ATTACHMENT A

PROPOSED

FINDINGS and STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The California Air Resources Board (CARB), as the lead agency for the *Proposed Control Measure for Ocean-Going Vessels At Berth* (Proposed Regulation[1]), prepared a Draft Environmental Analysis (EA) in accordance with its certified regulatory program (Cal. Code Regs., tit. 17, §§ 60000 – 60008) to comply with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000, *et seq*.). The Draft EA, entitled *Draft Environmental Analysis prepared for the Proposed Control Measure for Ocean Going Vessels At Berth in California*, included as Appendix D to the Staff Report (Initial Statement of Reasons) for the Proposed Regulation, provided an analysis of the potential environmental impacts associated with the Proposed Regulation. Following circulation of the Draft EA for a public review and comment period from October 18, 2019, through December 9, 2019, CARB prepared the *Final Environmental Analysis prepared for the Proposed Control Measure for Ocean Going Vessels At Berth in California* (Final EA) which includes minor revisions to the Draft EA. While updates have been made to the EA to ensure it reflects the Proposed Regulation as accurately as possible, these changes merely clarify, amplify, or make insignificant modifications to the otherwise-adequate Draft EA. Certain modifications to the Proposed Regulation as analyzed in the Draft EA would affect compliance responses to some extent, including modifications which would:

- Add the Innovative Concept compliance option;
- Expand use of Vessel and Terminal Incident Events (VIEs and TIEs) to new and expanding fleets;
- Accelerate implementation dates for tanker vessels to achieve earlier public health benefits;
- Extend the time to begin controlling emissions from 1 hour to 2 hours after the vessel is "ready to work".
- Change the date the Proposed Regulation supersedes the existing 2007 At-Berth Regulation; and
- Extend the compliance period for an innovative concept from three years to up to five years.

However, these modifications would not result in any new reasonably foreseeable significant environmental impacts or substantially increase the severity of an identified environmental impact. The Draft EA's findings, overall significance conclusions, mitigation

[1] While the Proposed Regulation would typically be referred to as the "Proposed Project" for CEQA purposes, we refer to it herein as the "Proposed Regulation" for consistency, because the other rulemaking documents in this proceeding use that defined term.

measures and alternatives adequately address the environmental review for the proposed modifications. Therefore, there is no significant new information that would require the EA to be recirculated. The Final EA was posted on CARB's webpage on August 25, 2020.

This statement of findings and overriding considerations was prepared to comply with CEQA's requirement to address the environmental impacts identified in the Final EA. (Pub. Resources Code, §§ 21081, 21081.6, Cal. Code Regs, tit. 14, §§ 15091, 15093.) The Final EA is based on the expected compliance responses of the regulated entities covered by the Proposed Regulation. Although the policy aspects and requirements of the Proposed Regulation would not directly change the physical environment, there are potential indirect physical changes to the environment that could result from reasonably foreseeable actions undertaken by entities in response to the Proposed Regulation. These indirect impacts are the focus of the programmatic-level impacts analysis in the Final EA.

Collectively, across all categories, the Final EA concluded that the reasonably foreseeable compliance responses associated with the Proposed Regulation could result in the following short-term and long-term impacts: less than significant impacts, or no impacts, to energy demand (construction-related or long-term), land use, air quality, greenhouse gases, population, employment and housing, public services, and recreation; and potentially significant adverse impacts to aesthetics, agriculture and forest resources, biological resources, cultural resources and tribal resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise and vibration, transportation and traffic, and utilities and service systems. The potentially significant and unavoidable adverse impacts are disclosed for both short-term, construction-related activities and long-term operational activities, which is why some resource areas are identified above as having both less-than-significant impacts and potentially significant impacts.

CARB's certified regulatory program requires that before adoption of an action for which significant adverse environmental impacts have been identified during the review process, CARB consider feasible mitigation measures and alternatives that could substantially reduce the impacts. (Cal. Code Regs, tit. 17, §60004.2.) CEQA places the burden on the approving agency to affirmatively show that it has considered feasible mitigation and alternatives that can lessen or avoid identified impacts through a statement of findings for each identified significant impact. (Pub. Resources Code, §21081.) CEQA Guidelines section 15091 provides direction on the content of the statement of findings. That section states that one or more of the following findings should be identified for each impact:

- Changes or alterations have been required in, or incorporated into, such projects which avoid or substantially lessen the significant environmental effect as identified in the final environmental impact report.

- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency, or can and should be adopted by such other agency.

- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

The potential adverse impacts identified in this programmatic level EA are potential indirect impacts associated with the compliance responses reasonably foreseeable in response to the Proposed Regulation based on currently available information. The ability to determine site- or project-specific impacts of projects carried out by third parties and the authority to require feasible mitigation lies with those agencies with authority to approve such actions, e.g. local permitting authorities in city or county governments and local air districts. CARB does not have the ability to determine with any specificity the project level impacts, nor the authority to require project-level mitigation in approving the Proposed Regulation, as discussed in the findings below.

An agency may approve a project with unavoidable (unmitigated) adverse environmental impacts. When doing so, CEQA requires the agency to make a statement in the record of its views on the ultimate balancing of the merits of approving the project despite the environmental impacts in a "statement of overriding considerations". (Pub. Resources Code, §21081(b); Cal. Code Regs, tit. 14, §15093.) The following presents the CARB Board's (Board) statement of findings for each significant adverse impact identified in the Final EA, accompanied by a brief explanation, and its statement of overriding considerations.

STATEMENT OF FINDINGS

The Board has independently reviewed and considered the entire record, including the information contained in the Final EA, public testimony, written comments received, and the written responses to environmental comments, all of which are hereby incorporated by reference. The Board makes the following written findings for each significant adverse impact identified, accompanied by a brief explanation of the rationale for each finding. These findings are supported by substantial evidence in the record.

As discussed in the Final EA, the evaluation of certain compliance responses would be speculative under CEQA. Those compliance responses are: the creation and use of the remediation fund and the creation and use of the Innovative Concepts Provision. CEQA does not require evaluation of speculative impacts (Cal. Code Regs., tit. 14 Section 15145). For that reason, an evaluation of effects of these compliance responses is not required and is not included in this analysis.

Aesthetics

<u>Finding and Explanation</u>

The Final EA found that the reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on aesthetic resources. Implementation of the Proposed Regulation could result in new

infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, while terminals and ports are already typically heavily-disturbed, industrial type areas, the compliance responses described here could adversely affect visual resources by adding new equipment and structures.

The Final EA includes Mitigation Measures 1.A-1 and 1.A-2, which identify existing statutes and regulations and operating permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 1.A-1 and 1.A-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 1.A-1 and 1.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the Final EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Agriculture and Forest Resources

<u>Finding and Explanation</u>

The Final EA found that the reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on agriculture and forest resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, affected ports and terminals would be in areas zoned for industrial uses. The Proposed Regulation would not incentivize or otherwise increase the number of port facilities in California or expand the footprint of existing port facilities. However, increased use of energy facilities, alternative fuels and lithium-ion batteries could require the construction and operation of new or expanded infrastructure across the state, which could potentially occur in areas currently zoned for or supporting agriculture and forest resources.

The Final EA includes Mitigation Measure 2.A-1, which identifies existing statutes and regulations and construction and operating permit requirements as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 2.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 2.A-1 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the Final EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Air Quality

Finding and Explanation

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land Based) impacts on air quality. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. Implementation of the Proposed Regulation could also result in infrastructure modifications (e.g., shore power connection cables, high voltage cables, and cable drums/reel systems) to existing vessels to accommodate increased on-board shore power usage. The construction and operation of these facilities and functions could result in some amount of increased emissions.

As described in greater detail in the EA, it would be expected that the primary sources of construction-related emissions would occur from soil disturbance and use of construction equipment. It is expected that during the construction phase for any new project, criteria air pollutants (e.g., NOx, SOx, and particulate matter (PM)) and toxic air contaminants (TACs) could be generated from a variety of activities and emission sources, such as equipment use and worker commute trips.

The Final EA included Mitigation Measure 3.A-1, which identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 3.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 3.A-1 should be adopted by those

agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This impact potential is overridden by the project's benefits as set forth in the statement of overriding considerations.

