Program EIR states that, "although the construction emissions at each individual facility might not exceed the SCAQMD's CEQA significance thresholds, it is foreseeable and likely that on any given day, construction of one or more control devices in order to comply with the 2016 AQMP could occur at more than one facility. Based on the results in Table 4.1-3, if more than four facilities or more than four control devices were concurrently constructed on any given day, the emissions would exceed the SCAQMD's air quality significance thresholds. Therefore, construction emissions are considered significant." Installation of control devices at four facilities was used as an example. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Mitigation measures AQ-1 through AQ-23 were included which would reduce construction related emissions of all criteria pollutants, not only for NOx. Implementation of the construction mitigation measures would reduce construction emissions, but the overall construction air quality and GHG impacts after mitigation would remain significant and unavoidable.

Comment 3-33

> The analysis also omits any consideration of grading activities "because modifications or installation of new equipment would occur at existing industrial/commercial facilities and, therefore, would not be expected to require earthmoving, grading, etc." (DPEIR, p. 4.1-19.) Even assuming that most upgrades would be made to existing facilities, some grading is likely to occur. By omitting such activity from the analysis, the DPEIR underreports the Project's air quality impacts.

Response 3-33
As shown in Chapter 4.1, pages 4.1-18 and 4.1-19, and in Table 4.1-3 of the Draft Program EIR, construction emissions from grading/site preparation activities were estimated for the various construction phases associated with the installation of air pollution control devices. In addition, criteria pollutant emissions were calculated for all on-road vehicles transporting workers, vendors, and material removal and delivery. The purpose of the footnote the comment is referring to is to clarify that grading/site preparation/earth moving activities are not anticipated to be necessary because modifications or installation of new equipment would occur at existing commercial/industrial facilities. However, the air quality impact analysis included emissions from grading/site preparation activities in order to ensure a worst-case analysis. Therefore, the Draft Program EIR did not underreport the air quality impacts, as claimed in the comment.

Comment 3-34

> Although the District has developed localized significance thresholds for criteria pollutant emissions, which are commonly employed for air quality impact analysis in the region, the DPEIR omits any localized air quality impact analysis claiming that "the details of the individual projects to implement [the AQMP] and their locations are not known at this time." (DPEIR, p. 4.1-20.) If the details of the project is not known, then no analysis can be undertaken at all. Moreover, there is no reason why the DPEIR could not have employed reasoned estimates of air quality emissions to provide analysis of likely impacts compared to the localized significance criteria.

Response 3-34

As explained in the Draft Program EIR and consistent with SCAQMD's LST Guidance, "An analysis of localized air quality impacts for criteria pollutant emissions is not applicable to regional projects such as local general plans, specific plans, or AQMPs (SCAQMD, 2008) because the details of the individual projects to implement these types of plans and their locations are not known at this time." (See Page 4.1-20) Furthermore, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-35

> Control Measure BCM-04 is intended to reduce ammonia emissions from livestock waste through a process known as thermal gasification. The DPEIR states that because such systems are in the testing stage, it is not likely that this technology will become widespread until further testing is done and that "any air quality impacts will be minimal." (DPEIR, p. 4.1-30.) The measure, among others, is intended to be implemented to attain federal and state air quality standards. The DPEIR thus must assume the measures will be implemented and analyze their impacts.

Response 3-35

Since the release of the Draft Program EIR, emission reductions were quantified for control measure BCM-04 in the Revised Draft 2016 AQMP. These reductions were estimated based on lowering the livestock thresholds in existing SCAQMD Rule 223 - Emission Reduction Permits for Large Confined Animal Facilities, as part of a Reasonably Available Control Measure (RACM) analysis of the Federal CAA requirements. At this time, analysis of the technology that would be used to achieve these estimated reductions would be speculative. As explained previously, the adverse environmental impacts from BCM-04 were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program

EIR.

Comment 3-36

> The Proposed Plan contains a number of measures designed to reduce emissions from mobile sources by accelerating the penetration of partial zero-emission and zero emission vehicles. (*See, e.g.*, Control Measures MOB-05, MOB-06, MOB-08, MOB-09, ORLD-03, ORHD-05, and ORHD-08.) The air quality analysis presumes that all older vehicles would be eliminated and discarded and thus only considers the air quality impacts associated with scrapping old vehicles. (DPEIR, Section 4.1.6.2.4; *see also*, DPEIR, pp. 4.1-43 to 4.1-44.)[15] There is no evidence to support this assumption. The air quality analysis should have conservatively assumed operation of both the new and old vehicles simultaneously at least for the estimated remaining operational life of the old vehicles. Indeed, the DPEIR acknowledges that "it is not conclusive that equipment will be put out of service and that the high number of vehicles or equipment will be scrapped as solid/hazardous waste." (DPEIR, p. 6-33.) Similarly, the DPEIR should have assumed *increased* levels of petroleum fuel production and transportation of crude oil, as opposed to vastly reduced levels. (DPEIR, pp. 4.1-41, 4.1-51 to 4.1.52.)
>
> [15] Even so, the scrapping analysis is based on an "internet search" of auto recycling facilities in the Basin. (DPEIR, p. 4.1-39.) This is hardly a scientific basis on which to conduct a robust analysis of potential air quality impacts. Indeed, there are other auto recycling facilities located outside the Basin and there are likely additional facilities inside the Basin as well.

Response 3-36

There is no evidence to support the claim that the proposed mobile source control measures would increase the number of vehicles in operation due to both old and new vehicles operating concurrently. Implementation of control measures from previous AQMPs which included vehicle replacements have led to the removal and replacement of older, higher emitting vehicles within the District. Additionally, SCAG's Final 2016 RTP/SCS projects a decrease in vehicle miles travelled. The intent of the mobile source control measures listed in the comment is to replace already existing, older high emitting vehicles with cleaner vehicles, not add additional cars. Furthermore, the aim of these measures is to move away from fossil fuel usage. Therefore, analysis of increased levels of petroleum fuel production and transportation of crude oil in the Draft Program EIR is not necessary or warranted.

Comment 3-37

> Control Measure BCM-08 is intended to provide alternatives to agricultural burns. Yet, no alternatives are specified. Thus, the conclusion that BCM-08 would reduce emissions from agricultural burn operations is not supported and does not inform the analysis of air quality impacts. (DPEIR, p. 4.1-42.)

Response 3-37

BCM-08 is considered a contingency measure in the 2016 AQMP. Chapter 4 of the 2016 AQMP has a detailed discussion as to what is being defined as a contingency measure to comply with CAA requirements. These contingency measures are analyzed in the Draft Program EIR regardless of how the measure is classified to comply with CAA requirements. As explained previously, the adverse environmental impacts from BCM-08 were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later

activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-38

> The DPEIR claims that due to the qualitative nature of the analysis of greenhouse gas ("GHG") emissions, "it is not possible to show the magnitude of GHG emission effects from implementing 2016 AQMP control measures." (DPEIR, p. 4.1-50.) The DPEIR nonetheless asserts that the Proposed Plan "is expected to reduce GHG emissions consistent with the AB 32 Scoping Plan," resulting in less than significant GHG impacts. It reaches this conclusion by amortizing already depressed construction emissions over a 30-year period and claiming that increased GHG emissions from energy demand will be offset by substantial reductions in the amount of petroleum fuel use (*e.g.*, 530 million gallons by 2023 and 870 million gallons by 2031). (DPEIR, pp. 4.1-51 to 4.1-53.) As noted above, those assumptions are artificial and unfounded.
>
> There is no analysis of recently enacted SB 32. This measure requires the State to reduce GHG emissions by 40 percent below 1990 levels by 2030. There is likewise no acknowledgment or analysis of the Project's consistency with State policy of reducing GHG emissions by 80 percent below 1990 levels by 2050. (Executive Order S-3-05.) The California Supreme Court has acknowledged the need to consider the evolving GHG targets and standards. (*Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204.)
>
> While concluding that the Project may have a potentially significant impact with respect to GHG emissions, the DPEIR inconsistently finds a less than significant impact with respect to the Project's impacts in regard to conflicts with applicable plans, policies, and regulations adopted for the purpose of reducing greenhouse gas emissions. The DPEIR must likewise study this issue and all applicable federal, state, and local GHG reduction plans and policies.

Response 3-38

As discussed in Chapter 4.1.6.4, "compared to the 2014 baseline, energy demand from 2016 AQMP control measures is expected to increase by 10,227 GWh, a 7.8 percent increase, by the year 2023 and produce 3.4907 million metric tons (MMT) of GHG emissions. Similarly, compared to the 2014 baseline, energy demand from 2016 AQMP control measures is expected to increase by 18,029 GWh, a 12.7 percent increase, by the year 2031 and produce 6.1496 MMT of GHG emissions. Concurrent with projected increases in electricity demand and associated emissions from implementing 2016 AQMP mobile source control measures is a reduction in the use of petroleum fuels and their associated emissions." Contrary to the claim in the comment, the analysis in the Draft Program EIR does not rely on amortizing already depressed construction emissions to reach the conclusion that the proposed 2016 AQMP will not conflict with the AB32 Scoping Plan, but instead relies on conservative, worst-case construction scenario impacts that could occur as a result of the implementation of the control measures. ECC-03 further exceeds the AB32 goals through incentives. Additionally, there will be the co-benefit of GHG reductions through other control measures targeted at criteria pollutant emissions, which would support the reductions required by SB32. Therefore, instead of conflicting with GHG plans, the 2016 AQMP compliments and further supports these policies and goals. Furthermore, the 2016 AQMP builds

upon SCAG's 2016 RTP/SCS and CARB's State SIP Strategy, which are in part, based on greenhouse gas reduction plans. Therefore, the 2016 AQMP does not conflict with other applicable plans, policies, or regulations and the comment does not provide evidence to the contrary.

Comment 3-39

> Finally, the DPEIR only analyzes the air quality and GHG impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential air quality and GHG impacts associated with, among others, Control Measures CMB-01, CMB-02, CMB-03, ECC-03, MOB-05, MOB-06, MOB-07, MOB-08, MOB-13, BCM-03, BCM-06, BCM-07, BCM-08, BCM-10, CTS-01, TXM-01, TXM-05, TXM-06, TXM-09, ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08.

Response 3-39

Subchapter 4.1 of the Draft Program EIR examines potential direct and indirect air quality and GHG impacts associated with the implementation of the control measures in the proposed 2016 AQMP. Table 4.1-1 on page 4.1-17 of the Draft Program EIR identifies the control measures that have the potential to generate air quality impacts and the types of air quality impacts for each control measure, including CMB-01, CMB-02, CMB-03, ECC-03, MOB-05, MOB-07, MOB-13, BCM-06, BCM-07, BCM-08, BCM-10, CTS-01, TXM-01, TXM-05, TXM-06, TXM-09, ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08. There are no specific issues raised as to the analysis contained in the Draft Program EIR.

MOB-06 involves the accelerated retirement of older light-duty and medium-duty vehicles and MOB-08 involves the accelerated penetration of partial zero-emission and zero-emission light-heavy- and medium-heavy-duty vehicles, which would result in emissions reductions of NOx and PM. Since it is speculative to assume the amount of reductions which would result from MOB-06 and MOB-08, the Draft Program EIR took a conservative approach and did not take credit for those emission reductions. BCM-03 involves the emission reductions from paved road dust sources. Since it is speculative to assume the amount of reductions which would result from BCM-03, the Draft Program EIR took a conservative approach and did not take credit for those PM emission reductions. Therefore, no air quality and GHG impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-40

> **d. Mitigation**
>
> As noted above, the air quality analysis was artificially constrained by focusing only on a theoretical maximum of four facilities undertaking construction activities per day in response to the control measures. As such, and contrary to CEQA, the disclosure of potentially significant air quality impacts, and the imposition of feasible mitigation measures to address them, is largely ignored by the DPEIR.
>
> The DPEIR does acknowledge a significant impact in regard to NOx emissions. However, Section 4.1.7 of the DPEIR states that various measures "*should* be implemented, where applicable and *if feasible*."[16] This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168 [no evidence that recommendations for reducing GHG emissions would function as enforceable or effective mitigation measures]; and *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 [list of potential mitigation measures rejected as "nonexclusive, undefined, untested and of unknown efficacy."].)
>
> [16] Mitigation Measure AQ-2 similarly "encourage[s]" contractors to apply for SCAQMD funding incentives.

Response 3-40

The Draft Program EIR states, "although the construction emissions at each individual facility might not exceed the SCAQMD's CEQA significance thresholds, it is foreseeable and likely that on any given day, construction of one or more control devices in order to comply with the 2016 AQMP could occur at more than one facility. Based on the results in Table 4.1-3, if more than four facilities or more than four control devices were concurrently constructed on any given day, the emissions would exceed the SCAQMD's air quality significance thresholds. Therefore, construction emissions are considered significant." (Draft Program EIR, p.4.1-19) Installation of control devices at four facilities was used as an example of a theoretical minimum to exceed the significance threshold, not maximum of concurrent construction sites as the comment claims. The maximum of concurrent construction sites is unknown.

Enforceable mitigation measures (AQ-1 through AQ-23) that would reduce construction related emissions of all criteria pollutants were included in the Draft Program EIR and can be found beginning on page 4.1-55. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures AQ-1 through AQ-23 would be applied to future projects, if the impacts from those projects would result in significant air quality impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of

mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The Draft Program EIR concluded that implementation of the construction mitigation measures would reduce construction emissions, but the overall construction air quality and GHG impacts after mitigation would likely remain significant.

Comment 3-41

> Several of the mitigation measures appear to have nothing at all to do with NOx emissions. Moreover, no effort is made to quantify the reduction in NOx emissions as a result of the measures, as is commonly done. Thus, it is impossible to determine whether impacts have been avoided or substantially lessened, as required. Instead, the DPEIR concludes that while implementation of these measures would reduce construction emissions, "the overall construction air quality and GHG impacts after mitigation would likely remain significant." (DPEIR, p. 4.1-57.)
>
> The DPEIR also fails to acknowledge that because the District lacks controls over implementation of these measures, the impact is significant and unavoidable. Instead, the DPEIR contains a vague reference to reliance on "subsequent CEQA analyses." (DPEIR, p. 4.1-57.)

Response 3-41

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. The Draft Program EIR clearly identifies significant adverse construction air quality, for all criteria pollutants, not just NOx, and GHG impacts would be caused by the proposed 2016 AQMP. Implementation of the construction mitigation measures would reduce construction emissions of all criteria pollutants, but the overall construction air quality and GHG impacts after mitigation would remain significant and unavoidable. As a program level document, it would be speculative to determine the amount of reduction achieved by the mitigation measures. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) Therefore, the Draft Program EIR concluded that construction air quality and GHG impacts would remain significant and unavoidable.

Comment 3-42

> **3. Energy**
>
> **a. Scope of Analysis**
>
> Several energy topics were scoped out of the analysis pursuant to the IS. (DPEIR, p. 4.2-7.) However, the District's conclusion that the Project will not potentially result in significant impacts to those areas is not supported by substantial evidence.
>
> For instance, the IS determined that the Project would not conflict with an adopted energy conservation plan or existing energy standards. (IS, p. A-76.) The District reached this conclusion by assuming that any owners or operators of affected facilities would comply with applicable standards at the time of future installation. However, there is no substantial evidence supporting the conclusion that owners or operators would comply with future standards. If the net effect of implementing the Project is an increase in regional energy demand, as the DPEIR indicates is likely, potential conflicts with adopted energy conservation plans and existing energy standards cannot be dismissed as "no impact." The shift from fossil fuels to alternative fuels or electrical- powered technologies and increased reliance on such alternative fuels or electricity such that sufficient supply and emergency storage would be available in the event of a major disaster must also be considered.

Response 3-42

The 2016 AQMP would promote and incentivize meeting and exceeding energy goals and standards. Increases or shifts in demand for different types of energy or fuel usage, including future electricity supply and demand, is evaluated in Subchapter 4.2 for energy of the Draft Program EIR. Risk of upset is analyzed in Subchapter 4.3 for hazards as a result of the usage of alternative fuels. Emergency storage due to a major disaster is not evaluated as an energy impact since the proposed 2016 AQMP would not result in an earthquake or any foreseeable major disasters. Additionally, it is appropriate to assume compliance with existing and future laws and regulations in analyzing impacts under CEQA. (*See Rominger v. Cnty. of Colusa* (3d Dist. 2014) 229 Cal. App. 4th 690, 728 [holding that a CEQA analysis was proper in assuming compliance with regulatory measures, even without a project condition required such compliance].)

Comment 3-43

> Additionally, the IS reached the conclusion that the Project would not conflict with an adopted energy conservation plan by assuming that the Project control measures would promote, rather than interfere with, energy efficiency and conservation. However, the IS does not analyze the potential for the control measures to frustrate adopted energy conservation plans by implementing conflicting measures. In fact, the IS does not even disclose any adopted energy conservation plans or energy standards. As such, there is no substantial evidence to support the conclusion that the Project will not conflict with adopted energy conservation plans or existing energy standards.

Response 3-43

By promoting control measures that would increase energy efficiency and conservation, the 2016 AQMP would not interfere or conflict with any adopted energy conservation plans. In fact, there would likely be an energy co-benefit from the proposed control measures to complement applicable energy conservation plans and energy standards. The comment does not identify any specific conflicts or provide evidence to support the claim that the proposed control measures

would conflict with adopted energy plans. No further response is necessary under CEQA.

Comment 3-44

> The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant energy impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

Response 3-44

The potential adverse energy impacts were analyzed in Chapter 4.2 of the Draft Program EIR. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no revisions to the Draft Program EIR are necessary and no further response is necessary under CEQA.

Comment 3-45

> **b. Impact Analysis**
>
> The DPEIR specifically states that the "actual potential increase in the amount of electricity use due to the implementation of the 2016 AQMP is unclear at this time because specific information regarding the number and size of the air pollution control devices that may be installed are currently unknown." (DPEIR, p. 4.2-11.) Yet, estimates of increased energy use must be provided based on substantial evidence. The DPEIR must accordingly be revised to include the potential operational energy use, including pollution control equipment that would be added pursuant to Control Measure CMB-05.

Response 3-45

The Draft Program EIR clearly states that the 2016 AQMP strategy would increase the demand for electricity through the incentivization and penetration of partial-zero and zero emission technologies and through the operation of some types of control equipment. Each control measure proposed in the 2016 AQMP was evaluated, including CMB-05, and 47 control measures were identified as having potential adverse energy impacts. Evaluation of the control measures was based on conducting an examination of the potential impacts for each control measure and the technologies that may be involved in light of current energy trends. All control measures were analyzed to identify both beneficial effects (energy conserving) and adverse impacts (energy consuming). Table 4.2-1 beginning on page 4.2-2 contains a summary of the 2016 AQMP control measures which may result in the use of compliance options that in turn, could generate significant energy impacts. Actual estimates of energy use are speculative at this time due to the unknown number and size of control devices that may be installed. Therefore, potential energy impacts from the control measures were analyzed in the Draft Program EIR on a programmatic level. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373.) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be

appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. *See also* Responses 3-5 and 3-6. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 3-46

> The Energy Section improperly relies on a 2015 Final Program Environmental Assessment ("PEA"), which analyzed potential increases in electricity demand associated with SCAQMD's Regional Clean Air Incentives Market ("RECLAIM") program to conclude that Control Measure CMB-05, which would seek further NOx reductions under the RECLAIM program, would not increase electricity demand. However, the DPEIR states that Measure CMB-05 may encourage different types of control devices, including "SCR, SNCRs, a proprietary Low Temperature Oxidation technology . . . and catalyst impregnates filters." (DPEIR, p. 4.2-8.) The DPEIR does not disclose how these different types of control devices would affect the conclusions in the 2015 PEA, but presumably, different types of control devices would alter the analysis and should be considered. More importantly, any further NOx reductions under the RECLAIM program should be quantified and analyzed. The District cannot simply assume that CMB-05 would not substantially increase electricity demand by relying on a 2015 EA for an existing program.

Response 3-46

CMB-05 would seek further NOx reductions under the RECLAIM program which may cause related energy impacts. Therefore, the Draft Program EIR appropriately utilized assumptions from the environmental analysis from the 2015 Final PEA for the RECLAIM amendment. Table 4.2-1 on page 4.2-9 summarized the estimated number of NOx emission control devices that were estimated in the December 2015 Final PEA prepared for NOx RECLAIM per sector and per equipment/source category. The December 2015 Final PEA for NOx RECLAIM estimated that the following new NOx air pollution control equipment could be installed: up to 117 SCRs, eight LoTOx^{TM} with WGSs, one LoTOx^{TM} without WGS, and three UltraCat DGSs. As stated in the Draft Program EIR, control measure CMB-05 would be expected to result in similar, but fewer impacts, because CMB-05 would require the approximately five tons per day of NOx emission reduction by 2031, while the analysis in the December 2015 Final PEA was based on achieving 14 tons per day of NOx reductions by 2022, which is more conservative.

Comment 3-47

Similarly, the analysis of impacts from Control Measures MOB-09, ORHD-08, ORHD-06, and ORHD-09 is based on a Draft EIR/EIS prepared by Caltrans in 2012 for the Interstate 710 Corridor Project. (DPEIR, p. 4.2-12.) The District states that Caltrans is in the process of revising the I-710 Corridor Project EIR/EIS and that the associated estimates used in the DPEIR, thus, are preliminary.

The EIR/EIS for the I-710 Corridor Project is in the process of being revised and recirculated and the particulars of that project are still unknown. A Draft EIR/EIS for the I-710 Corridor Project was released in 2012. In 2013, the I-710 Corridor Project lead agencies announced that they would be pursuing a Recirculated CEQA document with updated alternatives. This Recirculated EIR/EIS is not anticipated to be released until Spring 2017 at the earliest. As such, the alternatives being considered for the I-710 Corridor Project are currently unknown, and it is speculative to make any statements about the environmental impacts of the alternatives or rely on the underlying analysis that is a basis for environmental impacts of the alternatives.

It is not permissible to simply state that an impact analysis was based on preliminary data in lieu of preparing data supported by substantial evidence. The District should calculate an estimate of electricity demand for electric or magnetic power for anticipated new roadway infrastructure instead of relying on a four year old Caltrans document that is in the process of being substantially revised.

Response 3-47

The Draft Program EIR estimated electricity demand from electric or magnetic power built into roadway infrastructures to boost the pulling capacity or range of the heavy-duty vehicles. Data was used from the Draft EIR/EIS prepared for the Interstate 710 Corridor Project because that was the most recent data available for such an infrastructure project. Additionally, the Draft Program EIR estimated the potential electrical demand for electric roadway infrastructure along the State Route 60 Freeway. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-48

The DPEIR notes that construction activities necessary to implement control measures would increase gasoline and diesel demand. (DPEIR, p. 4.2-19.) The DPEIR then states that larger construction projects will likely require project-specific CEQA analysis and that the Project is anticipated to reduce petroleum fuels and alternative fuels overall. A deferral of environmental analysis until after a project is approved is not allowed by CEQA. (Public Resources Code §§ 21002, 21151; CEQA Guidelines § 15004.) The conclusion that the Project will not have a significant impact with regard to the use of gasoline, diesel, and alternative fuels is also not based on sufficient evidence. The DPEIR must be revised to include estimates of petroleum fuels and alternative fuels based on substantial evidence.

Response 3-48

Construction activities that may be necessary in order to implement control measures in the 2016 AQMP would increase the use of gasoline and diesel. Construction activities may be necessary for a variety of control measures in order to develop and build a transportation infrastructure, install air pollution control equipment, and further develop and build an electricity infrastructure to support the electrification of sources. The amount of petroleum fuels needed for construction would depend on the extent of the specific construction activities employed. For example, larger construction projects typically use the most fuels and are likely to require project specific CEQA review to evaluate the specific energy needs. Therefore, fuel usage is analyzed programmatically in the Draft Program EIR, not deferred, as the comment claims. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and not improperly deferred as the comment alleges. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) Pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities, and detailed, project-level CEQA analysis will be appropriate at that time. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 (holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR). Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-49

> The DPEIR states that the Project will result in a shift from petroleum-based fuels to alternative fuels, including hydrogen. (DPEIR, p. 4.2-21.) The DPEIR then states that hydrogen fueling capacity will be insufficient by 2020. Nonetheless, the DPEIR does not include any analysis or mitigation to address impacts associated with this deficiency in hydrogen fueling capacity, such as through development of additional hydrogen fueling facilities and/or reliance on alternative fuels. As such, the DPEIR should be revised to include analysis of this potentially significant impact.

Response 3-49

The Draft Program EIR adequately addresses the potential shift from petroleum-based fuels to alternative fuels, including hydrogen. On page 4.2-20, the Draft Program EIR states that "As of June 2016, 20 hydrogen fueling stations are located in the southern California region plus an additional 18 stations are expected to be opened by the end of 2016, although station development has progressed at a slower pace than projected in 2015 (CARB, 2016b)." Additionally, the Draft Program EIR states that, "California has been developing the infrastructure of a hydrogen highway to assure that hydrogen fueling stations are in place to meet the demands of fuel cell and other hydrogen vehicle technologies. CARB is focusing on putting additional emphasis on creating clusters of hydrogen fueling stations in key urban areas such as Los Angeles and Orange counties, Sacramento, and the San Francisco Bay area (CARB, 2016b)."

The intent of the mobile source control measures is not to shift from the use of petroleum-based fuels to one alternative fuel (such as hydrogen), but rather to reduce emissions, which will likely result in the use of a mix of alternative fuels. Therefore, the potential deficiency in the

infrastructure associated with one particular alternative fuel (such as hydrogen fueling capacity) will be lessened by the use and availability of other alternative fuels. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, no revisions to the Draft Program EIR are necessary.

Comment 3-50

> There is no substantial evidence to support the DPEIR's conclusion that impacts related to the increased demand of alternative fuels, alternative energy, renewable energy, petroleum fuels, and natural gas would be less than significant. (DPEIR, p. 4.2-24.) In the Energy Section itself, the DPEIR cites potential indirect impacts of the control measures, including the increased use of electricity and potentially increased need to generate additional renewable energy sources. (DPEIR, p. 4.2-23.) These indirect impacts would increase demand for alternative fuels, alternative energy, and renewable energy and are not quantified in the energy section. Thus, impacts cannot be deemed less than significant.

Response 3-50

Potential indirect impacts related to the increased demand of alternative fuels, alternative energy, renewable energy, petroleum fuels, and natural gas are fully analyzed on a programmatic level, and therefore, were not quantified at this time as that would be speculative. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) These potential indirect impacts (e.g. increased electricity usage) are discussed throughout Subchapter 4.2.4 of the Draft Program EIR. This comment does not provide specific examples to support the claim that the potential indirect impacts referred to were not adequately analyzed. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-51

> Appendix F of the CEQA Guidelines contains several requirements, which have recently been held by the court to be critical to include in EIR energy sections. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173.) One of the requirements is for total energy demand to be quantified, which is absent from the DPEIR. Other requirements mandate consideration of construction processes and specify that total daily vehicle trips be included. This information is also omitted from the Energy Section. Mitigation Measure E-4 purports to improperly defer the requisite energy analysis until after approval of the Project. The District must revise the Energy Section to include all components of Appendix F.

Response 3-51

SCAQMD's CEQA significance thresholds, as discussed on page 4.2-7 of the Draft Program EIR, do not conflict with the EIR content requirements or goals of Appendix F of the CEQA Guidelines. Appendix F of the CEQA Guidelines is also specifically discussed on page 4.2-15 of the Draft Program EIR. Potential energy impacts were estimated using the control measure descriptions in the Draft 2016 AQMP. Construction processes were fully analyzed and are discussed in Subchapter 4.2.4 – Impact Analysis. The intent of Mitigation Measure E-4 is to require that future projects evaluate potential energy impacts once specific details of the project are known, which is proper for a programmatic-level document. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-52

> Finally, the energy analysis fails to analyze the impacts associated with all of the proposed control measures. For instance, there is no substantive discussion or analysis of, among others, the potential energy impacts associated with, among others, Control Measures CMB-01, CMB-03, CMB-03, ECC-04, ECC-02, ECC-03, MOB-01, MOB-02, MOB-04, TXM-01, ORHD-04, ORFIS-01, and ORFIS-03.

Response 3-52

All proposed control measures were evaluated for potential energy impacts. The control measures which may result in the use of compliance options that in turn, could generate significant energy impacts are listed in Table 4.2-2 and they include MOB-01, MOB-02, MOB-04, TXM-01, ORHD-04, ORFIS-01, and ORFIS-03. CMB-01 and CMB-03 involves the transition to cleaner, lower emitting technologies for existing stationary sources as they replace equipment and upgrade facilities, therefore, CMB-01 and CMB-03 would not increase the energy use or needs because new equipment would likely be more energy efficient. Likewise, ECC-02, ECC-03, and ECC-04 would not increase energy demand as those measures seek to take credit for emissions reductions

associated with GHG reductions already required, increasing energy efficiency, and using cool roof technology to reduce emissions, respectively. It is likely that these control measures would lead to reduced energy needs and use for consumers, but the Draft Program EIR took a conservative approach and did not take credit for these reductions. Therefore, no energy impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-53

> **c. Mitigation**
>
> Section 4.2.5 of the DPEIR states that various measures "*should*" be implemented "where feasible." Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also, Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)
>
> For instance, Mitigation Measure E-1 states that project sponsors should "pursue incentives" to encourage the use of energy efficient equipment and vehicles and promote energy conservation. It is unclear specifically what incentives should be pursued and the number of energy efficient equipment and vehicles needed to mitigate Project impacts. Mitigation Measures E-5, E-6, and E-7 likewise call for "evaluat[ing] the potential for reducing peak energy demand" through various means. Studying or considering the potential for reducing energy demand is not the same as imposing a binding commitment to reduce energy demand.

Response 3-53

Enforceable mitigation measures (E-1 through E-7) that would reduce energy related impacts were included in the Draft Program EIR and can be found in Subchapter 4.2.5 on page 4.2-24. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures E-1 through E-7 would be applied to future projects, if the impacts from those projects would result in significant energy impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The Draft Program EIR concluded that even with implementation of the energy mitigation measures, electricity consumption impacts would remain significant and unavoidable.

Comment 3-54

4. Hazards and Hazardous Materials

a. Scope of Analysis

The IS stated that the Project would not be located on a site which is included in a list of hazardous materials sites compiled pursuant to Government Code § 65962.5, also known as the "Cortese list." As such, the IS concluded that "implementation of the proposed control measures is not expected to interfere with site cleanup activities or create additional site contamination" and that this topic "will not be further evaluated" in the DPEIR. (IS, p. 2-28.)

In our comment letter on the IS, we pointed out that Government Code § 65962.5 must be considered and that there are several parcels on the Cortese list located within the POLB alone.[17] The DPEIR includes a brief section on this issue and states that some facilities are included on lists of hazardous materials sites or near listed sites and that construction on these sites could pose risks to the public and environment. But, the DPEIR states that without knowing the sites and contaminants present, "it is not possible to know in advance which regulations would apply." (DPEIR, p. 4.3-40.) This is a critical issue that must be considered for the DPEIR to be adequate pursuant to CEQA. As such, the DPEIR must be revised and recirculated to adequately address this issue.

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[17] (*See* California Department of Toxic Substances Control. Hazardous Waste and Substances Site List—Site Clean (Cortese List) *www.dtsc.ca.gov/Site Cleanup/Cortese_List.cfm*. City of Long Beach zip code 90802.)

Response 3-54

Potential hazards and hazardous materials impacts were analyzed in Subchapter 4.3 of the Draft Program EIR.

The 2016 AQMP does not directly cause these facilities to contaminate the soil, but rather could indirectly cause the facility to expose contaminated areas during ground disturbance activities. The issue addressed in the IS assumed those on the Cortese list were conducting due diligence in cleaning up and protecting the neighborhood and was not assuming inaction. There are various federal, state, and local laws that apply to activities occurring on sites on the Cortese list, such as the Response Conservation, and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act and the Hazardous Materials Release and Clean-Up Act. Furthermore, SCAQMD Rule 1166 – Volatile Organic Compound Emissions from Decontamination of Soil regulates the emissions of VOCs from contaminated soils, Rule 1403 regulates the presence of asbestos during construction, and the 2016 AQMP contains TXM-04, which seeks to develop control measures that would control the toxic metal particulates generated during soil cleanup or remediation activities at these sites. Near-surface contaminated soil may be encountered during demolition and/or construction activities associated with implementation of the 2016 AQMP. Based on the location of the nearest sensitive receptor, it is possible that construction activities would create a significant hazard to the public or environment. Furthermore, without knowing the types of contamination (i.e. VOCs, TACs, etc.) it is not possible to know which regulations would apply. This is discussed in further detail in Subchapter 4.3.4.8 of the Draft Program EIR.

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were

analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, no revisions to the Draft Program EIR are necessary.

Comment 3-55

> **b. Impact Analysis**
>
> The DPEIR concludes that hazards associated with increased ethanol from mobile sources are equivalent or reduced compared to diesel fuel and gasoline. However, the DPEIR itself lists certain characteristics of ethanol that would pose a greater hazard risk than diesel and gasoline, such as ethanol's higher auto ignition temperature and the fact that ethanol can ignite in enclosed spaces, unlike gasoline. (DPEIR, p. 4.3-18.) It is unclear based on the limited information provided in the DPEIR whether, on balance, ethanol is more or less hazardous than diesel fuel and gasoline. The DPEIR should be revised to include further details about the specific differences between ethanol, diesel fuel, and gasoline, prior to making a conclusion that hazards associated with ethanol are generally equivalent or less than conventional fuel hazards.

Response 3-55

Potential hazards and hazardous materials impacts associated with ethanol were evaluated and discussed in Subchapter 4.3.4.2.1 of the Draft Program EIR. Comparative information and discussion regarding the differences between ethanol, diesel fuel, and gasoline was provided on pages 4.3-17 and 4.3-18 of the Draft Program EIR. Despite ethanol having a higher auto ignition temperature than gasoline and diesel, the Draft Program EIR states, "Ethanol is more difficult to ignite since it has a larger lower flammability limit (3.3 percent) than gasoline (approximately one percent) or diesel fuel (0.5 percent)". Additionally, the Draft Program EIR continues that "Ethanol blended fuel vapors are primarily composed of gasoline, and thus, the fire hazard associated with the transfer and storage of ethanol should be relatively the same as gasoline (DOT, 1999)." Therefore, the Draft Program EIR determined that health hazards associated with ethanol are approximately equivalent or less when compared to conventional fuels. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-56

> The DPEIR reaches a similar unsupported conclusion regarding the hazards associated with the use of compressed natural gas. The DPEIR needs to explain specifically why compressed natural gas poses the same or fewer hazards compared to conventional fuels, and such explanation must be supported by substantial evidence.

Response 3-56

Potential hazards and hazardous materials impacts associated with compressed natural gas (CNG) were evaluated and discussed in Subchapter 4.3.4.2.2 of the Draft Program EIR. Comparative information and discussion regarding the differences between CNG, diesel fuel, and gasoline was provided on pages 4.3-19 and 4.3-20 of the Draft Program EIR. Despite CNG having a higher auto ignition temperature than gasoline and diesel, the Draft Program EIR states, "CNG is more difficult to ignite since it has a larger lower flammability limit (5.3 percent) than gasoline (one percent) or diesel fuel (0.5 percent)". Additionally, the Draft Program EIR continues that "Diesel fuel and gasoline are toxic to the skin and lungs while CNG is not", and "Natural gas can be directly shipped via pipelines to the compressor station, rather than by on-road delivery trucks, and thus, has less delivery accident risk than vehicle shipments associated with gasoline or diesel fuel." Therefore, the Draft Program EIR determined that health hazards associated with CNG are approximately equivalent or less when compared to conventional fuels. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-57

> Regarding the use of liquefied natural gas, the DPEIR cites a methodology for estimating the potential risk of a vapor explosion; however, the Project's potential vapor explosion risk is never quantified. In addition, the discussion states that exposure of liquefied natural gas concentrations that would cause adverse health effects is unlikely because the lower explosive limit ("LEL"), or concentration at which a given gas ignites or explodes, is five percent. However, the discussion never explains what percentage would cause a LEL to result in adverse health effects nor does it compare a five percent LEL to any adopted threshold of significance.

Response 3-57

Potential hazards and hazardous materials impacts associated with liquefied natural gas (LNG) were evaluated and discussed in Subchapter 4.3.4.2.3 of the Draft Program EIR. Comparative information and discussion regarding the differences between LNG, diesel fuel, and gasoline was provided on pages 4.3-21 and 4.3-22 of the Draft Program EIR. Despite LNG having a higher auto ignition temperature than gasoline and diesel, the Draft Program EIR states, "LNG is more difficult to ignite since it has a larger lower flammability limit (5.3 percent) than gasoline (one percent) or diesel fuel (0.5 percent)". Additionally, the Draft Program EIR continues that "Diesel fuel and gasoline are toxic to the skin and lungs while LNG is not."

The safety issues associated with LNG are similar to CNG, and were discussed on page 4.3-20. As described in the Draft Program EIR, "Hazards associated with LNG are that, under certain conditions, it may explode or catch on fire. LNG is only explosive when confined and vapor concentrations are between five and 15 percent[1]." The vapor explosion risk was not quantified

[1] Included as CEC, 2015i in Chapter 7

because the amount of additional LNG usage due to implementation of the proposed control measures is speculative at this time. The Draft Program EIR concluded that "it is unlikely that off-site receptors would be exposed to LNG concentrations that would generate adverse health effects, because the LEL for methane is five percent (50,000 ppm)." This is a very high concentration, and it expected that releases of this magnitude would not occur if users/mobile sources were in compliance with any applicable design codes or regulations, in conformance to National Fire Protection Association standards, and in conformance to regulations or generally accepted industry practices related to operating policy and procedures concerning the design, construction, security, leak detection, spill containment or fire protection. Therefore, it was determined that increased usage of LNG with a concurrent decline in usage of conventional fuels will not significantly alter existing health hazards associated with mobile source fuels. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-58

> Section 4.3.4.2.5 of the Hazards Section discusses biodiesel's characteristics and then concludes that biodiesel and renewable diesel are safer than conventional diesel. However, there is no analysis, much less substantial evidence, to support this conclusion. This section must be revised to compare the hazardous characteristics of biodiesel to conventional diesel in order to conclude that biodiesel is the safer of the two.

Response 3-58

Potential hazards and hazardous materials impacts associated with biodiesel and renewable diesel were evaluated and discussed in Subchapter 4.3.4.2.5 of the Draft Program EIR. Biodiesel is significantly safer to store, handle and transport compared with petroleum diesel due to its low volatility, high flashpoint (266ºF), and low toxicity[2]. The National Fire Protection Agency classifies biodiesel as a non-flammable liquid. This additional information on biodiesel has been added to Subchapter 4.3.4.2.5 of the Draft Program EIR. The Draft Program EIR determined that increased usage of biodiesel will not significantly alter existing hazards associated with mobile source fuels. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-59

> The DPEIR analyzes the difference between hydrogen and conventional fuels and concludes that hydrogen is equivalent or safer than conventional fuels. However, the discussion notes that a hydrogen flame has few warning properties and that hydrogen has an unusually large flammability range. It is difficult to determine, on balance, based on the discussion in the DPEIR, why hydrogen's impacts are the same or less than conventional fuels. As such, the DPEIR should be revised to include a more detailed and quantitative analysis of the comparison of hydrogen and conventional fuels to support its less than significant conclusion.

Response 3-59

Potential hazards and hazardous materials impacts associated with hydrogen were evaluated and discussed in Subchapter 4.3.4.2.6 of the Draft Program EIR. Comparative information and discussion regarding the differences between hydrogen, diesel fuel, and gasoline was provided on

[2] U.S. Department of Energy; Available on the internet: http://www.afdc.energy.gov/fuels/biodiesel_benefits.html, Accessed on January 20, 2017

pages 4.3-24 and 4.3-25 of the Draft Program EIR. The Draft Program EIR states, "Diesel fuel and gasoline are toxic to the skin and lungs and hydrogen is non-toxic and non-reactive, so if released, it does not present a health hazard to humans." However, hydrogen does have a large flammability range and low energy requirement for ignition. To account for the higher range of flammability and low ignition energy requirement, hydrogen tanks are built to more rigorous standards than conventional fuel tanks, which reduces the likelihood of spills or leaks. Additionally, users/mobile sources using hydrogen are expected to be in compliance with any applicable design codes or regulations, in conformance to National Fire Protection Association standards, and in conformance to regulations or generally accepted industry practices related to operating policy and procedures concerning the design, construction, security, leak detection, spill containment or fire protection. Therefore, the Draft Program EIR determined that health hazards associated with hydrogen are approximately equivalent or less when compared to conventional fuels. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-60

> In all of the sections of the DPEIR discussed above that balance the risks of alternative fuels compared to conventional fuels, the DPEIR fails to disclose whether the quantity of each chemical is the same quantity that is required for conventional fuels. This information is critical to the determination of whether hazardous impacts would increase compared to conventional fuels and therefore should be included in Section 4.3.

Response 3-60

The quantity of each of the alternative fuels evaluated that would be necessary as a result of the 2016 AQMP cannot be accurately quantified at this time due to the unknown details of future projects, and therefore, are evaluated programmatically in the Draft Program EIR. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-61

> We noted in our comment letter on the IS that "risk of upset" was improperly omitted from the IS checklist. While risk of upset is included in Section 4.3 of the DPEIR, the analysis fails to adequately describe and improperly minimizes impacts that could potentially result from hazardous materials spills or accidents. For example, Section 4.3 includes an ammonia tank rupture scenario but simply states that major industrial facilities are typically large enough and far enough away from sensitive receptors to minimize impacts associated with new tanks by siting new tanks at least 528 feet from sensitive receptors. However, the section then notes that there are a number of industrial facilities in the Basin with sensitive receptors located within 528 feet of industrial facilities. Thus, the conclusion that any future new tank would be far enough away from sensitive receptors to minimize impacts is illogical since there are sensitive receptors currently located within 528 feet of industrial facilities that could be impacted by such an incident. The analysis goes on to state that "information on specific projects potentially affected by these control measures are unknown at this time" and "to identify any impacts at this time without knowing the specific design features would be speculative." (DPEIR, p. 4.3-33.) This is an inadequate conclusion under CEQA. The DPEIR must seek to disclose as much information as it reasonable can so as to reflect a good faith effort at full disclosure.

Response 3-61

The potential risk of upset was analyzed in Subchapter 4.3 for hazards as a result of the usage of alternative fuels. The ammonia tank rupture scenario that the comment refers to was analyzed in in detail in the Draft Program EIR beginning on page 4.3-32. Because a hazard analysis is dependent on knowing the exact location of the hazard within the site (e.g., location of the ammonia storage tank(s)), meteorological conditions, location of the receptor, etc., a site-specific hazard analysis is difficult to conduct without this information. As such, to identify any impacts at this time without knowing the specific design features would be speculative. Further attempts to qualitatively analyze the environmental impacts would have been speculative. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].) As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, the Draft Program EIR concluded that the hazards impacts from an ammonia tank rupture at a facility in the non-refinery sector would remain significant and unavoidable. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-62

> Finally, the DPEIR improperly analyzes the hazardous materials impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential hazards impacts associated with, among others, Control Measures BCM-07, TXM-01, TXM-05, TXM-06, TXM-08, and TXM-09.

Response 3-62

All proposed control measures were evaluated for potential hazards and hazardous materials impacts. The control measures which may result in the use of compliance options that in turn, could generate significant hazards and hazardous materials impacts are listed in Table 4.3-1, including TXM-08. BCM-07 involves PM emission reductions from stone grinding, TXM-01 involves toxic metal PM reductions from metal grinding operations, TXM-05 involves reducing toxic metal PM reductions from laser plasma cutting, TXM-06 involves reducing toxic emissions from metal melting facilities, and TXM-09 involves the control of emissions from oil and gas well activities. Therefore, no hazards and hazardous materials impacts are anticipated from these measures since they control emissions from existing facilities and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-63

> **c. Mitigation**
>
> Section 4.3.5 of the DPEIR contains various measures that "*should*" be implemented. Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)

Response 3-63

Enforceable mitigation measures (HZ-1 through HZ-18) that would reduce hazards or hazardous materials related impacts were included in the Draft Program EIR and can be found in Subchapter 4.3.5 on page 4.3-40. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures HZ-1 through HZ-18 would be applied to future projects, if the impacts from those projects would result in significant hazards or hazardous material impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The Draft Program EIR concluded that even with implementation of the mitigation measures, hazards and hazardous materials related impacts would remain significant and unavoidable.

Comment 3-64

> Several of the mitigation measures in the Hazards Section are insufficient to mitigate the Project's impacts. For example, Mitigation Measure HZ-1 calls for consumer warning requirements on all products that are flammable and extremely flammable, but does not indicate what those warnings must contain. Mitigation Measure HZ-2 similarly calls for a public education and outreach program with local fire departments as to such measures, without providing any performance standard or metric to ensure impacts are mitigated. Mitigation Measure HZ-3 requires fire departments to install secondary containment, but does not specify the level of containment required and does not require the containment to be inspected or approved by the fire department. Similarly, HZ-10 requires the use of best management practices to avoid soil and groundwater hazards, but does not identify specific practices or give an agency authority to review and approve the practices. HZ-17 requires transportation of hazardous materials within one-quarter mile of schools to be avoided "wherever feasible."

Response 3-64

The Draft Program EIR clearly indicates that hazards and hazardous materials related impacts would remain significant even after the implementation of mitigation measures HZ-1, HZ-2 and HZ-3. HZ-3 does not require fire departments to install secondary containment but it does require projects which will need ammonia tanks to install berms around the tanks, which is the current practice. Further, it is anticipated that the secondary containment/berms installed around the tanks would comply with the applicable rules and regulations enforced by the local fire department. (*See Rominger*, 229 Cal. App. 4th at 728 [CEQA analysis that assumed compliance with regulatory measures proper].) However, in addition to the federal, state, and local regulations that facilities and sites must comply with pursuant to Government Code Section 65962.5, the Draft Program EIR concluded that implementation of mitigation measures HZ-7 to HZ-15 (including HZ-10- use of best management practices to avoid soil and groundwater hazards and HZ-17- avoid transport of hazardous materials within one-quarter mile of schools) will reduce the impacts to less than significant. The comment does not provide any evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-65

> Formulation of mitigation measures cannot be deferred until a later time. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom*, *supra*.) However, several mitigation measures in the Hazards Section constitute improper deferral of mitigation. For example, Mitigation Measure HZ-3 simply recommends that future projects "[i]nstall secondary containment (e.g., berms)" and Mitigation Measure HZ-4 recommends that future projects "[i]nstall valves that fail shut." Mitigation Measure HZ-6 requires performance integrity testing of LNG storage tanks to prevent structural failure problems; however, this measure does not include an explanation of how to prevent physical damage if the integrity testing shows that the storage tanks will fail. Mitigation Measure HZ-7 requires future facilities to conduct Phase 1 Environmental Site Assessments ("ESA") prior to construction. If known contamination is discovered, Mitigation Measure HZ-7 requires a Phase II ESA to be conducted and the recommendations of the Phase II ESA to be implemented. This is improper deferral of mitigation and requires recirculation of the DPEIR. with legally adequate mitigation measures.

Response 3-65

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Mitigation measures were included for air quality, energy, hazards, hydrology, noise, transportation, and aesthetic impacts. Therefore, it is expected that mitigation measures contained in the Draft Program EIR would be applied to future projects, if the impacts from those projects would result in significant impacts for those environmental topics areas. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The comment does not provide any evidence to the contrary and no revisions to or recirculation of the Draft Program EIR is warranted.

Comment 3-66

> CEQA requires a lead agency to present feasible mitigation measures to avoid or substantially lessen significant environmental impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) Despite concluding that the Project will result in significant hazards impacts with respect to the transportation of ammonia, the DPEIR does not contain a single mitigation measure to address this impact. The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant hazards impacts.

Response 3-66

SCAQMD staff was unable to identify any feasible mitigation measures beyond existing legal requirements to reduce the significant impacts from ammonia transport and impacts were found to remain significant and unavoidable. Therefore, no revisions to the Draft Program EIR are

necessary or warranted.

Comment 3-67

5. Hydrology and Water Quality

a. Scope of Analysis

Runoff-related impacts were scoped out of the DPEIR pursuant to the IS, with the District reasoning that only "minor modifications" would be needed to commercial or industrial facilities affected by the proposed control measures. (DPEIR, p. A-86.) Drainage pattern impacts were similarly scoped out of the analysis in the DPEIR. Excluding these topics is not supported by substantial evidence in the record.

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant hydrology and water quality impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

Response 3-67

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. The proposed control measures do not require the construction of new facilities. Based on the descriptions of the control measures, only minor modifications would be needed at affected facilities. Thus, the Draft Program EIR concluded that no reasonably foreseeable impacts would occur with regard to run-off or drainage related impacts. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 3-68

b. Impact Analysis

The water quality impacts related to wastewater treatment capacity rely on estimated affecting coating usage data from the Program EIR ("PEIR") for the 2012 AQMP. (DPEIR, p. 4.4-9.) The discussion states that the 2012 data provides a conservative estimate of wastewater use because some of the materials may have already been reformulated. However, this explanation does not constitute a reasoned explanation why the 2012 data is appropriate to rely upon without supporting documentation proving that the estimate is, in fact, conservative. The discussion does not provide any details about why data from the 2012 AQMP PEIR is appropriate or relevant to analyze the significant water quality impacts of the particular 2016 control measures. As shown in Table 4.4-2, in addition to the total wastewater generated from reformulated materials, Control Measures CTS-01, FLX-02, TXM-08, CMB-05, BCM-01, and CPP-01 generate wastewater flow. The DPEIR should include a current estimate of how these control measures would affect projected wastewater flow.

Response 3-68

The 2012 AQMP Program EIR data was used to estimate the affected coating usage to project wastewater impacts from 2016 AQMP control measures. This is considered a conservative estimate because it assumes the same volume of materials impacted under the 2012 AQMP Program EIR will be impacted by the control measures of the 2016 AQMP, when it is likely that some of these materials may have already been reformulated. If some materials have already been reformulated, these projected wastewater totals would be less for the 2016 AQMP control measures. Based on the above information, the projected wastewater flow totals shown in Table 4.4-2 for control measures CTS-01, FLX-02, TXM-08, CMB-05, BCM-01, and CPP-01 are a conservative estimate of wastewater impacts due to the 2016 AQMP. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-69

> The wastewater treatment capacity section asserts that a 2.1 million gallon per day increase in wastewater flow would be within the capacity of existing wastewater treatment plants, but fails to list the wastewater treatment plants that would accept this capacity. If all of the new wastewater flow is sent to one wastewater treatment plant, for example, flow generated by the Project could exceed the capacity of that plant. This data should be provided in the DPEIR and the conclusion should be supported by substantial evidence.

Response 3-69

It is highly unlikely that the projected new wastewater flow would be sent to one single wastewater treatment plant. Rather, the wastewater impacts would likely be spread throughout the District. Nonetheless, a list of wastewater treatment plants that could accept additional capacity has been added to Subchapter 4.4.4.1.

Comment 3-70

> The analysis for wastewater discharge impacts is flawed because it relies on the 2015 PEA for the District's NOx RECLAIM program, which analyzed wastewater impacts for refinery facilities that would potentially install Wet Gas Scrubbers ("WGS") or Wet Electrostatic Precipitators ("ESP") technologies. The analysis concludes that since the RECLAIM PEA showed peak percentage increases from baseline levels to be less than 25 percent and thus under the need to obtain a wastewater discharge permit, any increased wastewater generated from WGS or Wet ESP technologies under the Project would not exceed 25 percent of existing capacity. The analogy to the 2015 PEA is insufficient evidence to support the conclusion that the Project control measures would not trigger a 25 percent or more increase above existing capacity at any facility, much less that the impacts from the Project control measures would be "similar or fewer" than impacts analyzed in the 2015 PEA. Control Measure CMB-05 itself requires further NOx reductions from the RECLAIM Assessment and requires a re-examination of the RECLAIM program, including voluntary opt-out of the program and implementation of additional control and SCR equipment. The DPEIR must specifically analyze potentially affected refineries and include capacity limits to properly analyze the impacts of the Proposed Plan. The DPEIR cannot simply rely on the analysis completed for a different project to conclude that the Project's wastewater discharge impacts are less than significant.

Response 3-70

To assess potential wastewater impacts from the installation and operation of wet gas scrubbers (WSGs) or wet electrostatic precipitators (ESPs) at refinery facilities, the Draft Program EIR included analysis from the December 2015 Final PEA for NOx RECLAIM. Each affected refinery provided their wastewater discharge limits and these limits were compared to each refinery's estimated potential increase in wastewater that may result from installing WGS or wet ESP technologies. The peak percentage increase from baseline levels was approximately nine percent. Since all of the affected facilities were shown to have a potential wastewater increases well below 25 percent, no modifications to any existing wastewater discharge permits are were anticipated at that time. Similarly, for the analysis in the Draft Program EIR, any facility operator that has increased wastewater generation due to the installation of WGS or wet ESP technology would be expected to have similar or fewer impacts than what was previously analyzed in the December 2015 Final PEA. Further, operators of affected facilities that install and operate WGS or wet ESP technology would continue to comply with existing wastewater treatment requirements of the applicable Regional Water Quality Control Board or sanitation district. Therefore, wastewater generated from industrial facilities as a result of implementing control measures in the 2016 AQMP was not expected to result in significant water quality impacts.

Comment 3-71

> The DPEIR's discussion of water demand concludes that new water conveyance infrastructure is not expected because the anticipated increased water demand associated with the Project, *e.g.*, five million gallons per day, is expected to be associated with existing sources within the Basin which already have water conveyance infrastructure. This conclusion is completely unsupported. An increase of water demand of five million gallons per day is extremely unlikely to be able to be accommodated by existing infrastructure. This impact must be adequately studied and impacts must be disclosed in order for the DPEIR to be legally adequate under CEQA.

Response 3-71

The 2016 AQMP control measures will primarily affect already existing facilities that already have developed water conveyance infrastructure. The water demand associated with certain air pollution control technologies would also likely be spread throughout the District. The source of water to meet the projected demand will vary from jurisdiction to jurisdiction, but can include additional use of ground water and recycled water resources, which is becoming more prevalent. As detailed in Subchapter 4.4 of the Draft Program EIR, overall water demand from implementing the 2016 AQMP is concluded to have significant hydrology impacts. Any new facilities that would be affected by the 2016 AQMP control measures would be required to go through the proper permitting processes, which would require a specific assessment of the available water resources at that time. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-72

> The DPEIR identifies potential new or increased sources of water pollution, such as biodiesel fuels, compressed natural gas, liquefied natural gas, and hydrogen. The DPEIR states that alternative fuels are expected to be less toxic compared to conventional fuels. However, the DPEIR fails to provide substantial evidence to support the conclusion that alternative fuels would be less toxic than conventional fuels. Further, even if alternative fuels are less toxic, they may cause or contribute to exceedances of storm water permit requirements because they present different pollutants into the storm drain system compared to conventional fuel byproducts. For example, as noted in the DPEIR, electric vehicles contain lead-acid and nickel-cadmium batteries. Although, as noted in the DPEIR, these batteries are being recycled at an increasing rate, they remain a source of storm water pollution which could exceed "numeric action limits" in various storm water permits issued to agencies in SCAQMD's jurisdiction. Thus, the conclusion that alternative fuel vehicles will not pose water quality impacts is unsupported by substantial evidence.

Response 3-72

In general, alternative fuels are expected to be less toxic than conventional fuels. Please see Subchapter 4.4.4.2.3 for the discussion to support this conclusion. The comment does not provide any specific evidence to dispute this conclusion. Industrial or commercial facilities are generally

considered "point sources" and must release wastewater into publicly owned treatment works (POTWs), under the National Pollutant Discharge Elimination System (NPDES) permit program, administered by the Regional Water Quality Control Board (RWQCB). Any facilities using alternative fuels are not expected to contribute to exceedances of storm water permit requirements because they must still comply with their applicable discharge requirements. (*See Rominger v. Cnty. of Colusa* (3d Dist. 2014) 229 Cal. App. 4th 690, 728 [holding that a CEQA analysis was proper in assuming compliance with regulatory measures, even without a project condition required such compliance].)

As noted in the comment, the switch to electric batteries has the potential to create water quality impacts from improper disposal. However, as described in the Draft Program EIR in Subchapter 4.4.4.2.4, the recycling of lead-acid and nickel-cadmium batteries is already a well-established activity. Further some manufacturers offer incentives to prevent illegal disposal of the batteries. Most car manufacturers offer a program to take back used or damaged battery packs, including Toyota and Nissan (Green Car Reports, 2016). The Draft Program EIR concluded that because battery recycling is required by law and because they have value, the illegal or improper disposal of batteries is expected to be uncommon, thereby reducing the potential water quality impacts caused by illegal disposal. (*See Rominger v. Cnty. of Colusa* (3d Dist. 2014) 229 Cal. App. 4th 690, 728 [holding that a CEQA analysis was proper in assuming compliance with regulatory measures, even without a project condition required such compliance].)

Comment 3-73

> Lastly, the DPEIR only analyzes the hydrology impacts associated with some, but not all, of the proposed control measures. For instance, the potential water quality impacts (both water demand and water quality impacts) associated with cleaning solar panels during routine maintenance (Control Measure ECC-03) are not analyzed. In addition, there is no substantive discussion or analysis of the potential hydrological impacts associated with, among others, Control Measures BCM-03, BCM-07, ECC-04, BCM-04, TXM-01, TXM-02, TXM-04, TXM-05, TXM-06, TXM-07, and CCP-01.

Response 3-73

The control measures which may result in the use of compliance options that in turn, could generate significant hydrology and water quality impacts are listed in Table 4.4-1, including the comment's referenced control measures ECC-03, ECC-04, BCM-03, BCM-04, BCM-07, TXM-01, TXM-02, TXM-04, TXM-05, TXM-06, TXM-07 and CCP-01. Potential hydrological impacts as result of the implementation of these control measures are discussed and analyzed in Subchapter 4.4. Footnote h of Table 4.4-4 stated that it would be too speculative at this time to estimate the water needed to wash solar panels and roofs. Further attempts to qualitatively analyze the environmental impacts would have been speculative. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].) As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the

program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-74

c. Mitigation

Section 4.4.6 of the DPEIR states that various measures "*should*" be implemented "where feasible." Other measures are likewise vague and indefinite. This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)

For example, Mitigation Measure WQ-1 states that local water agencies should continue to evaluate future water demand. Mitigation Measure WQ-2 provides that project sponsors should coordinate with local water providers to make sure there are adequate water supplies. Mitigation Measure WQ-3 encourages project sponsors to implement water conservation measures and prioritize recycled water "whenever available and appropriate." Finally, Mitigation Measure WQ-4 states that project sponsors should consult with local water providers to identify "feasible and reasonable" measures to reduce water consumption.

Most of these measures, which rely on future study and action, also constitute improper deferred mitigation under CEQA. (CEQA Guidelines §15126.4(a)(1)(B); *Sundstrom*, *supra*.)

Response 3-74

Enforceable mitigation measures (WQ-1 through WQ-4) that would reduce hydrology and water quality related impacts were included in the Draft Program EIR and can be found in Subchapter 4.4.6 on page 4.4-20. However, the mitigation measures are not expected to fully eliminate the significant water demand impacts. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures WQ-1 through WQ-4 would be applied to future projects, if the impacts from those projects would result in significant hydrology and water quality impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The Draft Program EIR concluded that even with implementation of the mitigation measures, hydrology and water quality impacts are expected to remain significant and unavoidable.

Comment 3-75

6. Noise

a. Scope of Analysis

We appreciate the District adding operational noise impacts to the scope of the DPEIR in response to our comments on the NOP/IS. However, the DPEIR still neglects to address the qualitative noise impacts that Appendix G of the CEQA Guidelines specifically recommends be addressed. For instance, there is no discussion of whether the Project would result in a substantial temporary or permanent increase in ambient noise levels above levels existing without the Project.

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant noise impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

Response 3-75

Operational noise impacts are analyzed in Subchapter 4.5.4.2 of the Draft Program EIR. The significance criteria used to evaluate potential noise impacts are presented in Subchapter 4.5.3. The operational noise and vibration impacts from implementation of the 2016 AQMP were concluded to be less than significant. The impact of the proposed project on local noise levels and vibration during construction, although temporary in nature, are considered significant. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-76

b. Impact Analysis

In order to determine whether or not the noise impacts from the proposed Project are significant, impacts are compared to the significance criteria in Section 4.5.3. (DPEIR, p. 4.5-5.) That section indicates that construction noise levels are significant if they: (a) "exceed the local noise ordinances," (b) increase ambient noise levels by more than three decibels if the noise threshold is currently exceeded, or (c) exceed federal Occupational Safety and Health Administration noise levels. For operational noise, thresholds similar to (a) and (b) above are used.

Despite the stated use of these thresholds, no analysis is performed of the Project's impacts compared to these thresholds. Instead, the DPEIR simply states based on the noise from a typical construction site, that construction noise impacts would be significant. There is no analysis of whether Project construction activities would exceed local noise ordinances. There is also no analysis of existing ambient noise levels, whether those noise levels are currently exceeded, and, if so, whether the Project would increase those levels by more than three decibels. The DPEIR employs a vibration significance threshold that is not included in its significance criteria and provides no explanation whatsoever to justify its use or reliance thereon.

Response 3-76
As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

The significance threshold used for vibration is based on the Federal Transit Administration (FTA) published standard vibration levels and peak particle velocities for construction equipment operations (FTA, 2006), and is explained on pages 4.5-8 and 4.5-9 of the Draft Program EIR.

Comment 3-77

> Moreover, there is no *qualitative* analysis of any noise impacts nor consideration of several topics referenced in Section XII of the Appendix G Checklist. (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 [lead agency did not comply with CEQA by relying solely on specified noise standard without undertaking analysis of potential impacts pursuant to Appendix G of the CEQA Guidelines].)

Response 3-77
Although some of the specific control measures are provided in broad language, potential associated noise impacts can still be analyzed based on known information or supported assumptions, as was done in the Draft Program EIR, to determine foreseeable effects. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Further attempts to qualitatively analyze the environmental impacts would have been speculative. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].)

Comment 3-78

> Further, the DPEIR only analyzes the construction-related noise impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential noise impacts associated with, among others, Control Measures MOB-05, MOB-08, MOB-13, BCM-08, and ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08. Other measures that may result in significant impacts, such as Control Measures CMB-03, MOB-06, BCM-03, and BCM-07, are given cursory, at best, treatment. Further, the DPEIR assumes that "no new industrial facilities or corridors will be constructed," but provides no evidence, let alone substantial evidence, as required, to support this statement. (DPEIR, p. 4.5-5.)

Response 3-78

All proposed control measures were evaluated for potential noise impacts, including construction related noise impacts. The control measures which may result in construction or the use of compliance options that in turn, could generate significant noise impacts are listed in Table 4.5-1, including CMB-03, BCM-03, and BCM-07. MOB-05, MOB-06, and MOB-08 involve the replacement of older equipment with newer, lower emitting equipment. MOB-13 involves the off-road mobile source emission reduction credit generation program. BCM-08 involves emissions reductions from agricultural, prescribed and training burning. ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08 involve the deployment of cleaner vehicles and equipment. Therefore, no noise impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

The control measures proposed in the 2016 AQMP would result in reduction of emissions and would not result in the construction of new industrial facilities or corridors, but rather some of the existing facilities and corridors would be modified to include installation of new equipment and roadway infrastructure due to the highly developed setting of the District. The existing rail and truck routes/corridors likely to be modified are located primarily in commercial and industrial zones within the southern California area. Examples of these areas include, but are not limited to, the Port of Los Angeles, Port of Long Beach, and industrial areas in and around container transfer facilities (rail and truck) near the Terminal Island Freeway, along the Alameda Corridor, as well inland railyards near downtown Los Angeles.

Comment 3-79

> The analysis of operational noise impacts suffers from the same flaws as the analysis of construction noise impacts. The stated noise thresholds are ignored and no reasoned analysis or substantial evidence supports the DPEIR's claim that "operational noise and vibration impacts associated with the Proposed Plan are expected to less than significant." (DPEIR, p. 4.5-10.)

Response 3-79

Contrary to the comment, the operational noise thresholds stated in Subchapter 4.5.3 are not ignored. Noise requirements and noise ordinances of the city or county would continue to apply to future projects, so that noise impacts on sensitive receptors are expected to be less than significant. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that

requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-80

> **c. Mitigation**
>
> The DPEIR acknowledges a significant impact in regard to construction noise and vibration impacts. Section 4.5.5 of the DPEIR states that various measures "*should* be implemented." This does not constitute "fully enforceable" mitigation, as required. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.) Moreover, as noted previously, *none* of these measures may be implemented given the ministerial nature of the subsequent local permitting process. Indeed, the DPEIR states that the District "cannot predict" how local agencies "might choose to mitigate a significant construction noise and vibration impacts for a future project." (DPEIR, p. 4.5-13.)

Response 3-80

Enforceable mitigation measures (NS-1 through NS-17) that would reduce noise related impacts were included in the Draft Program EIR and can be found in Subchapter 4.5.5 on page 4.5-11. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures NS-1 through NS-17 would be applied to future projects, if the impacts from those projects would result in significant noise impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) While mitigation measures NS-1 to NS-17 would minimize some of the noise and vibration impacts from construction, the SCAQMD cannot predict how a lead agency or responsible agency might choose to mitigate significant construction noise and vibration impacts for a future project. Therefore, noise and vibration impacts from construction of implementing the 2016 AQMP are expected to remain significant.

Comment 3-81

> The DPEIR acknowledges that the identified measures are not sufficient to mitigate the significant noise impacts to a less than significant level. No effort or attempt is made to explain what noise levels would be with or without mitigation. Thus, it is impossible to determine whether impacts have been avoided or substantially lessened, as required.
>
> Mitigation Measure NS-1 requires the installation of temporary noise barriers during construction. It is not clear whether such barriers must be installed during all construction periods, as implied.
>
> Mitigation Measure NS-2 specifies that noise barriers shall be used to protect sensitive noise receptors from excessive noise levels during construction. Again, the measure does not specify whether such barriers must be installed during all construction periods, as implied. Further, the measure does not specify what constitutes "excessive" noise levels.
>
> Mitigation Measure NS-3 indicates that if construction activities are allowed outside the hours allowed by local ordinances, the impacted individual should seek "temporary relocation or use of hearing protective devices." Placing the onus of mitigating noise impacts on the impacted sensitive receptor is anathema to the District's mitigation obligations under CEQA.

Response 3-81

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. As stated above, mitigation measures NS-1 to NS-17 would minimize some of the noise and vibration impacts from construction. However, the SCAQMD cannot predict how a lead agency or responsible agency might choose to mitigate significant construction noise and vibration impacts for a future project. Therefore, it is expected that mitigation measures NS-1 through NS-17 would be applied to future projects, if the impacts from those projects would result in significant noise impacts

The intent of NS-1 is to install temporary noise barriers during all construction activities that could generate excessive noise. However, the requirements of this mitigation measure would be clarified in the CEQA document for future projects.

The intent of NS-2 is to install temporary noise barriers to protect sensitive receptors during all construction activities that could generate excessive noise. However, the requirements of this mitigation measure (including what constitutes excessive noise levels) would be clarified in the CEQA document for future projects.

The comment regarding NS-3 misstates the intent of the mitigation measure. The intent of NS-3 is to schedule construction activities consistent with the allowable hours pursuant to the applicable general plan noise element or noise ordinance and to ensure noise-generating construction activities (including truck deliveries, pile driving, and blasting) are limited to the least noise-

sensitive times of day (e.g., weekdays during the daytime hours) for projects near sensitive receptors. The portion of the mitigation measure that refers to "temporary relocation or use of hearing protective devices" is intended to only be an option if the lead agency authorizes construction activities outside the limits established by the noise element of the general plan or local noise ordinance. The details of this mitigation measure would be clarified in the CEQA document for future projects.

Comment 3-82

> **7. Solid and Hazardous Waste**
>
> **a. Scope of Analysis**
>
> The IS prepared for the Project scoped out compliance with federal, state, and local statutes and regulations related to solid and hazardous waste from the DPEIR on the basis that the District's Board would be required to make consistency findings with current regulations prior to adopting or amending the proposed control measures. There is no substantial evidence to support the statement that the control measures would be consistent with regulations simply because the District will make consistency findings.
>
> The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant solid and hazardous waste impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

Response 3-82

Control measures that are applied to future projects (e.g. through rulemaking activities) would be required to be consistent with federal, state, and local statutes and regulations related to solid and hazardous waste. It is appropriate to assume compliance with existing and future laws and regulations in analyzing impacts under CEQA. (*See Rominger v. Cnty. of Colusa* (3d Dist. 2014) 229 Cal. App. 4th 690, 728 [holding that a CEQA analysis was proper in assuming compliance with regulatory measures, even without a project condition required such compliance].) The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 3-83

> **b. Impact Analysis**
>
> Section 4.6.4.2.2 states that the permitted capacity of landfills in Los Angeles, Orange, Riverside, and San Bernardino counties is 112,592 tons per day and that the increase in solid waste from the Project control measures would only result in a minor increase in solid waste that would not exceed permitted capacity. There are several issues with this analysis. First, the discussion omits an estimate of the quantity of solid waste anticipated to be generated by the Project, which is a critical component to making a significance determination of solid waste impacts. Second, the discussion does not state which landfills will accept solid waste from the Project. Third, the analysis does not consider when applicable landfills will reach capacity, which is vital to understanding whether there will be capacity to accept future waste, particularly for an EIR that analyzes impacts of a program that will be implemented over many years.

Response 3-83

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. It is speculative at this time to quantify a specific amount of solid waste that will be generated since future project details are unknown at this time. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].) The non-hazardous waste that would potentially be generated would be accepted at numerous landfills throughout southern California, including Prima Deshecha, Badlands, Colton, El Sobrante, Frank R. Bowerman, Lamb Canyon, Mid-Valley, Olinda Alpha, San Timoteo, Agua Mansa, Sunshine Canyon, Calabasas and Chiquita Canyon Landfills. It is outside of the scope of the Draft Program EIR to analyze when applicable landfills will reach capacity.

Comment 3-84

> Similarly, the DPEIR states that the permitted capacity at the Buttonwillow Landfill, which would likely accept hazardous waste generated as a result of the Project, is in excess of 10 million cubic yards and will therefore have "sufficient capacity to handle any small amounts of hazardous waste that could be collected by the filters, baghouses, or [electrostatic precipitators]." (DPEIR, p. 4.6-14.) This conclusion is not supported by substantial evidence because it does not quantify the "small amount" of hazardous waste generated by the Project and relies on permitted capacity rather than presenting data on current capacity.

Response 3-84

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. It is speculative at this time to quantify a specific amount of hazardous waste that will be generated since future project details are unknown at this time. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.].) The Clean Harbors hazardous waste landfill located in Buttonwillow, California is discussed in Subchapter 4.6.4.2.2 of the Draft Program EIR.

Comment 3-85

> Regarding construction waste, the DPEIR does not even attempt to quantify the solid waste that would be generated by the Proposed Plan's measures. Rather, the DPEIR states that "at this time, it is speculative to estimate the amount of construction waste that may be generated as the 2016 AQMP is implemented, since the extent and timing of individual projects is not known." (DPEIR, p. 4.6-17.) This conclusion is unsupported by any evidence, much less substantial evidence, as required. Construction waste estimates must be quantified and presented in the DPEIR along with feasible mitigation measures to avoid or substantially lessen any associated impacts.

Response 3-85

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. It is speculative at this time to quantify a specific amount of construction waste that will be generated since future project details are unknown at this time. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) Thus, the Draft Program EIR concluded that solid waste impacts from construction would remain significant and unavoidable.

Comment 3-86

> The Solid and Hazardous Waste Section only analyzes impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential solid and hazardous waste impacts associated with, among others, Control Measures ECC-03, ECC-04, BCM-01, BCM-02, BCM-07, CMB-01, CMB-02, CMB-04, FLX-02, MOB-05, MOB-06, MOB-07, MOB-08, MOB-10, MOB-11, MOB-12, and MOB-13.

Response 3-86

All proposed control measures were evaluated for potential solid and hazardous waste impacts. The control measures which may result in construction or the use of compliance options that in turn, could generate significant solid or hazardous impacts are listed in Table 4.6-1, including ECC-03, BCM-01, BCM-02, BCM-07, CMB-01, CMB-02, CMB-04, FLX-02, MOB-05, MOB-06, MOB-07, MOB-08, MOB-10, MOB-11, MOB-12, and MOB-13. ECC-04 involves the use of cool roof technology to reduce energy needs and would not result in the generation of waste as new technology would be placed on existing structures. Therefore, no solid and hazardous waste impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-87

c. Mitigation

CEQA requires a lead agency to present feasible mitigation measures to avoid or substantially lessen significant environmental impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) Despite concluding that the Project will result in significant solid and hazardous waste impacts, the DPEIR does not contain a single mitigation measure to address this impact. The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant waste impacts.

Response 3-87

Although the monetary value of scrapped engines, vehicles, and equipment would likely lead to recycling of these items, no mitigation measures have been identified to reduce the impacts to landfills and the impacts remain significant. Short-term impacts from construction also remain significant. No feasible mitigation measures have been identified. However, feasible mitigation may be determined during the project-level CEQA evaluation. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77.)

Comment 3-88

8. Transportation and Traffic

a. Scope of Analysis

Per the conclusions of the IS, the DPEIR does not contain any analysis of whether the Project would conflict with an applicable transportation plan, ordinance, or policy; substantially increase hazards due to a design feature or incompatible use; or conflict with adopted policies, plans, or programs regarding public transit, bicycle or pedestrian facilities. (DPEIR, p. 4.7-6.) These highly relevant topics from Section XVI of the Appendix G Checklist should be addressed in the DPEIR. As noted in our comment letter on the NOP/IS, the DPEIR's conclusion that the Project will not result in significant impacts to any of these categories is not supported by substantial evidence.

The DPEIR must be revised and the scope of the DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding all potentially significant traffic and transportation impacts as well as all feasible mitigation measures and alternatives to alleviate those impacts.

Response 3-88

The 2016 AQMP contains proposed control measures to reduce emissions from both stationary and mobile sources within the District. The transportation and traffic analysis which is requested in the comment was performed in the IS (see Appendix A). The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no revisions to the Draft Program EIR are necessary and no further response is necessary under CEQA.

Comment 3-89

> **b. Impact Analysis**
>
> In order to determine whether or not the traffic impacts from the proposed Project are significant, impacts are compared to the significance criteria in Section 4.7.3. (DPEIR, p. 4.7-6.) Per that section, the Project would result in significant traffic impacts if it would, among others: (a) cause peak period levels on major arterials to degrade to Level of Service ("LOS") D, E, or F for more than a month, (b) substantially alter water borne, rail car, or air traffic, (c) result in the need for 350 employees, or (d) increase customer traffic by more than 700 visits. There is no explanation for how these artificial thresholds, which do not appear to represent any local thresholds, were derived.

Response 3-89

The significance thresholds identified in the Draft Program EIR were developed pursuant to the CEQA Guidelines. Section 15064.7(a) encourages "[e]ach public agency [] to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects."

Comment 3-90

> More fundamentally, the DPEIR never applies the thresholds it purports to use. For instance, as to construction traffic impacts, the DPEIR simply concludes without any reasoned analysis or supporting data that construction traffic impacts could be significant. The reader is assured that such impacts will be studied later since "Project specific impacts would require a separate CEQA evaluation." (DPEIR, p. 4.7-7.) As noted previously, any further CEQA review would only be required if implementation of the Project control measures required discretionary approvals. Even if such measures did require discretionary approvals, as the DPEIR repeatedly notes, the measures would be implemented at existing facilities and thus would likely be determined by local agencies to be exempt from CEQA. (*See, e.g.*, CEQA Guidelines § 15301.) This underscores the important point that by law the time for CEQA review is now before the Project is approved.

Response 3-90

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. The comment provides no evidence to support the claim that projects would likely be exempted from CEQA requirements by local agencies. Therefore, no further response is necessary.

Comment 3-91

> As to operational traffic impacts, the DPEIR claims that "it is not known what control strategies may be applied, which facilities may require additional trips, or how often these trips may be necessary." (DPEIR, p. 4.7-9.) As such, the DPEIR claims that "no traffic estimates can be prepared at this time." Consistent with its treatment of other topics, the DPEIR summarily concludes without any analysis of Project impacts compared to its stated significance thresholds that the impacts of the proposed Project on traffic and transportation are expected to be significant prior to mitigation.
>
> In particular, the DPEIR does not contain any analysis of the potentially significant traffic impacts associated with an estimated increase of over 700,000 partial-zero and zero emission vehicles, 11,000 partial-zero and zero emission buses, and 245,000 partial-zero and zero heavy emission trucks[18] by 2031. (DPEIR, p. 4.7-8.) Instead of analyzing the impacts caused by additional vehicles, the analysis assumes that these vehicles will replace older vehicles "upon retirement." (*Id.*) However, other drivers will now be able to drive these vehicles and the analysis should have assumed that both the old and new vehicles will be used at the same time.[19] Indeed, the DPEIR itself acknowledges that "it is not conclusive that equipment will be put out of service and that the high number of vehicles or equipment will be scrapped as solid/hazardous waste." (DPEIR, p. 6-33.)
>
> [18] The DPEIR text wrongly cites this figure as 115,000 light, medium, and heavy duty trucks, whereas Table 4.7-2 lists this figure as 245,000 vehicles.
> [19] This same assumption should be reflected in all the analyses, including but not limited to, air quality, GHG emissions, and noise.

Response 3-91

It would be speculative to quantify specific traffic estimates at this time based on the fact that it is not known what control strategies may be applied and exactly where the future projects would be located. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) Therefore, operational traffic impacts from the implementation of the 2016 AQMP are analyzed on a programmatic level in the Draft Program EIR.

The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. The RTP TCMs are required by Health and Safety Code 40460 to be combined with the SCAQMD's portion of the AQMP; however, the 2016 RTP/SCS is considered a separate project under CEQA because the land use and transportation strategies program are within SCAG's jurisdictional authority and the 2016 RTP/SCS will move forward with or without adoption of the 2016 AQMP. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis.

Implementation of control measures from previous AQMPs which included vehicle replacements

have led to the removal and replacement of older, higher emitting vehicles within the District. The intent of control measures that incentivize the use of partial-zero and zero emission vehicles is to replace already existing, older high emitting vehicles with cleaner vehicles to assure that the intended environmental and air quality benefits of the program are achieved. Therefore, no increase in the number of mobile sources would be expected and no related traffic and circulation impacts would be generated. Consistent with SCAG's 2016 RTP/SCS, the vehicle miles travelled are anticipated to decrease, which further supports SCAQMD staff's assumption that the new vehicles would simply replace the older vehicles and not add to the older vehicles.