Biological Resources

Finding and Explanation

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on biological resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, most of the foreseeable compliance responses would generally be situated above-ground, although some construction activities could take place in marine areas as well. The potential for adverse construction-related effects related to these activities on biological resources would mainly be limited to pile driving, installation of piping and staging areas associated with facility modifications. Direct mortality could result from destruction of dens, burrows, or nests through ground compaction, ground disturbance, debris, or vegetation removal within port facility and marine terminal sites. Indirect impacts to species could result from construction noise disturbance that might cause nest or den abandonment and loss of

reproductive or foraging potential around the site during construction, transportation, or destruction of equipment and existing structures. Implementation of the Proposed Regulation could require operation of alternative fuel infrastructure such as compressor stations, pipelines, and export terminals, as well as lithium-ion battery infrastructure such as mining facilities, and recycling or refurbishment facilities. Long-term operation of these facilities would often include the presence of workers; movement of automobiles, trucks, and heavy-duty equipment; and operation of stationary equipment. As is generally the case in California's ports and terminals, this environment would generally not be conducive to the presence of biological resources located on-site or nearby.

The Final EA included Mitigation Measures 4.A-1 and 4.A-2, which identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 4.A-1 and 4.A-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 4.A-1 and 4.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This impact potential is overridden by the project's benefits as set forth in the statement of overriding considerations.

Cultural Resources

Finding and Explanation

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on cultural resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants,

lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, ground disturbing activities required by the implementation of the Proposed Regulation may require earth-moving and grading and mining activities that could affect undiscovered and known cultural resources, depending on their location in relation to known resources and whether the substrate is conducive to hosting archaeological resources. As a result, construction impacts would be potentially significant. Presence of new infrastructure may change the visual setting of the surrounding area, which could adversely affect historic resources and districts with an important visual component. For example, although it is unlikely such a facility would be sited in a historic district, a new industrial building or control system may not be consistent with the visual character of a historic district. As a result, construction and operational impacts would be potentially significant.

The Final EA included Mitigation Measure 5.A-1, which identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 5.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 5.A-1 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Geology and Soils

<u>Finding and Explanation</u>

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on geology and soil resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, it is probable construction activities for new facilities would require disturbance of undeveloped areas, such as clearing of vegetation, earth movement and grading, trenching for utility lines, erection of new buildings, and paving of parking lots, delivery areas, and roadways. These activities would have the potential to adversely affect soil and geologic resources. There is inherent uncertainty surrounding the location and magnitude of such facilities, which could be located outside of California. As such, it is conceivable that a facility could be located on soils incapable of supporting facility generated wastewater. Hard rock lithium ion extraction, which would be expected to occur outside of the state and U.S., would have adverse effects to erosion from potential loss of forests and soil disturbance.

The Final EA included Mitigation Measure 7.A-1, which identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 7.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 7.A-1 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Hazards and Hazardous Materials

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially short-term construction-related (land based) impacts and long-term operational (land based) impacts on hazards and hazardous material resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, construction activities generally use heavy-duty equipment requiring periodic refueling and lubricating fluids. It is during the transfer of fuel that the potential for an accidental release is most likely. Although precautions would be taken to ensure that any spilled fuel is properly contained and disposed, and such spills are typically minor and localized to the immediate area of the fueling (or maintenance), the potential remains for a substantial release of hazardous materials into the environment. The long-term operation of new infrastructure and facilities associated with capture and control systems and alternative fuels would result in the routine transport, use, and disposal of hazardous materials (i.e., fuels). Harmful substances can enter the environment in several ways throughout the entire cycle of fuel production, manufacturing, transportation, storage, distribution, and usage. The Final EA also addresses in detail potential fire and explosion risks presented by the Proposed Regulation. Furthermore, lithium reacts violently with strong oxidants, acids, and many compounds (hydrocarbons, halogens, halons, concrete, sand and asbestos) causing a fire and explosion hazard. In addition, lithium reacts with water, forming highly flammable hydrogen gas and corrosive fumes of lithium hydroxide. Lithium hydroxide represents a potentially substantial environmental hazard, particularly to water organisms. Improper

management of lithium-ion batteries could pose an environmental hazard and be of concern to public safety. Additionally, operational activities at ports would not take place in areas with substantial open space and vegetation that could be susceptible to wildfire; therefore, the Proposed Regulation would not exacerbate wildfire conditions.