Comment 3-92

> The DPEIR fails to meaningfully describe and analyze potentially significant impacts to rail and marine vessel traffic, ignoring the specific significance criterion related to this topic. Any attempt to quantify and analyze the impacts of increased marine vessel and rail traffic are dismissed by the DPEIR are "speculative." (DPEIR, pp. 4.7-8 to 4.7-9.)

Response 3-92

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. *See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. It would be speculative to quantify specific rail and marine vessel traffic impacts at this time because it is not known how the control strategies would be applied to future projects. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].)

Comment 3-93

> The DPEIR likewise fails to meaningfully describe and analyze potentially significant impacts associated with the use of overhead catenary electrical lines. Instead, the reader is told that the use of such lines could result in significant traffic impacts due to closure of lane(s) to vehicular traffic and alteration of traffic patterns and congestion. (DPEIR, p. 4.7-10.) Such analysis and mitigation is improperly deferred to an unspecified, later "CEQA evaluation." (DPEIR, p. 4.7-9 to 4.7-10.)

Response 3-93

As stated in the Draft Program EIR, specific design features associated with the future projects that will implement the use of overhead catenary electrical lines are unknown at this time. However, as part of a conservative analysis, the Draft Program EIR concluded that installation of catenary lines, bonnet technology, and solar panels could create significant aesthetic impacts. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such

analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-94

> Finally, the DPEIR only analyzes the traffic impacts associated with some, but not all, of the proposed control measures. For instance, there is no substantive discussion or analysis of the potential traffic impacts associated with, among other others, Control Measures CMB-03, MOB-05, MOB-06, MOB-08, MOB-13, BCM-03, BCM-07, ORLD-01, ORLD-03, ORHD-05, ORHD-09, and OFFS-08.

Response 3-94

All proposed control measures were evaluated for potential traffic and transportation impacts. The 30 control measures that may result in the use of compliance options that could generate significant transportation and traffic impacts are listed in Table 4.7-1, including CMB-03, BCM-03, BCM-07, ORHD-05, and ORHD-09. MOB-05, MOB-06, MOB-08, ORLD-01, ORLD-03, and OFFS-08 involve the replacement of older vehicles with newer, lower emitting vehicles or further deployment of cleaner technologies and would not result in transportation impacts since no new vehicles will be added to the roadways because of these control measures. MOB-13 involves the off-road mobile source emission reduction credit generation program, which does not result in additional vehicles on roadways. Therefore, no transportation and traffic impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-95

> **c. Mitigation**
>
> As to mitigation of identified significant construction traffic impacts, the DPEIR claims that it cannot impose mitigation measures for all such impacts because it failed to study them. (DPEIR, p. 4.7-10.) This plainly violates CEQA. (Public Resources Code §§ 21002, 21002.1., 21100.) As to the lone traffic mitigation measure the DPEIR does identify for significant construction traffic impacts (Mitigation Measure TR-1), this measure constitutes impermissible deferral of mitigation.

Response 3-95

The comment's claim that the Draft Program EIR cannot impose mitigation measures because it failed to study them is inaccurate. Staff did not identify any adverse environmental impacts from the traffic mitigation measures. Mitigation measure TR-1 was identified to reduce construction traffic impacts and is discussed in Subchapter 4.7.5. The intent of mitigation measure TR-1 is to develop a construction management plan that includes a list of traffic and transportation controls that can be utilized if they are determined to be feasible by the Lead Agency once future project specific details are known. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) Although

mitigation measure TR-1 would reduce transportation and traffic impacts during construction, those impacts would still remain significant. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measure TR-1 would be applied to future projects, if the impacts from those projects would result in significant transportation and traffic impacts.

Comment 3-96

> Formulation of mitigation measures should not be deferred until a later time. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom, supra*.) Deferral is permitted only in limited circumstance where a lead agency can show: (1) practical considerations prohibit devising such measures earlier in the planning process and (2) the EIR specifies the specific performance standards capable of mitigating the project's impact(s) to a less than significant level. (*Sacramento Old City Ass'n, supra*, 229 Cal.App.3d at 1028-1029; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237.)

Response 3-96

As a programmatic-level document, it is appropriate under CEQA to provide a framework for developing appropriate mitigation measures during future project-level review. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) Attempts to formulate specific mitigation measures at this time would be speculative. (See id. 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].)

Comment 3-97

> Mitigation Measure TR-1 calls for the preparation of a future Construction Management Plan. No commitment to mitigation is provided by the measure. Instead, the specified items need only be included "if determined to be feasible by the Lead Agency." In addition, no clear, specific performance standards are specified by this measure. Moreover, as noted previously, this measure may well never be implemented given the ministerial nature of the subsequent local permitting process.

Response 3-97

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in

the future, in the light of the Program EIR. Therefore, it is expected that mitigation measure TR-1 would be applied to future projects, if the impacts from those projects would result in significant transportation and traffic impacts. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) The comment provides no evidence to support the claim of the ministerial nature of future projects. However, if future projects are ministerial, the lead agency may not be able to require mitigation.

Comment 3-98

No mitigation measures are provided for the identified significant operational traffic impacts. This clearly and unequivocally violates CEQA, which requires agencies to not only identify potentially significant impacts but also mitigation measures and alternatives designed to avoid or substantially lessen such impacts. (Public Resources Code §§ 21002, 21002.1, 21100.) An agency cannot simply conclude an impact is significant without identifying all feasible mitigation to address that impact. (*Id.*) The DPEIR must be revised to provide feasible mitigation measures to address the Project's acknowledged significant traffic impacts.

Response 3-98

As stated in Subchapter 4.7.6, no mitigation measures were identified to reduce the significant impacts from the exclusive dedication of existing lanes of vehicle traffic travel as a truck lane for vehicles using the overhead catenary electrical lines or fixed guideway systems because traffic patterns and congestion may be altered or for the significant impacts associated with the increase in vessels in the harbor should the barge-based bonnet technology be used. Therefore, the operational impacts remain significant and unavoidable. No feasible mitigation measures were identified in the Draft Program EIR, and the comment does not propose any feasible mitigation measures. CEQA only requires that feasible mitigation be included in the EIR. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376 ["CEQA does not require analysis of every imaginable alternative or mitigation measure; its concern is with feasible means of reducing environmental effects."] (emphasis in original); *Concerned Citizens of S. Cent. L.A. v. Los Angeles Unified Sch. Dist.* (2d Dist. 1994) 24 Cal. App. 4th 826, 841 [same]; Pub. Res. Code §§ 21002, 21002.1, 21100; Guidelines § 15126.4(a).) No revisions to the Draft Program EIR are necessary.

Comment 3-99

9. Aesthetics

a. Scope of Analysis

We appreciate the District adding Aesthetics to the scope of the DPEIR in response to our comments on the NOP/IS.

Response 3-99

No response is necessary under CEQA.

Comment 3-100

> **b. Impact Analysis**
>
> Implementation of Control Measures ORHD-05, ORHD-06, ORHD-08, and ORHD-09 would result in the installation of catenary overhead electrical lines and fixed guideway systems, battery charging stations, and fueling infrastructure within or adjacent to existing roadways, streets, freeways, and/or transportation corridors. The DPEIR contends that the installation of catenary lines in industrialized areas near the Ports, is not expected to result in any significant aesthetic impacts to scenic highways because such areas "are not near an officially designated Scenic Highway or a roadway eligible for State Scenic Highway Designation." (DPEIR, p. 4.8-4.) However, the DPEIR fails to identify or even describe known visual resources such as John S. Gibson Boulevard, Harbor Boulevard, and the Vincent Thomas Bridge, all of which are designated as local scenic highways in the San Pedro and Wilmington-Harbor City Community Plans. Ocean Boulevard is likewise identified as a scenic route in the Scenic Element of Long Beach's General Plan. Indeed, there are many historic and cultural resources, both listed and found eligible for listing through surveys, that contribute to the visual setting and character of the Ports and if modified, through obstruction, alteration, or demolition would have a negative aesthetic impact.

Response 3-100

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

As stated in Subchapter 4.8.3, implementation of the 2016 AQMP would be considered to have significant aesthetics impacts if any of the following criteria apply: substantial adverse effect on scenic vistas; substantial damage to scenic resources, including but not limited to trees, rock outcroppings, and historic building within a state scenic highway; and creation of a new source of substantial light or glare which would adversely affect day or nighttime views in the area. The Draft Program EIR also states that "the potential locations for catenary overhead power lines (near Port facilities, transportation corridors, and railyards) would not be visible to Route 1 at State Route 19 due to the numerous structures and topography between the two locations. There are no officially designated Scenic Highways or highways eligible for State Scenic Highway Designation in areas affected by construction of zero or near-zero emission equipment associated with the 2016 AQMP." Most of the areas within the Basin where such equipment is being considered are primarily heavily industrialized areas and major transportation corridors. However, the Draft Program EIR did conservatively conclude that there could be significant aesthetics impacts as a result of the development of catenary lines. The potential impacts to the local visual resources and scenic highways will be evaluated during rulemaking for the proposed control measures. If future projects are planned in the immediate vicinity of the roadways referenced in the comment (John S. Gibson Blvd., Harbor Blvd., the Vincent Thomas Bridge, or Ocean Blvd., it would be necessary to conduct a site specific CEQA analysis where aesthetic impacts could be evaluated and appropriate mitigation could be applied.

Comment 3-101

> Implementation of Control Measures MOB-01 and ORFIS-04 would lead to the use of bonnet technology, which could be either land-based or barge-based, to reduce emissions from marine terminals. The DPEIR claims that while the use of bonnet technology could degrade the existing visual character or quality in the immediate surrounding area, it is unlikely that the use of bonnet technology would be visible from sensitive vantage points due to the presence of intervening structures at the ports. There is no substantial evidence, such as visual simulations, maps, or comparable data to support such statements.

Response 3-101

As discussed on page 4.8-4 of the Draft Program EIR, "while the use of bonnet technology could degrade the existing visual character or quality in the immediate surrounding area, it is unlikely that the use of bonnet technology would be visible from sensitive public vantage points due to the presence of intervening structures at the ports. One example of the use of the bonnet technology referred to in the comment is the installation of a dockside catalytic control system (DoCCS) at the Mitsubishi Cement Facility Modification Project at the Port of Long Beach." The NOP/IS[3] for the project concluded that aesthetic impacts from the DoCCS would be less than significant.

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR.

Comment 3-102

> Implementation of Control Measures ECC-03 and ECC-04 would require the installation of solar panels and cool roof technology. The DPEIR acknowledges that there would be a significant construction-related impact due to degradation of the existing visual character of each affected site as a result of equipment staging and laydown areas. The DPEIR likewise acknowledges that these technologies could increase a significant source of glare as a result of the Proposed Plan.

Response 3-102

The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

[3] The NOP/IS can be found online at: http://www.polb.com/civica/filebank/blobdload.asp?BlobID=8645, accessed on January 21, 2017.

Comment 3-103

> Further, the DPEIR only analyzes the aesthetic impacts associated with some, but not all, of the proposed control measures. The DPEIR does not even attempt to analyze the potentially significant aesthetic impacts from the proposed control measures which require and/or provide incentives for facility modifications, increased electrical usage (which may require new substations, powers plants and related infrastructure), and cool roofs and solar panels. In addition, there is no substantive discussion or analysis of, among others, the potential aesthetic impacts associated with Control Measures ECC-03, ECC-04, ECC-02, CMB-01, EGM-01, MOB-02, MOB-03, and MOB-04.

Response 3-103

All proposed control measures were evaluated for potential aesthetic impacts. The eight control measures that may result in the use of compliance options that could generate significant aesthetic impacts are listed in Table 4.8-1, including ECC-03 and ECC-04. ECC-02 involves taking credit for co-benefits from existing residential and commercial building energy efficiency measures, CMB-01 involves the transition to zero and near-zero emission technologies for stationary sources, EGM-01 involves emission reductions from new development and redevelopment projects, MOB-02, MOB-03, and MOB-04 involve emission reductions at various facilities. Therefore, no aesthetics impacts are anticipated from these measures and the comment does not provide evidence of impacts not analyzed in the Draft Program EIR.

Comment 3-104

> **c. Mitigation**
>
> Section 4.8.5 proposes various measures to address the above aesthetics impacts. Most of the measures are qualified by the phrase "where feasible" providing no assurances that the measures will, in fact, be implemented. This does not constitute adequate or effective mitigation under CEQA. (CEQA Guidelines § 15126.4(a)(2); *see also*, *Sierra Club v. County of San Diego* and *Communities for a Better Environment v. City of Richmond*, both *supra*.)
>
> For instance, Mitigation Measures AE-1 specifies that to "the extent feasible" construction staging areas should be located in areas that are already disturbed and sited to take advantage of natural screening opportunities provided by existing structures, topography, and/or vegetation. Mitigation Measure AE-2 requires construction areas to be screened from view "where feasible." Mitigation Measure AE-3 siting projects next to important scenic resources "should be avoided to the greatest extent possible." Finally, to reduce glare, Mitigation Measure AE-5 states that structural and/or vegetative screening from light-sensitive uses are to be provided "where feasible."

Response 3-104

Enforceable mitigation measures (AE-1 through AE-5) that would minimize aesthetic impacts were included in the Draft Program EIR and can be found in Subchapter 4.8.5. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment

derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. Therefore, it is expected that mitigation measures AE-1 through AE-5 would be applied to future projects, if the impacts from those projects would result in significant aesthetics impacts. This framework for applying mitigation measures to future projects is appropriate for a program-level document. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 376-77 ["The general statement of mitigation measures in the FEIR is consistent with the general nature of the Plan. Any further and more detailed statement of mitigation measures at this formative stage . . . would have been neither reasonably feasible nor particularly illuminating."].) While the identified mitigation measures could minimize some of the aesthetics impacts, the SCAQMD cannot predict how a lead agency might choose to mitigate a particular significant aesthetics impact for future project(s) located in areas with project-specific features and issues. Thus, the potential exists for impacts for future projects to be significant even after feasible mitigation measures are identified and imposed. Therefore, aesthetics impacts that may occur as a result of implementing the 2016 AQMP are expected to remain significant after mitigation.

Comment 3-105

> **10. Other CEQA Topics**
>
> The DPEIR neglects to discuss or assess the potentially significant growth inducing impacts associated with several control measures. (*See, e.g.*, Control Measures CMB-01 and FLX-02). The DPEIR concludes that the Project would not directly increase economic or population growth or result in the need for new housing in the Basin. (DPEIR, p. 4.10-1.) However, there is no substantial evidence to support this statement, as required by CEQA.

Response 3-105

CEQA defines growth-inducing impacts as those that "foster economic or population growth or construction of additional housing." CMB-01 seeks to advance the deployment of engines, ovens and boilers, which is not anticipated to result in the direct or indirect construction of housing. FLX-02 seeks to incentivize the use of low VOC technologies at stationary sources, which is not anticipated to construct housing, nor will the population grow as a result of new industry when this region has a robust available labor force. Therefore, the growth-inducing impacts are less than significant.

Comment 3-106

> The DPEIR relies on the fact that the District does not have land use authority to conclude that the Proposed Plan would not generate new residential development or alter land use policies. (DPEIR, p. 4.10-2.) The fact that the District does not have authority over local land use matters does not justify or excuse its need to study this issue consistent with CEQA. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail, supra*.)

Response 3-106

Contrary to the comment's claim, the conclusion that the 2016 AQMP would not generate new residential development or alter land use policies was based on a review of the control measures proposed in the 2016 AQMP which found that "the 2016 AQMP does not include policies that would encourage the development of new housing or population-generating uses or infrastructure that would directly encourage such uses. The 2016 AQMP does not change jurisdictional authority

or responsibility concerning land use or property issues." (Page 4.10-1) The comment does not provide evidence to the contrary and no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-107

> The DPEIR acknowledges that the Proposed Plan would result in construction activities associated with implementation of control measures, such as activities from installation of control equipment at existing stationary sources and electrification of existing roadways. The DPEIR then purports to justify its conclusion that few or no workers would relocate to the region, with statements that there is currently a workforce in the region and the Proposed Plan would be implemented over several years. These two facts alone do not constitute substantial evidence to support the conclusion that no additional workers would be needed to complete construction resulting from the Proposed Plan. Potential growth inducing impacts must be quantified and mitigated in the DPEIR.

Response 3-107

The 2016 AQMP would mainly affect existing commercial or industrial facilities in appropriately zoned industrial or commercial areas and, as such, is not anticipated to generate any significant effects on the Basin's population or population distribution. It is expected that the existing labor pool within southern California would accommodate labor requirements for any modifications required and that few or no new employees would need to be hired at affected facilities as the new control equipment is typically not labor intensive to operate or maintain. If any additional workers are needed for construction activities, they would only be needed temporarily and would not likely permanently relocate to the area. Implementation of control measures from previous AQMPs did not result in the need for additional permanent workers. Since the 2016 AQMP proposes control measures which are similar to those of previously adopted AQMPs, there is no evidence that the existing pool of construction workers would be insufficient to meet those needs and the comment does not provide evidence to support its claim.

Comment 3-108

> The DPEIR assumes that no new roadway access would be constructed as a result of the Project and therefore the Proposed Plan would not induce growth. (DPEIR, p. 4.10-2.) However, there is no evidence to support the statement that no new roadway access would be constructed, let alone substantial evidence, as required. Even if it were true, this does not mean that the Project would not result in new growth because there are other factors that induce growth besides new roadways and infrastructure.
>
> The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant growth inducing impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-108

In Subchapter 4.10.1.2, the removal of obstacles to growth from the 2016 AQMP were discussed. Contrary to the comment's claim, this discussion included other factors such as infrastructure, the use of fuels and electricity, and energy conservation. The discussion also concludes that the 2016 AQMP would not result in "the development of new infrastructure (e.g. new roadways access) that would directly or indirectly cause the growth of new populations, communities, or currently undeveloped areas." In Subchapter 4.10.1, the growth inducing impacts are discussed in detail.

Additionally, growth-inducing impacts from the TCMs were evaluated in the Program EIR for SCAG's 2016 RTP/SCS. Therefore, no revisions to the Draft Program EIR are necessary or warranted.

Comment 3-109

> **C. The Project May Result In Numerous Significant Impacts That Were Scoped Out Of, And Not Analyzed By, The DPEIR.**
>
> The scope of the proposed DPEIR improperly excludes potentially significant impacts to (1) Biological Resources, (2) Cultural Resources, (3) Geology and Soils, (4) Land Use and Planning, (5) Population and Housing, and (6) Public Services. Unless and until those areas are more fully addressed, the scope of the DPEIR is improperly limited and erroneously excludes areas requiring further assessment. In several respects, the DPEIR merely *assumes* the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the (inadequately-described) Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398; and *Sundstrom, supra*.)
>
> While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of a project, the authority to use such focus is misapplied in the DPEIR. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR *only* as to such impacts that the initial study properly shows to be *clearly insignificant and unlikely to occur* (*i.e.*, "effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR . . .."). The DPEIR, by contrast, excludes from consideration numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

Response 3-109

Pursuant to CEQA Guidelines Section 15063(c)(3), the SCAQMD prepared an IS, which provided an analysis of the potential impacts of the 2016 AQMP in all the CEQA topic areas. That analysis was supported with substantial evidence, such as implementation of control measures from previously approved AQMPs. The NOP/IS was circulated for a 30-day public review and comment period starting on July 5, 2016 and ending on August 4, 2016. Comments were received on the NOP/IS and where applicable, additional information was included in the Draft Program EIR in response to those comments. A formal response to comments section was also included in Appendix B of the Draft Program EIR. According to CEQA Guidelines Section 15143, "[e]ffects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study." The comment does not provide evidence to support its claims and no revisions to the Draft Program EIR are necessary.

Comment 3-110

> **1. Biological Resources**
>
> The DPEIR dismisses potentially significant impacts to biological resources because the DPEIR states that these impacts are not reasonably foreseeable. (DPEIR, pp. 4.9-1 to 4.9-2.) But, construction of new and/or expanded facilities is a reasonably foreseeable indirect impact of implementation of the Proposed Plan. For instance, the Project will result in the likely construction of transportation support systems, installation of control equipment at existing stationary sources, and electrification of existing roadways. (DPEIR, p. 4.10-2.) Any of these and other related Project construction activities could result in potentially significant biological impacts. As such, impacts to biological resources must be analyzed and cannot simply be dismissed for being unforeseeable.

Response 3-110

Construction related impacts from the implementation of the 2016 AQMP were fully analyzed in the Draft Program EIR. The comment accurately notes that "the Project will result in the likely construction of transportation support systems, installation of control equipment at existing stationary sources, and electrification of existing roadways." Existing facilities affected by modifications from the proposed control measures generally occur in areas zoned as commercial or industrial which typically do not support candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. Furthermore, existing industrial or commercial facilities typically have little to no plant life or plant life supporting wildlife species for fire safety reasons. The 2016 AQMP will not cause new development that would affect biological resources and the comment does not provide evidence to support its claim.

Comment 3-111

> The DPEIR also dismisses impacts on land use plans, local policies, ordinances, and regulations protecting biological resources. (DPEIR, p. 4.9-2.) The rationale behind this conclusion is that development would take place with or without the Project and that SCAQMD does not have legal authority over land use decisions. These arguments are improper considerations under CEQA. CEQA does not permit a lead agency to dismiss potential direct or indirect impacts to the environment simply because development will occur with or without a project or because the lead agency does not have authority over certain land use decisions that will be affected by the Project. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail, supra.*) CEQA requires lead agencies to analyze the direct and indirect environmental impacts of a Project, regardless of those considerations. The Project control measures will certainly conflict with some land use plans, local policies, ordinances, and resolutions protecting biological resources. As such, any impacts should be fully analyzed and mitigated as appropriate in a recirculated DPEIR.

Response 3-111

Contrary to the comment, the 2016 AQMP's impacts on land use plans, local policies, ordinances, and regulations protecting biological resources are based on the fact that "land use plans, local polices, or ordinances, or regulations protecting biological resources are not expected to be affected by the proposed control measures as they primarily affect existing commercial and industrial facilities located in appropriately zones areas. The 2016 AQMP will not cause new development that would affect biological resources" (page 4.9-2). Based on implementing control

measures from previously approved AQMPs, the proposed control measures would not drive the land use approval process, and therefore, cannot alter or interfere with land use zoning ordinances or designations and cannot approve new land use projects. The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. Land use and transportation strategies program are within SCAG's jurisdictional authority. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis. Future projects will undergo additional CEQA analysis that will address whether the future proposed projects conflict with land use plans, local policies, ordinances, and resolutions protecting biological resources.

Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no further response is necessary under CEQA.

Comment 3-112

> The DPEIR fails to analyze, through detailed quantification and hydrodynamic modeling, potential wastewater impacts to designated wetlands. Section 4.9 of the DPEIR states that Project control measures promoting the installation of air pollution control equipment at Port facilities is not anticipated to have wastewater impacts because the facilities would be required to comply with applicable water quality standards. (DPEIR, p. 4.9-2.) This explanation remains insufficient to conclude that potential impacts on protected wetlands would be less than significant.

Response 3-112

No wetlands were identified which would be affected by implementation of the control measures proposed in the 2016 AQMP and the comment does not provide evidence to support its claims. Affected industrial or commercial facilities are generally considered "point sources" and as such must release wastewater into POTWs under the NPDES permit program, administered by the RWQCB. Under CWA §404, direct discharge into federally protected wetlands is prohibited. Port facilities are considered to be heavy industrial facilities consistent with this land use and are subject to water quality standards established in the California Ocean Plan for any wastewater released into California's ocean waters. For this reason, control measures promoting the installation of air pollution control at port facilities are not expected to have wastewater impacts. Therefore, the 2016 AQMP will not adversely affect protected wetlands as defined by CWA §404.

Comment 3-113

> The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant impacts to biological resources, as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-113

The comment does not provide any evidence to support the claim that biological resources were not properly evaluated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-114

> **2. Cultural Resources**
>
> The DPEIR fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. (DPEIR, p. 4.9-2.) The DPEIR dismisses impacts to cultural resources because it states that any physical modifications would likely be located in a previously disturbed location. (*Id.*) Even if it is likely that physical environmental changes will occur in areas that are currently developed, the Project's potentially significant cultural resources impacts must be analyzed and mitigated in the event that development occurs on an undeveloped site or one with known or unknown cultural resources.
>
> For instance, not all areas within the Ports are devoid of cultural resources or have been previously disturbed, as concluded on Page 4.9-2 of the DPEIR. There are known recorded historic and prehistoric sites throughout the Ports alone,[20] and there are undoubtedly other historic and prehistoric sites in the Basin that would be affected by the Project. Without knowing the location and extent of ground disturbance from possible construction activities associated with the Project, it is speculative to assume that no significant adverse cultural resources impacts are expected as a result of its implementation. The conclusion in the DPEIR that the Project will result in "no impact" to cultural resources is unsupported by substantial evidence, as required.
>
> [20] For example, *see* City of Los Angeles's website at http://www.portoflosangeles.org/idx_history.asp.

Response 3-114

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development

and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. Without identification of specific locations affected by the 2016 AQMP, an analysis of the cultural impacts is speculative. (*See Rio Vista Farm Bureau*, 5 Cal. App. 4th at 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) The Draft Program EIR states that while the likelihood of encountering cultural or archaeological resources is low, there is still a potential that additional buried archaeological resources may exist. Any such impact from unexpected sub-surface resources would be eliminated by using standard construction practices and complying with state law including Public Resource Code Section21083.2 and CEQA Guidelines Section 15064.5.

Comment 3-115

> Further, the DPEIR includes language reflecting the typical mitigation measure to be imposed on unknown cultural resources to justify its "no impact" conclusion. (DPEIR, p. 4.9-2). This fact alone demonstrates that there are potentially significant cultural resource impacts requiring analysis and mitigation in the DPEIR.

Response 3-115

The mitigation referred to in the comment is actually state law, including Public Resource Code Section 21083.2 and CEQA Guidelines Section 15064.5. Since this is a law that projects are required to comply with, it is not considered mitigation and does not demonstrate that there are potentially significant impacts that need to get mitigated.

Comment 3-116

> The DPEIR must be revised, and the scope of the proposed DPEIR expanded to include a detailed analysis, supported by substantial evidence, regarding potentially significant impacts to cultural resources as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-116

The comment does not provide any evidence to support the claim that cultural resources were not properly evaluated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-117

> **3. Geology and Soils**
>
> Because details concerning several Project control measures are not yet known, the DPEIR improperly concludes that the Project has no potential to generate significant adverse impacts to geology and soil resources. In particular, the DPEIR wrongly assumes that only "minor" modifications at existing industrial or commercial facilities would be needed due to Project control measures and that "no control measures would require the location of new or relocation of existing facilities in areas prone to liquefaction." (DPEIR, p. 4.9-3.) At minimum, the potentially significant geology-related impacts associated with the control measures identified above must be analyzed in the DPEIR.

Response 3-117

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. SCAQMD staff believes that only minor modifications at existing industrial or commercial facilities would be needed due to the proposed control measures. No relocation of facilities is anticipated. The comment does not provide evidence to support its claims.

Comment 3-118

> The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant geology and soils impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-118

The comment does not provide any evidence to support the claim that geology related impacts were not properly evaluated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-119

4. Land Use and Planning

CEQA requires an analysis of whether the Project would conflict with any applicable plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (CEQA Guidelines § 15125(d); CEQA Guidelines, Appendix G, Item X.b; and *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.) However, the DPEIR does not include an analysis of potential conflicts between the Proposed Plan and applicable plans, policies, and regulations adopted to avoid or mitigate environmental effects.

The DPEIR states that there would be no land use conflicts because construction would occur with or without implementation of the Project and because modified rail or truck traffic routes would not conflict with land use documents. (DPEIR, p. 4.9-3.) As discussed above, CEQA requires an analysis of direct and indirect impacts on the environment from an action and does not allow a lead agency to conclude that impacts would not occur simply because an action would occur with or without the project. The fact that the District does not have authority over local land use matters (DPEIR, p. 4.9-3) does not justify or excuse its need to study this issue consistent with CEQA. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail, supra*.) Further, it is impossible to determine whether land use conflicts would occur without conducting any analysis of the applicable land use documents and the Project control measures. There is no evidence to support the conclusion that the Project would not conflict with applicable land use documents.

In addition to local plans, there are numerous federal and state plans that contain pertinent policies that must be considered and evaluated in light of the Project control measures. For instance, the proposed Project would seemingly create conflicts with the Ports' existing policies implementing the State Tidelands Trust principles, the California Coastal Act planning and permitting requirements, and the existing Master Plan for each Port, as detailed in the previous Port letters. In addition, the proposed Project would create inconsistencies with the CAAP. The numerous ***inconsistencies*** between the Project, as proposed, and the existing plans and policies require inclusion in the DPEIR. (CEQA Guidelines § 15125(d).)

Response 3-119

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. . Based on analysis of the proposed control measures in the 2016 AQMP, none of the control measures would result in new development of facilities which would conflict with land use plans. The comment does not provide any evidence of how the proposed control measures would conflict with land use documents. No final decisions have been made on how to implement control measures, such as MOB-01, that could affect the CAAP. Therefore, inconsistencies with the CAAP cannot be determined at this time. The Further Deployment Measures emission reductions associated with port-related sources will be used as a starting point for discussion on what level of emission reductions could be achieved through voluntary actions. Staff will strive to be consistent with existing policies and plans, including the

CAAP, when implementing control measures. The Ports are encouraged to participate in the stakeholder working group meetings when these decisions will be made.

Comment 3-120

> The DPEIR assumes that no new rail or truck traffic routes would be constructed and that instead existing transportation lines near the Ports would be modified to add electrical lines. (DPEIR, p. 4.9-3.) There is no evidence to support this statement, let alone substantial evidence, as required. Even if it were true this does not mean that the Project would not result in any conflicts with plan policies adopted for the purpose of avoiding or mitigating environmental effects. Increased electrical use would increase electrical demand. As noted above, this could conflict with adopted energy conservation plans. Installation of electric infrastructure could raise significant conflicts with aesthetics/visual policies especially since these lines are proposed to be located overhead.

Response 3-120

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. By promoting control measures that would increase energy efficiency and conservation, the 2016 AQMP would not interfere or conflict with any adopted energy conservation plans. In fact, there would likely be an energy co-benefit from the proposed control measures to complement applicable energy conservation plans and energy standards. The comment does not provide any evidence that the proposed control measures in the 2016 AQMP would conflict with plan policies in place to avoid or mitigate environmental effects or adopted energy conservation plans. Aesthetic impacts from overhead lines are fully evaluated in Subchapter 4.8 of the Draft Program EIR.

Comment 3-121

> Additionally, fueling infrastructure to support zero and near-zero emissions vehicles, such as those powered by hydrogen fuel cells or natural gas, could have a significant impact on local land use and may conflict with existing plans. Such Project components could likewise contribute to the physical division of an established community. The DPEIR admits as much in noting that to the extent such infrastructure requires modification to an existing rail or truck traffic route/corridor, this "will require a separate CEQA evaluation." (DPEIR, p. 4.9-3.) The District cannot legally defer analysis of Project impacts to some future, speculative CEQA review process. The analysis must take place now in order to inform the District's decision on the Proposed Plan.

Response 3-121

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome

level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo a project-level CEQA analysis in the future, in the light of the Program EIR. As discussed on page 4.9-3, "no land use conflicts, or inconsistencies with any general plan, or zoning ordinance are expected since only existing transportation routes would be modified. It is possible that construction activities to modify transportation routes could temporarily disrupt or divide the community. However, because construction of new traffic routes/corridors is not required, once construction activities are finished and physical barriers removed, no long term land use impacts are anticipated." The comment does not provide any evidence that additional fueling infrastructure as a result of the proposed 2016 AQMP control measures was not adequately evaluated and addressed in the Draft Program EIR.

Comment 3-122

> The DPEIR states that it incorporates "local land use planning decisions and population growth." (DPEIR, p. 4.9-4.) However, there is no explanation or evidentiary support for this statement, and even if there were, it is irrelevant. The pertinent questions are whether the Project may conflict with plan policies pertaining to environmental issues and/or physical division of an established community.

Response 3-122

The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. The RTP TCMs are required by Health and Safety Code 40460 to be combined with the SCAQMD's portion of the AQMP; however, the 2016 RTP/SCS is considered a separate project under CEQA because the land use and transportation strategies program are within SCAG's jurisdictional authority and the 2016 RTP/SCS will move forward with or without adoption of the 2016 AQMP. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis. The analysis of impacts from the physical division of an established community were discussed on page 4.9-3 and also responded to in Response 3-121.

Comment 3-123

> The DPEIR admits that it is possible construction activities would divide an existing community, but reasons that because the Project would only result in modification of existing traffic routes, the Project would not divide an existing community in the long-run. (DPEIR, p. 4.9-3.) As discussed above, however, there is no basis to support the conclusion that the Project would not result in construction of new traffic routes or corridors. As such, the conclusion that the Project would not divide an existing community is not supported by substantial evidence.

Response 3-123

The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. The RTP TCMs are required by Health and Safety Code 40460 to be combined with the SCAQMD's portion of the AQMP; however, the

2016 RTP/SCS is considered a separate project under CEQA because the land use and transportation strategies program are within SCAG's jurisdictional authority and the 2016 RTP/SCS will move forward with or without adoption of the 2016 AQMP. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis. As discussed on page 4.9-3, "potential land use impacts associated with the 2016 AQMP are associated primarily with the construction of support system (e.g. magnetic infrastructure related to the operation of zero and near-zero transport systems). In evaluating potential impacts, it has been assumed herein that no new rail or truck traffic routes would be constructed, but rather that existing ones would be modified. No land use conflicts, or inconsistencies with any general plan, or zoning ordinance are expected since only existing transportation routes would be modified. It is possible that construction activities to modify transportation routes could temporarily disrupt or divide the community. However, because construction of new traffic routes/corridors is not required, once construction activities are finished and physical barriers removed, no long term land use impacts are anticipated." The comment does not provide evidence to support its claims.

Comment 3-124

> The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant land use and planning impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-124

The comment does not provide any evidence to support the claim that land use and planning impacts were not properly evaluated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-125

> **5. Population and Housing**
>
> The analysis assumes that "few or no new employees would need to be hired at affected facilities as the new control equipment is typically not labor intensive to operate or maintain." (DPEIR, p. 4.9-4.) The DPEIR concludes that no control measures would induce population growth because "there are a finite number of drivers in the region at any given time." (*Id.*) There is no evidence to support either statement, let alone substantial evidence, as required.

> The DPEIR states that there would be no displacement of people or housing without providing any analysis to support the conclusion. (DPEIR, p. 4.9-4.) Several of the control measures, including new or expanded transportation corridors, could result in displacement of people or housing.

Response 3-125

As discussed on page 4.9-4, "the 2016 AQMP would mainly affect existing commercial or industrial facilities in appropriately zones industrial or commercial areas and, as such, is not anticipated to generate any significant effects on the Basin's population or population distribution. It is expected that the existing labor pool within Southern California would accommodate labor requirements for any modifications required and that few or no new employees would need to be hired at affected facilities as the new control equipment is typically not labor intensive to operate or maintain. Implementing the mobile source control measures, like those that would accelerate the penetration of zero or low emission vehicles, would not induce population growth because there are a finite number of drivers in the region at any given time. Future population growth would occur in the region for reasons other than complying with the 2016 AQMP control measures and adopting the control measures is not expected to result in changes to population densities or induce significant growth in the population. The 2016 AQMP contains no provisions that would lead to displacement of a substantial number of people of existing housing nor necessitate the construction of replacement housing elsewhere." The comment does not provide evidence to support its claims.

Comment 3-126

> The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant population and housing impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-126

The comment does not provide any evidence to support the claim that population and housing impacts were not properly evaluated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-127

6. Public Services

The DPEIR assumes that the Project would not generate any increased need for public services. (DPEIR, p. 4.9-4.) However, the DPEIR does not provide any substantial evidence to support its *assumptions* regarding the absence of impact on additional public services or facilities. New fueling infrastructure to support zero and near-zero emissions vehicles, including hydrogen and natural gas, could impact Fire Department resources and require additional public services.

The DPEIR relies on the lack of future population increase assumed in the Population and Housing Section to conclude that no new school facilities or public facilities would be required. This conclusion is not supported by substantial evidence and is therefore improper.

The DPEIR must be revised, and the scope expanded, to include a detailed analysis, supported by substantial evidence, regarding potentially significant public services impacts as well as feasible mitigation measures and alternatives designed to address those impacts.

Response 3-127

No adverse public service impacts are expected as a result of adopting the 2016 AQMP, as it would not result in the need for new physically altered government facilities to maintain acceptable service ratios, response times, or other performance objectives. As discussed in the Draft Program EIR, the 2016 AQMP is not anticipated to result in population growth, but includes control measures to reduce emissions in spite of population growth projected by SCAG in their 2016 RTP/SCS; therefore, the Draft Program EIR properly concluded that no impacts to schools or public facilities is anticipated. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation and no revisions to the Draft Program EIR are necessary.

Comment 3-128

D. The DPEIR Fails To Consider And Discuss Cumulative Impacts.

The cumulative impact analysis includes the project-specific analyses of the SCAQMD's stationary and mobile source control measures and CARB's mobile source control measures, as well as the TCMs that were developed and adopted by SCAG as part of the 2016 RTP/SCS. (DPEIR, pp. 1-22, 5-1.) In general, TCMs are control measures that provide emission reductions from on-road mobile sources, based on changes in the patterns and modes by which the regional transportation system is used. (DPEIR, p. 5-2.) The DPEIR claims that the TCMs "are appropriately part of the cumulative impact analysis because they include regulatory activities associated with measures that could also generate related environmental impacts within the Basin." (DPEIR, p. 5-1.)

A cumulative impact analysis is supposed to evaluate the impacts of a project along with *other* projects producing *related effects*. (CEQA Guidelines § 15130(b).) The Project Description states that the Project is comprised of: (1) the SCAQMD's Stationary and Mobile

Source Control Measures, (2) stated and suggested Federal Source Control Measures, and (3) RTP/SCS Control Measures provided by SCAG. (DPEIR, p. 2-13.) The TCMs are part of the RTP/SCS. (DPEIR, pp. 2-53 to 2-55.) The DPEIR thus improperly segmented the Project analysis by removing a portion of it, the TCMs, from the project-level analysis and treating it as a separate project for purposes of the cumulative impact analysis. The whole of an action must be considered when evaluating an activity, both on a project-level and on a cumulative basis.[21]

[21] The DPEIR also improperly omits any discussion of the RTP/SCS's land use and transportation strategies as well as the federal mobile source control measures, which are also part of the Project (*see* Section 2.8), from the cumulative impact analysis.

Response 3-128

The comment provides no substantial evidence that cumulative impacts were not considered in the Draft Program EIR. The 2016 AQMP relies on the regional demographic projections and transportation programs, measures, and strategies from SCAG's 2016 RTP/SCS. The RTP TCMs are required by Health and Safety Code 40460 to be combined with the SCAQMD's portion of the AQMP; however, the 2016 RTP/SCS is considered a separate project under CEQA because the land use and transportation strategies program are within SCAG's jurisdictional authority and the 2016 RTP/SCS will move forward with or without adoption of the 2016 AQMP. The environmental impacts from the 2016 RTP/SCS were analyzed and disclosed in the Draft Program EIR released by SCAG on December 4, 2015 for a 60-day public review and comment period ending on February 1, 2016. On April 7, 2016, the SCAG Regional Council adopted the 2016 RTP/SCS and certified the Final Program EIR. Since SCAQMD will not be adopting rules or regulations to implement the TCMs and the two projects are not dependent on each other, the environmental impacts from the 2016 RTP/SCS were only analyzed as part of the cumulative analysis.

The project-specific environmental impacts from implementing CARB's mobile source control measures were analyzed herein as SCAQMD is expected to enter into rulemaking to implement CARB's strategies within the District. Furthermore, at the time of release of the Draft Program EIR, the environmental impacts associated with CARB's SIP strategy were not fully evaluated under CEQA.

Comment 3-129

There is also no explanation as to why other past, present, and probable future projects producing related effects were not considered. The DPEIR reaches this conclusion apparently because it mistakenly focused on whether the projects themselves were "related," instead of whether the impacts were related. (DPEIR, p. 5-4.) The DPEIR thus errs in failing to consider other projects that along with the Project result in potentially significant impacts.

Response 3-129

The goal of the 2016 AQMP is to provide a framework of measures for attaining the NAAQS. Control measures were identified and analyzed in the Draft Program EIR on a programmatic level to determine foreseeable environmental effects. A cumulative analysis of proposed project impacts was presented in Subchapter 5.0 of the Draft Program EIR. The related projects for the cumulative analysis (SCAG's 2016 RTP/SCS) were discussed beginning in Subchapter 5.1.3 on page 5-4. The comment does not provide evidence of cumulative projects which should have been

considered but were not.

Comment 3-130

> As noted above, the DPEIR did not analyze several resource topics on the ground that the Project would not result in any significant impacts in those areas. These topics include biological resources, cultural resources, geology and soils, land use, mineral resources, and public services. Yet, the cumulative impact analysis acknowledges that the Project would result in potential impacts in these areas albeit in a form "different" than the impacts of the TCMs. (DPEIR, pp. 5-10 to 5-12, 5-14, 5-18, 5-20, 5-23.)

Response 3-130
The Draft Program EIR analyzed all topics that were found to be potentially significant from the NOP/IS. The topics referred to in the comment were found to be not significant. Chapter 5 of the Draft Program EIR analyzed the cumulative impacts from the 2016 AQMP, which included CARB's State SIP Strategy, and SCAG's 2016 RTP/SCS. Chapter 5 summarized the conclusion of the impacts analysis performed for each of those plans. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 3-131

> The cumulative noise analysis wrongly states that the Project's significant construction impacts were limited to the construction of the overhead catenary lines. Section 4.5.4.1 of the DPEIR identified significant noise impacts associated with other construction activities as well. (*See also*, Table 4.5-1.)

Response 3-131
The Final Program EIR has been revised to reflect the conclusions stated in Subchapter 4.5.4.1 regarding noise. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation.

Comment 3-132

> The cumulative traffic analysis focuses exclusively on construction traffic impacts. (DPEIR, Section 5.18.) It neglects to reference or analyze the Project's significant unavoidable operational traffic impacts. These include significant congestion and hazard traffic impacts associated with the use of the catenary lines and barge-based bonnet technology. (DPEIR, p. 4-7-10.)

Response 3-132
Contrary to the comment's claim, the discussion in Subchapter 5.18.1 on page 5-26 (see second paragraph) includes a discussion of the 2016 AQMP's significant operational impacts on transportation and traffic, specifically from the use of catenary lines and barge based bonnet

technology.

Comment 3-133

> **E. The EIR Fails To Analyze A Reasonable Range Of Alternatives To The Project.**
>
> CEQA requires that an EIR include a reasonable range of alternatives to the project that would feasibly meet most of the basic project objectives while avoiding or significantly reducing the project's significant impacts. (CEQA Guidelines § 15126.6.) The EIR's alternatives analysis does not comply with CEQA because it includes legally infeasible alternatives as well as alternatives that would not meet most of the basic project objectives and/or avoid or substantially lessen significant environmental impacts.
>
> The DPEIR considers four alternatives. These include: (1) No Project Alternative (2012 AQMP), (2) Mobile Source Reduction Only, (3) CARB or SCAQMD Regulation Only, and (4) Expanded Incentive Funding. None of the alternatives, other than the Expanded Incentive Funding alternative would meet most of the basic project objectives. (DPEIR, p. 6-41.) The DPEIR claims that that the Expanded Incentive Funding alternative has the potential to be the environmental superior alternative even though it would result in increased impacts to aesthetics, energy, hazards, water, noise, waste, and traffic. (DPEIR, pp. 6-40 to 6-41.) Only one of these alternatives, the No Project Alternative, would substantially reduce impacts compared to the Project. The Mobile Source Reduction Only Alternative is not legally feasible as the District lacks regulatory jurisdiction over mobile source emissions.

Response 3-133

A full range of legally feasible alternatives to the proposed project are presented in Chapter 6 of the Draft Program EIR. The possible alternatives to the proposed 2016 AQMP are limited by the nature of the proposed project. For example, the SCAQMD is required to prepare a PM2.5 and ozone AQMP that demonstrates attainment of the federal ambient air quality standards by applicable dates. The magnitude of emission reductions needed for the attainment of these NAAQS requires an aggressive mobile source control strategy supplemented with focused, strategic stationary source control measures and close collaboration with federal, state, and regional governments, local agencies, businesses, and the public. Because the 2016 AQMP includes all feasible control measures identified as part of the AQMP development process and control measures reflect the maximum emission reduction potential, it is difficult to develop alternatives that would still achieve the project objectives, including attaining the federal ozone and PM2.5 standard, but are substantially different than the 2016 AQMP.

In spite of the limitations identified above with regard to developing project alternatives, similar to previous AQMP Program EIRs, alternatives to the 2016 AQMP focus on emphasizing different pollutant control strategies. For example, alternatives could rely more only on regulation only versus greater reliance on incentive funding and mobile source control measures. Ultimately, all project alternatives must demonstrate attainment of the federal ozone and PM2.5 standards.

The rationale for developing the alternatives for the proposed project is fully explained in Subchapter 6.1. The alternatives rejected as infeasible are discussed in Subchapter 6.2. The four proposed project alternatives are discussed and analyzed in Subchapters 6.3 and 6.4.

Under Alternative 2 – Mobile Source Reduction Only, CARB's mobile source and consumer

product control measures would be implemented. Although SCAQMD has limited regulatory authority over mobile sources, CARB has the primary regulatory authority and, in the case of local mobile sources (e.g., fleet rules), SCAQMD would implement those control measures that are within SCAQMD's authority.

Comment 3-134

> In several resource topics (*e.g.*, air quality, energy, hazards and hazardous materials, hydrology and water quality, noise, transportation and traffic), the DPEIR acknowledges that the No Project Alternative would result in significant impacts. But, it calls the impact less than significant because this alternative is "requiring what has already been adopted and analyzed to be implemented." (DPEIR, pp. 6-19, 6-20, 6-22, 6-25, 6-28, 6-34.)[22] This is akin to an impermissible plan-to-plan comparison of impacts. (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350.) If continued implementation of the 2012 AQMP would result in significant impacts, this should have been acknowledged in a simple and straight-forward manner. The failure to do so skews the entire alternatives analysis since impacts that are in fact significant are deemed insignificant merely because of the bureaucratic reason that the plan has been approved.
>
> [22] As to traffic, the DPEIR then inconsistently claims that "the traffic and transportation impacts will not change the traffic and transportation impacts identified in the 2012 AQMP, and therefore, remain significant." (DPEIR, p. 6-34.)

Response 3-134

CEQA requires the evaluation of the No Project Alternative, which consists of what would occur if the proposed project was not approved; in this case, not adopting the 2016 AQMP. The net effect of not adopting the 2016 AQMP would be a continuation of the 2012 AQMP and the 2007 AQMP. This approach is consistent with CEQA Guidelines Section 15126.6 (e)(3)(A), which states: "When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the 'no project' alternative will be the continuation of the existing plan, policy, or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan."

The 2012 AQMP was fully analyzed for potential environmental impacts. The Final Program Environmental Impact Report[4] for the 2012 Air Quality Management Plan, which was certified on December 7, 2012. The comment refers to part of the discussion of the no project alternative and takes it out of context. For example, in Subchapter 6.4.1.2, the Draft Program EIR clearly states: "Under Alternative 1, the black box measures from the 2007 AQMP and the yet-to-be implemented control measures from the 2012 AQMP would continue to be identified, adopted and implemented (see Table 6.3-1). The continuing implementation of these measures would generate construction impacts but not as many adverse impacts from the 2016 AQMP since there are less to implement. The one variable is what will constitute long-term measures in the future. Since the future technologies have not been identified or defined, it would be speculative to assume the

[4] Available online at: http://www.aqmd.gov/home/library/documents-support-material/lead-agency-scaqmd-projects/aqmd-projects---year-2012/aqmp-2012.

construction air quality impacts from the long-term measures at this time. The construction air quality impacts from the 2012 AQMP were determined to be significant; however, the No Project Alternative is requiring what has already been adopted and analyzed to be implemented. Thus, the construction air quality impacts from not taking new action or proposing new control measures will not change the existing construction air quality baseline and thus, the construction air quality impacts from Alternative 1 are less than significant." The comment does not provide substantial evidence to support its claims.

Comment 3-135

> The discussion of construction noise impacts (Section 6.4.5.1) wrongly states that the Project does not result in significant construction noise impacts. As set forth in Section 4.5.4.1, the Project results in significant and unavoidable construction noise impacts.

Response 3-135

Subchapter 6.4.5.1 has been revised in the Final Program EIR to reflect that, while temporary in nature, construction noise impacts are significant and unavoidable, consistent with the analysis in Subchapter 4.5.4.1. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation.

Comment 3-136

> **III. CONCLUSION**
>
> While it is plain that an EIR is needed in connection with this proposed Project, it is also clear that the DPEIR should be more complete than the version that was provided for public review and comment. The current version of the DPEIR fails to adequately describe the "Project" thereby thwarting effective public review and comment on the Proposed Plan. In several key areas, it fails to thoroughly and adequately identify the Project's significant environmental impacts and propose feasible mitigation measures and alternatives to avoid or substantially lessen such impacts. As such, the DPEIR fails to comply with CEQA, and the DPEIR must therefore be revised, corrected, and re-circulated with all of the analysis and other content required by CEQA before the District may lawfully take action on the Project.
>
> Thank you for your consideration of POLB's comments on the DPEIR. Please do not hesitate to contact the undersigned or Dawn McIntosh with any questions concerning this correspondence. Our contact information is as follows:

Response 3-136

This comment is a summary of previous comments made throughout the letter and those comments have been responded to in detail. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-

level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation.

G | D | B Gatzke Dillon & Ballance LLP
LAWYERS

November 15, 2016 *By Electronic Mail*

Jeff Inabinet
AQ Specialist: CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765-4182
jinabinet@aqmd.gov

Re: *Draft Program Environmental Impact Report for the 2016 Air Quality Management Plan*

Dear Mr. Jeff Inabinet:

This letter is submitted on behalf of John Wayne Airport, Orange County (Airport or JWA) and contains the Airport's written comments on the Draft Program Environmental Impact Report (Draft EIR) for the proposed 2016 Air Quality Management Plan (2016 AQMP), issued by the South Coast Air Quality Management District (SCAQMD or District) in September 2016. The Airport appreciates the opportunity to continue to work constructively and cooperatively with the SCAQMD in evaluating and developing realistic airport emission reduction strategies for the proposed 2016 AQMP and analyzing the potential environmental impacts of the proposed measures. 4-1

The Airport has achieved success in obtaining substantial emission reductions from their air quality measures implemented over the past decade and the Airport continues to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Airport must fundamentally disagree with any proposal by the District to convert these measures into a possible regulatory indirect source rule and must reiterate its concerns relating to AQMP Control Measure MOB-04 (Emission Reductions at Commercial Airports). As the District knows from prior comment letters submitted by the Airport on the 2016 AQMP, which are incorporated by this reference, the Airport believes that the possible conversion of Measure MOB-04 into an indirect source rule would exceed the SCAQMD's legal authority for the reasons set forth in the referenced letters.[1] Proposed Measure MOB-04 also contains various flaws which contribute to the inadequacy of 4-2

[1] The comment letters submitted to the SCAQMD regarding the 2016 AQMP include, but are not limited to the following: (i) letter dated October 8, 2014 from John Wayne Airport to Mr. Randall Pasek regarding 2016 AQMP LTO data; (ii) letter dated July 28, 2015 from Burbank-Glendale-Pasadena Airport Authority, John Wayne Airport, Long Beach Airport and Los Angeles World Airports to Mr. Henry Hogo regarding the 2016 AQMP White Papers; (iii) letter dated August 4, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Ms. Jillian Wong regarding the Notice of Preparation of a Draft Program EIR; (iv) letter dated August 19, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Mr. Michael Krause regarding the Draft 2016 AQMP; and (v) letter dated November 7, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Mr. Michael Krause regarding the Revised Draft 2016 AQMP.

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the Draft EIR and failure to comply with the requirements of the California Environmental Quality Act (CEQA). 4-2 cont.

First, proposed Measure MOB-04, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description making it impossible for the SCAQMD, the Airport, or the public to assess its potential environmental impacts. An EIR must describe the whole of the action, or the entirety of a project, including reasonably foreseeable actions that are part of a project, and must analyze the impacts of those reasonably foreseeable actions. Although the District continues to indicate that the exact impacts resulting from the particular methods that will be used under MOB-04 can only be determined in the future as the measure is developed into a rule or regulation and adopted, it is clear that the District has already commenced the rule development process and will continue this process with an "MOB-04 working group." The Draft EIR does not provide a description of how the proposed measure would work. It fails to describe reasonably foreseeable activities or action of other agencies in response to or associated with the proposed measure. The Draft EIR instead suggests that the intent of the proposed measure would be to delegate the District's responsibilities for regulating or reducing emissions to other agencies, specifically the public officials governing airports in the Basin, and appears to imply that any informed public discussion and environmental review on this course of action be deferred until those other agencies attempt to "comply" with the District's proposed, but unarticulated, new MOB-04 measure at some point in the future. Such an approach, however, is inconsistent with, and in violation of, many fundamental rules and policies required by CEQA (*e.g.,* failure to identify and analyze the whole of the project, improper project "segmentation," improper deferral of impact analysis and mitigation, failure to identify and evaluate project alternatives). 4-3

Because of the current structure of MOB-04, it is clear that the approaches and concepts considered for MOB-04 may be changed based on comments from the working group. In light of the District's initiative in forming an "airport working group" to help formulate the proposed measure, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after any actual measure is developed and to delete the measure from current consideration in the AQMP. This is particularly important, because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by the California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement, if approved by the U.S. Environmental Protection Agency (EPA). The SCAQMD is required to fully disclose the details of Measure MOB-04 before adoption, and CEQA requires a full disclosure and discussion, which SCAQMD has failed to do in the Draft EIR. 4-4

Second, although the Draft EIR does not provide emissions targets for proposed MOB-04 (which omission itself is a defect), it appears that regulation will be triggered by failure to meet 4-5

set emission targets for future years. The Airport is concerned about, among others, what these emission targets will be and how the District set the emissions inventory. These examples are provided to illustrate that the Draft EIR's description of the proposed measure is not only flawed but missing altogether.

4-5 cont.

Third, to the extent the SCAQMD intends to approve the Draft EIR and AQMP containing the vague current version of MOB-04, and later, as a part of future rulemaking, provide details regarding its proposed actions against airports including an environmental analysis, that would be segmentation or piecemealing of its CEQA analysis. More specifically, it appears that proposed MOB-04 is intended to require actions by the airports in the Basin to adopt and implement strategies to address emission reductions. The Draft EIR improperly fails to address or to provide any information and analysis relating to the environmental impacts of the anticipated subsequent approvals, discretionary actions, and possible future regulations that appear to be proposed as parts of MOB-04, or the physical environmental effects of social or economic impacts that may result [CEQA Guidelines Section 15063]. Such anticipated and intended actions by other governmental agencies therefore appear to be part of this project and must be identified and evaluated in the Draft EIR, along with the potential impacts. The District has failed to fully disclose the details of Measure MOB-04 and as a result is segmenting or piecemealing its CEQA analysis.

4-6

Fourth, it is critical under CEQA that any level of environmental review makes clear the "baseline" being used as the basis for analysis of the significance of potential project impacts [CEQA Guidelines 15125(a)]. The Draft EIR fails to make it clear as to what "baseline" is being used and what data it will use for the estimated projected reductions that may occur through implementation of control measures. In many places the Draft EIR compares the anticipated impacts to the permitted emissions levels anticipated in the future under the 2016 AQMP, rather than to the existing environmental conditions. The Draft EIR must be revised to accurately and consistently describe the baseline being used.

4-7

Fifth, Measure MOB-04 has serious problems of infeasibility which the Draft EIR has failed to analyze. Measure MOB-04 in effect arguably attempts to convert the various goals of airports in the Basin into enforceable regulation against the airports. However, because the airports are not air regulators and they do not themselves own, operate, or control much of the emissions equipment operated by the airport industry, there are legal feasibility questions that must be discussed in the Draft EIR. In addition, the District does not have the legal authority to compel the airports in the Basin to exercise their discretion in particular ways, such as to impose clean fleet rules, to achieve District objectives.

4-8

At a minimum, the Draft EIR must address the issue of whether the proposed MOB-04 is being proposed in order to accomplish something indirectly that SCAQMD cannot do directly. *See*

4-9

e.g., Perry v. Brown (2011) 52 Cal.4th 1116, 1126 (public officials are not permitted to do indirectly that which they are prohibited from doing directly); *Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 434. These issues of infeasibility and legality have been addressed at length in previous Airport comment letters to the District. The Draft EIR must be revised to cite to any authority the District is relying on for its processing of the proposed measure so that the public can comment on whatever legal authority may be invoked by the District. Until the legal authority is identified and shown to be legally authorized, how can the CEQA analysis for measure MOB-04 be undertaken? The Draft EIR is flawed and legally inadequate in its failure to discuss these infeasibility issues.

Further, to the extent the Draft EIR relies on vague disclaimers to the effect that proposed MOB-04 would not require any measure that lacks legal authority or feasibility, such disclaimers raise more questions than they answer. Whatever types of emission reduction plans may be anticipated by MOB-04 should be identified by the District in the Draft EIR so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

4-9 cont.

Sixth, the draft AQMP refers to some emission reduction strategies, such as fleet and facility modernization, reductions in emissions from ground support equipment, zero emission airport shuttle buses, and possible mitigation fees and clean fleet rules, but the Draft EIR does not explain how these may relate to proposed MOB-04, or whether they should be considered part of the Project. Such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of the Airport users that themselves would require analysis or mitigation. Any such contemplated implementation strategies should be included in the project description and better identified in a more complete Draft EIR, so that they may be evaluated along with the rest of the project.

4-10

Seventh, and finally, the Draft EIR should be revised to include a broad-based analysis of the socioeconomic effects of the proposed measure MOB-04, including the potential for job loss, business closures, and diversion of passenger and cargo demand to other airports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the measure, even if future regulatory action is not taken, and the possible future enforcement of the measure. Because these conditions have the potential to physically change the environment in and around the airports, these impacts should be identified and assessed in the Draft EIR. [CEQA Guidelines 15064(e) and 15131.] This assessment should not be limited to businesses and operations at the airports in the Basin, but should extend to those facilities, businesses, and operations that while located outside of the airport are dependent upon the flow of passenger and cargo service at the airports.

4-11

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In closing, we believe that the Draft EIR has provided a narrow and legally inadequate environmental analysis that is not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis thereby thwarting effective public review and comment. The Draft EIR must therefore be revised, corrected, and re-circulated to provide the relevant decision-makers, affected public agencies, and the public generally with sufficient analysis as required by CEQA. 4-12

If you have any questions regarding the comments set forth in this letter, please do not hesitate to contact me at your convenience.

Very truly yours,

Lori D. Ballance
of
Gatzke Dillon & Ballance LLP

LDB/rlf

cc: David Salardino, California Air Resources Board
Rhonda Runyon, California Air Resources Board
Jessica Witt, Deputy Chief Operating Officer
Barry Rondinella, Airport Director
Melinda McCoy, Airport Environmental Engineer

Responses to Comment Letter #4 – GDB- John Wayne Airport

Comment 4-1

This letter is submitted on behalf of John Wayne Airport, Orange County (Airport or JWA) and contains the Airport's written comments on the Draft Program Environmental Impact Report (Draft EIR) for the proposed 2016 Air Quality Management Plan (2016 AQMP), issued by the South Coast Air Quality Management District (SCAQMD or District) in September 2016. The Airport appreciates the opportunity to continue to work constructively and cooperatively with the SCAQMD in evaluating and developing realistic airport emission reduction strategies for the proposed 2016 AQMP and analyzing the potential environmental impacts of the proposed measures.

Response 4-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR.

Comment 4-2

The Airport has achieved success in obtaining substantial emission reductions from their air quality measures implemented over the past decade and the Airport continues to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Airport must fundamentally disagree with any proposal by the District to convert these measures into a possible regulatory indirect source rule and must reiterate its concerns relating to AQMP Control Measure MOB-04 (Emission Reductions at Commercial Airports). As the District knows from prior comment letters submitted by the Airport on the 2016 AQMP, which are incorporated by this reference, the Airport believes that the possible conversion of Measure MOB-04 into an indirect source rule would exceed the SCAQMD's legal authority for the reasons set forth in the referenced letters.[1] Proposed Measure MOB-04 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the requirements of the California Environmental Quality Act (CEQA).

[1] The comment letters submitted to the SCAQMD regarding the 2016 AQMP include, but are not limited to the following: (i) letter dated October 8, 2014 from John Wayne Airport to Mr. Randall Pasek regarding 2016 AQMP LTO data; (ii) letter dated July 28, 2015 from Burbank-Glendale-Pasadena Airport Authority, John Wayne Airport, Long Beach Airport and Los Angeles World Airports to Mr. Henry Hogo regarding the 2016 AQMP White Papers; (iii) letter dated August 4, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Ms. Jillian Wong regarding the Notice of Preparation of a Draft Program EIR; (iv) letter dated August 19, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Mr. Michael Krause regarding the Draft 2016 AQMP; and (v) letter dated November 7, 2016 from Ms. Lori Ballance, Gatzke Dillon & Ballance LLP to Mr. Michael Krause regarding the Revised Draft 2016 AQMP.

Response 4-2

The comment raises concern with MOB-04 – Emission Reductions at Commercial Airports. As explained in Subchapter 2.8.2.2 of the Draft Program EIR, "Due to projected increases in airline passenger transportation and expansion of operations at various commercial airports, potential increases in emissions may result unless the increased emissions are fully mitigated. Several airport authorities are implementing emissions mitigation measures, while other airports have initiated actions that can lead to additional emission reductions. This measure seeks to quantify such actions and identify additional actions that can lead to additional emission reductions to assist in attainment of federal air quality standards and reduce local exposure to air toxic emissions.

Quantified emission reductions that are real, surplus, permanent, and enforceable will be reflected in future emissions inventories as part of the Rate-of-Progress reporting requirements or in baseline emission inventories as part of future AQMP/SIP development. In addition, such emission reductions can be used for general conformity purposes. A working group will be convened with affected stakeholders to discuss airport emissions related issues and provide input to identify actions and develop mechanisms to implement this measure. To the extent that the identified actions are voluntary in nature and are sustained over a long-term basis and the emission reduction levels are maintained, the emission reductions may be credited as surplus reductions (as defined by the U.S. EPA) into the SIP. If emission reductions are to be included in the SIP, enforceable commitments to ensure that the emissions are permanent will need to be made and may be in the form of a regulation adopted by the SCAQMD within its legal authority or by other enforceable mechanisms." The comment also refers to the comment letter submitted previously on the NOP/IS. That letter is identified as Letter A-8 and responses to those comments were contained in Appendix B of the Draft Program EIR.

Comment 4-3

> First, proposed Measure MOB-04, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description making it impossible for the SCAQMD, the Airport, or the public to assess its potential environmental impacts. An EIR must describe the whole of the action, or the entirety of a project, including reasonably foreseeable actions that are part of a project, and must analyze the impacts of those reasonably foreseeable actions. Although the District continues to indicate that the exact impacts resulting from the particular methods that will be used under MOB-04 can only be determined in the future as the measure is developed into a rule or regulation and adopted, it is clear that the District has already commenced the rule development process and will continue this process with an "MOB-04 working group." The Draft EIR does not provide a description of how the proposed measure would work. It fails to describe reasonably foreseeable activities or action of other agencies in response to or associated with the proposed measure. The Draft EIR instead suggests that the intent of the proposed measure would be to delegate the District's responsibilities for regulating or reducing emissions to other agencies, specifically the public officials governing airports in the Basin, and appears to imply that any informed public discussion and environmental review on this course of action be deferred until those other agencies attempt to "comply" with the District's proposed, but unarticulated, new MOB-04 measure at some point in the future. Such an approach, however, is inconsistent with, and in violation of, many fundamental rules and policies required by CEQA (*e.g.*, failure to identify and analyze the whole of the project, improper project "segmentation," improper deferral of impact analysis and mitigation, failure to identify and evaluate project alternatives).

Response 4-3

The adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. This comment does not provide evidence to support the claim that the project description in the Draft Program EIR does not describe reasonably foreseeable activities associated with the control measure. The comment does not provide evidence that SCAQMD has commenced

the rule development process. As noted by the comment, the formation of a working group is one of the first steps to rulemaking, when the interested stakeholders and the public are invited to join the working group, which would be involved in providing SCAQMD staff with feedback during rulemaking. Therefore, contrary to the comment, the identification of a MOB-04 working group does not imply that the rulemaking process for MOB-04 has begun and that the Draft Program EIR has failed to properly include reasonably foreseeable actions related to MOB-04. Potential impacts were estimated using the control measure descriptions in the Draft 2016 AQMP. These control measures, including MOB-04, were analyzed on a programmatic level, not deferred, as the comment suggests. As stated previously, any future regulatory action by the SCAQMD would require further CEQA evaluation at that time.

Comment 4-4

Because of the current structure of MOB-04, it is clear that the approaches and concepts considered for MOB-04 may be changed based on comments from the working group. In light of the District's initiative in forming an "airport working group" to help formulate the proposed measure, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after any actual measure is developed and to delete the measure from current consideration in the AQMP. This is particularly important, because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by the California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement, if approved by the U.S. Environmental Protection Agency (EPA). The SCAQMD is required to fully disclose the details of Measure MOB-04 before adoption, and CEQA requires a full disclosure and discussion, which SCAQMD has failed to do in the Draft EIR.

Response 4-4

As noted above in Response 4-3, MOB-04 is analyzed programmatically in the Draft Program EIR. SCAQMD staff agrees with the comment that specific control measures such as MOB-04 may need to go through a rulemaking process in the future and environmental impacts associated with the proposed rulemaking will be further evaluated at that time, in the light of the Program EIR. SCAQMD staff will work with affected parties to develop enforceable mechanisms to ensure that the resulting emission reductions remain permanent if the reductions are proposed to be included in the SIP.

Comment 4-5

> Second, although the Draft EIR does not provide emissions targets for proposed MOB-04 (which omission itself is a defect), it appears that regulation will be triggered by failure to meet set emission targets for future years. The Airport is concerned about, among others, what these emission targets will be and how the District set the emissions inventory. These examples are provided to illustrate that the Draft EIR's description of the proposed measure is not only flawed but missing altogether.

Response 4-5

Emission reduction targets are not specified for MOB-04 because staff is seeking to identify additional actions through a public process to help meet the State SIP Strategy emission reduction commitment.

The emissions inventory relied upon in the Draft Program EIR is based on the most recent information from CARB. For example, after the release of the Draft 2016 AQMP in June, SCAQMD staff revised aircraft emissions, as newer data reflecting SCAG's newest growth forecast was received. Staff continually seeks to improve the emissions inventory so the most accurate data is included in the Final 2016 AQMP and submitted to U.S. EPA as part of the 2016 AQMP in compliance with CAA requirements.

Additionally, there was a typo on the CARB 2016 SIP Strategy document. The 2023 emission reductions associated with aircraft category is 11 TPD, not 17 TPD. This is reflected in the Draft Final 2016 AQMP.

Comment 4-6

> Third, to the extent the SCAQMD intends to approve the Draft EIR and AQMP containing the vague current version of MOB-04, and later, as a part of future rulemaking, provide details regarding its proposed actions against airports including an environmental analysis, that would be segmentation or piecemealing of its CEQA analysis. More specifically, it appears that proposed MOB-04 is intended to require actions by the airports in the Basin to adopt and implement strategies to address emission reductions. The Draft EIR improperly fails to address or to provide any information and analysis relating to the environmental impacts of the anticipated subsequent approvals, discretionary actions, and possible future regulations that appear to be proposed as parts of MOB-04, or the physical environmental effects of social or economic impacts that may result [CEQA Guidelines Section 15063]. Such anticipated and intended actions by other governmental agencies therefore appear to be part of this project and must be identified and evaluated in the Draft EIR, along with the potential impacts. The District has failed to fully disclose the details of Measure MOB-04 and as a result is segmenting or piecemealing its CEQA analysis.

Response 4-6

As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development

and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. This is the proper use of a programmatic EIR. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) This is not considered "segmenting" or "piecemealing" the CEQA analysis and the comment provides no evidence to support its claim.

Comment 4-7

Fourth, it is critical under CEQA that any level of environmental review makes clear the "baseline" being used as the basis for analysis of the significance of potential project impacts [CEQA Guidelines 15125(a)]. The Draft EIR fails to make it clear as to what "baseline" is being used and what data it will use for the estimated projected reductions that may occur through implementation of control measures. In many places the Draft EIR compares the anticipated impacts to the permitted emissions levels anticipated in the future under the 2016 AQMP, rather than to the existing environmental conditions. The Draft EIR must be revised to accurately and consistently describe the baseline being used.

Response 4-7

2012 is the baseline year used for the emissions inventory to develop the control strategy and future baseline emissions for the 2016 AQMP. The latest verifiable air quality data (from approved air quality monitoring sites) is from 2015, which can be found in Chapter 2 of the 2016 AQMP and Subchapter 3.2 of the Draft Program EIR. The most recent environmental topic data from 2016 was used for the CEQA baseline in determining environmental impacts in other environmental topic areas because that was the time of the release of the NOP/IS. The baseline used was described in Subchapter 3.2.1 of the Draft Program EIR and no revisions are necessary.

Comment 4-8

Fifth, Measure MOB-04 has serious problems of infeasibility which the Draft EIR has failed to analyze. Measure MOB-04 in effect arguably attempts to convert the various goals of airports in the Basin into enforceable regulation against the airports. However, because the airports are not air regulators and they do not themselves own, operate, or control much of the emissions equipment operated by the airport industry, there are legal feasibility questions that must be discussed in the Draft EIR. In addition, the District does not have the legal authority to compel the airports in the Basin to exercise their discretion in particular ways, such as to impose clean fleet rules, to achieve District objectives.

Response 4-8

The Draft Program EIR evaluated the environmental impacts of implementing the control measures proposed in the 2016 AQMP, regardless of how the emissions reductions would be achieved (regulatory, incentive and co-benefit approaches). The comment does not provide evidence of the infeasibility which was not analyzed. Control measure MOB-04 is proposed to help meet the State SIP Strategy "Further Deployment of Cleaner Technologies" measures emission reductions. The measures seek to work collaboratively with affected stakeholders and the public to identify actions that could help achieve the State SIP Strategy emission reductions. A working group will be created to help implement the measures. SCAQMD staff welcomes John Wayne Airport's participation on the working group. Any future proposed regulatory action by the SCAQMD will be within its legal authority.

Comment 4-9

At a minimum, the Draft EIR must address the issue of whether the proposed MOB-04 is being proposed in order to accomplish something indirectly that SCAQMD cannot do directly. *See e.g., Perry v. Brown* (2011) 52 Cal.4th 1116, 1126 (public officials are not permitted to do indirectly that which they are prohibited from doing directly); *Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 434. These issues of infeasibility and legality have been addressed at length in previous Airport comment letters to the District. The Draft EIR must be revised to cite to any authority the District is relying on for its processing of the proposed measure so that the public can comment on whatever legal authority may be invoked by the District. Until the legal authority is identified and shown to be legally authorized, how can the CEQA analysis for measure MOB-04 be undertaken? The Draft EIR is flawed and legally inadequate in its failure to discuss these infeasibility issues.

Further, to the extent the Draft EIR relies on vague disclaimers to the effect that proposed MOB-04 would not require any measure that lacks legal authority or feasibility, such disclaimers raise more questions than they answer. Whatever types of emission reduction plans may be anticipated by MOB-04 should be identified by the District in the Draft EIR so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Response 4-9

Staff believes that SCAQMD has the legal authority to regulate indirect sources as recognized by *Nat. Ass'n. of Home Builders v. San Joaquin Valley Unif. APCD*, 627 F. 3d 730 (9th Cir. 2009). Moreover, EPA's former indirect source regulation specifically identified airports as a type of indirect source. *See* "Indirect Source Controls: An Intersection of Air Quality Management and Land Use Regulation," Loyola of Los Angeles Law Review, 6-1-91, p. 1133. The 9th Circuit Court of Appeals rejected the contention that indirect source controls were preempted by the CAA's provisions regarding mobile sources. With regard to any other potentially preemptive federal statute, we note that once the measure is approved into the SIP, it would be entitled to be harmonized with the provisions of that federal statute and upheld wherever possible. *Ass'n of Am. Railroads v. S. Coast AQMD*, 622 F. 3d 1094 (9th Cir. 2010). With regard to the airport's authority as a proprietor, this issue will be discussed further during the working group process to the extent there is a desire to rely on such authority. This comment raises no specific comments on the adequacy of the environmental analysis under CEQA.

Comment 4-10

Sixth, the draft AQMP refers to some emission reduction strategies, such as fleet and facility modernization, reductions in emissions from ground support equipment, zero emission airport shuttle buses, and possible mitigation fees and clean fleet rules, but the Draft EIR does not explain how these may relate to proposed MOB-04, or whether they should be considered part of the Project. Such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of the Airport users that themselves would require analysis or mitigation. Any such contemplated implementation strategies should be included in the project description and better identified in a more complete Draft EIR, so that they may be evaluated along with the rest of the project.

Response 4-10

The Draft Program EIR analyzed the environmental impacts from all proposed control measures in the 2016 AQMP on a programmatic level. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) The comment does not provide specific examples of which emission reduction strategies in the 2016 AQMP were not analyzed in the Draft Program EIR. Therefore, no further response is necessary under CEQA.

Comment 4-11

> Seventh, and finally, the Draft EIR should be revised to include a broad-based analysis of the socioeconomic effects of the proposed measure MOB-04, including the potential for job loss, business closures, and diversion of passenger and cargo demand to other airports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the measure, even if future regulatory action is not taken, and the possible future enforcement of the measure. Because these conditions have the potential to physically change the environment in and around the airports, these impacts should be identified and assessed in the Draft EIR. [CEQA Guidelines 15064(e) and 15131.] This assessment should not be limited to businesses and operations at the airports in the Basin, but should extend to those facilities, businesses, and operations that while located outside of the airport are dependent upon the flow of passenger and cargo service at the airports.

Response 4-11

A socioeconomic analysis is not within the CEQA scope of analysis. However, in an effort to provide information to the public, a socioeconomic analysis was conducted for the 2016 AQMP and is available here: http://www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan/socioeconomic-analysis. The socioeconomic analysis evaluated the regional impacts of the entire 2016 AQMP and does not provide a breakdown of effects by control measure. During future rulemaking, SCAQMD staff will conduct both a CEQA and Socioeconomic analysis of the proposed rules, where applicable and as suggested by the comment.

Comment 4-12

> In closing, we believe that the Draft EIR has provided a narrow and legally inadequate environmental analysis that is not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis thereby thwarting effective public review and comment. The Draft EIR must therefore be revised, corrected, and re-circulated to provide the relevant decision-makers, affected public agencies, and the public generally with sufficient analysis as required by CEQA.
>
> If you have any questions regarding the comments set forth in this letter, please do not hesitate to contact me at your convenience.

Response 4-12

This comment is a summary of previous comments made throughout the letter, which have been responded to. As explained previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a

Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. Since the Draft 2016 AQMP was released on June 30, 2016, SCAQMD staff has released the Revised Draft 2016 AQMP on October 7, 2016 and the Draft Final 2016 AQMP on December 2, 2016. SCAQMD staff reviewed the changes in each of those documents and found that, pursuant to CEQA Guidelines Section 15088.5, any changes to the project description did not constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation. Therefore, no further response is necessary under CEQA.

SOUTHERN CALIFORNIA EDISON®
An EDISON INTERNATIONAL® Company

Kelly Henderson
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November 15, 2016

VIA ELECTRONIC DELIVERY (mkrause@aqmd.gov)

Michael Krause
Program Supervisor
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Comments on Draft Program Environmental Impact Report for the 2016 Air Quality Management Plan

Dear Mr. Krause:

Southern California Edison (SCE) is hereby providing additional comments pertaining to one particular aspect of the Draft Environmental Impact Report ("Draft EIR") for the 2016 Air Quality Management Plan ("2016 AQMP") for the South Coast Air Quality Management District ("SCAQMD"). These comments are in addition to other comments provided by SCE pertaining to other aspects of the Draft EIR. 5-1

The Draft EIR correctly points out that certain control measures contained in the 2016 AQMP will result in installation of additional selective catalytic reduction ("SCR") emissions-control systems utilizing ammonia injection. As a result, the Draft EIR analyzes the potential impacts associated with increased use and transport of ammonia within the SCAQMD. The Draft EIR states that the typical concentration of ammonia used in SCR is 19% (see, e.g., pp. 3.4-21 and 3.4-30). While this is generally true, certain existing and proposed enhanced emissions-control systems may utilize a higher concentration of ammonia (up to 29%). The Draft EIR should acknowledge and analyze the potential impacts associated with the use and transport of higher-concentration ammonia. 5-2

An example of such use is in enhanced emission control systems currently planned for multiple "peaking" electrical generating facilities located throughout the SCAQMD. This advanced SCR improves the deliverability of ammonia to the catalyst through changes to the ammonia injection grid and use of 29% aqueous ammonia. These enhancements increase the emissions-control efficiency of the SCR. 5-3

One of the advantages of these enhanced emission control systems is that they improve grid reliability and integration of renewable energy resources. This is accomplished by improving the ability of the emission control systems to control NOx emissions from the combustor, allowing the turbines to operate over a wider operating range, including lower operating levels, with faster ramping capability throughout the operating range. This provides the California grid operator with

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more options for dispatching the facilities to meet very specific needs related to grid stability and the integration of intermittent renewable energy resources (solar and wind). This means that facilities need not be dispatched at load levels higher than needed to maintain grid reliability in order to maintain compliance with emission limits that typically can only be achieved at higher operating levels. This, in turn, means less fuel consumption and lower emissions.

Another advantage of these enhancements is reduced water consumption in emission control systems that rely on water injection in the combustor to control NOx emissions. The enhancements involve reconfiguring the emissions-control system to increase the catalyst surface area and improve ammonia distribution in order to enhance control of NOx emissions. As a result, the NOx concentration from the combustor can increase while still maintaining controlled emissions within required limits. Thus, the enhanced configuration does not require as much water injection for the initial control of NOx from the combustor. The lower water-injection rate in the emissions-control systems will mean that less water is consumed – which supports California's goal to reduce water usage.

5-3 cont.