The Final EA includes Mitigation Measures 9.A-1 and 9.A-2, which identify existing statutes and regulations and construction and operating permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 9.A-1 and 9.A-2 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 9.A-1 and 9.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource is inherently uncertain.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Hydrology and Water Quality

Finding and Explanation

The Final EA found reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on hydrology and water quality resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel

cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, construction activities could require disturbance of undeveloped areas, such as clearing of vegetation, earth movement and grading, trenching for utility lines, erection of new buildings, and paving of parking lots, delivery areas, and roadways. Specific construction projects would be required to comply with applicable erosion, water quality standards, and waste discharge requirements (e.g., NPDES, Stormwater Pollution Prevention Plan [SWPPP]). With respect to depleting groundwater supplies, new facilities are not anticipated to result in substantial groundwater demands. The increased demand for lithium-ion batteries would increase the demand for mined lithium. Lithium is currently obtained from areas outside of the United States, where State and federal laws and regulations are not enforced. Thus, water quality impacts related to mining could occur because of implementation of the reasonably foreseeable compliance responses associated with the Proposed Regulation. Alternative fuels (e.g., ethanol, methanol) associated with the Proposed Regulation could enter estuaries and marine waters from accidental release during fueling activities, which could adversely affect water quality in those aquatic systems.

The Final EA included Mitigation Measures 10.A-1 and 10.A-2, which identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 10.A-1 and 10.A-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 10.A-1 and 10.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Mineral Resources

<u>Finding and Explanation</u>

The Final EA found that the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts to mineral resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, implementation of the Proposed Regulation and associated compliance responses could result in an increased development where mining for lithium is feasible, which could conceivably affect the availability of these mineral resources if access to resources becomes impeded. Additionally, the Proposed Regulation may increase lithium mining, which would also contribute to the loss of availability of lithium as it is mined and consumed.

The Final EA included Mitigation Measure 12.A-1, which identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 12.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 12.A-1 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be

potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Noise

Finding and Explanation

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on noise resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, implementation of the Proposed Regulation could result in the generation of short-term construction noise levels in excess of applicable standards or that result in a substantial increase in ambient levels at nearby sensitive receptors, and exposure to excessive vibration levels. New sources of noise associated with implementation of Proposed Regulation could include operation of electrical infrastructure and shore- and barge-based capture and control systems at ports. It would be expected that, given the existing industrial character of and noise levels at ports, additional noise from operation of such equipment would not exacerbate existing noise levels. Nonetheless, implementation of the Proposed Regulation could result in the operation of alternative fuel-related infrastructure (e.g., pipelines, compressor stations, export terminals) outside the boundaries of a port. Operation of these facilities could include on-site noise sources, including fuel-delivery and other hauling-related activities (e.g., truck unloading), fuel-handling and processing activities (e.g., conveyor system, wheeled loader, dozer), and mechanical equipment (e.g., boiler, turbine, fans, pumps).

The Final EA included Mitigation Measures 13.A-1 and 13.A-2, which identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the

purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 13.A-1 and 13.A-2 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 13.A-1 and 13.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Transportation and Traffic

Finding and Explanation

The Final EA found that reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant short-term construction-related (land based) impacts and long-term operational (land based) impacts on transportation and traffic resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads. An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, construction of new infrastructure and facilities would result in short-term construction traffic (primarily motorized) in the form of worker commute and material delivery trips. Depending on the amount of trip generation and the location of new facilities, implementation could conflict with applicable programs, plans, ordinances, or

policies (e.g., performance standards, congestion management); and/or result in hazardous design features and emergency access issues from road closures, detours, and obstruction of emergency vehicle movement, especially due to project-generated heavy-duty truck trips. Long-term operational-related activities associated with deliveries and distribution of goods (e.g., alternative fuels) could result in the addition of new trips, which could affect roadway service levels. New facilities may result in additional egress/ingress points or increased traffic that would result in hazardous conditions on local roadways. Inadequate access may impede emergency vehicle access to new facilities.

The Final EA included Mitigation Measures 17.A-1 and 17.A-2, which identify existing statutes and regulations and construction permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measures 17.A-1 and 17.A-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 17.A-1 and 17.A-2 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Utilities and Service Systems

<u>Finding and Explanation</u>

The Final EA found that the reasonably foreseeable actions associated with implementation of the Proposed Regulation could result in potentially significant long-term operational (land based) impacts on utilities and service systems resources. Implementation of the Proposed Regulation could result in new infrastructure or modifications to existing infrastructure (e.g., high voltage cable lines, power meters, and circuit breaker main cabinets) to accommodate increased shore power, as well as modifications to berths to provide land-based capture and control devices. In addition, the Proposed Regulation may increase the use of barge-based control systems. Shore power and capture and control devices could require the construction of new pilings and surface area. Increased use of shore power could also require the use of peaker plants, lithium-ion storage batteries or fuel cells to provide alternative or additional electricity to vessels with large electrical loads.