While use of higher-concentration ammonia is not expected to be widespread, it can offer significant advantages in certain applications, and its use and transport should be addressed in the Draft EIR. This does not significant modifications to the Draft EIR's analysis. The Draft EIR concludes that storage of ammonia is not anticipated to result in significant adverse impacts after implementation of appropriate project design features and mitigation measures (see, Draft EIR, Section 4.3.4.3). Construction of the vessels and foundations in accordance with the California Building Code requirements helps structures to resist major earthquakes without collapse. As required by U.S. EPA's spill prevention control and countermeasure regulations, all facilities are required to have emergency spill containment equipment and implement spill control measures if necessary. Storage tanks typically have secondary containment such as a berm, which would be capable of containing 110 percent of the contents of the storage tanks. Therefore, should a rupture occur, the contents of the tank would be collected within the containment system and pumped to an appropriate storage tank. This is true for 29% ammonia as much as it is for 19% ammonia.

5-4

With respect to transport of ammonia to facilities, the Draft EIR correctly points out the extensive regulations applied to the shipment of hazardous materials on California highways on both the federal and state level to ensure the safe transport of ammonia, including the Hazardous Material Transportation Act (HMTA), adopted in 1975 (*see* 49 U.S.C. §§5101 – 5127), and regulations promulgated by the United States Department of Transportation (U.S. DOT) (*see* 49 CFR Parts 171-180) which oversees the movement of hazardous materials at the federal level. U.S. DOT regulations require all tanker truck trailers carrying aqueous ammonia to meet strict requirements for collision and accident prevention. The ammonia tanker trucks are designed to withstand violent accidents without breach of the primary containment. The Draft EIR concludes that notwithstanding these measures, the impacts associated with a potential release as a result of an accident are significant and cannot be fully mitigated (see, Draft EIR, pp. 4.3-39 and 4.3-41). While SCE does not necessarily agree with the conclusion that transport of ammonia presents a significant impact, including consideration of 29% ammonia in the analysis will not alter the conclusion in the Draft EIR with respect to this issue.

SCE appreciates the opportunity to comment on this important aspect of the Draft EIR. Should you have additional questions, we would be happy to meet with you at your earliest convenience. Please contact me at (626) 302-4411 with any questions. 5-5

Sincerely,

Kelly Henderson

Kelly Henderson

KO:ig

Responses to Comment Letter #5 – Southern California Edison

Comment 5-1

> Southern California Edison (SCE) is hereby providing additional comments pertaining to one particular aspect of the Draft Environmental Impact Report ("Draft EIR") for the 2016 Air Quality Management Plan ("2016 AQMP") for the South Coast Air Quality Management District ("SCAQMD"). These comments are in addition to other comments provided by SCE pertaining to other aspects of the Draft EIR.

Response 5-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR.

Comment 5-2

> The Draft EIR correctly points out that certain control measures contained in the 2016 AQMP will result in installation of additional selective catalytic reduction ("SCR") emissions-control systems utilizing ammonia injection. As a result, the Draft EIR analyzes the potential impacts associated with increased use and transport of ammonia within the SCAQMD. The Draft EIR states that the typical concentration of ammonia used in SCR is 19% (see, e.g., pp. 3.4-21 and 3.4-30). While this is generally true, certain existing and proposed enhanced emissions-control systems may utilize a higher concentration of ammonia (up to 29%). The Draft EIR should acknowledge and analyze the potential impacts associated with the use and transport of higher-concentration ammonia.

Response 5-2

Based on a review of permits issued for SCRs, the typical concentration of ammonia used in SCRs is 19 percent. However, as the comment notes, there are certain situations where the use of a higher concentration of ammonia could be used. For those specific projects, additional CEQA review would be necessary to fully evaluate the potentially significant impacts prior to issuance of any SCAQMD permits. The Draft Program EIR concludes that there could be significant impacts associated with a potential release of ammonia as a result of an accident which cannot be fully mitigated. This would certainly remain true for projects using higher concentrations of ammonia, and therefore, would not alter any conclusions reached in the Draft Program EIR. Since it is not foreseeable that typical SCRs would use a higher concentration of ammonia, the Draft Program EIR appropriately analyzed the potential impacts from the use of 19 percent ammonia.

Comment 5-3

An example of such use is in enhanced emission control systems currently planned for multiple "peaking" electrical generating facilities located throughout the SCAQMD. This advanced SCR improves the deliverability of ammonia to the catalyst through changes to the ammonia injection grid and use of 29% aqueous ammonia. These enhancements increase the emissions-control efficiency of the SCR.

One of the advantages of these enhanced emission control systems is that they improve grid reliability and integration of renewable energy resources. This is accomplished by improving the ability of the emission control systems to control NOx emissions from the combustor, allowing the turbines to operate over a wider operating range, including lower operating levels, with faster ramping capability throughout the operating range. This provides the California grid operator with more options for dispatching the facilities to meet very specific needs related to grid stability and the integration of intermittent renewable energy resources (solar and wind). This means that facilities need not be dispatched at load levels higher than needed to maintain grid reliability in order to maintain compliance with emission limits that typically can only be achieved at higher operating levels. This, in turn, means less fuel consumption and lower emissions.

Another advantage of these enhancements is reduced water consumption in emission control systems that rely on water injection in the combustor to control NOx emissions. The enhancements involve reconfiguring the emissions-control system to increase the catalyst surface area and improve ammonia distribution in order to enhance control of NOx emissions. As a result, the NOx concentration from the combustor can increase while still maintaining controlled emissions within required limits. Thus, the enhanced configuration does not require as much water injection for the initial control of NOx from the combustor. The lower water-injection rate in the emissions-control systems will mean that less water is consumed – which supports California's goal to reduce water usage.

Response 5-3

The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 5-4

While use of higher-concentration ammonia is not expected to be widespread, it can offer significant advantages in certain applications, and its use and transport should be addressed in the Draft EIR. This does not significant modifications to the Draft EIR's analysis. The Draft EIR concludes that storage of ammonia is not anticipated to result in significant adverse impacts after implementation of appropriate project design features and mitigation measures (see, Draft EIR, Section 4.3.4.3). Construction of the vessels and foundations in accordance with the California Building Code requirements helps structures to resist major earthquakes without collapse. As required by U.S. EPA's spill prevention control and countermeasure regulations, all facilities are required to have emergency spill containment equipment and implement spill control measures if necessary. Storage tanks typically have secondary containment such as a berm, which would be capable of containing 110 percent of the contents of the storage tanks. Therefore, should a rupture occur, the contents of the tank would be collected within the containment system and pumped to an appropriate storage tank. This is true for 29% ammonia as much as it is for 19% ammonia.

With respect to transport of ammonia to facilities, the Draft EIR correctly points out the extensive regulations applied to the shipment of hazardous materials on California highways on both the federal and state level to ensure the safe transport of ammonia, including the Hazardous Material Transportation Act (HMTA), adopted in 1975 (*see* 49 U.S.C. §§5101 – 5127), and regulations promulgated by the United States Department of Transportation (U.S. DOT) (*see* 49 CFR Parts 171-180) which oversees the movement of hazardous materials at the federal level. U.S. DOT regulations require all tanker truck trailers carrying aqueous ammonia to meet strict requirements for collision and accident prevention. The ammonia tanker trucks are designed to withstand violent accidents without breach of the primary containment. The Draft EIR concludes that notwithstanding these measures, the impacts associated with a potential release as a result of an accident are significant and cannot be fully mitigated (see, Draft EIR, pp. 4.3-39 and 4.3-41). While SCE does not necessarily agree with the conclusion that transport of ammonia presents a significant impact, including consideration of 29% ammonia in the analysis will not alter the conclusion in the Draft EIR with respect to this issue.

Response 5-4

Based on a review of permits issued for SCRs, the typical concentration of ammonia used in SCRs is 19 percent. However, as the comment notes, there are certain situations where the use of a higher concentration of ammonia could be used. For those specific projects, additional CEQA review would be necessary to fully evaluate the potentially significant impacts prior to issuance of any SCAQMD permits. The Draft Program EIR concludes that there could be significant impacts associated with a potential release of ammonia as a result of an accident which cannot be fully mitigated. This would certainly remain true for projects using higher concentrations of ammonia, and therefore, would not alter any conclusions reached in the Draft Program EIR. Since it is not foreseeable that typical SCRs would use a higher concentration of ammonia, the Draft Program EIR appropriately analyzed the potential impacts from the use of 19 percent ammonia.

Comment 5-5

SCE appreciates the opportunity to comment on this important aspect of the Draft EIR. Should you have additional questions, we would be happy to meet with you at your earliest convenience. Please contact me at (626) 302-4411 with any questions.

Response 5-5
This comment does not raise any issues regarding the Draft Program EIR and no response is necessary under CEQA.

THE PORT OF LOS ANGELES 425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Eric Garcetti *Mayor, City of Los Angeles*

Board of Harbor Commissioners: Ambassador Vilma S. Martinez *President*; David Arian *Vice President*; Patricia Castellanos; Anthony Pirozzi, Jr.; Edward R. Renwick

Eugene D. Seroka *Executive Director*

November 15, 2016

Jillian Wong
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Ms. Wong:

SUBJECT: DRAFT 2016 AIR QUALITY MANAGEMENT PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT (PEIR)

The City of Los Angeles Harbor Department (Harbor Department) appreciates the opportunity to participate in the 2016 Air Quality Management Plan (AQMP) Advisory Committee and to provide these comments regarding the Draft Program Environmental Impact Report (PEIR).

A PEIR by definition is broad and often unable to quantify impacts to a refined level of detail. The Harbor Department recognizes this and requests and assumes that further California Environmental Quality Act (CEQA) review will be conducted by the Lead Agency when project-specific analyses are tiered off of this document for individual development. As you know, CEQA requires that the direct or indirect effects of a project on the environment should be identified and described, with consideration given to both short- and long-term impacts. The discussion of environmental impacts may include, but is not limited to, the resources involved; physical changes; alterations of ecological systems; health and safety impacts caused by physical changes; and other aspects of the resource base, including water quality, public services, etc. 6-1

The following are our comments related to the specific resources areas found in the Draft PEIR:

AIR QUALITY IMPACTS

Construction Impacts

Section 4.1 of the Draft PEIR evaluates potential air quality impacts from the 2016 AQMP. Construction-related impacts were identified for several port-related measures including MOB-01, MOB-02, ORFIS-01, ORFIS-04, ORFIS-05 as well as TXM-04 related to the construction of control equipment at stationary sources. 6-2

Table 4.1-3 highlights the peak daily construction emissions for the installation of one single control device in the South Coast Air Basin (Basin). However, there appears to be no quantification of overall construction for infrastructure changes necessary to provide support for cleaner equipment or vehicles. Please provide more detail on Table 4.1-3 and what constitutes a control device in the analysis. Please further provide an estimate of construction-related emissions from significant infrastructure improvements; particularly as they pertain to the San Pedro Bay Complex. 6-2 cont.

Operational Impacts

The Draft PEIR states the following:

Control measures MOB-01, MOB-02, MOB-04, MOB-05, MOB-06, MOB-07, MOB-09, MOB-10, MOB-13, MOB-14, EGM-01, ORLD-01, ORLD-03, ORHD-02, ORHD-04, ORHD-05, ORHD-06, ORHD-07, ORHD-08, ORHD-09, ORFIS-01, ORFIS-05, OFFS-04, OFFS-07, and OFFS-08 have the potential to increase the use of alternative fuels such as biodiesel, LNG, CNG, ethanol, and hydrogen. The availability of the producers of alternative fuels to meet the increase in demand has the potential for an increase in emissions associated with the increased production.[1]

This section then concludes with the statement that "in general, the 2016 AQMP mobile source control measures are expected to result in emission reductions."[2] There appears to be no quantification or substantiation of this statement. An estimate of the production increases and associated emissions should have been provided rather than a qualitative comparison between gasoline and diesel fuel. 6-3

Similar to the use of alternative fuels, the Draft PEIR discusses the conversion to electric vehicles and the use of electricity for control technology and infrastructure changes and improvements. The document states that "the associated emissions from the increased electricity generation needed to meet this projected energy demand have been included in the emissions inventory of the 2016 AQMP."[3] These emission estimates should be provided in the PEIR so that a thorough evaluation can occur.

GREENHOUSE GAS EMISSIONS (GHGS)

The analysis shows a qualitative reduction in GHGs from implementation of the control measures contained in the PEIR including several that pertain to the San Pedro Bay Complex. It is important that the PEIR show how compliance with these measures would be consistent with applicable local, regional and state plans and policies that set goals for reduction of GHGs. 6-4

[1] SCAQMD, Draft PEIR, page 4.1-40.
[2] SCAQMD, Draft PEIR, page 4.1-40.
[3] SCAQMD, Draft PEIR, page 4.1-24.

While it is difficult for quantification to occur at this programmatic level of analysis, the Harbor Department requests that this quantification be provided during each measure's individual rule development and associated CEQA process. Further, a reduction in petroleum fuel usage was estimated and provided for several measures but it is unclear where these estimates were derived. Further, please clarify what the Estimated Increase in Vehicles is referring to in Table 4.1-5 and how this estimate was derived along with the associated fuel usage. The table appears to assume that all source categories are utilizing significant quantities of petroleum fuel rather than any alternative fuel options. It also assumes that there will be a significant increase in "vehicles" under such categories as truck refrigeration units (TRU), forklifts, and ground support equipment. Please provide the estimate of how this increase was derived.

6-4 cont.

ENERGY IMPACTS

The Draft PEIR indicates that the AQMP may increase the usage of electricity or alternative fuels such as natural gas as part of implementation of several proposed control measures. As commented above under Air Quality Impacts, more details need to be provided during the rule development process for specific control measures. If additional power plants or the increased production of alternative fuels is necessary, the construction-related and operational emissions associated with the increased production should be quantified and included in the individual rule assessments and associated CEQA documentation for the individual control measures.

6-5

HAZARD IMPACTS

The Draft PEIR estimates that ammonia storage will be needed to implement those control measures that require the use of Selective Catalytic Reduction, Non-Selective Catalytic Reduction and Dry Gas Scrubbers. Port-related measures ORFIS-01 and ORFIS-03 were both identified as measures that would require the use (and storage) of ammonia. Because ammonia is not something traditionally stored in large quantities at the Port of Los Angeles (Port), we respectfully request additional information as to how the tank sizes were estimated, how much ammonia is assumed to be utilized at the Port Complex and estimation of the necessary truck trips transporting this hazardous material. Additional information on the transport, storage and use of this hazardous material is necessary to make a thorough evaluation and conclusion. As background, the Port Master Plan contains the Methodology for the Identification of Hazards as well as the probability of a hazardous release. The Port's Methodology for the Identification of Hazards is as follows:

6-6

The identification of hazards to be assessed in the Risk Management Plan utilizes the National Fire Protection Association (NFPA) Hazard Identification System. The NFPA system numerically grades all materials in three separate hazard dimensions: health, flammability, and reactivity (tendency to react with water or other common materials). There are five numerical grades (0-4) with four being the most severe hazard or danger and zero being no hazard at all. More detailed information on this system is available in the "Standard System for the Identification of the Hazards of Materials for Emergency

Response", NFPA No. 704. Commodities with a rating of two or more in any dimension, and transferred or stored in bulk (quantities greater than 10,000 gallons) within the Port are considered hazardous and subject to the goals and policies of the Risk Management Plan. The exception is for a commodity's flammability. In addition to the NFPA flammability rating of two (2) or greater, a commodity must have a flashpoint (the lowest temperature where a liquid generates sufficient vapors to form a flammable gas vapor) of below 140° Fahrenheit (F).[4]

Please provide an explanation for the assumption that ammonia would be stored in 5,000 gallon tanks on site and how the Harbor Department would assess this potential impact as these tanks may be required at multiple sites within the Port Complex.

6-6 cont.

The San Pedro Bay Complex contains many sites listed as hazardous materials sites pursuant to Government Code Section 65962.5. As a result, near-surface contaminated soil is often encountered during demolition and/or construction activities; including those associated with implementation of the 2016 AQMP. This creates the possibility that a significant hazard could be created to the public or the environment. Please clarify what, if any, mitigation measures the South Coast Air Quality Management District (SCAQMD) is proposing to reduce this potential risk and whether the SCAQMD will be the Lead Agency for any necessary CEQA analysis as it pertains to measure TXM-04 and Government Code Section 65962.5. Please further clarify whether the Phase I Environmental Site Assessment and possible Phase II Environmental Site Assessment identified in Mitigation Measure HZ-7 will be required for every site; regardless of whether it has been identified under Government Code Section 65962.5. The cost and timing associated with this measure needs to be quantified and considered and the Lead Agency responsible for this testing needs to be identified.[5]

6-7

BIOLOGY AND WATER QUALITY IMPACTS

Please provide the quantification for water consumption assumed for TXM-04. Table 4.4-4 highlights water demand from AQMP control measures but does not have a measure-by-measure breakdown so it is difficult to ascertain whether this measure (and others) would cause a significant water demand impact at the San Pedro Bay Complex. While water demand impacts are identified as significant and unavoidable after mitigation, quantification by measure is necessary to assess project-level demand.

6-8

NOISE

Several measures pertaining to the San Pedro Bay Complex have been identified as needing construction due to infrastructure improvements or the installation of air pollution control technology. These measures include but are not limited to the following: MOB-01, TXM-04 and ORFIS-04. The Draft PEIR states the following:

6-9

[4] Port of Los Angeles Port Master Plan, page 64, 2014.
[5] SCAQMD, Draft PEIR, page 4.3-41.

The existing rail and truck routes/corridors likely to be modified are located primarily in commercial and industrial zones within the Southern California area. Examples of these areas include, but are not limited to, the Port of Los Angeles, Port of Long Beach, and industrial areas in and around container transfer facilities (rail and truck) near the Terminal Island Freeway, along the Alameda Corridor, as well inland railyards near downtown Los Angeles.[6]

6-9 cont.

The San Pedro Bay Complex is already a heavy-duty industrial area where significant noise levels can occur from both construction improvements and the daily operation of the facilities. Any increase in noise to the terminals as a result of the AQMP needs to be quantified and addressed to ensure that a new significant adverse noise impact is not triggered as a result of the implementation of control measures that include significant associated construction.

SOLID AND HAZARDOUS WASTE

Table 4.6-2 of the Draft PEIR indicates that the acceleration of the penetration of zero emission TRUs, forklifts and ground support equipment (among other things) could result in increased solid/hazardous waste from the disposal of spent batteries. A quantification or explanation for the estimate from the source category should be provided that includes the basis for assuming that this equipment doubles in inventory between 2023 and 2031.[7] The early retirement of equipment such as burners, on-road trucks, off-road vehicles, gasoline-fueled engines, and locomotive and aircraft engines is also expected to occur as part of the 2016 AQMP. Although it is expected that approximately 80% of a vehicle can be recycled and reused in another capacity, there still remains a potentially significant amount of landfill materials that need to be quantified and assessed for disposal capacity in the Basin.

6-10

Please provide further justification for why the significant conversion of the abovementioned source categories will not exceed or adversely impact the physical landfill capacity constraints of approximately 112,000 tons per day in the Basin. The finding of no significant impacts needs further substantiation and quantification.

TRAFFIC AND TRANSPORTATION

The Draft PEIR states the following:

MOB-01 might result in an increase of harbor traffic, if the ports decide to use the barge-based bonnet system to capture emissions from ocean-going vessels. The additional number of vessels is speculative at this time, but could potentially result in significant impacts to transportation and traffic by creating congestion and causing an increase in traffic hazards in the harbors.[8]

6-11

[6] SCAQMD, Draft PEIR, page 4.5-6.
[7] SCAQMD, Draft PEIR, Table 4.6-2, page 4.6-9.
[8] SCAQMD Draft PEIR, page 4.7-8.

Although this potential impact is found to be speculative, the Draft PEIR concludes that operational traffic impacts remain significant for both the increased use of the barge-based bonnet as well as the potential dedication of existing vehicular traffic lanes for vehicles using the overhead catenary system. These impact areas need further quantification and clarification. In addition, if an analysis is too speculative at this time, please indicate how this conclusion was derived and what type of analysis will be conducted in the future. Please indicate whether these measures will be the jurisdiction of the SCAQMD or California Air Resources Board as Lead Agency. 6-11 cont.

AESTHETICS

The Draft PEIR states the following:

Similarly, while the use of bonnet technology could degrade the existing visual character or quality in the immediate surrounding area, it is unlikely that the use of bonnet technology would be visible from sensitive public vantage points due to the presence of intervening structures at the ports.[9] 6-12

Please provide substantiation for this statement as to what intervening structures are being assumed. Projects traditionally completed in the San Pedro Bay Complex undergo extensive aesthetics analyses when additional cranes or other large equipment is being installed. This same analysis would be required for any required bonnet technology. Although the chapter's finding is that aesthetic impacts would remain significant after mitigation, it is unclear if this component of MOB-01 is also considered significant and unavoidable.

Thank you for the opportunity to comment on the Draft PEIR. We look forward to continuing to work with the SCAQMD toward the successful completion of the 2016 AQMP and its associated documentation. We further look forward to receiving written responses to the comments included herein. Please contact Lisa Wunder, Marine Environmental Manager, at (310) 732-7688 or via email at lwunder@portla.org if you have any questions regarding these comments. 6-13

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management

CC:LW:LO:TT:mrx
APP No.: 061024-605

[9] SCAQMD, Draft PEIR, page 4.8-4.

Responses to Comment Letter #6 – Port of Los Angeles

Comment 6-1

The City of Los Angeles Harbor Department (Harbor Department) appreciates the opportunity to participate in the 2016 Air Quality Management Plan (AQMP) Advisory Committee and to provide these comments regarding the Draft Program Environmental Impact Report (PEIR).

A PEIR by definition is broad and often unable to quantify impacts to a refined level of detail. The Harbor Department recognizes this and requests and assumes that further California Environmental Quality Act (CEQA) review will be conducted by the Lead Agency when project-specific analyses are tiered off of this document for individual development. As you know, CEQA requires that the direct or indirect effects of a project on the environment should be identified and described, with consideration given to both short- and long-term impacts. The discussion of environmental impacts may include, but is not limited to, the resources involved; physical changes; alterations of ecological systems; health and safety impacts caused by physical changes; and other aspects of the resource base, including water quality, public services, etc.

The following are our comments related to the specific resources areas found in the Draft PEIR:

Response 6-1

This is an introductory comment. The comment accurately notes that the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. Specific control measures will need to go through a rulemaking process in the future and environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in the light of the Program EIR.

Comment 6-2

AIR QUALITY IMPACTS

Construction Impacts

Section 4.1 of the Draft PEIR evaluates potential air quality impacts from the 2016 AQMP. Construction-related impacts were identified for several port-related measures including MOB-01, MOB-02, ORFIS-01, ORFIS-04, ORFIS-05 as well as TXM-04 related to the construction of control equipment at stationary sources.

Table 4.1-3 highlights the peak daily construction emissions for the installation of one single control device in the South Coast Air Basin (Basin). However, there appears to be no quantification of overall construction for infrastructure changes necessary to provide support for cleaner equipment or vehicles. Please provide more detail on Table 4.1-3 and what constitutes a control device in the analysis. Please further provide an estimate of construction-related emissions from significant infrastructure improvements; particularly as they pertain to the San Pedro Bay Complex.

Response 6-2

The assumptions for potential air quality impacts from construction activities associated with the 2016 AQMP control measures are discussed in Subchapter 4.1.6.1 beginning on page 4.1-18. Examples of what constitutes a control device is provided in the first paragraph: "3) the construction of control equipment at stationary sources (e.g., SCRs, SNCRs particulate controls, and vapor recovery systems)." The commenter correctly states that Table 4.1-3 summarizes the construction emissions that would be expected to occur as a result of installing one air pollution control device at one facility (see Appendix C of the Draft Program EIR for detailed assumptions and calculations). Although the construction emissions at each individual facility might not exceed the SCAQMD's CEQA significance thresholds, it is foreseeable and likely that on any given day, in order to comply with the 2016 AQMP, construction of one or more control devices could occur at more than one facility. Based on the results in Table 4.1-3, if more than four facilities or more than four control devices were concurrently constructed on any given day, the emissions would exceed the SCAQMD's air quality significance thresholds. Therefore, construction emissions were considered significant.

Since project specific details of future infrastructure development projects are unknown at this time, construction impacts for these types of projects cannot be accurately quantified, thus were evaluated on a programmatic level in the Draft Program EIR. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) It will be necessary for future infrastructure projects to undergo a project-specific CEQA evaluation once project-specific details are known.

Comment 6-3

Operational Impacts

The Draft PEIR states the following:

Control measures MOB-01, MOB-02, MOB-04, MOB-05, MOB-06, MOB-07, MOB-09, MOB-10, MOB-13, MOB-14, EGM-01, ORLD-01, ORLD-03, ORHD-02, ORHD-04, ORHD-05, ORHD-06, ORHD-07, ORHD-08, ORHD-09, ORFIS-01, ORFIS-05, OFFS-04, OFFS-07, and OFFS-08 have the potential to increase the use of alternative fuels such as biodiesel, LNG, CNG, ethanol, and hydrogen. The availability of the producers of alternative fuels to meet the increase in demand has the potential for an increase in emissions associated with the increased production.[1]

This section then concludes with the statement that "in general, the 2016 AQMP mobile source control measures are expected to result in emission reductions."[2] There appears to be no quantification or substantiation of this statement. An estimate of the production increases and associated emissions should have been provided rather than a qualitative comparison between gasoline and diesel fuel.

Similar to the use of alternative fuels, the Draft PEIR discusses the conversion to electric vehicles and the use of electricity for control technology and infrastructure changes and improvements. The document states that "the associated emissions from the increased electricity generation needed to meet this projected energy demand have been included in the emissions inventory of the 2016 AQMP."[3] These emission estimates should be provided in the PEIR so that a thorough evaluation can occur.

[1] SCAQMD, Draft PEIR, page 4.1-40.
[2] SCAQMD, Draft PEIR, page 4.1-40.
[3] SCAQMD, Draft PEIR, page 4.1-24.

Response 6-3

It is speculative to quantify any potential increases in emissions associated with the potential increase in production of alternative fuels (from current production levels) because there are a number of unknown factors at the present time, and therefore, this impact was analyzed qualitatively. As detailed in Subchapter 4.1.6.2.4, production of alternative fuels such as LNG and CNG require little processing with less emissions than the production of refined petroleum products such as gasoline, diesel, and jet fuel. While biodiesel and ethanol production do require more processing than LNG and CNG, the production processes are less complicated than petroleum refining. Therefore, the production of alternative fuels, especially biofuels, typically generates less air emissions than a petroleum refinery would when producing similar gasoline or gasoline equivalent amounts. Any increase in emissions attributable to an increased production of alternative fuels would be offset by reduced levels of petroleum fuel production and transportation of crude oil primarily from overseas and possibly by rail, as diesel and gasoline demand decreases.

Potential impacts from increased electricity demand associated with the 2016 AQMP control measures are thoroughly discussed in Subchapter 4.1.6.2.1. Please refer to this section of the Draft Program EIR for the detailed discussion.

Comment 6-4

GREENHOUSE GAS EMISSIONS (GHGS)

The analysis shows a qualitative reduction in GHGs from implementation of the control measures contained in the PEIR including several that pertain to the San Pedro Bay Complex. It is important that the PEIR show how compliance with these measures would be consistent with applicable local, regional and state plans and policies that set goals for reduction of GHGs.

While it is difficult for quantification to occur at this programmatic level of analysis, the Harbor Department requests that this quantification be provided during each measure's individual rule development and associated CEQA process. Further, a reduction in petroleum fuel usage was estimated and provided for several measures but it is unclear where these estimates were derived. Further, please clarify what the Estimated Increase in Vehicles is referring to in Table 4.1-5 and how this estimate was derived along with the associated fuel usage. The table appears to assume that all source categories are utilizing significant quantities of petroleum fuel rather than any alternative fuel options. It also assumes that there will be a significant increase in "vehicles" under such categories as truck refrigeration units (TRU), forklifts, and ground support equipment. Please provide the estimate of how this increase was derived.

Response 6-4

As stated in Subchapter 4.1.3 of the Draft Program EIR, the NOP/IS concluded that the 2016 AQMP would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. SCAG's 2016 RTP/SCS focuses on the GHG reduction efforts through modifying traditional land use development patterns to include more mixed use projects, which eliminates or substantially shortens commute trip lengths compared to traditional land use planning where residential land uses are separate from and potentially long distances from jobs and other commercial land uses. The 2016 AQMP utilizes vehicle and population projections from the 2016 RTP/SCS and none of the proposed control measures would conflict with GHG reduction plans, but would instead seek to quantify and take credit for criteria pollutant emission reductions resulting in compliance with GHG regulations. Therefore, this topic was not analyzed in the Draft Program EIR.

The comment accurately notes that as part of the future rulemaking process, SCAQMD staff will provide specific quantification of emissions and environmental impacts.

The reduction in petroleum fuel usage shown in Table 4.1-5 was estimated based on the mobile source emissions model EMFAC2014 emissions for 2023 and 2031 and mobile source emissions model OFFROAD emissions for 2023 and 2029. As stated in Subchapter 4.1.5, vehicle population data and transportation analysis zone (TAZ) data was provided by SCAG.

Comment 6-5

ENERGY IMPACTS

The Draft PEIR indicates that the AQMP may increase the usage of electricity or alternative fuels such as natural gas as part of implementation of several proposed control measures. As commented above under Air Quality Impacts, more details need to be provided during the rule development process for specific control measures. If additional power plants or the increased production of alternative fuels is necessary, the construction-related and operational emissions associated with the increased production should be quantified and included in the individual rule assessments and associated CEQA documentation for the individual control measures.

Response 6-5

The comment accurately notes that as part of the future rulemaking process, SCAQMD staff will provide specific quantification of emissions and environmental impacts.

Comment 6-6

HAZARD IMPACTS

The Draft PEIR estimates that ammonia storage will be needed to implement those control measures that require the use of Selective Catalytic Reduction, Non-Selective Catalytic Reduction and Dry Gas Scrubbers. Port-related measures ORFIS-01 and ORFIS-03 were both identified as measures that would require the use (and storage) of ammonia. Because ammonia is not something traditionally stored in large quantities at the Port of Los Angeles (Port), we respectfully request additional information as to how the tank sizes were estimated, how much ammonia is assumed to be utilized at the Port Complex and estimation of the necessary truck trips transporting this hazardous material. Additional information on the transport, storage and use of this hazardous material is necessary to make a thorough evaluation and conclusion. As background, the Port Master Plan contains the Methodology for the Identification of Hazards as well as the probability of a hazardous release. The Port's Methodology for the Identification of Hazards is as follows:

The identification of hazards to be assessed in the Risk Management Plan utilizes the National Fire Protection Association (NFPA) Hazard Identification System. The NFPA system numerically grades all materials in three separate hazard dimensions: health, flammability, and reactivity (tendency to react with water or other common materials). There are five numerical grades (0-4) with four being the most severe hazard or danger and zero being no hazard at all. More detailed information on this system is available in the "Standard System for the Identification of the Hazards of Materials for Emergency

Response", NFPA No. 704. Commodities with a rating of two or more in any dimension, and transferred or stored in bulk (quantities greater than 10,000 gallons) within the Port are considered hazardous and subject to the goals and policies of the Risk Management Plan. The exception is for a commodity's flammability. In addition to the NFPA flammability rating of two (2) or greater, a commodity must have a flashpoint (the lowest temperature where a liquid generates sufficient vapors to form a flammable gas vapor) of below 140° Fahrenheit (F).[4]

Please provide an explanation for the assumption that ammonia would be stored in 5,000 gallon tanks on site and how the Harbor Department would assess this potential impact as these tanks may be required at multiple sites within the Port Complex.

[4] Port of Los Angeles Port Master Plan, page 64, 2014.

Response 6-6

The tank sizes, ammonia usage, and estimations of necessary truck trips for transporting ammonia were based on general assumptions from previous projects in the non-refinery sector. SCAQMD staff will work with Port staff to ensure that all environmental impacts, such as hazards impacts, associated with control measures affecting the Ports will be analyzed as part of future rulemaking activities. Detailed project-specific information will be researched and used in any rulemaking efforts that involve the Port-related control measures.

Comment 6-7

The San Pedro Bay Complex contains many sites listed as hazardous materials sites pursuant to Government Code Section 65962.5. As a result, near-surface contaminated soil is often encountered during demolition and/or construction activities; including those associated with implementation of the 2016 AQMP. This creates the possibility that a significant hazard could be created to the public or the environment. Please clarify what, if any, mitigation measures the South Coast Air Quality Management District (SCAQMD) is proposing to reduce this potential risk and whether the SCAQMD will be the Lead Agency for any necessary CEQA analysis as it pertains to measure TXM-04 and Government Code Section 65962.5. Please further clarify whether the Phase I Environmental Site Assessment and possible Phase II Environmental Site Assessment identified in Mitigation Measure HZ-7 will be required for every site; regardless of whether it has been identified under Government Code Section 65962.5. The cost and timing associated with this measure needs to be quantified and considered and the Lead Agency responsible for this testing needs to be identified.[5]

[5] SCAQMD, Draft PEIR, page 4.3-41.

Response 6-7

Potential hazards and hazardous materials impacts, including near-surface contaminated soil at sites, were analyzed in Subchapter 4.3 of the Draft Program EIR. As the comment notes, the San Pedro Bay Complex contains many sites listed as hazardous materials sites pursuant to Government Code Section 65962.5 The 2016 AQMP does not directly cause these facilities to contaminate the soil, but rather could indirectly cause the facility to expose contamination upon ground disturbance activities. The NOP/IS assumed that sites identified as hazardous materials sites, such as those on the Cortese list, were conducting due diligence in cleaning up and protecting the neighborhood and was not assuming inaction. There are various federal, state, and local laws that apply to activities occurring on sites on the Cortese list, such as the Response Conservation, and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act and the Hazardous Materials Release and Clean-Up Act. Furthermore, SCAQMD Rule 1166 - Volatile Organic Compound Emissions from Decontamination of Soil regulates the emissions of VOCs from contaminated soils, Rule 1403 - Asbestos Emissions from Demolition/Renovation Activities regulates the presence of asbestos during construction, and the 2016 AQMP contains TXM-04, which seeks to develop control measures that would control the toxic metal particulates generated during soil cleanup or remediation activities at these sites. Near-surface contaminated soil may be encountered during demolition and/or construction activities associated with implementation of the 2016 AQMP. Based on the location of the nearest sensitive receptor, it is possible that construction activities would create a significant hazard to the public or environment. Furthermore, without knowing the types of contamination (i.e. VOCs, TACs, etc) it is not possible to know which regulations would apply. Without the knowledge of site-specific information, it is speculative to identify what investigative or remedial activities would be required and to identify the Lead Agency responsible for oversight at these sites. SCAQMD staff will work with Port staff to ensure that all environmental impacts associated with control measures affecting the Ports will be analyzed as part of future rulemaking activities.

Comment 6-8

BIOLOGY AND WATER QUALITY IMPACTS

Please provide the quantification for water consumption assumed for TXM-04. Table 4.4-4 highlights water demand from AQMP control measures but does not have a measure-by-measure breakdown so it is difficult to ascertain whether this measure (and others) would cause a significant water demand impact at the San Pedro Bay Complex. While water demand impacts are identified as significant and unavoidable after mitigation, quantification by measure is necessary to assess project-level demand.

Response 6-8

Control measures, such as TXM-04, were identified and analyzed in the Draft Program EIR on a programmatic level to determine foreseeable adverse effects. As noted previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. SCAQMD staff will work with Port staff to ensure that all environmental impacts, such as water quality, associated with control measures affecting the Ports will be analyzed as part of future rulemaking activities.

Comment 6-9

NOISE

Several measures pertaining to the San Pedro Bay Complex have been identified as needing construction due to infrastructure improvements or the installation of air pollution control technology. These measures include but are not limited to the following: MOB-01, TXM-04 and ORFIS-04. The Draft PEIR states the following:

The existing rail and truck routes/corridors likely to be modified are located primarily in commercial and industrial zones within the Southern California area. Examples of these areas include, but are not limited to, the Port of Los Angeles, Port of Long Beach, and industrial areas in and around container transfer facilities (rail and truck) near the Terminal Island Freeway, along the Alameda Corridor, as well inland railyards near downtown Los Angeles.[6]

The San Pedro Bay Complex is already a heavy-duty industrial area where significant noise levels can occur from both construction improvements and the daily operation of the facilities. Any increase in noise to the terminals as a result of the AQMP needs to be quantified and addressed to ensure that a new significant adverse noise impact is not triggered as a result of the implementation of control measures that include significant associated construction.

[6] SCAQMD, Draft PEIR, page 4.5-6..

Response 6-9
As noted previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. SCAQMD staff will work with Port staff to ensure that all environmental impacts, such as noise impacts, associated with control measures affecting the Ports will be analyzed as part of future rulemaking activities.

Comment 6-10

SOLID AND HAZARDOUS WASTE

Table 4.6-2 of the Draft PEIR indicates that the acceleration of the penetration of zero emission TRUs, forklifts and ground support equipment (among other things) could result in increased solid/hazardous waste from the disposal of spent batteries. A quantification or explanation for the estimate from the source category should be provided that includes the basis for assuming that this equipment doubles in inventory between 2023 and 2031.[7] The early retirement of equipment such as burners, on-road trucks, off-road vehicles, gasoline-fueled engines, and locomotive and aircraft engines is also expected to occur as part of the 2016 AQMP. Although it is expected that approximately 80% of a vehicle can be recycled and reused in another capacity, there still remains a potentially significant amount of landfill materials that need to be quantified and assessed for disposal capacity in the Basin.

Please provide further justification for why the significant conversion of the abovementioned source categories will not exceed or adversely impact the physical landfill capacity constraints of approximately 112,000 tons per day in the Basin. The finding of no significant impacts needs further substantiation and quantification.

[7] SCAQMD, Draft PEIR, Table 4.6-2, page 4.6-9.

Response 6-10
As noted in the comment, the switch to electric batteries has the potential to create solid waste impacts from the improper disposal of spent batteries. However, as described in Subchapter 4.6.4.1 the Draft Program EIR, the recycling of lead-acid and nickel-cadmium batteries is already a well-established activity. Further some manufacturers offer incentives to prevent illegal disposal of the batteries. Most car manufacturers offer a program to take back used or damaged battery packs, including Toyota and Nissan. The Draft Program EIR concluded that because battery recycling is required by law and because they have value, the illegal or improper disposal of batteries is expected to be uncommon, thereby reducing the solid waste impacts caused by illegal disposal. The comment does not provide any evidence contrary to the conclusions made in the Draft Program EIR.

Vehicle population data and transportation analysis zone (TAZ) data was provided by SCAG. Retirement of equipment was discussed in Subchapter 4.6.4.3. Based on a programmatic-level review of potential solid waste impacts, scrap metals from vehicle and engine replacements are

expected to be recycled and not disposed of in landfills. Any small increase of disposal in landfills that may occur from miscellaneous parts is expected to be within the permitted capacity of over 112,000 tons per day. However, as stated on page 4.6-17 of the Draft Program EIR, the high volume of vehicle and equipment to retire in a short timeframe and the uncertainty of their outcome would result in potential significant solid and hazardous waste impacts due to implementation of the 2016 AQMP. Additionally, it is too speculative to estimate the amount of waste that could be generated at this time. (*See Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1st Dist. 1992) 5 Cal. App. 4th 351, 373 ["Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."].) Project-specific potential solid waste impacts will be evaluated as part of future rulemaking activities, which will need further CEQA evaluation at that time.

Comment 6-11

TRAFFIC AND TRANSPORTATION

The Draft PEIR states the following:

MOB-01 might result in an increase of harbor traffic, if the ports decide to use the barge-based bonnet system to capture emissions from ocean-going vessels. The additional number of vessels is speculative at this time, but could potentially result in significant impacts to transportation and traffic by creating congestion and causing an increase in traffic hazards in the harbors.[8]

Although this potential impact is found to be speculative, the Draft PEIR concludes that operational traffic impacts remain significant for both the increased use of the barge-based bonnet as well as the potential dedication of existing vehicular traffic lanes for vehicles using the overhead catenary system. These impact areas need further quantification and clarification. In addition, if an analysis is too speculative at this time, please indicate how this conclusion was derived and what type of analysis will be conducted in the future. Please indicate whether these measures will be the jurisdiction of the SCAQMD or California Air Resources Board as Lead Agency.

[8] SCAQMD Draft PEIR, page 4.7-8.

Response 6-11

The Draft Program EIR conservatively concluded that the operational traffic impacts would remain significant for the increased use of the barge-based bonnet technology as well as the potential dedication of existing vehicular traffic lanes for vehicles using overhead catenary systems. As noted previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in the light of the Program EIR. SCAQMD staff will work with Port staff to ensure that all environmental impacts, such as traffic and transportation impacts, associated with control measures affecting the

Ports will be analyzed as part of future rulemaking activities. Jurisdiction and Lead Agency determination would also be clarified during future rulemaking activities.

Comment 6-12

AESTHETICS

The Draft PEIR states the following:

Similarly, while the use of bonnet technology could degrade the existing visual character or quality in the immediate surrounding area, it is unlikely that the use of bonnet technology would be visible from sensitive public vantage points due to the presence of intervening structures at the ports.[9]

Please provide substantiation for this statement as to what intervening structures are being assumed. Projects traditionally completed in the San Pedro Bay Complex undergo extensive aesthetics analyses when additional cranes or other large equipment is being installed. This same analysis would be required for any required bonnet technology. Although the chapter's finding is that aesthetic impacts would remain significant after mitigation, it is unclear if this component of MOB-01 is also considered significant and unavoidable.

[9] SCAQMD, Draft PEIR, page 4.8-4.

Response 6-12

The intervening structures refer to storage buildings, unloaders, ships, lighting, fencing, and signage, as noted in the example provided on page 4.8-5 of the Draft Program EIR. As stated previously, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in light of the Program EIR. SCAQMD staff will work with Port staff to ensure that all environmental impacts, such as aesthetics impacts, associated with control measures affecting the Ports will be analyzed as part of future rulemaking activities. While the identified aesthetic mitigation measures could minimize some of the aesthetics impacts, the SCAQMD cannot predict how a lead agency might choose to mitigate a particular significant aesthetics impact for future project(s) located in areas with project-specific features and issues. Thus, the potential exists for impacts for future projects to be significant even after feasible mitigation measures are identified and imposed. Therefore, aesthetics impacts that may occur as a result of implementing the 2016 AQMP, including MOB-01, are expected to remain significant after mitigation.

Comment 6-13

> Thank you for the opportunity to comment on the Draft PEIR. We look forward to continuing to work with the SCAQMD toward the successful completion of the 2016 AQMP and its associated documentation. We further look forward to receiving written responses to the comments included herein. Please contact Lisa Wunder, Marine Environmental Manager, at (310) 732-7688 or via email at lwunder@portla.org if you have any questions regarding these comments.

Response 6-13

SCAQMD staff looks forward to working with Port staff. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Airlines for America®

We Connect the World

November 15, 2016

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765-4182
submitted electronically at: https://onbase-pub.aqmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey
and emailed to: aqmp@aqmd.gov; jwong1@aqmd.gov; jinabinet@aqmd.gov

Re: Comments on Draft Program Environmental Impact Report - 2016 Air Quality Management Plan

To Whom It May Concern:

On behalf of our members, Airlines for America® ("A4A")[1] thanks the South Coast Air Quality Management District ("SCAQMD" or "District") for providing this opportunity to comment on its Draft Program Environmental Impact Report - 2016 Air Quality Management Plan ("Draft EIR"). We note that we provided extensive comments on the Draft 2016 Air Quality Management Plan released in June 2016 ("Draft 2016 AQMP") and will provide further comment on the Revised Draft 2016 Air Quality Management Plan (the "Draft Final AQMP") as appropriate.

7-1

As we emphasized in our comments on the Draft 2016 AQMP, A4A and its member airlines have a very strong record of continually improving environmental performance while increasing our considerable contributions to the national and California economies. We also emphasized that we fully support the District's effort to develop its 2016 AQMP to attain compliance with National Ambient Air Quality Standards ("NAAQS") and its overall objective "[t]o ensure air quality goals will be met while maximizing benefits and minimizing adverse impacts to the regional economy."[2] We continue to support this effort and will look forward to working with District staff as they work to finalize and implement the AQMP.

However, we identified a number of concerns about the Draft 2016 AQMP, many of which do not appear to have been addressed in the latest revision, the Draft Final AQMP. In this context, we remain particularly concerned about the accuracy and transparency of the emissions inventory and the estimates of emission reductions expected to result from measures identified in the various documents supporting the AQMP, including the Draft EIR. The most recent estimates from both the California Air Resources Board ("CARB") and the District state that

7-2

[1] A4A is the principal trade and service organization of the U.S. airline industry. A4A's members are: Alaska Airlines, Inc.; American Airlines Group; Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co.; Air Canada, Inc. is an associate member.
[2] Draft 2016 AQMP at ES-4; Draft Final AQMP at ES-4.

total reductions in emissions of oxides of nitrogen ("NOx") in the South Coast resulting from the "Further Deployment of Cleaner Technologies" measures applied to Off-Road Federal and International Sources will be 40 tons per day ("tpd) in 2023 and 30tpd in 2031. *See* Draft Final AQMP, Table 4-5 and the "Proposed New SIP Measures Handout" provided at CARB's September 1, 2016 public workshop on the Proposed 2016 State Strategy for the State Implementation Plan (available here: https://www.arb.ca.gov/planning/sip/2016sip/090116wkshp_handout.pdf). Both of these documents indicate that the Further Deployment of Cleaner Technologies measure will result in NOx reductions of 17tpd from aircraft, 10tpd from locomotives and 13tpd from ocean-going vessels (a total of 40tpd) in 2023 and of 13tpd from aircraft, 7tpd from locomotives and 10tpd from ocean-going vessels (a total of 30tpd) in 2031. This is not consistent with the estimate of emissions reductions identified in the Draft EIR. The Draft EIR identifies ORFIS-05, "Further Deployment of Cleaner Technology: Off-Road Federal and International Sources," as one of the measures in the State SIP Strategy. The Draft EIR describes this measure as "outlin[ing] a series of actions that would be taken at state and local level to achieve further reductions among three categories of off-road federal and international sources: ocean-going vessels, aircraft, and locomotives." Draft EIR at 2-51. Table 2.8-6 in the Draft EIR indicates that "expected emissions reductions" from this measure will be 13tpd NOx on 2023 and 10tpd NOx in 2031. *See also* Draft EIR, Appendix A, Table 1.9-4. There is thus a clear discrepancy between the estimates of NOx emissions reductions expected to result from Further Deployment of Cleaner Technologies by these federal sources provided in the Draft EIR and the State SIP Strategy and between the estimates provided in the Draft EIR and the Draft Final AQMP it is intended to support.

7-2 cont.

We pointed out in our comments on the Draft 2016 AQMP that while the State SIP Strategy indicates that CARB estimated Further Deployment of Cleaner Technologies could reduce NOx emissions from aircraft in the District by 17tpd in 2023,[3] this value exceeded the total NOx emissions the District projected would be emitted by aircraft in 2023. As pointed out above, the District adopts this estimate in the Draft Final AQMP (as reflected in Table 4-4). However, the inventory accompanying the Draft Final AQMP now projects NOx emissions from aircraft in the District in 2023 will be 17.31tpd. *See* Draft Final AQMP, Attachment A. In other words, the Draft Final AQMP implies (as did the State SIP Strategy) that this measure will result in the virtual elimination of NOx emissions from aircraft in 2023. This is not possible. The Draft EIR provides no basis for assessing the actual impact this measure may have; in fact, it only muddles the issue as it provides an estimate of emissions reductions that differs from the estimate in the AQMP it is intended to support.

7-3

In short, these discrepancies render it impossible to provide meaningful comment on this aspect of the Draft EIR. In addition, the discrepancies indicate a more general lack of definition regarding the effect this measure may have on aircraft, raising doubts regarding the District's ability to properly assess potential impacts related to the measure.

7-4

In our comments on the Draft 2016 AQMP, we emphasized that it is absolutely essential that the State and its political subdivisions respect that they lack authority to regulate aircraft, aircraft engines and aviation fuels and face strict limitations on their authority to regulate the aviation sector generally. In this context, the reference to "mitigation fees" in the description of MOB-04

7-5

[3] State SIP Strategy, Table 4.

("Emissions Reductions at Airports") contained in Appendix A at A-125 is of concern. We will not repeat the comments presented on this subject in our comments on the Draft 2016 AQMP.[4] It is important to note, however, that the District makes no reference to "mitigation fees" in any other description of MOB-04 in either the Draft 2016 AQMP, Draft Final AQMP or Draft EIR and the District has not provided any discussion of the "mitigation fees" concept or any basis for evaluating their potential impact(s). As such, no adequate notice and opportunity for comment has been provided to support adoption of this concept and this Draft EIR cannot provide support for any future action to pursue such a concept. Indeed, MOB-04 is not sufficiently defined to enable a meaningful evaluation of its potential impacts, much less comments on such an evaluation. The Draft Final AQMP makes clear that any specific measures that may be generated through MOB-04 will only emerge after a future process to consider alternatives. The evaluation of the need for such alternatives could well depend on the effectiveness of other measures identified in the AQMP, including the Further Deployment of Cleaner Technologies measures discussed above, which themselves are ill-defined and speculative. In short, at present the MOB-04 measure is too ill-defined to support development of an EIR that adequately discloses potential impacts and this Draft EIR has not done so.

7-5 cont.

Finally, we note that the "Regulatory Setting" section of Chapter 3.6 addressing noise impacts fails to reference statutory and regulatory provisions strictly prohibiting state and local governments from adopting airport noise or access restrictions without approval by the Federal Aviation Administration ("FAA"), specifically the Airport Noise & Capacity Act of 1990 and Federal Code of Regulations, Title 14, Part 161 – Notice and Approval of Noise and Access Restrictions. This section also fails to identify Part 150 – Airport Noise Compatibility Planning and the role the FAA plays in approving airport noise analyses and associated noise compatibility programs. Any sufficient analysis would need to take these regulatory constraints on California and its local governments into account.

7-6

CONCLUSION

We appreciate the opportunity to comment on this Draft EIR. We continue to strive to improve on our strong environmental performance and contribute to the prosperity of California and its residents and, in that spirit, look forward to conferring with the District as it refines and finalizes the 2016 AQMP.

7-7

Sincerely yours,

Timothy A. Pohle
Senior Managing Director, Environmental Affairs

[4] We do incorporate our comments on the Draft 2016 AQMP by reference.

Responses to Comment Letter #7 – Airlines for America

Comment 7-1

On behalf of our members, Airlines for America® ("A4A")[1] thanks the South Coast Air Quality Management District ("SCAQMD" or "District") for providing this opportunity to comment on its Draft Program Environmental Impact Report - 2016 Air Quality Management Plan ("Draft EIR"). We note that we provided extensive comments on the Draft 2016 Air Quality Management Plan released in June 2016 ("Draft 2016 AQMP") and will provide further comment on the Revised Draft 2016 Air Quality Management Plan (the "Draft Final AQMP") as appropriate.

As we emphasized in our comments on the Draft 2016 AQMP, A4A and its member airlines have a very strong record of continually improving environmental performance while increasing our considerable contributions to the national and California economies. We also emphasized that we fully support the District's effort to develop its 2016 AQMP to attain compliance with National Ambient Air Quality Standards ("NAAQS") and its overall objective "[t]o ensure air quality goals will be met while maximizing benefits and minimizing adverse impacts to the regional economy."[2] We continue to support this effort and will look forward to working with District staff as they work to finalize and implement the AQMP.

Response 7-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR and no response is necessary under CEQA.

Comment 7-2

However, we identified a number of concerns about the Draft 2016 AQMP, many of which do not appear to have been addressed in the latest revision, the Draft Final AQMP. In this context, we remain particularly concerned about the accuracy and transparency of the emissions inventory and the estimates of emission reductions expected to result from measures identified in the various documents supporting the AQMP, including the Draft EIR. The most recent estimates from both the California Air Resources Board ("CARB") and the District state that total reductions in emissions of oxides of nitrogen ("NOx") in the South Coast resulting from the "Further Deployment of Cleaner Technologies" measures applied to Off-Road Federal and International Sources will be 40 tons per day ("tpd) in 2023 and 30tpd in 2031. *See* Draft Final AQMP, Table 4-5 and the "Proposed New SIP Measures Handout" provided at CARB's September 1, 2016 public workshop on the Proposed 2016 State Strategy for the State Implementation Plan (available here: https://www.arb.ca.gov/planning/sip/2016sip/090116wkshp_handout.pdf). Both of these documents indicate that the Further Deployment of Cleaner Technologies measure will result in NOx reductions of 17tpd from aircraft, 10tpd from locomotives and 13tpd from ocean-going vessels (a total of 40tpd) in 2023 and of 13tpd from aircraft, 7tpd from locomotives and 10tpd from ocean-going vessels (a total of 30tpd) in 2031. This is not consistent with the estimate of emissions reductions identified in the Draft EIR. The Draft EIR identifies ORFIS-05, "Further Deployment of Cleaner Technology: Off-Road Federal and International Sources," as one of the measures in the State SIP Strategy. The Draft EIR describes this measure as "outlin[ing] a series of actions that would be taken at state and local level to achieve further reductions among three categories of off-road federal and international sources: ocean-going vessels, aircraft, and locomotives." Draft EIR at 2-51. Table 2.8-6 in the Draft EIR indicates that "expected emissions reductions" from this measure will be 13tpd NOx on 2023 and 10tpd NOx in 2031. *See also* Draft EIR, Appendix A, Table 1.9-4. There is thus a clear discrepancy between the estimates of NOx emissions reductions expected to result from Further Deployment of Cleaner Technologies by these federal sources provided in the Draft EIR and the State SIP Strategy and between the estimates provided in the Draft EIR and the Draft Final AQMP it is intended to support.

Response 7-2

The emissions inventory is updated as the AQMP is developed and new information is provided. For example, after the release of the Draft 2016 AQMP in June, aircraft emissions were revised, as SCAQMD staff received newer data reflecting SCAG's newest growth forecast. SCAQMD staff works to improve the emissions inventory so the most accurate data is included in the Final 2016 AQMP and submitted to U.S. EPA as part of the 2016 AQMP in compliance with CAA requirements.

The total NOx emission reductions of 40 TPD in 2023 and 30 TPD in 2031 the comment refers to are correct for the May version of CARB's State SIP Strategy. The emission reductions modelled for the attainment demonstration are taken from CARB's State SIP Strategy. However, the discrepancy between the expected emission reductions for ORFIS-05 in Table 2.8-6 and CARB's State SIP Strategy is because ORFIS-05 only includes the further deployment of cleaner technology from ocean-going vessels. The exclusion of further deployment of cleaner technology from aircraft and locomotives from the Table 2.8-6 does not change the conclusions in the 2016 AQMP or the Draft Program EIR. The further deployment of cleaner technology from aircraft and locomotives has not specifically been defined beyond what is described in CARB's State SIP Strategy.

There was a typo in CARB's State SIP Strategy document. The 2023 emission reductions associated with aircraft category is 11 TPD, not 17 TPD. This is reflected in the Draft Final 2016

AQMP and is reflected in the Final Program EIR. This revision does not worsen the potential air quality impacts, but would reduce the air quality benefit of the 2016 AQMP. The Draft Program EIR did not take credit for the emissions reductions which would occur as a result of implementation of the 2016 AQMP, therefore, this revision would not affect the conclusions and CEQA determination. Pursuant to CEQA Guidelines Section 15088.5, the comment does not raise any issues which would constitute "significant new information" because no new significant environmental impacts would result, there would be no substantial increase in the severity of an environmental impact requiring mitigation, no feasible new or different project alternatives or mitigation measures have been identified, and the public was not deprived of an opportunity for meaningful review and comment. The comment does not raise any issues which would trigger the need for recirculation.

Comment 7-3

> We pointed out in our comments on the Draft 2016 AQMP that while the State SIP Strategy indicates that CARB estimated Further Deployment of Cleaner Technologies could reduce NOx emissions from aircraft in the District by 17tpd in 2023,[3] this value exceeded the total NOx emissions the District projected would be emitted by aircraft in 2023. As pointed out above, the District adopts this estimate in the Draft Final AQMP (as reflected in Table 4-4). However, the inventory accompanying the Draft Final AQMP now projects NOx emissions from aircraft in the District in 2023 will be 17.31tpd. *See* Draft Final AQMP, Attachment A. In other words, the Draft Final AQMP implies (as did the State SIP Strategy) that this measure will result in the virtual elimination of NOx emissions from aircraft in 2023. This is not possible. The Draft EIR provides no basis for assessing the actual impact this measure may have; in fact, it only muddles the issue as it provides an estimate of emissions reductions that differs from the estimate in the AQMP it is intended to support.

Response 7-3

Please refer to Response 7-2 above.

Comment 7-4

> In short, these discrepancies render it impossible to provide meaningful comment on this aspect of the Draft EIR. In addition, the discrepancies indicate a more general lack of definition regarding the effect this measure may have on aircraft, raising doubts regarding the District's ability to properly assess potential impacts related to the measure.

Response 7-4

Please refer to Response 7-2 above.

Comment 7-5

> In our comments on the Draft 2016 AQMP, we emphasized that it is absolutely essential that the State and its political subdivisions respect that they lack authority to regulate aircraft, aircraft engines and aviation fuels and face strict limitations on their authority to regulate the aviation sector generally. In this context, the reference to "mitigation fees" in the description of MOB-04 ("Emissions Reductions at Airports") contained in Appendix A at A-125 is of concern. We will not repeat the comments presented on this subject in our comments on the Draft 2016 AQMP.[4] It is important to note, however, that the District makes no reference to "mitigation fees" in any other description of MOB-04 in either the Draft 2016 AQMP, Draft Final AQMP or Draft EIR and the District has not provided any discussion of the "mitigation fees" concept or any basis for evaluating their potential impact(s). As such, no adequate notice and opportunity for comment has been provided to support adoption of this concept and this Draft EIR cannot provide support for any future action to pursue such a concept. Indeed, MOB-04 is not sufficiently defined to enable a meaningful evaluation of its potential impacts, much less comments on such an evaluation. The Draft Final AQMP makes clear that any specific measures that may be generated through MOB-04 will only emerge after a future process to consider alternatives. The evaluation of the need for such alternatives could well depend on the effectiveness of other measures identified in the AQMP, including the Further Deployment of Cleaner Technologies measures discussed above, which themselves are ill-defined and speculative. In short, at present the MOB-04 measure is too ill-defined to support development of an EIR that adequately discloses potential impacts and this Draft EIR has not done so.
>
> [4] We do incorporate our comments on the Draft 2016 AQMP by reference.

Response 7-5

SCAQMD staff believes that working with the commenter and airport authorities, we can identify and quantify additional emission reductions from existing actions and future actions that are being implemented to improve operational efficiencies in aircraft operations (being taken by individual airlines) and by airport authorities. SCAQMD staff does not have any preconceived concepts for incentives and such concepts will be identified and developed through a public process. SCAQMD staff welcomes the commenter's participation in the process. The comment letter submitted on the 2016 AQMP referenced in the comment was responded to within the Response to Comments[1] document.

Proposed measure MOB-04 is seeking to identify actions to help achieve the emission reductions associated with the State Mobile Source Strategy "Further Deployment of Cleaner Technologies" measures for light-duty vehicles, off-road equipment, and federal and international sources. MOB-04 is proposing that the overall AQMP emission reductions to attain federal air quality standard be used as an initial goal to help identify additional emission reductions. SCAQMD staff will consider comments and input through the public process on identifying actions that result in additional emission reductions. The actions may be voluntary or regulatory in nature. Any future proposed regulatory action by the SCAQMD will be within its legal authority. The adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].)

[1] The referenced comment letter with responses is listed as Comment Letter Number 30 and is available on the internet at: http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/response-to-comments/2016-aqmp-rtc-2-of-4.pdf.

Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in light of the Program EIR. However, the implementation mechanism of the control measures (i.e. regulation or incentive or fee approach) does not affect the environmental analysis contained in the Draft Program EIR and the comment does not provide evidence to the contrary.

Comment 7-6

> Finally, we note that the "Regulatory Setting" section of Chapter 3.6 addressing noise impacts fails to reference statutory and regulatory provisions strictly prohibiting state and local governments from adopting airport noise or access restrictions without approval by the Federal Aviation Administration ("FAA"), specifically the Airport Noise & Capacity Act of 1990 and Federal Code of Regulations, Title 14, Part 161 – Notice and Approval of Noise and Access Restrictions. This section also fails to identify Part 150 – Airport Noise Compatibility Planning and the role the FAA plays in approving airport noise analyses and associated noise compatibility programs. Any sufficient analysis would need to take these regulatory constraints on California and its local governments into account.

Response 7-6

References to FAA regulations and authority were made throughout Subchapter 3.6, including Subchapters 3.6.2.1.3, 3.6.2.3, and 3.6.3.4.1 of the Draft Program EIR. SCAQMD staff will ensure that any future proposed regulatory action by the SCAQMD will be within its legal authority and will be in compliance with all FAA regulations.

Comment 7-7

> **CONCLUSION**
>
> We appreciate the opportunity to comment on this Draft EIR. We continue to strive to improve on our strong environmental performance and contribute to the prosperity of California and its residents and, in that spirit, look forward to conferring with the District as it refines and finalizes the 2016 AQMP.

Response 7-7

The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

long beach unified school district

BUSINESS DEPARTMENT – Facilities Development & Planning
2425 Webster Avenue, Long Beach, CA 90810
(562) 997-7550 Fax (562) 595-8644

November 07, 2016

Mr. Jeff Inabinet
Program Supervisor, CEQA
Planning, Rule Development, and Area Sources
21865 Coplay Drive
Diamond Bar, California 91765-4182
Transmitted via email: jinabinet@aqmd.gov

Re: Comments on the Draft Environmental Impact Report for the 2016 Air Quality Management Plan, SCAQMD, California

Dear Mr. Inabinet:

The Long Beach Unified School District (LBUSD) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the 2016 Air Quality Management Plan (2016 AQMP or Plan). We understand the Plan is a regional blueprint for achieving the federal air quality standards and healthful air, and that the South Coast Air Quality Management District (SCAQMD) is Lead Agency for the Project under the California Environmental Quality Act (CEQA).

BACKGROUND

The 2016 AQMP includes both stationary and mobile source strategies to ensure that rapidly approaching attainment deadlines are met, that public health is protected to the maximum extent feasible, and that the region is not faced with burdensome sanctions if the Plan is not approved or if the National Ambient Air Quality Standards (NAAQS) are not met on time. As noted in the draft Plan, the most significant air quality challenge in the Basin is to reduce nitrogen oxide (NOx) emissions sufficiently to meet the upcoming ozone standard deadlines. Since NOx emissions also lead to the formation of $PM_{2.5}$, the NOx reductions needed to meet the ozone standards will likewise lead to improvement of $PM_{2.5}$ levels and attainment of $PM_{2.5}$ standards.

8-1

GENERAL COMMENT

In addition to establishing high standards of academic excellence for its students, LBUSD is committed to providing a safe environment and school facilities for its students and employees. Thus, our primary concern in reviewing the DEIR – and the Plan -- is to ensure that potential environmental impacts to schools are appropriately identified, evaluated and mitigated.

SPECIFIC COMMENTS

Facility-Based Mobile Sources

Three "facility-based" mobile source control measures in the Plan seek to identify actions that will result in additional emission reductions at commercial marine ports, rail yards and intermodal facilities, and warehouse distribution centers to help meet the emission reductions associated with the State Mobile Source State Implementation Plan (SIP) Strategy "Further Deployment"

8-2

measures for on-road heavy-duty vehicles, off-road equipment, and federal and international sources:

- MOB-01 Emission Reductions at Commercial Marine Ports [NOx, SOx, PM]
- MOB-02 Emission Reductions at Rail Yards and Intermodal Facilities [NOx, PM]
- MOB-03 Emission Reductions at Warehouse Distribution Centers [All Pollutants].

We note that the recently revised draft Plan (dated October 7, 2016) includes revisions to proposed implementation start dates for these measures to 2019 from 2018). The implementation period is now identified as 2019 – 2031 for each measure.

Comment: A number of District school facilities are adjacent to and adversely affected by emissions from commercial marine ports, rail yards and intermodal facilities, and warehouse distribution centers. As such, the District encourages implementation of these proposed measures (MOB-01, MOB-02, and MOB-03) as expeditiously as possible. 8-2 cont.

On-Road Mobile Sources

The Plan identifies a range of "on-road" mobile source control measures, including the following:

- MOB-05 Accelerated Penetration of Partial Zero-Emission and Zero-Emission Vehicles [VOC, NOx, CO]
- MOB-06 Accelerated Retirement of Older Light-Duty and Medium-Duty Vehicles [VOC, NOx, CO]
- MOB-07 Accelerated Penetration of Partial Zero-Emission and Zero-Emission Light-Heavy- and Medium-Heavy-Duty Vehicles [NOx, PM]
- MOB-08 Accelerated Retirement of Older On-Road Heavy-Duty Vehicles [NOx, PM]

Comment: District school facilities can be adversely affected by emissions from mobile sources of emissions, including Goods Movement sources. As such, the District encourages continuing and expeditious implementation of these proposed measures.

Air Pollution Impacts to Schools

The DEIR states (pp.1-18 and 1-27) "[I]mplementation of the 2016 AQMP is expected to result in an overall reduction in toxic emissions due to the toxic control measures. Nevertheless, hazard impact associated with implementation of the 2016 AQMP control measures could result in potentially significant hazard impacts at sensitive receptors, including existing and proposed school sites." The DEIR further states (p. 3.2-40) "[E]levated ozone levels are also associated with increased school absences." In addition, (p. 3.2-44) "[D]aily fluctuations in fine particulate matter concentration levels have also been related to hospital admissions for acute respiratory conditions, to school and kindergarten absences, to a decrease in respiratory function in normal children and to increased medication use in children and adults with asthma. Studies have also shown lung function growth in children is reduced with long-term exposure to particulate matter. In 8-3

addition to children, the elderly, and people with preexisting respiratory and/or cardiovascular disease appear to be more susceptible to the effects of PM_{10} and $PM_{2.5}$."

New and modified sources of toxic air contaminants in the SCAQMD are subject to Rule 1401 - New Source Review of Toxic Air Contaminants, and Rule 212 - Standards for Approving Permits. Rule 1401.1 – Requirements for New and Relocated Facilities Near Schools -- sets risk thresholds for new and relocated facilities near schools. The requirements are more stringent than those for other air toxics rules in order to provide additional protection to school children. In addition, Rule 212 requires notification of SCAQMD's intent to grant a permit to construct a significant project, defined as a new or modified permit unit located within 1000 feet of a school (a state law requirement under AB 3205), a new or modified permit unit posing a maximum individual cancer risk of one in one million (1×10^6) or greater, or a new or modified facility with criteria pollutant emissions exceeding specified daily maximums.

8-3 cont.

Comment: District school facilities can be adversely affected by emissions from stationary sources, including new and modified permitted sources of toxic air contaminants. As such, the District encourages continuing and expeditious implementation of the existing rules regarding risk thresholds for new or relocated facilities near schools and notification regarding SCAQMDs intent to permit projects within close proximity of new schools. The District agrees with the intent of the above rules but recommends that the rule(s) be modified to require risk thresholds and notifications be required for projects within 1,320 feet (1/4 mile), rather than 1,000 feet, of SCAQMD permitted uses, to be consistent with the State's school safety criteria as established in Education Code 17213(b) and California Code of Regulations, Title 5, 14010(q).

CONCLUSION

The District appreciates the opportunity to participate in the environmental review process. We look forward to working with the SCAQMD in a continuing review and assessment of impacts from implementation of the Project (Plan), and the development and implementation of effective measures to mitigate air pollution impacts to schools.

8-4

If you have any questions, please contact Dori Arbour at LBUSD at (714) 598-5456 or darbour@lbschools.net.

Sincerely,

Alan Reising – Executive Director, Facilities Development & Planning
Long Beach Unified School District
areising@lbschools.net

cc: Dori Arbour, Facilities Consultant Environmental Manager
PlaceWorks

Responses to Comment Letter #8 – Long Beach Unified School District

Comment 8-1

The Long Beach Unified School District (LBUSD) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the 2016 Air Quality Management Plan (2016 AQMP or Plan). We understand the Plan is a regional blueprint for achieving the federal air quality standards and healthful air, and that the South Coast Air Quality Management District (SCAQMD) is Lead Agency for the Project under the California Environmental Quality Act (CEQA).

BACKGROUND

The 2016 AQMP includes both stationary and mobile source strategies to ensure that rapidly approaching attainment deadlines are met, that public health is protected to the maximum extent feasible, and that the region is not faced with burdensome sanctions if the Plan is not approved or if the National Ambient Air Quality Standards (NAAQS) are not met on time. As noted in the draft Plan, the most significant air quality challenge in the Basin is to reduce nitrogen oxide (NOx) emissions sufficiently to meet the upcoming ozone standard deadlines. Since NOx emissions also lead to the formation of $PM_{2.5}$, the NOx reductions needed to meet the ozone standards will likewise lead to improvement of $PM_{2.5}$ levels and attainment of $PM_{2.5}$ standards.

GENERAL COMMENT

In addition to establishing high standards of academic excellence for its students, LBUSD is committed to providing a safe environment and school facilities for its students and employees. Thus, our primary concern in reviewing the DEIR – and the Plan – is to ensure that potential environmental impacts to schools are appropriately identified, evaluated and mitigated.

Response 8-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR, therefore, no response is necessary under CEQA.

Comment 8-2

SPECIFIC COMMENTS

Facility-Based Mobile Sources

Three "facility-based" mobile source control measures in the Plan seek to identify actions that will result in additional emission reductions at commercial marine ports, rail yards and intermodal facilities, and warehouse distribution centers to help meet the emission reductions associated with the State Mobile Source State Implementation Plan (SIP) Strategy "Further Deployment" measures for on-road heavy-duty vehicles, off-road equipment, and federal and international sources:

- MOB-01 Emission Reductions at Commercial Marine Ports [NOx, SOx, PM]
- MOB-02 Emission Reductions at Rail Yards and Intermodal Facilities [NOx, PM]
- MOB-03 Emission Reductions at Warehouse Distribution Centers [All Pollutants].

We note that the recently revised draft Plan (dated October 7, 2016) includes revisions to proposed implementation start dates for these measures to 2019 from 2018). The implementation period is now identified as 2019 – 2031 for each measure.

Comment: A number of District school facilities are adjacent to and adversely affected by emissions from commercial marine ports, rail yards and intermodal facilities, and warehouse distribution centers. As such, the District encourages implementation of these proposed measures (MOB-01, MOB-02, and MOB-03) as expeditiously as possible.

On-Road Mobile Sources

The Plan identifies a range of "on-road" mobile source control measures, including the following:

- MOB-05 Accelerated Penetration of Partial Zero-Emission and Zero-Emission Vehicles [VOC, NOx, CO]
- MOB-06 Accelerated Retirement of Older Light-Duty and Medium-Duty Vehicles [VOC, NOx, CO]
- MOB-07 Accelerated Penetration of Partial Zero-Emission and Zero-Emission Light-Heavy- and Medium-Heavy-Duty Vehicles [NOx, PM]
- MOB-08 Accelerated Retirement of Older On-Road Heavy-Duty Vehicles [NOx, PM]

Comment: District school facilities can be adversely affected by emissions from mobile sources of emissions, including Goods Movement sources. As such, the District encourages continuing and expeditious implementation of these proposed measures.

Response 8-2

SCAQMD staff will work expeditiously to implement the proposed control measures referenced in the comment. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 8-3

Air Pollution Impacts to Schools

The DEIR states (pp.1-18 and 1-27) "[I]mplementation of the 2016 AQMP is expected to result in an overall reduction in toxic emissions due to the toxic control measures. Nevertheless, hazard impact associated with implementation of the 2016 AQMP control measures could result in potentially significant hazard impacts at sensitive receptors, including existing and proposed school sites." The DEIR further states (p. 3.2-40) "[E]levated ozone levels are also associated with increased school absences." In addition, (p. 3.2-44) "[D]aily fluctuations in fine particulate matter concentration levels have also been related to hospital admissions for acute respiratory conditions, to school and kindergarten absences, to a decrease in respiratory function in normal children and to increased medication use in children and adults with asthma. Studies have also shown lung function growth in children is reduced with long-term exposure to particulate matter. In addition to children, the elderly, and people with preexisting respiratory and/or cardiovascular disease appear to be more susceptible to the effects of PM_{10} and $PM_{2.5}$."

New and modified sources of toxic air contaminants in the SCAQMD are subject to Rule 1401 - New Source Review of Toxic Air Contaminants, and Rule 212 - Standards for Approving Permits. Rule 1401.1 – Requirements for New and Relocated Facilities Near Schools -- sets risk thresholds for new and relocated facilities near schools. The requirements are more stringent than those for other air toxics rules in order to provide additional protection to school children. In addition, Rule 212 requires notification of SCAQMD's intent to grant a permit to construct a significant project, defined as a new or modified permit unit located within 1000 feet of a school (a state law requirement under AB 3205), a new or modified permit unit posing a maximum individual cancer risk of one in one million (1×10^6) or greater, or a new or modified facility with criteria pollutant emissions exceeding specified daily maximums.

Comment: District school facilities can be adversely affected by emissions from stationary sources, including new and modified permitted sources of toxic air contaminants. As such, the District encourages continuing and expeditious implementation of the existing rules regarding risk thresholds for new or relocated facilities near schools and notification regarding SCAQMDs intent to permit projects within close proximity of new schools. The District agrees with the intent of the above rules but recommends that the rule(s) be modified to require risk thresholds and notifications be required for projects within 1,320 feet (1/4 mile), rather than 1,000 feet, of SCAQMD permitted uses, to be consistent with the State's school safety criteria as established in Education Code 17213(b) and California Code of Regulations, Title 5, 14010(q).

Response 8-3

SCAQMD staff will work expeditiously and appreciates the recommendation in the comment. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 8-4

CONCLUSION

The District appreciates the opportunity to participate in the environmental review process. We look forward to working with the SCAQMD in a continuing review and assessment of impacts from implementation of the Project (Plan), and the development and implementation of effective measures to mitigate air pollution impacts to schools.

If you have any questions, please contact Dori Arbour at LBUSD at (714) 598-5456 or darbour@lbschools.net.

Response 8-4

SCAQMD staff looks forward to working with Long Beach Unified School District staff. The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

OCTA

November 15, 2016

Ms. Jillian Wong
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: **Draft 2016 Air Quality Management Plan Program Environmental Impact Report**

Dear Ms. Wong:

The Orange County Transportation Authority (OCTA) appreciates the opportunity to provide comments on the Draft 2016 Air Quality Management Plan (AQMP) Program Environmental Impact Report. In addition, OCTA appreciates your diligent efforts to include a wide variety of stakeholders in your process as the 2016 AQMP is developed. In reviewing the Draft Program Environmental Impact Report (PEIR), OCTA identified several environmental impact areas that would benefit from additional clarification or further analysis prior to the certification of the Final AQMP Environmental Impact Report (EIR). These concerns are outlined in the discussion below. 9-1

As you know, the direct or indirect effects of a project on the environment should be identified and described, with consideration given to both short- and long-term impacts. The discussion of environmental impacts may include, but is not limited to, the resources involved; physical changes; alterations of ecological systems; health and safety impacts caused by physical changes; and other aspects of the resource base, including water quality, public services, etc. Because the environmental analysis accompanying the AQMP is a Draft PEIR, the analysis is broad and often cannot calculate and quantify environmental impacts to the detail needed to make findings. Therefore, OCTA requests that further Califoria Environmental Quality Act (CEQA) analysis be conducted (whether by the Southern California Air Quality Management District {SCAQMD} or the California Air Resources Board {CARB}) related to the individual control measures as they undergo the rulemaking process. We specifically request a subsequent analysis of ORHD-04 – Advanced Clean Transit and EGM-01 – Emission Reductions from New Development and Redevelopment Projects. 9-2

Orange County Transportation Authority
600 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)

ORHD-04 - Advanced Clean Transit

The CARB's Advanced Clean Transit Regulation is included in the AQMP. This regulation is intended to ensure that nearly every heavy-duty vehicle operated in California in 2023 will meet the 2010 heavy-duty engine emission standard. However, even a highly aggressive full-fleet penetration of 2010-compliant engines would not provide sufficient nitrous oxide (NOx) reductions to attain the federal ozone standard in the timeframe required.

This proposed rulemaking also requires transit operators to replace their entire bus fleets with zero-emission technologies between 2018 and 2040. There is a significant investment required as a result of this measures for very little emission reductions (less than 200 pounds of NOx per day). The emission reduction calculations for this measure need to be provided along with the fleet inventory assumed and fleet turnover projected. Without critical inputs, OCTA is unable to replicate the emission reductions associated with this measure.

It appears that the Draft 2016 AQMP assumed that the South Coast region's fleet is comprised of 11,000 buses, each traveling approximately 16,000 miles per year. However, CARB's Mobile Source Strategy appears to assume the same 11,000 buses operating for the entire state. Please verify the fleet assumption for the draft AQMP. The documentation for this inventory, along with the assumed fleet mix, should also be provided and shown in the Final PEIR. Further, please clarify that SCAQMD or CARB intend on conducting a subsequent and more detailed CEQA analysis as part of this rulemaking process in the future.

Finally, please note that implementation of ORHD-04 may result in significant expenses to transit providers that could necessitate fare increase and/or reduced service. This could negatively impact low-income and environmental justice communities. These potential impacts should be addressed in the PEIR.

9-3

EGM-01 – Emission Reductions from New Development and Redevelopment Projects

This measure appears to be under the jurisdiction of the SCAQMD and has a tentative adoption date of 2017. Implementation would occur between the years 2018-2031. AQMD states that this measure "seeks to capture emission reduction opportunities during the project development phase and opportunities to enable greater deployment of zero and near-zero emission

9-4

technologies."[1] This language is vague, and the measure does not identify emission reductions, cost-effectiveness, affected entities, or legal authority. However, although lacking detail or specificity, the Draft PEIR has identified the following potential environmental impacts: Air quality, energy, hazards, water quality and solid waste.

OCTA requests more information on this measure, so that a thoughtful analysis can occur and comments can be submitted. Specifically, please describe what assumptions were used to make the impact determinations. If a working group is convened for this measure, OCTA respectfully requests inclusion to assist with the rule development process.

Emission reductions with this measure, and many others, are identified as "To Be Determined" (TBD), which makes it difficult to assess benefits and potential adverse environmental impacts. Given the lack of specificity with these TBD measures, please explain whether it is necessary to include them in the PEIR, or if it would be more appropriate to analyze them separately once they are more refined.

9-4 cont.