An increase in demand for lithium-ion batteries and fuel cells could result in lithium and platinum mining and exports from source countries or other states and increased recycling, refurbishment, or disposal of lithium batteries and hydrogen fuel cells. However, any increased rates of disposal of lithium batteries and hydrogen fuel cells in California would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. Implementation of the Proposed Regulation could also require substantial new and improved infrastructure (e.g., pipelines, compressor stations, export terminals, fueling stations) to support the use of alternative fuels and fuel cells. As described in greater detail in the EA, new facilities associated with the production and distribution of alternative fuels, could substantially increase the demand for water, wastewater treatment, storm water drainage, energy, and solid waste services in their local areas. Additionally, depending on the location, new facilities may require new utility service lines and connections. At this time, the specific location, type, and number of new facilities that would be developed is not known and would be dependent upon a variety of market factors that are not within the control of CARB. Therefore, the ultimate magnitude and location of demand for utilities such as water and wastewater cannot be known. However, common impacts to utilities and service systems could include exceedances in wastewater treatment requirements of the applicable Regional Water Quality Control Board, requiring the construction of new wastewater treatment infrastructure and/or plants as well as new or expanded stormwater drainage facilities, producing water demand in exceedance of available water supplies, and generating levels of solid waste that exceeds an existing landfill's capacity.

The EA includes Mitigation Measure 18.A-1, which identifies existing statutes and regulations and construction and operating permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Therefore, the Board finds that the authority to implement Mitigation Measure 18.A-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 18.A-1 should be adopted by those agencies. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource is inherently uncertain.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed actions in the Proposed Regulation would be potentially significant and unavoidable. This potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Cumulatively Considerable Impacts

The applicable plan containing the appropriate summary of projections for considering cumulative impacts of the Proposed Regulation is the 2016 State SIP Strategy. The analysis of cumulative impacts for the Proposed Regulation included a summary of the cumulative impacts found for each resource area in this plan, and a conclusion regarding whether the Proposed Regulation could result in a cumulatively considerable contribution to an existing significant cumulative impact.

The EA concluded the Proposed Regulation could result in a cumulatively considerable contribution to significant cumulative impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise, transportation and traffic, and utilities and service systems. While suggested mitigation is provided within the respective resource areas of the EA analyses that could address the contribution of the Proposed Regulation to each of these potentially cumulatively considerable impacts, the Board finds that because these adverse impacts are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with the requisite authority can and should implement the identified measures to the degree feasible.

Because the authority and responsibility to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to these resources. Consequently, while cumulative impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the cumulatively considerable contribution of the Proposed Regulation to existing significant cumulative impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise, transportation and traffic, and utilities and service systems to be potentially significant and unavoidable.

Findings on Alternatives to the Project

In addition to the No-Project Alternative, the EA considered a reasonable range of potentially feasible alternatives that could potentially reduce or eliminate the significant adverse environmental impacts associated with the Proposed Regulation, while accomplishing most of the basic project objectives.

The Board finds the alternatives analysis is sufficient to inform the Board and the public regarding the tradeoffs between the degree to which the alternatives could reduce

environmental impacts and the corresponding degree to which the alternatives could achieve the project objectives.

Based upon a full evaluation of the alternatives, and the entirety of the record, the Board finds that adoption and implementation of the Proposed Regulation is the most desirable, feasible, and appropriate action for achieving the objectives of the project, and the Board rejects the other alternatives because they either fail to meet most project objectives, or are infeasible based on consideration of the relevant factors identified in the EA and briefly described below. Please see the Final EA for more in-depth discussion and analysis regarding project alternatives.

Alternative 1: No Project Alternative

Alternative 1 in the EA describes a reasonably foreseeable scenario if CARB did not approve the Proposed Regulation. Under Alternative 1, vessels, ports and terminals subject to the Existing Regulation would maintain their operations, business as usual, without addressing specific implementation fixes for the vessel fleets (which are included as part of the Proposed Regulation). No additional set of actions would be required to reduce emissions from vessels while at berth at a California Port. There would be no requirements for additional vessel categories to reduce emissions or requirements for ports and terminals to install or have emission control equipment available for vessels visiting their facilities.