Air Quality Impacts

Potential air quality and greenhouse gas emissions were projected from the use of additional electricity and alternative fuels. As stated previously, the emissions analysis should be clearly quantified so that this information can be more easily reviewed and verified. OCTA is particularly interested in the details regarding the emissions calculated for ORHD-04 to better understand potential adverse impacts related to increased demand for electricity and alternative fuels.[2]

A significant decrease in fuel usage was accounted for based on the implementation of ORHD-04. Specifically, this decrease was estimated at 88,902,832 gallons per year by 2023 and 77,251,722 by 2031. Please explain or provide the assumptions and calculations that went into these figures. Further, the estimated increase in clean transit vehicles is listed at 11,000 by 2023 and 11,000 by 2031. If the inventory for the four-county Basin is actually estimated to be 11,000 transit buses, it is unclear why the turnover appears to be estimated at exactly double this figure. Please provide the assumptions and calculations that went into Table 4.1-5.[3]

9-5

[1] Draft Program EIR for the 2016 AQMP, page 2-27, October 2016.
[2] Draft Program EIR, Table 4.1-4, page 4.1-48, October 2016.
[3] Draft Program EIR, Table 4.1-5, page 4.1-52, October 2016.

Energy Impacts

Table 4.2-5 in the Draft PEIR evaluates potential energy impacts from the 2016 AQMP. ORHD-04 is shown as having a fleet of 11,000 buses within the South Coast region, each averaging 16,600 miles per year. It further assumes that this sector will need an additional 183 gigawatts (GW)/hour in 2023 and 183 GW/hour in 2031. Please, again, verify the fleet assumption and provide details for the energy consumption calculation. Also, please explain why this energy usage number is identical in 2023 and 2032. It seems unlikely that the fleet turnover and energy usage would be exactly the same for both years.[4] 9-6

ORHD-04 is included in an additional line item in Table 4.2-5. It indicates that ORHD-03, ORHD-04, ORHD-05, ORHD-06 and ORHD-08 will have a combined electricity usage of 1,909 GW/hour in 2023 and 4,067 GW/hour in 2031. Please clarify why ORHD-04 is being counted twice and what the difference is between the two line items for ORHD-04. 9-7

The natural gas sector under the Energy Impacts analysis has also identified ORHD-04 as creating an increase in demand. When explaining the fleet mix and assumptions, it would be helpful to know if a certain percentage of buses were assumed to turnover to electric engines versus natural gas. 9-8

Thank you once again for the opportunity to provide input on the Draft 2016 AQMP PEIR. Should you have any questions regarding the comments above, please contact Greg Nord, Principal Transportation Analyst, at 714-569-5885, or gnord@octa.net. 9-9

Sincerely,

Kia Mortazavi
Executive Director, Planning

KM:gn

[4] Draft Program EIR, Table 4.2-5, page 4.2-13, October 2016.

Responses to Comment Letter #9 – Orange County Transportation Authority

Comment 9-1

The Orange County Transportation Authority (OCTA) appreciates the opportunity to provide comments on the Draft 2016 Air Quality Management Plan (AQMP) Program Environmental Impact Report. In addition, OCTA appreciates your diligent efforts to include a wide variety of stakeholders in your process as the 2016 AQMP is developed. In reviewing the Draft Program Environmental Impact Report (PEIR), OCTA identified several environmental impact areas that would benefit from additional clarification or further analysis prior to the certification of the Final AQMP Environmental Impact Report (EIR). These concerns are outlined in the discussion below.

Response 9-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR, therefore, no response is necessary under CEQA.

Comment 9-2

As you know, the direct or indirect effects of a project on the environment should be identified and described, with consideration given to both short- and long-term impacts. The discussion of environmental impacts may include, but is not limited to, the resources involved; physical changes; alterations of ecological systems; health and safety impacts caused by physical changes; and other aspects of the resource base, including water quality, public services, etc. Because the environmental analysis accompanying the AQMP is a Draft PEIR, the analysis is broad and often cannot calculate and quantify environmental impacts to the detail needed to make findings. Therefore, OCTA requests that further Califoria Environmental Quality Act (CEQA) analysis be conducted (whether by the Southern California Air Quality Management District {SCAQMD} or the California Air Resources Board {CARB}) related to the individual control measures as they undergo the rulemaking process. We specifically request a subsequent analysis of ORHD-04 – Advanced Clean Transit and EGM-01 – Emission Reductions from New Development and Redevelopment Projects.

Response 9-2

As accurately noted in the comment, the adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Each of the projects, including rule development and amendment derived from the control measures, will undergo project-level CEQA analysis in the future, in light of the Program EIR.

Comment 9-3

ORHD-04 - Advanced Clean Transit

The CARB's Advanced Clean Transit Regulation is included in the AQMP. This regulation is intended to ensure that nearly every heavy-duty vehicle operated in California in 2023 will meet the 2010 heavy-duty engine emission standard. However, even a highly aggressive full-fleet penetration of 2010-compliant engines would not provide sufficient nitrous oxide (NOx) reductions to attain the federal ozone standard in the timeframe required.

This proposed rulemaking also requires transit operators to replace their entire bus fleets with zero-emission technologies between 2018 and 2040. There is a significant investment required as a result of this measures for very little emission reductions (less than 200 pounds of NOx per day). The emission reduction calculations for this measure need to be provided along with the fleet inventory assumed and fleet turnover projected. Without critical inputs, OCTA is unable to replicate the emission reductions associated with this measure.

It appears that the Draft 2016 AQMP assumed that the South Coast region's fleet is comprised of 11,000 buses, each traveling approximately 16,000 miles per year. However, CARB's Mobile Source Strategy appears to assume the same 11,000 buses operating for the entire state. Please verify the fleet assumption for the draft AQMP. The documentation for this inventory, along with the assumed fleet mix, should also be provided and shown in the Final PEIR. Further, please clarify that SCAQMD or CARB intend on conducting a subsequent and more detailed CEQA analysis as part of this rulemaking process in the future.

Finally, please note that implementation of ORHD-04 may result in significant expenses to transit providers that could necessitate fare increase and/or reduced service. This could negatively impact low-income and environmental justice communities. These potential impacts should be addressed in the PEIR.

Response 9-3
Comments regarding the Advanced Clean Transit regulation have been provided to CARB since the measure is part of the State Mobile Source Strategy. It is not the intent of the control measure to result in reduced service levels, but CARB has not released specific proposals for the rule amendment at this time. However, CARB has discussed concepts for a proposed regulation, which includes consideration of near-zero emission buses as a transition to zero-emission buses.

CARB's Mobile Source Strategy uses an 11,000 bus fleet for the entire state. Accordingly, the buses operating within the District would be a subset of this fleet. However, SCAQMD did not have an accurate subset to use at the time of the development of the 2016 AQMP, so therefore, the entire fleet was conservatively included. The fleet assumption in the Draft 2016 AQMP was not relied upon for the programmatic level analysis conducted in the Draft Program EIR. ORHD-04 is intended to be part of future rulemaking activities and the environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR.

Comment 9-4

EGM-01 – Emission Reductions from New Development and Redevelopment Projects

This measure appears to be under the jurisdiction of the SCAQMD and has a tentative adoption date of 2017. Implementation would occur between the years 2018-2031. AQMD states that this measure "seeks to capture emission reduction opportunities during the project development phase and opportunities to enable greater deployment of zero and near-zero emission technologies."[1] This language is vague, and the measure does not identify emission reductions, cost-effectiveness, affected entities, or legal authority. However, although lacking detail or specificity, the Draft PEIR has identified the following potential environmental impacts: Air quality, energy, hazards, water quality and solid waste.

OCTA requests more information on this measure, so that a thoughtful analysis can occur and comments can be submitted. Specifically, please describe what assumptions were used to make the impact determinations. If a working group is convened for this measure, OCTA respectfully requests inclusion to assist with the rule development process.

Emission reductions with this measure, and many others, are identified as "To Be Determined" (TBD), which makes it difficult to assess benefits and potential adverse environmental impacts. Given the lack of specificity with these TBD measures, please explain whether it is necessary to include them in the PEIR, or if it would be more appropriate to analyze them separately once they are more refined.

[1] Draft Program EIR for the 2016 AQMP, page 2-27, October 2016.

Response 9-4
EGM-01 is intended to be part of future rulemaking activities and the environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR. All assumptions used to make these determinations are discussed in Draft Program EIR Subchapters 4.1, 4.2, 4.3, 4.4, and 4.6, respectively.

The "TBD" (to be determined) measures require further technical and feasibility evaluations and the attainment demonstration is not dependent on these measures. However, they are included in the 2016 AQMP as part of a comprehensive plan with all feasible measures in case there is a possible need for additional measures and a shortfall in reductions. As emission reductions are realized and to the extent that the reductions can be SIP creditable, the reductions will be taken as part of future rate-of-progress reporting or as part of future AQMP revisions. For the SCAQMD TBD mobile source measures, emission reductions are accounted for under CARB's State SIP Strategy so emission reductions are not listed to avoid overlap. These emission reductions will take place locally and will be determined when the programs, such as facility-based measures, are implemented.

Comment 9-5

Air Quality Impacts

Potential air quality and greenhouse gas emissions were projected from the use of additional electricity and alternative fuels. As stated previously, the emissions analysis should be clearly quantified so that this information can be more easily reviewed and verified. OCTA is particularly interested in the details regarding the emissions calculated for ORHD-04 to better understand potential adverse impacts related to increased demand for electricity and alternative fuels.[2]

A significant decrease in fuel usage was accounted for based on the implementation of ORHD-04. Specifically, this decrease was estimated at 88,902,832 gallons per year by 2023 and 77,251,722 by 2031. Please explain or provide the assumptions and calculations that went into these figures. Further, the estimated increase in clean transit vehicles is listed at 11,000 by 2023 and 11,000 by 2031. If the inventory for the four-county Basin is actually estimated to be 11,000 transit buses, it is unclear why the turnover appears to be estimated at exactly double this figure. Please provide the assumptions and calculations that went into Table 4.1-5.[3]

[2] Draft Program EIR, Table 4.1-4, page 4.1-48, October 2016.
[3] Draft Program EIR, Table 4.1-5, page 4.1-52, October 2016.

Response 9-5

The potential emissions increases that could occur as a result of the additional use of electricity and alternative fuels from the mobile source control measures were not quantified because project-specific information is not known at this time. Therefore, they are analyzed programmatically in the Draft Program EIR. ORHD-04 is intended to be part of future rulemaking activities and environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR. However, any increase in emissions attributable to an increased production of alternative fuels would be offset by reduced levels of petroleum fuel production and transportation of crude oil primarily from overseas and possibly by rail, as diesel and gasoline demand decreases. Similarly, the net effect of removing gasoline and diesel mobile sources is expected to have greater overall emission reduction benefits because emissions from electricity generation needed to power one electric vehicle are much less than the

combustion emissions from one gasoline or diesel vehicle, including for GHGs. In general, the 2016 AQMP mobile source control measures are expected to result in emission reductions.

The reduction in petroleum fuel usage shown in Table 4.1-5 was estimated based on the mobile source emissions model EMFAC2014 emissions for 2023 and 2031 and mobile source emissions model OFFROAD emissions for 2023 and 2029. The estimated increase of 11,000 clean transit vehicles by 2023 was estimated based on the funding estimates needed for the mobile source sector to attain the ozone NAAQS provided in Table 4-19 on page 4-68 of the Revised Draft 2016 AQMP. The addition of 11,000 clean transit vehicles in 2031 is a typographical error which has been corrected in the Draft Final 2016 AQMP and the Final Program EIR.

Comment 9-6

Energy Impacts

Table 4.2-5 in the Draft PEIR evaluates potential energy impacts from the 2016 AQMP. ORHD-04 is shown as having a fleet of 11,000 buses within the South Coast region, each averaging 16,600 miles per year. It further assumes that this sector will need an additional 183 gigawatts (GW)/hour in 2023 and 183 GW/hour in 2031. Please, again, verify the fleet assumption and provide details for the energy consumption calculation. Also, please explain why this energy usage number is identical in 2023 and 2032. It seems unlikely that the fleet turnover and energy usage would be exactly the same for both years.[4]

[4] Draft Program EIR, Table 4.2-5, page 4.2-13, October 2016.

Response 9-6

As stated in Response 9-5 above, the estimated increase of 11,000 clean transit vehicles by 2023 was estimated based on the funding estimates needed for the mobile source sector to attain the ozone NAAQS provided in Table 4-19 on page 4-68 of the Revised Draft 2016 AQMP. Footnote c to Table 4.2-5 describes the assumptions used to estimate the electricity impacts. The 183 GW-h estimate in 2031 is simply a carryover from the additional electricity demand from 2023, since the entire 11,000 busses estimate is accounted for in the 2023 figure.

Comment 9-7

ORHD-04 is included in an additional line item in Table 4.2-5. It indicates that ORHD-03, ORHD-04, ORHD-05, ORHD-06 and ORHD-08 will have a combined electricity usage of 1,909 GW/hour in 2023 and 4,067 GW/hour in 2031. Please clarify why ORHD-04 is being counted twice and what the difference is between the two line items for ORHD-04.

Response 9-7

The second reference to ORHD-04 was a typographical error. This has been corrected in the Final Program EIR.

Comment 9-8

> The natural gas sector under the Energy Impacts analysis has also identified ORHD-04 as creating an increase in demand. When explaining the fleet mix and assumptions, it would be helpful to know if a certain percentage of buses were assumed to turnover to electric engines versus natural gas.

Response 9-8

The potential energy impacts that could occur as a result of ORHD-04 was not quantified because project-specific information is not known at this time. Therefore, the energy impacts were analyzed programmatically in the Draft Program EIR and based on natural gas demand projections from the CEC as shown in Table 4.2-6 in the Draft Program EIR. ORHD-04 is intended to be part of future rulemaking activities and environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR.

Comment 9-9

> Thank you once again for the opportunity to provide input on the Draft 2016 AQMP PEIR. Should you have any questions regarding the comments above, please contact Greg Nord, Principal Transportation Analyst, at 714-569-5885, or gnord@octa.net.

Response 9-9

The comment does not raise any issues specific to the analysis contained in the Draft Program EIR, therefore, no further response is necessary under CEQA.

CALIFORNIA Water Boards

EDMUND G. BROWN JR. GOVERNOR

MATTHEW RODRIQUEZ SECRETARY FOR ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

November 18, 2016

Mr. Jeff Inabinet
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

jinabinet@aqmd.gov

DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT, 2016 AIR QUALITY MANAGEMENT PLAN – SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, DIAMOND BAR

Dear Mr. Inabinet:

Staff of the Santa Ana Regional Water Quality Control Board (Regional Board) has reviewed the Draft Program Environmental Impact Report (DPEIR) for the 2016 Air Quality Management Plan (AQMP) prepared by the South Coast Air Quality Management District (AQMD). This AQMP is the eleventh such regional plan to be issued since 1979, consistent with requirements of the 1976 Lewis Air Quality Act (which created the AQMD) and the federal Clean Air Act to incorporate updates of air quality standards and implementation measures to attain them. 10-1

The DPEIR provides an extensive, accurate review of the Regional Water Board goals and programs in its discussion of supply and water quality protection. The DPEIR evaluated the proposed comprehensive Project (the AQMP), and considered various components of several alternatives. However, because the DPEIR focuses only on certain air pollution control measures[1] that potentially affect water supply and quality, the document is insufficient in detailing whether or how the AQMP will address the topic of the potential for anthropogenic activities (some are listed below) to release air-borne pollutant particles that can adversely impact water bodies. The primary mechanism is dispersion of those particles, which are then absorbed or adsorbed into water at varying distances from the emission source. The distance over which different contaminants disperse would have 10-2

[1] Section 1.5.4, Hydrology and Water Quality, Subchapter 4.4 identified that implementing the control measures in the 2016 AQMP could potentially increase water demand and consequent wastewater discharges from an increase of treated wastewater at treatment plants, use of more waterborne coatings, and accidental releases from catalytic or non-catalytic reduction.

value in the regulation of boatyards, metal plating, and other industries. The addition of this information would greatly enhance the Water Boards' knowledge of these little-known impacts, and also more completely address water quality concerns in the DPEIR. 10-2 cont.

Water Quality Section 3.5.6 discusses point and nonpoint source pollution, but only mentions atmospheric deposition of metals (DPEIR p.3.5-33). Section 4.4, Hydrology and Water Quality mitigation measures (p.4.4.6), addresses contaminant spills to water bodies (reservoirs, channel beds, wetlands, nearshore environments, etc.) but again, the contaminant-water pollution link should be discussed for these situations. We recommend the DPEIR and AQMP address these data and information gaps, including the potential dispersal distances of air contaminants from the following likely sources to a water body: 10-3

- Applications or stripping of coatings for boats and other surfaces, including reformulated coatings, solvents, adhesives, and sealants containing VOCs;
- Metal emissions from plating, anodizing, and painting operations (p.2-42), with fugitive emissions to the air from nickel and copper plating prior to hexavalent chromium plating;
- Metal particulate emissions that can become airborne during the disturbance of soils contaminated with hexavalent chromium, lead, nickel, cadmium, and arsenic;
- Fumes from plasma/laser cutting of metals;
- Emissions from smelting, galvanizing, soldering, and other processing of molten metal;
- Lead and arsenic emissions from lead-acid battery recycling;
- Oil and gas field production well maintenance/stimulation;
- Return fluids from hydraulic fracturing;
- Fugitive silica dust from a variety of industrial actions;
- Heavy-duty vehicle engine emissions (primary diesel);
- Ammonia from greenwaste composting;
- Emissions from locomotives, ships and pleasure craft;
- Perchloroethylene emissions from dry cleaning operations;
- Spent batteries and disposed activated carbon; and we add,
- Atmospheric deposition from wind-borne air pollution from other countries (China, etc.).

If you have any questions, please contact Glenn Robertson at (951) 782-3259 or Glenn.Robertson@waterboards.ca.gov

10-4

Sincerely,

Wanda M Cross

Wanda M. Cross, Chief
Regional Planning Programs Section

Cc: State Clearinghouse
State Water Resources Control Board, Clean Water Programs Unit - Bill Orme

Responses to Comment Letter #10 – Santa Ana Regional Water Quality Control Board

Comment 10-1

Staff of the Santa Ana Regional Water Quality Control Board (Regional Board) has reviewed the Draft Program Environmental Impact Report (DPEIR) for the 2016 Air Quality Management Plan (AQMP) prepared by the South Coast Air Quality Management District (AQMD). This AQMP is the eleventh such regional plan to be issued since 1979, consistent with requirements of the 1976 Lewis Air Quality Act (which created the AQMD) and the federal Clean Air Act to incorporate updates of air quality standards and implementation measures to attain them.

Response 10-1

This is an introductory comment, which does not raise any issues regarding the Draft Program EIR, therefore, no response is necessary under CEQA.

Comment 10-2

The DPEIR provides an extensive, accurate review of the Regional Water Board goals and programs in its discussion of supply and water quality protection. The DPEIR evaluated the proposed comprehensive Project (the AQMP), and considered various components of several alternatives. However, because the DPEIR focuses only on certain air pollution control measures[1] that potentially affect water supply and quality, the document is insufficient in detailing whether or how the AQMP will address the topic of the potential for anthropogenic activities (some are listed below) to release air-borne pollutant particles that can adversely impact water bodies. The primary mechanism is dispersion of those particles, which are then absorbed or adsorbed into water at varying distances from the emission source. The distance over which different contaminants disperse would have value in the regulation of boatyards, metal plating, and other industries. The addition of this information would greatly enhance the Water Boards' knowledge of these little-known impacts, and also more completely address water quality concerns in the DPEIR.

[1] Section 1.5.4, Hydrology and Water Quality, Subchapter 4.4 identified that implementing the control measures in the 2016 AQMP could potentially increase water demand and consequent wastewater discharges from an increase of treated wastewater at treatment plants, use of more waterborne coatings, and accidental releases from catalytic or non-catalytic reduction.

Response 10-2

The adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Specific control measures will need to go through a rulemaking process in the future and environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR.

SCAQMD staff is unaware of methodologies which would estimate the absorption or adsorption of air-borne PM into water at varying distances from the emission source. SCAQMD staff looks forward to working with Santa Ana RWQCB staff during the future rulemaking process to more completely address water quality concerns.

Comment 10-3

Water Quality Section 3.5.6 discusses point and nonpoint source pollution, but only mentions atmospheric deposition of metals (DPEIR p.3.5-33). Section 4.4, Hydrology and Water Quality mitigation measures (p.4.4.6), addresses contaminant spills to water bodies (reservoirs, channel beds, wetlands, nearshore environments, etc.) but again, the contaminant-water pollution link should be discussed for these situations. We recommend the DPEIR and AQMP address these data and information gaps, including the potential dispersal distances of air contaminants from the following likely sources to a water body:

- Applications or stripping of coatings for boats and other surfaces, including reformulatec coatings, solvents, adhesives, and sealants containing VOCs;
- Metal emissions from plating, anodizing, and painting operations (p.2-42), with fugitive emissions to the air from nickel and copper plating prior to hexavalent chromium plating;
- Metal particulate emissions that can become airborne during the disturbance of soils contaminated with hexavalent chromium, lead, nickel, cadmium, and arsenic;
- Fumes from plasma/laser cutting of metals;
- Emissions from smelting, galvanizing, soldering, and other processing of molten metal;
- Lead and arsenic emissions from lead-acid battery recycling;
- Oil and gas field production well maintenance/stimulation;
- Return fluids from hydraulic fracturing;
- Fugitive silica dust from a variety of industrial actions;
- Heavy-duty vehicle engine emissions (primary diesel);
- Ammonia from greenwaste composting;
- Emissions from locomotives, ships and pleasure craft;
- Perchloroethylene emissions from dry cleaning operations;
- Spent batteries and disposed activated carbon; and we add,
- Atmospheric deposition from wind-borne air pollution from other countries (China, etc.).

Response 10-3

The Draft Program EIR evaluates and addresses potential hydrology and water quality impacts that may be caused by the proposed control measures on a programmatic level. The 2016 AQMP proposes control measures which would reduce the emissions from the sources listed below. Therefore, it is anticipated that by reducing the emissions from these sources, there would be a corresponding reduction in the associated water quality impact from the existing baseline. The adverse environmental impacts from the Draft 2016 AQMP were analyzed programmatically and pursuant to CEQA Guidelines Section 15168(c), a Program EIR can be used with later activities. (*See Town of Atherton*, 228 Cal. App. 4th at 346-47 [holding that site-specific analysis must be examined in detail in a project-level EIR and that requiring such analysis at the program level would undermine the purpose of tiering and create a burdensome level of detail in the larger-scale program EIR].) Specific control measures will need to go through a rulemaking process in the future and environmental impacts associated with the proposed rules or proposed rule amendments will be further evaluated at that time, in light of the Program EIR. The sources listed in the comment are addressed below:

- Applications of stripping of coatings for boats and other surfaces, including reformulated coatings, solvent, adhesives, and sealants containing VOCs are currently regulated by a number of Rules under SCAQMD Regulation XI – Source Specific Standards, including but not limited to Rules 1104, 1106, 1106.1, 1107, 1113, 1115, 1122, 1124, 1125, 1126, 1128, 1129, 1132, 1136, 1141, 1141.1, 1141.2, 1143, 1144, 1145, 1151, 1162, 1163, 1164, 1168, and 1171. Details of these VOC-related Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts will undergo a project-level CEQA analysis at that time.

- Metal emissions from plating, anodizing, and painting operations are currently regulated by a number of Rules under SCAQMD Regulation XI – Source Specific Standards, including but not limited to Rules 1107 and 1144, and SCAQMD Regulation XIV – Toxics and Other Non-Criteria Pollutants, including but not limited to Rules 1426, 1469, and 1469.1. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi, and details of Regulation XIV Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xiv. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from metal emissions will undergo a project-level CEQA analysis at that time.

- Plasma/laser cutting is currently regulated in Rule 219 under Regulation II – Permits. Details of Regulation II Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-ii. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from plasma/laser cutting will undergo a project-level CEQA analysis at that time.

- Emissions from metal melting operations are currently regulated by several Rules under SCAQMD Regulation XIV – Toxics and Other Non-Criteria Pollutants, including but not limited to Rules 1407 and 1420.2. Details of Regulation XIV Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xiv. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from metal melting operations will undergo a project-level CEQA analysis at that time.

- Emissions from lead and arsenic emissions from lead-acid battery recycling operations are currently regulated under SCAQMD Regulation XIV – Toxics and Other Non-Criteria Pollutants, Rule 1420.1. Details of Rule 1420.1 can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xiv. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from lead-acid battery recycling operations will undergo a project-level CEQA analysis at that time.

- Emissions from oil and gas field production well maintenance/stimulation, as well as hydraulic fracturing fluids are currently regulated by several Rules under SCAQMD Regulation XI – Source Specific Standards, including but not limited to Rules 1148, 1148.1 and 1148.2. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from oil and gas field production well maintenance/stimulation, as well as hydraulic fracturing fluids, will undergo a project-level CEQA analysis at that time.

- Emissions from fugitive silica dust (from abrasive blasting) are currently regulated by Rule 1140 under SCAQMD Regulation XI – Source Specific Standards. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from fugitive silica dust will undergo a project-level CEQA analysis at that time.

- Emissions from heavy-duty vehicle engine emissions are currently regulated by Rules 1192, 1193, 1194, 1195, and 1196 under SCAQMD Regulation XI – Source Specific Standards. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from heavy-duty vehicle engine emissions (within SCAQMD authority) will undergo a project-level CEQA analysis at that time.

- Emissions from greenwaste composting are currently regulated by Rule 1133.3 under SCAQMD Regulation XI – Source Specific Standards. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from greenwaste composting will undergo a project-level CEQA analysis at that time.

- Emissions from locomotives are currently regulated by Rules 3501, 3502, and 3503 under SCAQMD Regulation XXXV – Railroads and Railroad Operations. Details of Regulation XXXV Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xxxv. The SCAQMD is currently in development of several rules that would apply to commercial marine ports that include proposed Rules 4001, 4010, and 4020. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from railroad, ship, or pleasure craft operations will undergo a project-level CEQA analysis at that time.

- Perchloroethylene emissions from dry cleaning operations are currently regulated by Rule 1102.1 under SCAQMD Regulation XI – Source Specific Standards. Details of Regulation XI Rules can be found online at the following location: http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulation-xi. Any future rule development derived from the control measures that could potentially create hydrology/water quality impacts from dry cleaning operations will undergo a project-level CEQA analysis at that time.

- Please refer to Response 6-10 regarding a discussion on battery disposal. Please refer to Subchapter 4.6.4.2.1 of the Draft Program EIR for a full discussion on the disposal of activated carbon from control technologies.

- Wind-borne air pollution from other countries is out of the CEQA scope of analysis for the 2016 AQMP Draft Program EIR. No further response is necessary.

Comment 10-4

If you have any questions, please contact Glenn Robertson at (951) 782-3259 or Glenn.Robertson@waterboards.ca.gov

Response 10-4

This comment does not raise any issues regarding the Draft Program EIR, therefore, no response is necessary under CEQA.

From: Harvey Eder <harveyederpspc@yahoo.com>
Sent: Wednesday, November 16, 2016 12:00 AM
To: harveyederpspc@yahoo.com
Cc: harveyederpspc@yahoo.com
Subject: comments for all documents ref.ceqa ,aqmp 2016 and socio economics.Solar Now

lFrom Harvey Eder Ex. Dir. for self and PSPC Public Solar Power Coalition Nov. 15, 2016

More time is needed to work on commenting on the above

incorporated by reference is the entire record in 2013 SC116941 EDER et.a and the a[[eeelate case as well and everything said on the record etc

solar includes wind and water, This pro[osal includes floating solar and wind since some of this is con

Combined solar power pv and thermal with large tamks heat engine w.o combustion water tanks can be used after a big earthquake with seasonal storage in the ground as well as stratas in aquifers and earth due to confidental business inffformation.
the hox emissions will come down by 43 and 55 per cent by 23 and 31 respectfully this includes district heating and cooling systems these can all be done the new infrastructure program trump has thaked about water and sewerz etc,
solar thermal is 2 to 3 times more efficent, also this and all submittalsare in ther dealings with the comision and the Segs 11-1
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the 8 may 18 this yr are in the record there will be 10 million solar zev were in the here and above all is incirperateeeeeeeeeeeeeeeeeeeeeeed
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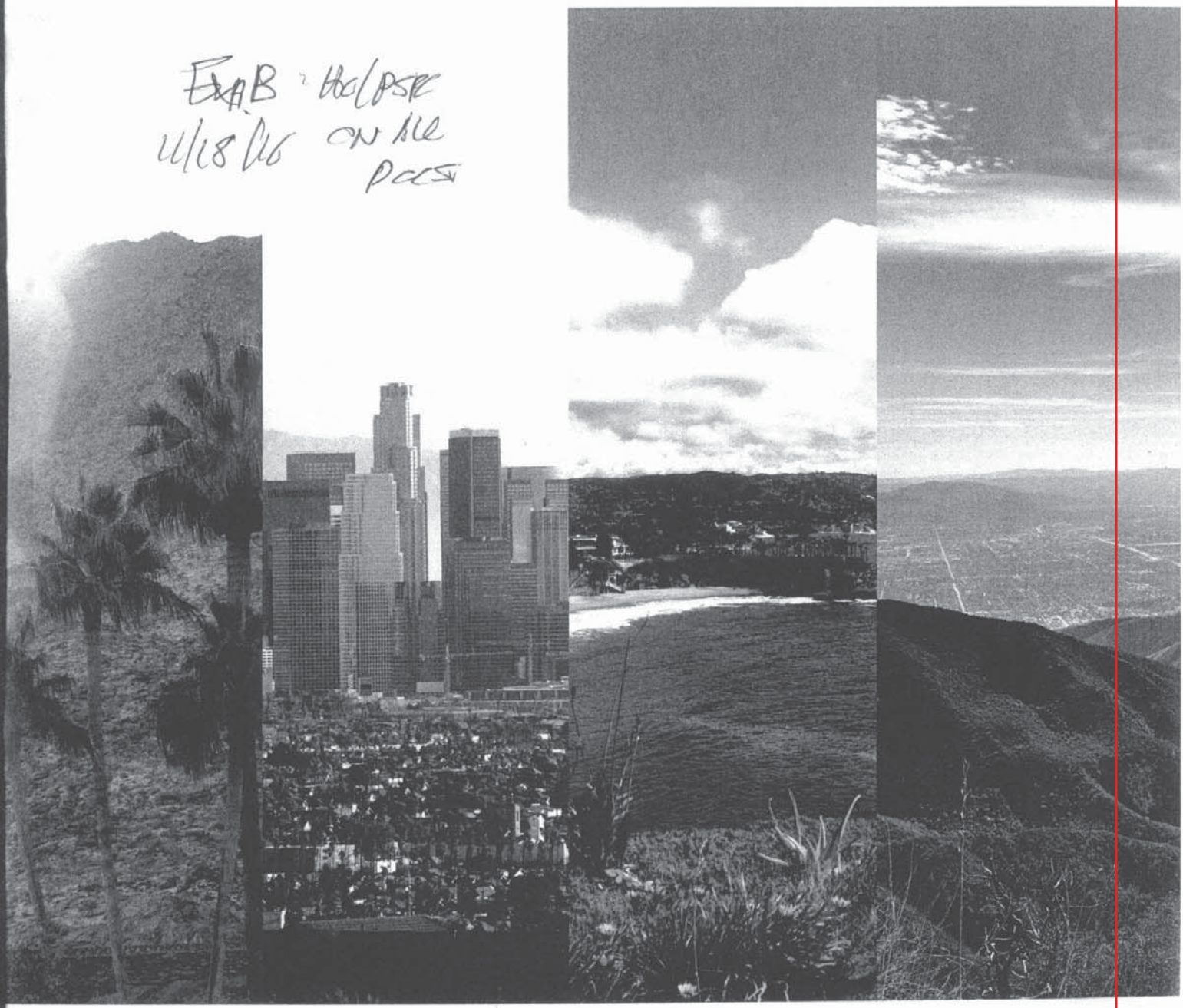
and IEA and IREn have info on solarrnargy and district solar heating and cooling sustems. so

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Program Environmental Impact Report

2016 AIR QUALITY MANAGEMENT PLAN

11-2



SEPTEMBER 2016

ON WAY TO
WIND
REPOWER
PALM SPRING
NEW WIND
TURBINES
RG. 11/17/16
PRE-ELECT
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COMMENTS
IN THURSDAY
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CEQA
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S/E STUDY

BACK SLIDING

DOE - SUNSHOT PV/CEP
FINANCIAL HEALTH
4 OF 8
MAY 18, 2016

11-3

COMMENTS BY HARVEY EDER
FOR SELF AND AS EX. DIR
FOR PSPC PUBLIC SOLAR
POWER COALITION
NOV. 18, 2016
FOR CEQA DOC, DRAFT PLAN AQMP
& SOC/ECON DOCUMENTS
FOR ALL SUBMITTED EXHIBITS
& ALL COMMENTS IN ALL PROCEEDINGS
ETC.

11-4

WORKED WITH
NORM INGRAHAM
DIRECTOR NCPA
1974
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WITH NCPA
200 MW GEOTHERMAL
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11-5

6.0 INTRODUCTION

This Program EIR provides a discussion of alternatives to the proposed project as required by CEQA. Pursuant to the CEQA guidelines, alternatives should include realistic measures to attain the basic objectives of the proposed project but would avoid or substantially lessen any of the significant effects of the project, and provide means for evaluating the comparative merits of each alternative (CEQA, Guidelines, §15126.6(a)). In addition, though the range of alternatives must be sufficient to permit a reasoned choice, they need not include every conceivable project alternative (CEQA Guidelines §15126.6(a)). The key issue is whether the selection and discussion of alternatives fosters informed decision making and public participation. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative (CEQA Guidelines, §15126.6(f)(3).

6.1 METHODOLOGY FOR DEVELOPING PROJECT ALTERNATIVES

The alternatives typically included in CEQA documents for proposed SCAQMD rules, regulations, or plans are developed by breaking down the project into distinct components (e.g., emission limits, compliance dates, applicability, exemptions, pollutant control strategies, etc.) and varying the specifics of one or more of the components. Different compliance approaches that generally achieve the objectives of the project may also be considered as project alternatives.

11-6

The 2016 AQMP identifies control measures and strategies to demonstrate that the region will: (1) attain the revoked 1997 8-hour ozone standard (80 ppb) by 2023; (2) attain the 2008 8-hour ozone standard (75 ppb) by 2032; (3) attain the 2012 annual PM2.5 standard (12 ug/m3) by 2025; (4) attain the 2006 24-hour PM2.5 standard (35 ug/m3) by 2019; and (5) attain the revoked 1979 1-hour ozone standard (120 ppb) by 2022. The 2016 AQMP also discusses the recently adopted new federal 8-hour ozone standard (70 ppb), as well as incorporates toxics, climate change, energy, transportation, goods movement, infrastructure and other planning efforts that affect future air quality.

The proposed attainment strategy focuses on reduction of ozone precursors (NOx and VOC), direct PM2.5, and PM2.5 precursors (NOx). NOx emissions lead to the formation of both ozone and PM2.5. Therefore, the most significant air quality challenge faced by the SCAQMD is to reduce NOx emissions sufficiently to meet the upcoming ozone and PM2.5 federal standard deadlines. The 2016 AQMP analyses indicate that an additional 43 percent NOx emission reduction is needed by 2023 and 55 percent is needed by 2031 to attain the 8-hour ozone standard. The majority of NOx emission reductions are expected to come from mobile sources.

The possible alternatives to the proposed 2016 AQMP are limited by the nature of the project. For example, the SCAQMD is required to prepare a PM2.5 and ozone AQMP that demonstrates attainment of the federal ambient air quality standards by applicable dates. The magnitude of emission reductions needed for the attainment of these NAAQS requires an aggressive mobile source control strategy supplemented with focused, strategic stationary source control measures and close collaboration with federal, state, and regional governments, local agencies, businesses, and the public.

Further, 2016 AQMP control measures are developed to achieve the maximum emission reduction potential that is technically feasible and cost-effective. Because, the 2016 AQMP includes all feasible control measures identified as part of the AQMP development process and control measures reflect the maximum emission reduction potential, it is difficult to develop alternatives that would still achieve the project objectives, including attaining the federal ozone and PM2.5 standard, but are substantially different than the 2016 AQMP.

11-7

In spite of the limitations identified above with regard to developing project alternatives, similar to previous AQMP Program EIRs, alternatives to the 2016 AQMP focus on emphasizing different pollutant control strategies. For example, alternatives could rely more only on regulation only versus greater reliance on incentive funding and mobile source control measures. Ultimately, all project alternatives must demonstrate attainment of the federal ozone and PM2.5 standards.

11-8

Development of the ozone and PM2.5 attainment control strategy relies on baseline emissions specified by the emissions inventory of all emissions sources in the Basin. The federal CAA §172(c)(3) requires all plan [AQMP] submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant(s). To fulfill the intent of this requirement, the year 2012 was selected as the baseline year for analyzing the effectiveness of 2016 AQMP control measures in attaining the ozone and PM2.5 standard. Typically, the existing setting is established at the time the NOP/IS is circulated for public review, which was July 2016. This baseline is used for all environmental topics analyzed in this Program EIR.

6.2 ALTERNATIVES REJECTED AS INFEASIBLE

In accordance with CEQA Guidelines §15126.6(c), a CEQA document should 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. Section 15126.6(c) also states that among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (1) failure to meet most of the basic project objectives; (2) infeasibility; or (3) inability to avoid significant environmental impacts.

11-9

As noted in Section 6.2, the range of feasible alternatives to the 2016 AQMP is limited by the nature of the proposed project and associated legal requirements. Similarly, the range of alternatives considered, but rejected as infeasible is also relatively limited. The following subchapters identify six potential alternatives to the 2016 AQMP that were rejected for the reasons explained in each subchapter.

6.2.1 NO PROJECT ALTERNATIVE – NO FURTHER ACTION

CEQA documents typically assume that the adoption of a no project alternative would result in no further action on the part of the project proponent or Lead Agency. For example, in the case of a proposed land use project such as a housing development, adopting the No Project Alternative terminates further consideration of that housing development or any housing development alternative identified in the associated CEQA document. In that case, the existing setting would typically remain unchanged.

11-10

The concept of taking no further action (and thereby leaving the existing setting intact) by adopting a No Project Alternative does not readily apply to an update of an already adopted and legally mandated plan such as the AQMP. Adopting a no project alternative for an update to the AQMP does not imply that no further action will be taken (i.e., halting implementation of the existing AQMP). The federal and state Clean Air Acts require the SCAQMD to revise and implement the AQMP in order to attain all applicable ozone and PM2.5 state and national ambient air quality standards. A no further action No Project Alternative in the case of the AQMP is not a legally viable alternative. Consequently, the No Project Alternative presented in this Program EIR is the continued implementation of the 2012 AQMP. Continued implementation of the 2012 AQMP without additional reduction measures would not be a feasible alternative because the SCAQMD is required to submit to U.S. EPA an ozone and PM2.5 AQMP that demonstrates attainment of the applicable ozone and PM2.5 NAAQS by the applicable dates, as explained above. However, continued implementation of the 2012 AQMP as the No Project Alternative (see Section 6.3.1 below) is consistent with CEQA guidelines §15126.6(e)(2) (italics added):

11-11

"The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, *as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services…*"

It should be noted that, except for air quality, there would be no further incremental impacts on the existing environment if no further action is taken. Although there are existing rules that may have future compliance dates, potential adverse impacts from these rules have already been evaluated in the Final Program EIR for the 2012 AQMP and subsequent rule-specific CEQA documents. Air quality would continue to improve to a certain extent, but it is unlikely that all state or federal ozone standards would be achieved as required by the federal and California CAAs.

6.2.2 FULL SOLAR CONVERSION ONLY

11-12

Under this alternative, all electricity would be generated by solar power. Public comments provided on the 2016 AQMP and NOP/IS (Appendix B) have requested that the alternative of complete solar power be evaluated.

11-13

Under this alternative, electricity would be generated by the construction and operation of additional solar generating systems. Some of these would be expected to be on existing housing, structures, and buildings. However, the amount of electricity that would need to be generated would require new large solar installations, which have generally been placed in the desert areas of California (CEC, 2016g), due to the large demand for land that is required. In 2015, solar thermal facilities generated a total of 14,953 gigawatt-hours or about 7.64 percent of the state's total electricity production (CEC, 2016g). Therefore, the state would need a significant increase in the construction and operation of additional solar generating systems.

While the solar technology has made great advances in recent years, there are still a number of existing concerns regarding the reliability and transmission of solar power. Large solar installations have been located in the desert portions of the state. As such, transmission lines that connect solar installations to the more populated portions of the state are not currently available.

Further, electricity would only be generated when the sun was out. While this is common in California, there are times when it is cloudy, rainy or night time when electricity would not be produced. So some type of electricity storage system may be required. The technology for large battery backup systems has not yet been developed which would mean that there would still be a requirement for natural gas-generated electricity. Therefore, full solar conversion is not feasible at this time.

A full solar alternative would result in a number of additional potentially significant environmental impacts than the current proposed AQMP strategy. This alternative would require the conversion of large portion of presumably desert habitat to industrial facilities, resulting in potentially significant impacts to aesthetics (impacts to visual character and glare), biological impacts (destruction of native habitats for rare and endangered species such as the desert tortoise), cultural impacts, land use impacts (conversion of native habitat to industrial land uses), additional air, noise, and traffic impacts associated with construction activities, and other similar impacts.

Finally, converting to full solar is an ambitious goal that has future possibilities. A full solar alternative to the 2016 AQMP would not result in sufficient emission reductions to assure attainment of the federal or state ozone standards. As discussed in Chapter 4.1.5, the carrying capacities (the maximum allowable NOx emissions to meet ozone standards) are estimated to be 150 tons/day NOx in 2023, and 100 tons/day NOx in 2031. NOx reductions of approximately 43 percent and 55 percent from the baseline levels are needed in 2023 and 2031, respectively. Elimination of natural gas-fired electricity power plants would not result in sufficient emission reductions to comply with ozone standards. Therefore, a full solar alternative would not achieve the primary objective of the proposed project to demonstrate attainment of the federal or state standards for ozone. For this reason, the alternative is considered to be infeasible at this time.

6.2.3 HEAVY VOC REDUCTION STRATEGY

The Heavy VOC Reductions Alternative scenario would aim to implement more VOC emission reductions to achieve ozone attainment, as opposed to the current 2016 AQMP strategy which focuses on NOx emission reductions. NOx levels would be held at or nearly constant and attainment would be dependent upon the reduction of VOC emissions, primarily in the areas of cleaner mobile sources, consumer products and lower VOC solvents. The VOC heavy approach is technically more uncertain, because it would require technology breakthrough in formulations of solvents or consumer products, which are not currently available. One result of the strategy may be the development of potentially new toxic formulations; however, replacement of solvents with low VOC formulations tends to be less toxic than conventional solvents.

Table 6.2-1 shows the limited feasible VOC control measures that have been identified as part of the 2016 AQMP. The VOC emission reductions currently total about 7-10 tons per day. Under this alternative, significant additional VOC emissions reductions would be required. Sufficient feasible VOC emission reductions are not available to demonstrate compliance with the ozone ambient air quality standards because there is a limited number of VOC sources and limited number of feasible VOC emission reductions. As a matter of fact, the ozone isopleths[1] for the two

[1] April 2016 AQMP Advisory Group Meeting #9 – http://www.aqmd.gov/docs/default-source/Agendas/aqmp/advisory9-item2.pdf (Slides 7-8)

Public Solar Power Coalition – Harvey Eder

The commentator provided printed copies of the following series of published papers. Since these papers are copyrighted materials (e.g. published papers or books), these copyrighted materials are not reprinted here, and instead, we are providing a list of the papers received, and links to websites where such materials may be available for viewing and download.

- Power to the People (William Bradley, December 2001)
- Home Investment Partnerships Program (U.S. Department of Urban Housing and Development, 2016)
- The California Energy Crisis, (Los Angeles Times, February 2001)
- Taken for a Ride (New Day Films, 1996)
- General Motors Streetcar Conspiracy (Wikipedia)
- Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP) (U.S. Environmental Protection Agency, September 2004)
- Guidance on State Implementation Plan (SIP) Credits for Emissions Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures (U.S. EPA, August 2004)
- Control Techniques for Nitrogen Oxides Emissions from Stationary Sources – Second Edition (U.S. EPA, January 1978 - Cover to page 25 was provided)

Responses to Comment Letter #11 – Harvey Eder
(Note that this is also listed as Comment Letter #98[1] on the 2016 AQMP)

Comment 11-1

lFrom Harvey Eder Ex. Dir. for self and PSPC Public Solar Power Coalition Nov. 15, 2016

More time is needed to work on commenting on the above

incorporated by reference is the entire record in 2013 SC116941 EDER et.a and the a[[eeelate case as well and everything said on the record etc

solar includes wind and water, This pro[osal includes floating solar and wind since some of this is con

Combined solar power pv and thermal with large tamks heat engine w.o combustion water tanks can be used after a big earthquake with seasonal storage in the ground as well as stratas in aquifers and earth due to confidental business infffformation.
the hox emissions will come down by 43 and 55 per cent by 23 and 31 respectfully this includes district heating and cooling systems these can all be done the new infrastructure program trump has thaked about water and sewerz etc,
solar thermal is 2 to 3 times more efficent, also this and all submittalsare in ther dealings with the comision and the Segs
solar energy generation about 400mw capacity
the 8 may 18 this yr are in the record there will be 10 million solar zev were in the here and above all is incirperateeeeeeeeeeeeeeeeeeeeeeeed
by reference tkhere is ahistiry of lit going back Materials on drug resistant ie super bugs 77770 per cent of anti biotice are used for farm animmmmals
there has been a series of articles on this on the record s10s 100000 deaths per yr to the mbte of the thousands od deaths
in deceptoively called renewabke natlural gas Al baeq working on BACT the hand scode says the district nust work ion BACT ASBAET BACRT deadky gas iv=boit 19 yrs ago
there will be 20 million zev with lithum and other batteries that via tesla l battrtord thast were 500 dollars per kw capacoty kwh are now 400 dokkars per kwh that will soon be 300 dokkars a kwh and are estimated to go 50 percent by 2019 or 100 to150 dollars oe [er kwh

and IEA and IREn have info on solarrnargy and district solar heating and cooling sustems. so

Response 11-1

The foreseeable environmental impacts associated with the 2016 AQMP control measures were fully analyzed in the Draft Program EIR. The use of renewable energy, such as solar, wind, and water has been committed to by the state and the 2016 AQMP seeks to compliment those efforts by accelerating the deployment of cleaner vehicles, such as electric, which would reduce emissions.

This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

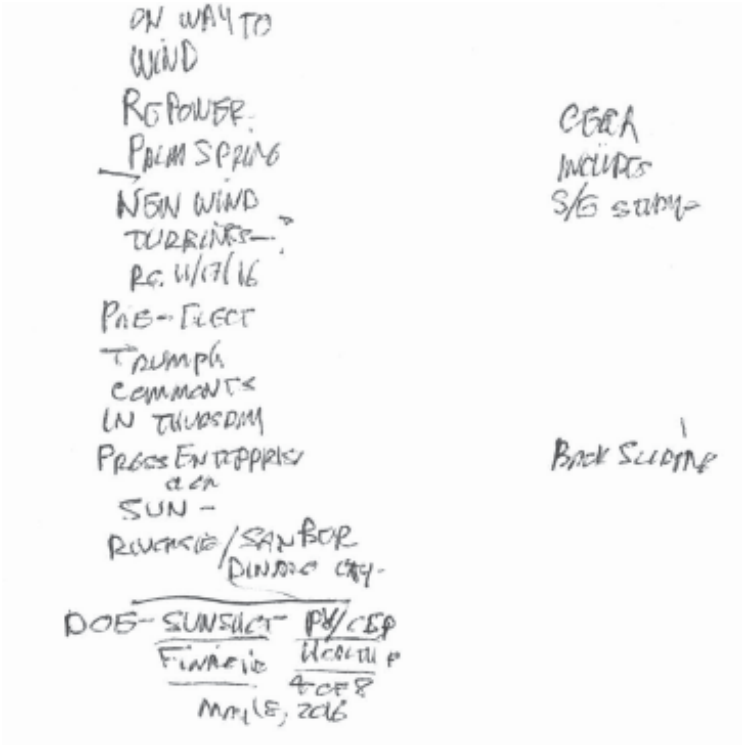
Comment 11-2

This comment is a reproduction of the cover page of the Draft Program EIR.

[1] Available on the internet at: http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/response-to-comments/2016-aqmp-rtc-4-of-4.pdf.

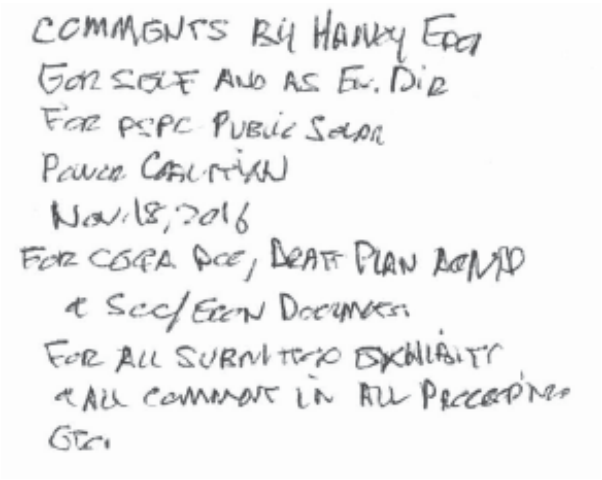
Response 11-2
The comment includes the commenters name and the date. This comment does not provide specifics regarding the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 11-3



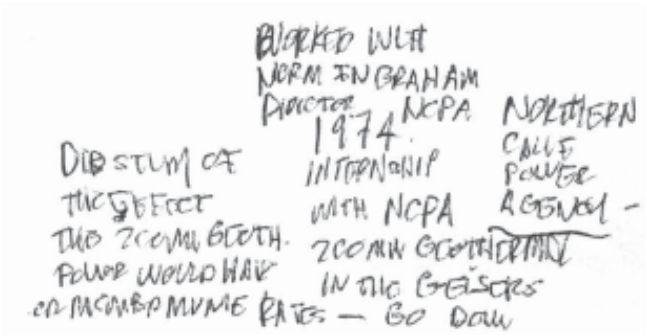
Response 11-3
This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-4



Response 11-4
This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-5



Response 11-5
This comment does not provide specifics regarding the Draft Program EIR, therefore, no further response is necessary under CEQA.

Comment 11-6

This comment is a reproduction of Page 6-1 of the Draft Program EIR.

Response 11-6
This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-7

Further, 2016 AQMP control measures are developed to achieve the maximum emission reduction potential that is technically feasible and cost-effective. Because, the 2016 AQMP includes all feasible control measures identified as part of the AQMP development process and control measures reflect the maximum emission reduction potential, it is difficult to develop alternatives that would still achieve the project objectives, including attaining the federal ozone and PM2.5 standard, but are substantially different than the 2016 AQMP. a TOXICS - VOC/ ? NO, PM - HOW ~~MOST~~ INCLUDES a GHG -

Response 11-7
The environmental impacts regarding air toxics and GHG emissions was included in Subchapter 4.1 of the Draft Program EIR. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-8

In spite of the limitations identified above with regard to developing project alternatives, similar to previous AQMP Program EIRs, alternatives to the 2016 AQMP focus on emphasizing different pollutant control strategies. For example, alternatives could rely more only on regulation only versus greater reliance on incentive funding and mobile source control measures. Ultimately, all project alternatives must demonstrate attainment of the federal ozone and PM2.5 standards.

Development of the ozone and PM2.5 attainment control strategy relies on baseline emissions specified by the emissions inventory of all emissions sources in the Basin. The federal CAA §172(c)(3) requires all plan [AQMP] submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant(s). To fulfill the intent of this requirement, the year 2012 was selected as the baseline year for analyzing the effectiveness of 2016 AQMP control measures in attaining the ozone and PM2.5 standard. Typically, the existing setting is established at the time the NOP/IS is circulated for public review, which was July 2016. This baseline is used for all environmental topics analyzed in this Program EIR.

Response 11-8

The environmental impacts regarding PM2.5 emissions was included in Subchapter 4.1 of the Draft Program EIR. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-9

6.2 ALTERNATIVES REJECTED AS INFEASIBLE

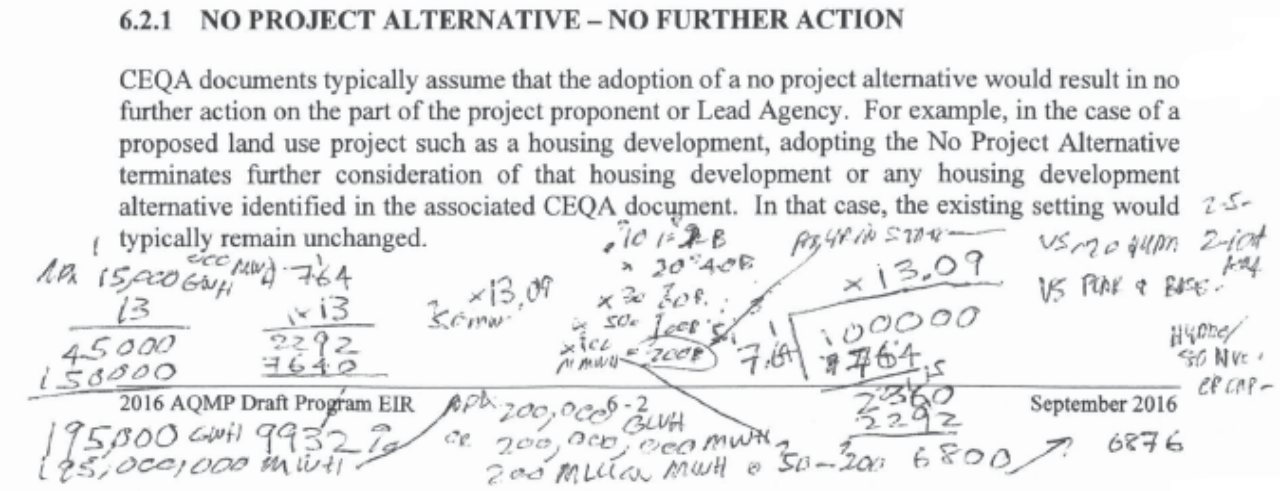
In accordance with CEQA Guidelines §15126.6(c), a CEQA document should identify any alternatives that were considered by the lead agency, but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Section 15126.6(c) also states that among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (1) failure to meet most of the basic project objectives; (2) infeasibility; or (3) inability to avoid significant environmental impacts.

As noted in Section 6.2, the range of feasible alternatives to the 2016 AQMP is limited by the nature of the proposed project and associated legal requirements. Similarly, the range of alternatives considered, but rejected as infeasible is also relatively limited. The following subchapters identify six potential alternatives to the 2016 AQMP that were rejected for the reasons explained in each subchapter.

Response 11-9

This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-10



6.2.1 NO PROJECT ALTERNATIVE – NO FURTHER ACTION

CEQA documents typically assume that the adoption of a no project alternative would result in no further action on the part of the project proponent or Lead Agency. For example, in the case of a proposed land use project such as a housing development, adopting the No Project Alternative terminates further consideration of that housing development or any housing development alternative identified in the associated CEQA document. In that case, the existing setting would typically remain unchanged.

2016 AQMP Draft Program EIR September 2016

Response 11-10

This comment includes numbers and calculations. However, no specifics regarding the analysis in the Draft Program EIR are provided. Therefore, no further response is necessary under CEQA.

Comment 11-11

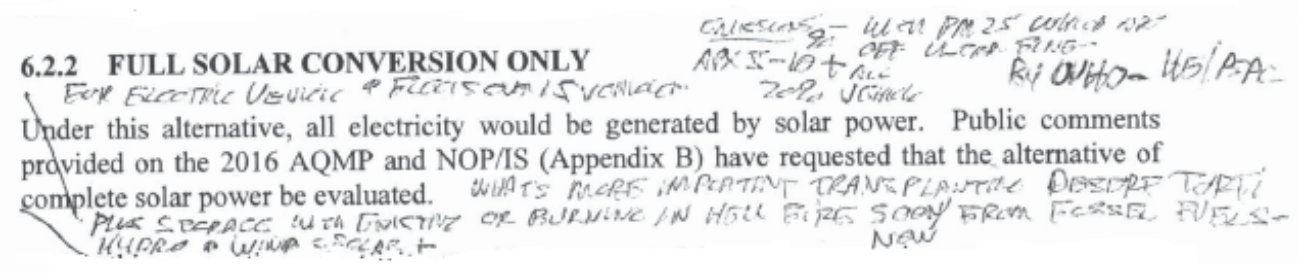
The concept of taking no further action (and thereby leaving the existing setting intact) by adopting a No Project Alternative does not readily apply to an update of an already adopted and legally mandated plan such as the AQMP. Adopting a no project alternative for an update to the AQMP does not imply that no further action will be taken (i.e., halting implementation of the existing AQMP). The federal and state Clean Air Acts require the SCAQMD to revise and implement the AQMP in order to attain all applicable ozone and PM2.5 state and national ambient air quality standards. A no further action No Project Alternative in the case of the AQMP is not a legally viable alternative. Consequently, the No Project Alternative presented in this Program EIR is the continued implementation of the 2012 AQMP. Continued implementation of the 2012 AQMP without additional reduction measures would not be a feasible alternative because the SCAQMD is required to submit to U.S. EPA an ozone and PM2.5 AQMP that demonstrates attainment of the applicable ozone and PM2.5 NAAQS by the applicable dates, as explained above. However, continued implementation of the 2012 AQMP as the No Project Alternative (see Section 6.3.1 below) is consistent with CEQA guidelines §15126.6(e)(2) (italics added):

"The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, *as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services…*"

It should be noted that, except for air quality, there would be no further incremental impacts on the existing environment if no further action is taken. Although there are existing rules that may have future compliance dates, potential adverse impacts from these rules have already been evaluated in the Final Program EIR for the 2012 AQMP and subsequent rule-specific CEQA documents. Air quality would continue to improve to a certain extent, but it is unlikely that all state or federal ozone standards would be achieved as required by the federal and California CAAs.

Response 11-11
This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-12

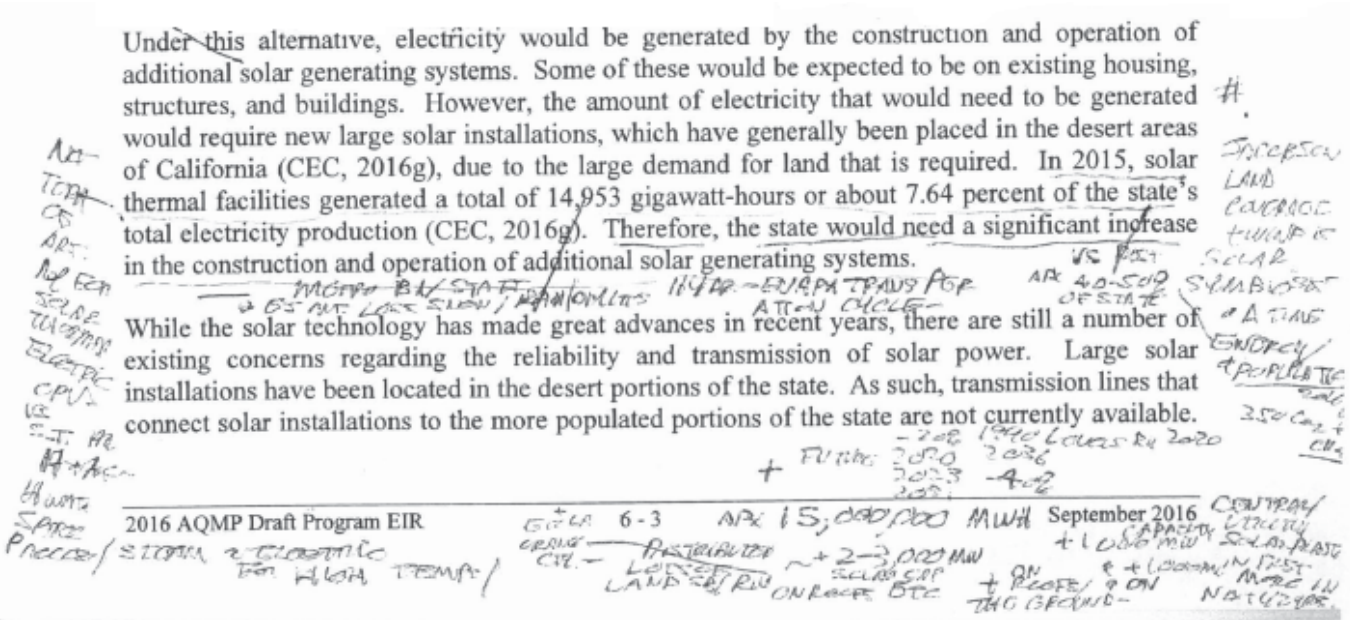


6.2.2 FULL SOLAR CONVERSION ONLY

Under this alternative, all electricity would be generated by solar power. Public comments provided on the 2016 AQMP and NOP/IS (Appendix B) have requested that the alternative of complete solar power be evaluated.

Response 11-12
The biological impacts from implementation of the 2016 AQMP were discussed in the NOP/IS (Appendix A), with a finding that no impacts would result; therefore, this topic area was not further analyzed in the Draft Program EIR. The air quality impacts were analyzed in Subchapter 4.1 of the Draft Program EIR and the energy impacts were analyzed in Subchapter 4.2 of the Draft Program EIR. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-13

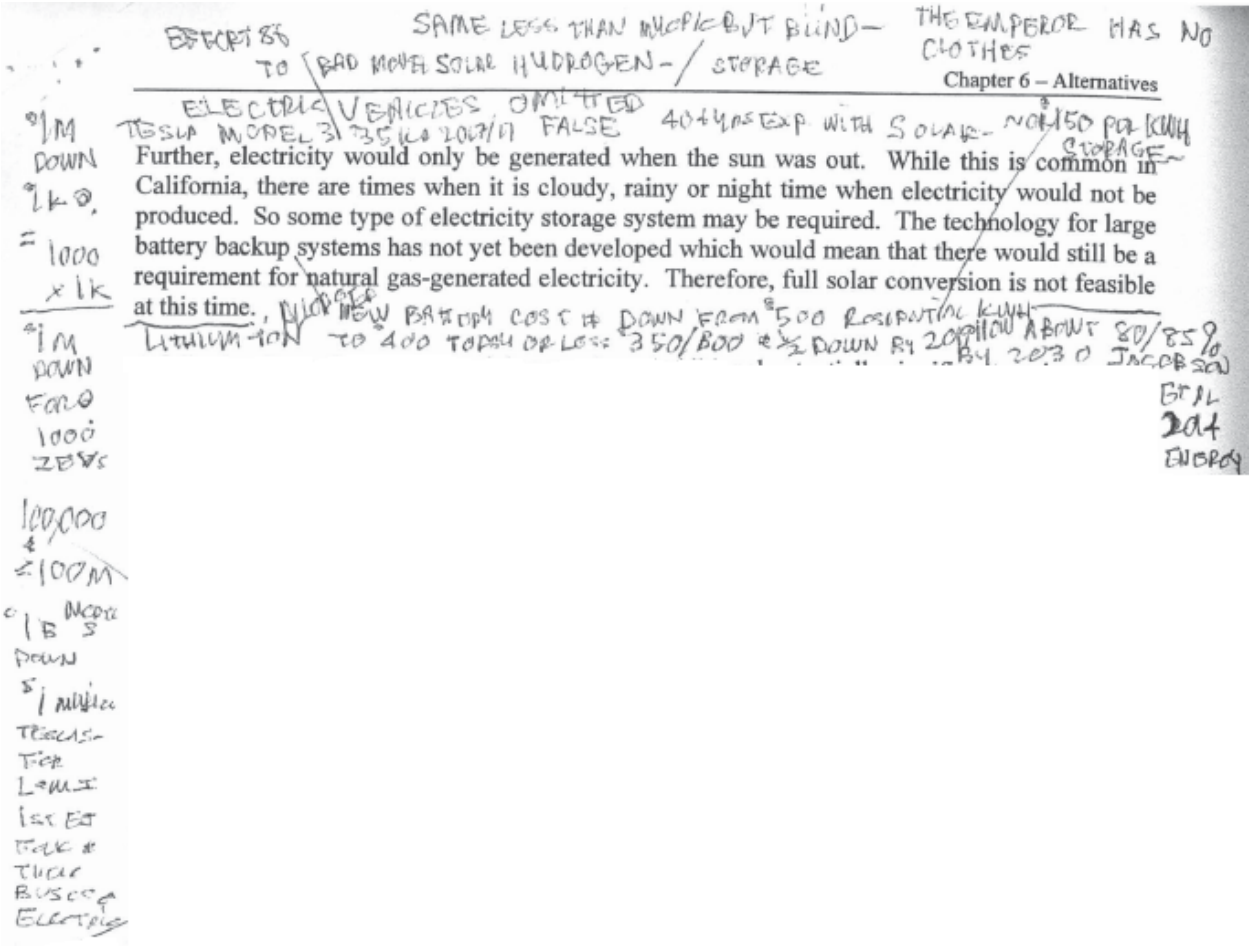


Under this alternative, electricity would be generated by the construction and operation of additional solar generating systems. Some of these would be expected to be on existing housing, structures, and buildings. However, the amount of electricity that would need to be generated would require new large solar installations, which have generally been placed in the desert areas of California (CEC, 2016g), due to the large demand for land that is required. In 2015, solar thermal facilities generated a total of 14,953 gigawatt-hours or about 7.64 percent of the state's total electricity production (CEC, 2016g). Therefore, the state would need a significant increase in the construction and operation of additional solar generating systems.

While the solar technology has made great advances in recent years, there are still a number of existing concerns regarding the reliability and transmission of solar power. Large solar installations have been located in the desert portions of the state. As such, transmission lines that connect solar installations to the more populated portions of the state are not currently available.

Response 11-13
The air quality impacts were analyzed in Subchapter 4.1 of the Draft Program EIR, and the energy impacts were analyzed in Subchapter 4.2 of the Draft Program EIR. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

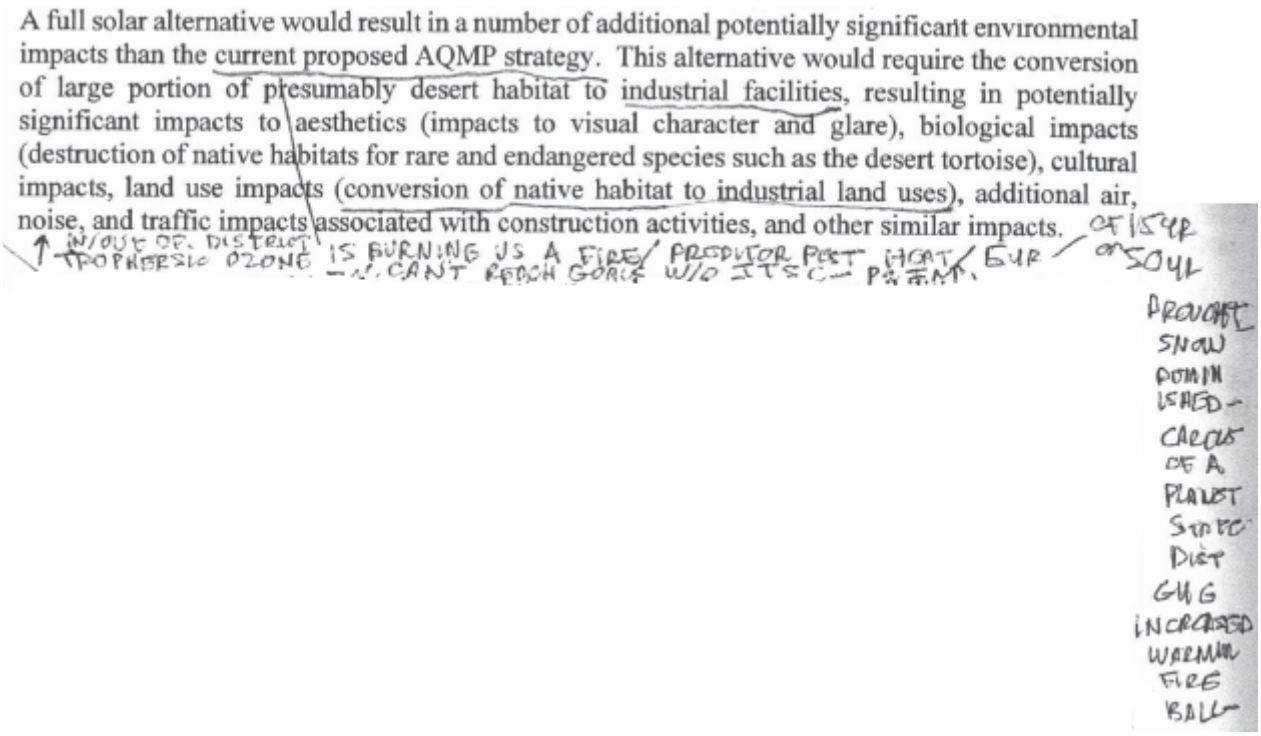
Comment 11-14



Response 11-14
The air quality impacts were analyzed in Subchapter 4.1 of the Draft Program EIR, and the energy impacts were analyzed in Subchapter 4.2 of the Draft Program EIR. The costs associated with the control measures are not a consideration when analyzing the environmental impacts of the 2016 AQMP. However, the Socioeconomic Report[2], which was prepared for the 2016 AQMP, discloses the costs and health benefits. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

[2] Available on the internet at: http://www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan/socioeconomic-analysis

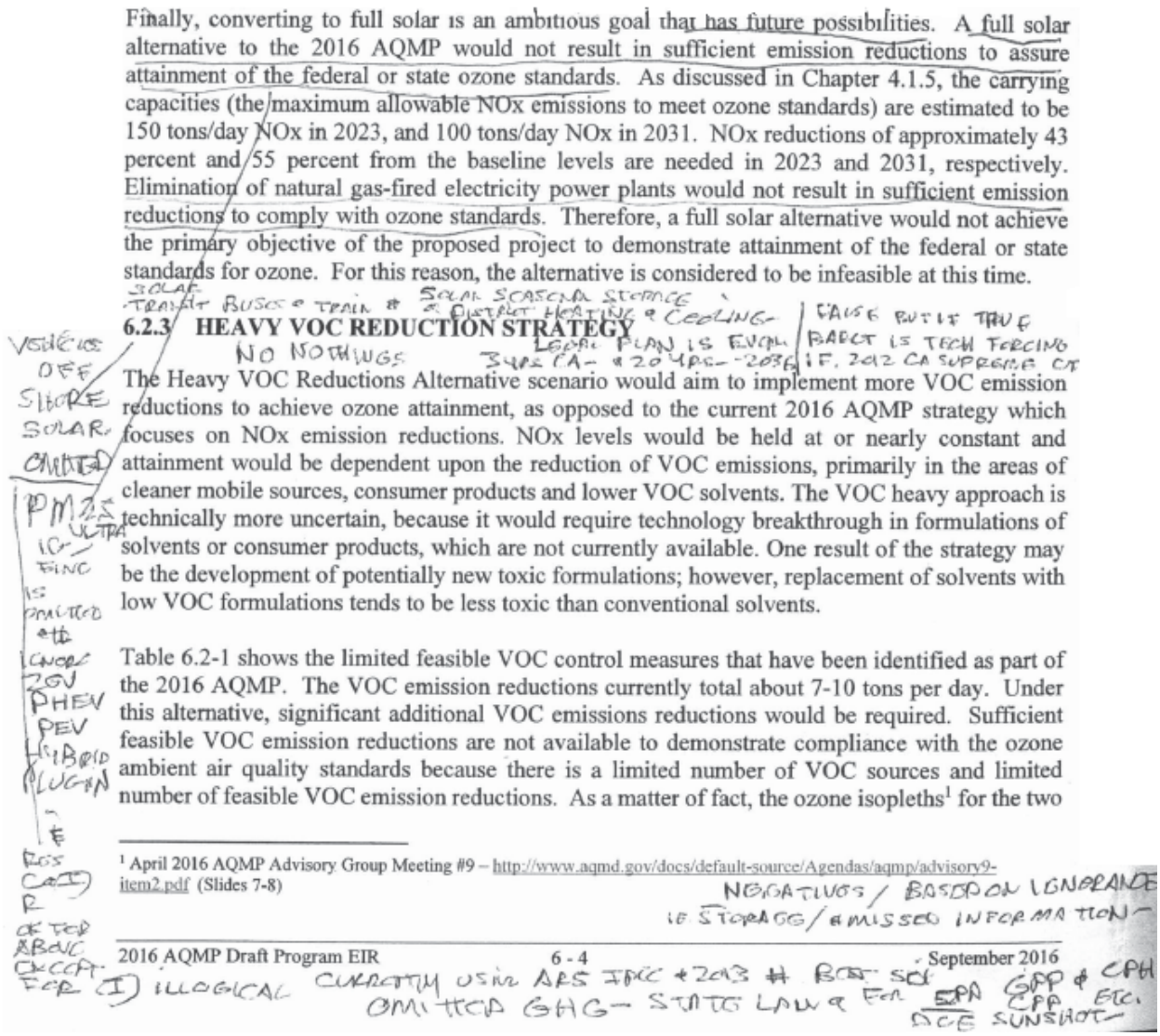
Comment 11-15


A full solar alternative would result in a number of additional potentially significant environmental impacts than the current proposed AQMP strategy. This alternative would require the conversion of large portion of presumably desert habitat to industrial facilities, resulting in potentially significant impacts to aesthetics (impacts to visual character and glare), biological impacts (destruction of native habitats for rare and endangered species such as the desert tortoise), cultural impacts, land use impacts (conversion of native habitat to industrial land uses), additional air, noise, and traffic impacts associated with construction activities, and other similar impacts.

Response 11-15

The foreseeable environmental impacts associated with the 2016 AQMP control measures were fully analyzed in the Draft Program EIR. The hazards and hazardous materials impacts were discussed in Subchapter 4.3 of the Draft Program EIR. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

Comment 11-16



Finally, converting to full solar is an ambitious goal that has future possibilities. A full solar alternative to the 2016 AQMP would not result in sufficient emission reductions to assure attainment of the federal or state ozone standards. As discussed in Chapter 4.1.5, the carrying capacities (the maximum allowable NOx emissions to meet ozone standards) are estimated to be 150 tons/day NOx in 2023, and 100 tons/day NOx in 2031. NOx reductions of approximately 43 percent and 55 percent from the baseline levels are needed in 2023 and 2031, respectively. Elimination of natural gas-fired electricity power plants would not result in sufficient emission reductions to comply with ozone standards. Therefore, a full solar alternative would not achieve the primary objective of the proposed project to demonstrate attainment of the federal or state standards for ozone. For this reason, the alternative is considered to be infeasible at this time.

6.2.3 HEAVY VOC REDUCTION STRATEGY

The Heavy VOC Reductions Alternative scenario would aim to implement more VOC emission reductions to achieve ozone attainment, as opposed to the current 2016 AQMP strategy which focuses on NOx emission reductions. NOx levels would be held at or nearly constant and attainment would be dependent upon the reduction of VOC emissions, primarily in the areas of cleaner mobile sources, consumer products and lower VOC solvents. The VOC heavy approach is technically more uncertain, because it would require technology breakthrough in formulations of solvents or consumer products, which are not currently available. One result of the strategy may be the development of potentially new toxic formulations; however, replacement of solvents with low VOC formulations tends to be less toxic than conventional solvents.

Table 6.2-1 shows the limited feasible VOC control measures that have been identified as part of the 2016 AQMP. The VOC emission reductions currently total about 7-10 tons per day. Under this alternative, significant additional VOC emissions reductions would be required. Sufficient feasible VOC emission reductions are not available to demonstrate compliance with the ozone ambient air quality standards because there is a limited number of VOC sources and limited number of feasible VOC emission reductions. As a matter of fact, the ozone isopleths[1] for the two

[1] April 2016 AQMP Advisory Group Meeting #9 – http://www.aqmd.gov/docs/default-source/Agendas/aqmp/advisory9-item2.pdf (Slides 7-8)

Response 11-16

The SCAQMD fully supports solar powered technologies and the 2016 AQMP includes a number of control measures that promote and integrate solar. Control Measures ECC-01 recognizes criteria pollutant co-benefits from federal, state, and local mandates and programs to reduce greenhouse gas (GHG) emissions including renewable portfolio standards and widely incentivized solar programs; ECC-02 seeks criteria pollutant co-benefits from the implementation of required energy efficiency mandates such as California's Title 24 program and SB 350 Clean Energy and Pollution Reduction Act; and ECC-03 seeks to provide financial incentives that go beyond the state-wide goals achieved under ECC-02. Solar PV and hot water heating are integral to these measures and will facilitate the penetration of zero-emission technologies in both stationary and mobile applications. Further, control measure CMB-01 anticipates future rulemaking in combination with financial incentives for the replacement of older equipment with zero and near-zero emission technologies. Equipment electrification, solar power, use of fuel cells, battery storage, and/or combined heating and power are all possible alternatives. Additionally, an

extensive discussion of energy and climate change can be found in Chapter 10 of the 2016 AQMP and the CEQA document considers the feasibility of full solar conversion as an alternative to the project. While full solar conversion cannot achieve AQMP's attainment goals by attainment deadlines, it can serve to make zero-emission technologies more cost-effective and feasible.

Solar panels are becoming more efficient, well established, and prices are declining rapidly making them cost-effective, but there are still a number of concerns regarding the reliability, transmission, demand spikes, and intermittency associated with renewable generation. Due to these issues, technologies that provide ancillary services and grid support, such as energy storage and improved demand side management, need to be further developed and integrated into the grid. Without incorporating these technologies as higher levels of renewables are incorporated, the stability of the electrical grid can be compromised and emissions could increase as peaking generating units are increasingly used.

To meet the federal ozone standards, the region will need to reduce 117 tpd NOx emission by 2023. Elimination of natural gas-fired electricity power plants, if feasible, will only result in 3 tpd NOx reductions. However, great progress in solar deployment is being made in California, which is leading the nation with over half a million solar projects along with commitments towards using 50% renewables in California by 2030. Incorporating and combining newer technologies such as solar collectors, smart grid, and energy storage with better power system management at the transmission, distribution, and behind the meter applications can reduce the need for redundant infrastructure and emissions from fossil-based generation. In addition, by combining with other technologies, conversions to full solar power become more cost effective and subsequently decrease the need for traditional based fossil generation. Staff will continue to promote and encourage the use of solar energy systems and technology in applications where it can be shown to be cost-effective and result in emission reductions. These efforts include incorporating renewable resources towards powering alternative transportation technologies.

The use of solar transit busses and trains, although not currently commercially available, is envisioned in the mobile source control measures in the 2016 AQMP. At the time of rulemaking, SCAQMD staff will consider all feasible technologies and options available for near-zero and zero emission vehicles. The use of battery storage to supplement solar was discussed in Chapter 10 of the 2016 AQMP as well as in control measures BCM-02 and ECC-03. This comment does not provide specifics regarding the Draft Program EIR; therefore, no further response is necessary under CEQA.

As part of this comment letter, copies of published materials were submitted. Since those papers are copyrighted materials, a list of the items submitted is included at the end of the comment letter.