The Board finds that the No-Project Alternative would fail to meet most of the project objectives listed in Chapter 2 of the Final EA. The No Project Alternative, would not expand the Existing Regulation to achieve reductions of NOx, ROG, DPM, PM2.5, GHG and black carbon emissions additional to those from the Existing Regulation to provide public health benefits in communities near ports and marine terminals that are heavily burdened by freight pollution. It would not reduce emissions from additional vessels (e.g. small vessel fleets, ro-ro, or tankers) or additional ports and terminals, nor would it reduce emissions from the boilers of tanker vessels using steam-driven pumps to off-load cargo. Emissions from auxiliary engines running on LNG and other alternative fuels would not be captured. For these reasons, the Board rejects this alternative.

Alternative 2: Implementation Fixes Through an Amendment of the Existing Regulation Only –

This alternative would remove many of the substantive expansions in the Proposed Regulation, including those pertaining to ro-ro and tanker vessels, additional ports, terminals and additional vessel visits not covered under the Existing Regulation. The implementation fixes to certain aspects of the Existing Regulation would remain in the proposal.

The Board finds that Alternative 2 would not expand the Existing Regulation to achieve reductions of NOx, ROG, DPM, PM2.5, GHG and black carbon emissions above those from the Existing Regulation to provide public health benefits in communities near ports and marine terminals that are heavily burdened by freight pollution. By only implementing regulatory fixes, this alternative would not expand on the Existing Regulation and would not achieve emissions reductions from other vessel types (ro-ro and tanker), small vessel fleets,

nor would it cover tanker boilers used for off-loading (e.g. crude tankers). This alternative would continue to allow compressed natural gas and LNG fuels to be exempt. By only addressing implementation fixes, this alternative fails to achieve the objective of ensuring ports and terminals take the necessary actions to achieve emissions reductions and allowing ports and terminals the flexibility to select CARB approved technologies that are the most cost effective for their specific operations. Although this alternative reduces many of the potentially significant environmental impacts from infrastructure construction and equipment operations of the Proposed Regulation, the beneficial impact of reduced long-term air pollution in pollution-burdened communities would not be realized. In addition, the State's ability to further combat the adverse health effects and environmental impacts related to air quality and climate change would be limited to benefits achieved from other programs. Therefore, this alternative would fail to meet most of the basic project objectives. For these reasons, the Board rejects this alternative.

Alternative 3: Require Barge-based Capture and Control Only Compliance Pathway for Tanker, Ro-Ro, Newly Regulated Reefer, and Container Vessels and Shore Power Only Compliance Pathway for Cruise Vessels (Apply the Same Thresholds as the Proposed Regulation and Maintain Existing Shore Power Infrastructure)

This alternative would require that cruise vessels use a shore power only compliance option using existing shore power infrastructure and that tankers, Ro-Ros, newly regulated reefer and container vessels use a barge-based capture and control only compliance option.

The Board finds that this alternative would result in substantial reductions of NOx, ROG, PM2.5, and DPM emissions additional to those from the Existing Regulation to provide public health benefits in communities near ports and marine terminals that are heavily burdened by freight pollution. This alternative would also broaden the Existing Regulation to include ro-ro and tanker vessels (including boilers on tankers that use steam driven pumps for off-loading), small fleets, auxiliary engines operating on LNG or alternative fuels and include additional ports and marine terminals. However, this Alternative would not reduce GHG and black carbon emissions further than the Existing Regulation, nor would it allow for the flexibility for ports or marine terminals to select a CARB approved technology that is most cost effective and feasible for their specific site operations. The barge-based only emissions control systems would not achieve air emissions benefits to the same extent as the Proposed Regulation. For vessels already utilizing shore power it is assumed less reductions would be achieved from a switch from shore power to barge-based capture and control. This alternative would avoid most of the construction-related activity from the Proposed Regulation, thus resulting in decrease to the significant environmental impacts identified, making this the environmentally superior alternative. However, this alternative fails to meet the objectives of the Proposed Regulation. For these reasons, the Board rejects this alternative.

Alternatives Considered but Rejected

Four additional alternatives were considered during development of the alternatives to the Proposed Regulation. The first was "Shore Power Only Compliance Pathway for all Vessel

Types (Apply the Same Thresholds as the Proposed Regulation)", the second was "Proposed At Berth Regulation Without the Inclusion of Ro-Ro Vessels (Apply the Same Thresholds as the Proposed Regulation)", the third was "Proposed At Berth Regulation Without the Inclusion of Tanker Vessels (Apply the Same Terminal Threshold as the Proposed Regulation)" and the fourth was "Industry Coalition Alternative". The CEQA Guidelines Section 15126.6(c) includes three factors that may be used to eliminate alternatives from detailed consideration in an Environmental Impact Report (EIR): "(i) failure to meet most of the basic Regulation objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impact." As described in detail in Chapter 7 of the Final EA, these alternatives were rejected because they do not meet the most basic of the project objectives or are either infeasible or would not avoid significant environmental impacts.

STATEMENT OF OVERRIDING CONSIDERATIONS

CARB expects that many of the significant adverse impacts identified in the EA will be avoided or mitigated; however, since uncertainty exists as to the extent of mitigation that other agencies will require at the site- and project-specific level, the Board is conservatively considering certain impacts to be potentially significant and unavoidable. The Board finds that despite the potential for adverse environmental impacts associated with the Proposed Regulation, other benefits of the proposed actions are determined to be overriding considerations that warrant approval of the Proposed Regulation and outweigh and override its unavoidable significant impacts. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every unavoidable impact. These benefits include:

1. Reducing exposure of air pollution in the most impacted communities by increasing the amount of vessel visits have emissions control under AB 617 (Health & Safety Code Sections § 40920.6, 42400, 42402, 39607.1, 40920.8, 42411, 42705.5, and under Assembly Bill 617);

2. Minimizing near-source exposure and health risk from identified toxic air contaminants, including DPM, produced by fuel combustion pursuant to the Toxic Air Contaminant Identification and Control Act, which established California's program to reduce exposure to air toxics. (Health and Safety Code § 36950 - 36975, Assembly Bill No. 1807, 1983);

3. Attaining the National Ambient Air Quality Standards (NAAQS) for Ozone and PM in all regions of California, as required by the Federal Clean Air Act. The current standards are 80 parts per billion (ppb) 8-hour ozone by 2023, 75 ppb 8-hour ozone by 2031, 12 micrograms per cubic meter annual PM2.5 by 2021 to 2025, and lastly the new federal ozone standard of 70 ppb with attainment dates through 2037. (California Air Resources Board, Revised Proposed 2016 State Strategy for the State Implementation Plan; Health and Safety Code § 39003);

4. Ensuring vessels at berth and at anchorage are complying with existing opacity standards set forth in California's HSC section 41701 in California's regulated waters;

5. Incentivizing and supporting emerging zero-emission technology that will be

needed to achieve CARB's SIP goals;

6. Achieving emission reductions consistent with the Global Warming Solutions Act (Heath and Safety Code Sections 38550 et seq.);

7. Spurring economic activity and increase benefits to control system manufacturers, crane manufacturers barge manufacturers, component suppliers (including ducts and piping), electrical suppliers, design and engineering and construction firms;

8. Taking steps to ensure all Californians can live, work, and play in a healthful environment free from harmful exposure to air pollution, including protecting and preserving public health and well-being, and preventing irritation to the senses, interference with visibility, and damage to vegetation and property (Health & Safety Code Section 43000(b)) in recognition that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State (Health & Safety Code Section 43000(a); 43013(b));

9. Achieving reductions in GHGs, ROG, and black carbon emissions, supporting California's climate change goals;

10. Advancing research and development for cleaner marine technologies which can be translated on a global scale;

11. Helping support shore power use outside of California which drives down costs to California and provides health benefits to other port communities where shore power technology is used;

12. Reducing noise pollution to port communities as a result of vessel engines required to be shut down while at berth and provides better on-board comfort while at port;

13. Providing cost savings for terminal operators by the generation of credits for the low carbon fuel standard (LCFS) at an estimated cost savings of $2.8 million;

14. Providing fuel and cost savings for vessels using shore power; and

15. Providing additional health benefits relating to avoided hospitalization, reduced mortality and emergency room visits.

LOCATION AND CUSTODIAN OF THE RECORD

The documents and other materials that constitute the record of proceedings on which these findings are based are located at 1001 I Street Sacramento, CA 95814. The custodian for these documents is the California Air Resources Board Legal Office, inquiries can be submitted to CaliforniaEnvironmentalQualityAct@arb.ca.gov.